

BEFORE THE ARBITRATOR

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In the Matter of the Arbitration of a Dispute Between  
**MILWAUKEE BUILDING AND CONSTRUCTION  
TRADES COUNCIL, AFL-CIO**

and

**COUNTY OF MILWAUKEE**

Case 765  
No. 70825  
MA-15056

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**Appearances:**

**Karen Rioux**, Whitfield, McGann & Ketterman, Attorneys at Law, 111 East Wacker Drive, Suite 2600, Chicago, Illinois 60601, for Milwaukee Building and Construction Trades Council, AFL-CIO, which is referred to below as the Council.

**Roy Williams**, Principal Assistant Corporation Counsel, Milwaukee County, Room 303, 901 North Ninth Street, Milwaukee, Wisconsin 53233, for the County of Milwaukee, which is referred to below as the County.

**ARBITRATION AWARD**

The Council and the County are parties to a collective bargaining agreement, which provides for final and binding arbitration. The Council requested, and the County agreed, that the Wisconsin Employment Relations Commission appoint an arbitrator to resolve Grievance 61669, filed on behalf of Tim Risse. The Commission appointed Richard McLaughlin, a member of its staff. On August 8, 2011, hearing was held in Milwaukee, Wisconsin. The hearing was not transcribed. The parties entered argument at hearing, waived the filing of briefs, and requested that an interim, or, if possible, a full final award be issued by August 12, 2011.

**ISSUES AND BACKGROUND**

At hearing, the parties entered a document entitled "**STIPULATIONS**" (the Stipulation), which states:

**ISSUE**

Did the Milwaukee County Parks Department violate Section 2.07(2) of the Collective Bargaining Agreement and the Park Maintenance Vacation Policy when it denied Tim Risse's March 10, 2011 vacation request?

If so, what is the appropriate remedy?

**FACTS**

1. The County of Milwaukee and the Milwaukee Building & Construction Trades Council, AFL-CIO are parties to a Collective Bargaining Agreement ("CBA"). The CBA is effective from January 1, 2009 through December 31, 2011 . . .

2. Section 2.07(2) of the CBA states as follows:

(2) "Whenever possible, vacations shall be granted at the time requested by the employees. Approval of vacation requests shall be based on countywide seniority subject to the departmental work rules."

. . .

3. On or about March 10, 2011, Mr. Risse submitted his 2011 Vacation Request to the Park Maintenance Department. Mr. Risse's Vacation Request form indicates that he has requested a vacation from August 22, 2011 through September 21, 2011. . . .

4. On or about March 15, 2011, the Department of Parks, Recreation & Culture denied Mr. Risse's vacation request.

5. On or about March 25, 2011, Mr. Risse timely filed a grievance over the denial of his vacation request with the Human Resources Coordinator for the Department of Parks, Recreation & Culture. . . .

6. This grievance is properly before Arbitrator Richard McLaughlin for a decision on the merits.

7. The Department of Parks, Recreation & Culture established a Vacation Policy dated March 1, 2002. Paragraph 7 . . . states as follows:

"The Department of Parks, Recreation and Culture will honor reasonable vacation requests provided the proper employees are available to perform required duties and responsibilities. Special events, winter sports, weather conditions, work load and public needs may restrict times when vacations may be taken."

...

8. The Park Maintenance Department issued a 2011 Vacation Policy placing certain restrictions on when vacations may be taken. . . .

9. On or about April 20, 2011, Lyle Balistreri, President of the Milwaukee Building & Construction Trades sent correspondence to the Human Resources Coordinator for the Parks Department, Lori Brown, seeking certain documents and written confirmation of the reason for the Parks Department's denial of Mr. Risse's vacation request. . . .

10. On or about May 10, 2011, Lori Brown sent written correspondence to Lyle Balistreri, responding to his April 20, 2011 correspondence. Ms. Brown's letter states in part:

"I wish to confirm that the reason the Parks Department is denying Mr. Risse's request for vacation is the hardship that five consecutive weeks away from his duties would have on the remaining carpenters who would be responsible for accomplishing all carpentry projects while he is away."

Ms. Brown's correspondence also contained . . . an attachment with a statement from the Mechanical Services Manager, Gene Andrzejak, as to the impact a five week vacation would have on the remaining carpenters employed by the Parks Department as well prior vacation requests of Tim Risse and other member of the Skilled Trades Department. . . .

The Stipulation consists of the items listed above and related exhibits.

The Department of Parks, Recreation & Culture is referred to below as Parks, and the Park Maintenance Department is referred to below as Park Maintenance.

Risse filed a vacation request form dated March 10, 2011 (references to dates are to 2011, unless otherwise noted). The request notes that he has accrued 240 hours of vacation and 44.2 hours of vacation carryover. The request includes an attachment seeking that the first two days of the time off be taken as personal days. Dave Jager was then employed as a Carpenter and served as a Working Foreman. He denied Risse's request. Gene Andrzejak, Park Maintenance Manager and Jager's direct supervisor, confirmed the denial.

Risse responded by filing Grievance 61669. The grievance form states, under the heading, "What happened to cause your grievance?" that,

Vacation requests and the 2011 Park Maintenance Vacation Policy were distributed early in March, 2011. On Wednesday, March 9, 2011 Dave Jager . . . informed the carpenters that we were to have our vacation requests turned in by Friday, March 11, 2011. On Thursday, March 10, 2011 I turned in my vacation request. On March 11, 2011 at the carpenter shop morning meeting, Dave Jager informed me "I'm not letting you take five weeks off in a row." I asked him why, because I was following

the policy. He replied "I don't care, I'm not letting you have off. You have all year to take off. You don't need to take five weeks off in a row." I talked to Gene Andrzejak, Park Maintenance Manager. He also said that I couldn't do that but he would look into it.

On Tuesday, March 15, 2011 I found my vacation request under my placemat at the carpenter's table marked "Vacation Denied". When I asked Gene A. why my vacation was denied since I was following the policy, he explained there was no way he could let me have off six weeks in a row and he said he has the final say. I explained that I wanted to drive to Alaska with my son and to my daughter's sealing of her marriage in the Mormon faith in Arizona and it was probably going to be a 20,000 mile trip. He reiterated that he could not let me have off six weeks in a row.

Gene also said that there is a general Parks Department vacation policy that he had not handed out. I questioned why he didn't hand that out with the rest of the policy. He then gave me the Department of Parks Recreation & Culture Vacation Policy. I read the policy and then timestamped my vacation request form and turned it into Gene A.'s mailbox because the Parks Department policy he just gave me said that . . . employees will be notified whether their vacation has been approved no later than March 15th and I was worried about losing my seniority. He came to me later and during our heated discussion he explained that we had a lot of work coming up and that he could not let me have off six weeks in a row, and that I shouldn't have tried to string personal days onto the beginning of my vacation, and that I was being unfair to everyone else and I should have come and talked to him first. I countered that I didn't think I had to ask him because I was following the policy. I asked if I could leave my vacation request open for now because I had no alternate vacation picked and that I didn't think there was going to be a problem because I was following the policy. He said that I had to pick at least three weeks or he was allowed to pick it for me.

As noted in Item 9 of the Stipulation, Balistreri issued a letter dated April 20, which sought information to tie down the County's rationale. Brown's response, noted in Item 10 of the Stipulation, includes, beyond the paragraph cited in Item 10, the following:

I wish to confirm that the reason the Parks Department is denying Mr. Risse's request for vacation is the hardship that five consecutive weeks away from his duties would have on the remaining carpenters who would be responsible for accomplishing all carpentry projects while he is away. . . .

Upon investigation of prior vacation requests in the last four consecutive years, I have discovered no parks employee who has been granted five weeks or more vacation and only one individual, Robert Porth, a Park Unit Coordinator who was granted four weeks of vacation. This vacation request, however, is not analogous to Mr. Risse's request for several reasons. First of all, the Park Unit Coordinators are part of our Field Operations Division and their duties and responsibilities greatly

taper off in the fall when the summer season ends and public activity and required upkeep in our parks lessen. The carpenters, however, are involved with projects and repairs not only during the summer season, but also well in to the fall when there is less public activity in the parks to disrupt.

In addition, Mr. Porth's vacation request was for at least two months later in the fall when his work load was lighter. Mr. Risse's request is for time off during one of the division's busiest project periods, right before the Fall Show at the Domes, which is one of the largest carpentry projects of the season. . . .

Noting Parks and Park Maintenance Vacation Policy, Brown's letter concludes, "Accordingly, Mr. Risse's request for five consecutive weeks of vacation is denied."

Andrzejak's memo, cited in Brown's letter and Item 10 of the Stipulation, is entitled "Impact of Five Week Vacation", and reads thus:

Mr. Tim Risse's extended vacation request will impact the work log of the carpenter shop in several ways this year. The carpenter shop in past years was staffed with four (4) carpenters and a carpenter supervisor. This year, Mr. Don Jager retired In January of 2011. The vacant carpenter position is in the process of being abolished to create a painter position to fill a need for a second painter. Budget restraints will not allow us to fill the carpenter position and add a painter position. This is the first year the carpenter shop will only have three (3) carpenters.

The carpenter shop was issued 788 work orders in 2010. Mandated furlough days last year created a backlog of work in all departments at Park Maintenance. The carpenter shop is in the process of catching up on delayed work such as replacement of Park flag signs, 10 work orders are in place currently to build new signs and none have been started. Four (4) wood pedestrian bridges need complete replacement and are scheduled to begin in early July or late August. The Dome show is scheduled for new props August 12 to August 23. This is just a few of many projects slated this year.

This has also impacted the rest of the carpenter staff because of this grievance. Steve Kazmierski, Kevin Kloss and Dave Jager still have not finalized all of their vacation time going into May because of the unresolved vacation issues of Mr. Risse. They all have family vacations they like to schedule and should have the opportunity five months into the year to schedule their vacations.

This document is referred to below as the Memo.

Paragraph 7 of Parks Vacation Policy is quoted in Item 7 of the Stipulation. The balance of the policy reads thus:

The Department of Parks Recreation and Culture has adopted the following vacation policy:

1. The Manager of each area, whenever possible, shall grant vacations at the time requested by the employees. Approval of vacation requests will be based on competitive seniority within organizational work units.
2. Vacation requests submitted between January 1 and the last working day in February will be honored by competitive seniority. Vacation requests submitted between March 1 and August 1 will be honored based upon the date they are submitted. Employees will be notified whether their vacation has been approved no later than March 15. Seniority will be used to resolve vacation selection conflicts.
3. Employees who have not selected vacation dates by September 1 shall lose their right to such selection. Vacation dates will be assigned by appropriate management.
4. Employee vacation time may be divided into as many parts as mutually agreeable except that no division of less than eight (8) hours shall be permitted from May 1 to September 30. A minimum of four (4) hours will be permitted for the rest of the work year if proper coverage can be managed.
5. Employees who have an approved vacation request but transfer to a different Region/Service Division or work unit, by their request, will have their vacation requests honored unless it conflicts with existing approved vacation requests. Every effort will be made to give the employee the same vacation dates. Employees who are administratively transferred will have their approved vacation requests transferred to the new organizational unit.
6. During the period beginning with Memorial Day week and ending with Labor Day week, the number of employees allowed on vacation at one time will be dependent on maintaining operating efficiency.

The Park Maintenance Vacation Policy, noted in Item 8 of the Stipulation, reads thus:

Our 2011 vacation policy is based on the needs of the park system and our employees' personal plans. Restrictions are necessary to make sure that our jobs are protected, but if any employee has a serious problem, we are willing to sit down and discuss it.

Basically the restrictions are as follows:

From May 30th through August 29th, each employee is permitted to use a maximum of two weeks vacation in full weeks only.

Each department will have the following restrictions during this period:

Carpenters	1 employee
Electricians	1 employee
Plumbers	1 employee
Painters	1 employee
Welders	1 employee
Park Maintenance Workers	1 employee
Office	1 employee

Prior to and after the dates indicated, one additional person will be allowed vacation provided; the appropriate foreman approves it. The use of personal days and compensatory time is used at the discretion of each foreman during the entire year and will vary based on weather conditions, workload and related factors.

No vacations are permitted during the following restricted periods:

<b>Carpenters</b> .....	June 27th - July 2nd
<b>Electricians</b> .....	May 23nd - June 19th
<b>Heating Mechanics</b> .....	November 14th - March 20
<b>Painter's</b> .....	April 18th - May 28th
<b>Plumbers</b> .....	April 25th - June 19th
	October 3th - November 6th

...

Risse provided the only testimony. He testified that his duties vary seasonally. For the last five years, he has performed shop work in the winter. Such work includes construction of light poles, barricades and signs. In summer, more work is performed throughout the parks in response to work orders. To exemplify work orders, the Grievant noted that he recently repaired a sizeable hole in a wall of a park facility, which a plumber had opened to find and repair a leak. His work can include building repairs, window repair and installation, as well as repair of vandalized structures.

A work day typically starts with a Working Foreman discussing projects and work orders. Written work orders are then assigned to an individual Carpenter. Not all work orders are assigned, but roughly two work orders per day would be assigned to Risse. Unassigned work orders are retained and scheduled over time at the discretion of Park Maintenance managerial staff. Although furloughs imposed last year produced a backlog of work, Risse is current in his performance of work orders. He believed he had between ten and fifteen work orders that needed completion. The work orders were from one to three years old. None of them demanded work on his part. Rather, their completion demanded work of another classification. For example, signs he

had finished building awaited completion by a painter. Job priority may be discussed or determined solely by management. Not all work performed by a Carpenter is in response to a written work order. Work on unanticipated projects, such as vandalism repair work, does not typically require a work order. Risse stated that he was not working overtime and was aware of no overtime potential in any pending project.

To Risse's experience, Carpenters do not perform work started by another Carpenter except in case of emergency. Work not performed due to vacation time is typically completed by the Carpenter who started it. The other Carpenters had taken the two weeks of vacation permitted by Park Maintenance Vacation Policy between May and August. He had not taken the full amount permitted.

Risse initially requested four weeks and three days off, using two personal days at the start of the leave. He turned the request into Jager at the close of work on Thursday, March 10. Jager denied it the next morning at the start of the shift, giving no rationale beyond the assertion that Risse could not expect to take five weeks in a row. Risse had received four consecutive weeks in the summer of 2000, and determined to put the issue to Andrzejak. In conversation with Andrzejak, Risse learned that Park Maintenance had a Vacation policy distinct from Parks. Andrzejak told Risse he could not expect to get six weeks in a row and denied the request. Risse discussed the matter with Andrzejak on several occasions, because he felt he had followed procedure and "was not asking for anything special." The discussions did not narrow their differences. On one occasion, Andrzejak approached Risse after work to advise him that Risse should have approached Andrzejak before making a formal request and that his request showed a lack of concern for fellow Carpenters.

Risse did not feel the County ever gave him a rationale for its denial. As of the hearing, he had no pending special project work. He has not been assigned to work on pedestrian bridges. He has not been assigned to work on the Dome Show project for at least eight years. Prior to that, he was part of the Dome Show project.

Risse did not know of any County approval of five consecutive weeks of vacation, but did not know if any other employee had made such a request. As Risse understands it, an employee can carry one-half of accrued vacation over to a succeeding year.

Risse seeks the five weeks to drive with his son to Alaska and back. The trip back includes driving to Arizona, where he and his son will attend the Mormon sealing ritual at his daughter's wedding. In his view, five weeks is a base requirement to permit his family time together outside of the travel required. He attempted to explain his reasons to Jager, who responded that he did not care what the reasons might be. Risse did not believe the reasons underlying the request were discussed in any depth prior to the processing of the grievance.



## **THE PARTIES' POSITIONS**

### **The Council**

Risse is the most senior Carpenter, has greater than twenty years of service with the County, and has accumulated in excess of 280 hours of vacation to be taken in 2011. In March, Risse requested time off for the period from August 18 through September 21. He used personal leave and vacation to fill the five week request.

Section 2.07(2), read with Parks and with Park Maintenance Vacation policy, governs this request. Section 2.07(2) establishes no contractual basis to deny the request. Paragraph 7 of the Parks Vacation Policy establishes no policy basis to deny the request. County responses to Balistreri's April 20 letter establish no solid basis for the denial of the request. Neither Brown's nor Andrzejak's response prove any actual hardship. There is no proof that there is a backlog of work orders; no proof that Risse has been assigned to any of the non-routine projects the County claims need his attention; and no proof that the County could not cover his absence if it chose to. It follows from this that there is no contractual or policy basis for the denial of the request and thus that Risse's request should be granted.

Risse acknowledged that vacation approval was more leniently treated prior to Jager's becoming a Working Foreman. He acknowledged that a change in County administration brought with it different management philosophy.

### **The County**

Andrezejak's memo establishes that the County lacks the staffing necessary to cover the five week request without undue hardship on other employees. Beyond this, the Memo establishes specific projects that would suffer if Risse's request was granted. The pedestrian bridge and Dome Show projects demand Risse's presence.

The request for five weeks is, in any event, unreasonable. Not all departmental work is predictable in nature. It is impossible to anticipate repair work traceable to vandalism or to unpredictable events such as fire or weather. Beyond this, it is impossible to predict when and for how long a Carpenter may use leave, paid or unpaid. This places staffing demands on the County that can not be reconciled to five weeks of continuous vacation for Risse.

The County's denial of the request is reasonable and the grievance should be denied.

## **DISCUSSION**

The stipulated issue poses an issue of contract interpretation focusing on Section 2.07(2). Section 2.07(2) broadens the focus by turning County approval of a vacation request on "countywide seniority subject to the departmental work rules". There is no dispute regarding seniority, since Risse is the most senior Carpenter and since the County's decision did not involve

competing requests. Thus, Section 2.07(2) broadens the focus of the contractual interpretation issue by incorporating Parks and Park Maintenance vacation policy.

Prior to examination of the issue, the depth of feeling surrounding the grievance is worthy of some note. Risse's concern regarding an extensive road trip involving family members is evident. County concern on the impact of an extended loss of a skilled Carpenter is no less clear. The friction between these is apparent, but affords no guidance to resolve the grievance. Resolution of the grievance through arbitration must be based on the terms of the labor agreement rather than an evaluation of conflicting equities or an evaluation of management policy.

Application of Section 2.07(2) to the evidence poses fundamental ambiguities regarding contract interpretation and regarding application of contract to fact. Each poses ambiguity because neither involves rote application of a rule. Section 2.07(2) is silent regarding the maximum number of weeks of vacation that can be taken consecutively. Parks Vacation Policy limits vacation usage, but does not provide a limit on the number of weeks that can be taken consecutively. Item 4 addresses incremental use of vacation, and Item 6 limits "the number of employees allowed on vacation at one time". Item 7 states the governing limitation, which is a reasonableness standard. Park Maintenance Vacation Policy governs the timing and use of vacation between May 30 and August 29, but that limitation has no direct bearing on Risse's request. He requested the week starting August 22 as a full week, which does not conflict with the first restriction of the Park Maintenance Vacation Policy. There is no dispute regarding whether Risse could be the sole Carpenter permitted off during that week and neither party raises an issue regarding Risse's initial attempt to use two personal days during that week. This means the second and third restrictions of the Park Maintenance Vacation Policy have no bearing on the request. The final restriction of that policy regarding Carpenters falls on usage of time between June 27 and July 2, which is outside of the time period of Risse's request. In sum, neither contract nor department policy establish a rule barring five consecutive weeks of vacation.

The contract and the two vacation policies state a common theme. Each anticipates the exercise of management discretion on a case-by-case basis. Whether the "Whenever possible" reference of Section 2.07(2) is applied to the timing of vacation approval, to its merit, or to both, it is evident the provision seeks the exercise of management discretion on whether granting a request is "possible". Park Maintenance Vacation Policy clarifies that this discretion is rooted in a case-by-case analysis by turning the approval process on an evaluation "on the needs of the park system and our employees' personal plans." The Parks Vacation Policy, at Item 7, underscores this by demanding an evaluation of the reasonableness of the request and on whether "the proper employees are available to perform required duties and responsibilities." The final sentence of that item further specifies factors bearing on the exercise of discretion.

The application of contract is thus ambiguous because the governing determination must be made on a case-by-case basis. The ambiguity is not traceable to a flaw in drafting but to the complexity of applying broad considerations to specific fact. None of this demands an arbitrator's original view of the contract or the policies. Rather, the review turns on the specific discretion exercised by the County. In light of the language of Item 7 of the Parks Vacation Policy, the

standard of review is most persuasively viewed as a reasonableness standard, but what the appropriate standard of review should be does not pose a fundamental issue on this record.

The reason the standard of review does not pose a fundamental issue on this record is that the supervisors who denied Risse's request failed to consider it on its factual merit, and attempted to apply the contract and departmental policy as if they provided a clear rule that could be applied by rote. Because they failed to evaluate the Risse's request on its merit, there is no issue regarding the deference appropriate to their decision and the denial violates Section 2.07(2) as an abuse of County discretion.

Both the Parks and the Park Maintenance Vacation Policy put Jager and Anrzejak as the key positions in the approval process. It is unmistakable that Jager applied the policy by rote. He denied the request virtually upon receipt. More to the point, he declined to consider Risse's "personal plans", noting to Risse that he did not care what the vacation was for. Andrzejak gave the request no more consideration. He referred to it as a six week request, thus confirming that he denied the request without regard to its basis. It is clear that Andrzejak based the denial on the number of consecutive weeks, underscored by the fact that he did not identify how many consecutive weeks could be taken. The application of the policy by rote is unmistakable. It is understandable that Andrzejak informed Risse he should have approached him earlier. The length of the request is singular. However, this cannot obscure that the issue under the policies remained the same without regard to when Risse made the request. The County was to weigh the needs of the system against Risse's personal plans. No such weighing process took place.

Brown's letter to Balistreri confirmed, and pushed Andrzejak to expand, the rationale for the denial. This does not make up for the absence of any meaningful weighing of the factors demanded by the policies by the front line supervisors. Brown's assertion that the Porth vacation affords no precedent for Risse's is persuasive. This cannot obscure, however, that Risse received approval in the summer of 2000 for four consecutive weeks of vacation. Beyond this, the Memo establishes no case-by-case review of the request. That the department now has three Carpenters can be granted. That this precludes consideration of the request is, standing alone, unclear. On the face of the Park Maintenance Vacation Policy, it is evident that more than one Carpenter can be off on vacation outside of certain summer months. Thus, there is no evident basis to conclude the vacation policies set a minimum staffing level.

Significantly, the only evidence in the record on work load undercuts the Memo. Risse testified without contradiction that the backlog noted in the Memo no longer exists, at least in regard to his workload. The assertion that pedestrian bridges need replacement cannot explain the absence of any present or future assignment of that duty to Risse. Nor can it explain the absence of proof on whether the work actually began "in early July" as the Memo noted it might. The occurrence of the 2011 Dome Show cannot explain why his presence was not needed in the prior eight years. The potential impact of the request on the vacations of the remaining Carpenters is speculative.

The assertions of the Memo are persuasive considerations in the abstract, but lack any demonstrated basis in fact. This reflects that the Memo does not articulate a specific weighing of

the actual needs of the department against Risse's request. Rather, it asserts a policy-based denial in place of the case-by-case analysis of the request the contract and departmental policy contemplate. The Memo could be taken to justify a denial of any length of vacation, because it is not rooted in time. The projected bridge work might begin "in early July or late August." The considerations articulated in March apparently continued without alteration through the time of hearing. Whether or when the bridge work was to begin, or even if it was completed prior to August is unclear. The Memo applies the vacation policies by rote, as if they specifically banned consecutive weeks of vacation.

The logic of the Memo cannot substitute for the case-by-case weighing process required by contract and departmental policy. The absence of any determination by the County of how long a continuous vacation Risse could take is noteworthy. Could the trip have been split into separate components of three weeks and two weeks? The absence of clarity on this point cannot persuasively be held against Risse. The Park Maintenance Vacation Policy demands consideration of "our employees' personal plans" and asserts that if there is a problem, "we are willing to sit down and discuss it." The absence of interest in Risse's plans and the absence of discussion rest on the absence of a case-by-case review of the request by front-line supervision. The lack of clarity on "the needs of the park system" cannot be held against Risse. The difference between his 2000 and his 2011 request is one week. The grievance form implies that Andrzejak did not object to a three week absence. The assertion that past management was "more lenient" affords no clarity on why his 2011 request was never seriously evaluated. There is no evidence the contractual or departmental standards meaningfully changed over that time.

Finding Risse's request too lengthy cannot rest on arbitral inference. If the Memo is taken as definitive without any proven basis in fact, its rationale would justify denying Risse leave for any reason including work-related injury or family/medical leave. This is well beyond the permissible scope of arbitral inference or the discretion granted the County by Section 2.07(2). In sum, the record establishes that the County's failure to evaluate Risse's request on a case-by-case basis, weighing the actual "needs of the park system" against Risse's specific "personal plans", constitutes an abuse of discretion, because no discretion was exercised.

The parties have not specifically addressed the issue of remedy. This, coupled with the request for a prompt decision, establishes the centrality of the determination whether County denial of Risse's vacation request violates the labor agreement. Finding that the denial violates Section 2.07(2) thus demands that the County rescind its denial of Risse's request, thus permitting him to take the vacation sought in his March request. The parties do not dispute, and the Award does not address, how to account for the vacation. His second request dropped the request for personal days. The Award presumes that the parties either mutually understand or can work out how to appropriately account for the requested leave.

Before closing, it is appropriate to tie the conclusions stated above more tightly to the arguments. The Memo articulates reasonable policy. Its lack of reasonableness traces not to its facial validity but to its application, and more specifically to the failure of front line supervisors to weigh the basis of Risse's request against departmental operational needs. There is a qualitative difference between the assertion that the Dome Show will take place at a certain time and proof that

the department's current planning for the Dome Show requires three Carpenters for a specific period of time conflicting with a specific vacation request. That vandalism or employee use of leave may be unpredictable can be granted. However, treating this as a definitive statement of operational needs would justify the denial of all vacation requests and would afford no clarity on how any could be approved.

Contrary to Risse's assertion, his request does seek something special. Five consecutive weeks of vacation is, to my experience, singular. County concern with its length is appropriate. The denial of the request is not inherently unreasonable. However, the parties have not chosen to limit, by contract or by work rule, the amount of consecutive weeks available for a vacation. Rather, they bargained a case-by-case review of vacation requests. The purpose of arbitration is to give the parties the benefit of their bargain. A rule banning a set number of consecutive weeks of vacation has yet to be bargained and thus cannot be enforced through arbitration.

The contractual flaw in the current denial is County failure to specifically and factually root its denial in the "needs of the park system". To grant one Carpenter five consecutive weeks off is, in a sense, equivalent to granting two Carpenters vacation for two and one-half weeks consecutively over the same period of time. Standing alone, the latter is within departmental policy. What makes either reasonable or unreasonable is how the absences specifically impact departmental needs. That is the case-by-case analysis of individual requests which is demanded by Section 2.07(2) and which is lacking in this record.

### **AWARD**

The Milwaukee County Parks Department did violate Section 2.07(2) of the Collective Bargaining Agreement and the Park Maintenance Vacation Policy when it denied Tim Risse's March 10, 2011 vacation request.

As the remedy appropriate to its violation of Section 2.07(2), the County shall cease and desist from denying Tim Risse's March 10, 2011 vacation request, thus permitting him to take the requested vacation.

Dated at Madison, Wisconsin, 12th day of August, 2011.

Richard McLaughlin /s/  
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Richard McLaughlin, Arbitrator

RBM/gjc  
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