IN THE MATTER OF THE ARBITRATION BETWEEN

Ohio Civil Service Employees Association, AFSCE Local 11,	**:**	**Grievance No.: 1-17**
	:	**Grievance: Previous service credit**
Union,	**:**	
	:	**Grievant: Matt Thomas**
and	**:**	
	:	**Arbitrator's File No.: 18020**
Twin City Water and Sewer District,	**:**	
	:	**August 14, 2018**
Employer,	**:**	

APPEARANCES

For the Union:

Rusty Burkepile, Staff Representative
Jeff Freeman, Staff Representative
Todd Henry, Steward
Joel Peterson, Chief Operator

For the Employer:

Matthew Baker, Labor Representative
James J. Ong, General Counsel
Donnie Fawcett, Superintendent
Lisa O'Hara, Office Manager

Daniel G. Zeiser
Arbitrator
P.O. Box 43280
Cleveland, Ohio 44143-0280
440.449.9311
Email: danzeiser@aol.com

I. BACKGROUND

The grievance giving rise to this arbitration was submitted to the Employer in writing on December 28, 2017. It was processed in accordance with Article 4 of the Contract by and between the Twin City Water and Sewer District (Employer or District) and the Ohio Civil Service Employees Association, AFSCME Local 11, AFL-CIO (Union or OCSEA), SERB Case No. 2016-MED-10-1271, January 1, 2017 - December 31, 2019. After unsuccessful attempts to resolve the grievance, it was submitted to arbitration pursuant to Article 4, Section 7, Step 3 of the Agreement. This Arbitrator was mutually selected by the parties to hear this matter.

The arbitration hearing took place on July 18, 2018 at the Employer's offices, 1580 Boyd Street, Uhrichsville, Ohio. During the hearing, the parties had the full opportunity to examine and cross-examine witnesses, introduce relevant exhibits, and argue their positions. Witnesses were sworn and separated. The parties stipulated that the matter was properly before the Arbitrator for resolution. The parties timely submitted briefs to the Arbitrator no later than August 8, 2018, the record was closed, and the matter was submitted.

II. ISSUE

The parties stipulated to the issue as follows:

> Did the Employer violate Article 7, Section 4, and if so, what shall the remedy be within the four corners of the collective bargaining agreement?

III. RELEVANT PROVISIONS OF THE AGREEMENT

ARTICLE 7
VACATION

SECTION 1. Permanent employees shall enjoy the following vacation schedules:

YEARS OF SERVICE	PAID DAYS OFF
1 through 4	2 weeks = 80 hours
5 through 11	3 weeks = 120 hours
12 through 18	4 weeks = 160 hours
19 through 24	5 weeks = 200 hours
25 and above	6 weeks = 240 hours

SECTION 2. Vacation time earned shall be used in the year immediately following the year in which it is earned and may not be accrued with the time earned in previous or subsequent years. Seniority in the Twin City Water & Sewer District shall be the determining factor as to vacation selection dates. Two weeks' written notice must be given to take vacation time off. However, the Employer reserves the right to deny requests for [vacation] when the result of

granting such request would be more than one employee from the same department on vacation simultaneously.

SECTION 3. Vacation time off and vacation pay is earned in the year preceding. Therefore, an employee shall qualify immediately each anniversary date for the vacation time corresponding to his/her years of service. Any employee leaving the employment of the Twin City Water & Sewer District [f]or any reason shall receive payment for accrued or pro-rate time. No vacation time shall be accrued or due to any employee, however, until such employee has completed one year of employment with the Twin City Water & Sewer District.

SECTION 4. Any employee with prior service for the State of Ohio or any political subdivision within Ohio who have their total years of public service employment combined to determine years of service for vacation accrual, will continue accruing at that rate. Employees hired after December 31st, 2013 will accrue vacation at a rate that does not include any prior public service.

IV. FACTS

The parties stipulated to many of the material facts in this matter. The stipulations were as follows:

1. The Grievance is properly before the Arbitrator for resolution;

2. The Grievant was hired by the Twin City Water and Sewer District on July 22, 2013;

3. The Grievant was previously employed by the village of Newcomerstown from November 19, 2012 to July 15, 2013;

4. The Grievant's "anniversary date" with the Twin City Water and Sewer District for purposes of Article 7 - VACATION, Section 3 is July 22 annually;

5. The specific language in dispute is found in Article 7 - VACATION, Section 4.

6. On July 22, 2014, the Grievant was credited with 2 weeks (10 days) of paid vacation leave;

7. On July 22, 2015, the Grievant was credited with 2 weeks (10 days) of paid vacation leave;

8. On July 22, 2016, the Grievant was credited with 2 weeks (10 days) of paid vacation leave;

9. On July 22, 2017, the Grievant was credited with 2 weeks (10 days) of paid vacation leave;

10. Joint Exhibit #1 shall be the Collective Bargaining Agreement with effective dates of January 1, 2017 to December 31, 2019;

11. Joint Exhibit #2 shall be Grievance No. 1-17 filed by employee Matt Thomas;

12. The issue to be decided by the arbitrator shall be: “Did the Employer violate Article 7, Section 4, and if so, what shall the remedy be within the four corners of the collective bargaining agreement?”

Joel Peterson is the Chief Operator in the waste water plant. He was hired by the District in 1993. He is also a Union Steward. Peterson testified that this issue has not been grieved before. The language of Article 7, Section 4 has changed. In the 1986-1989 contract with the District, the language of Section 4 was:

> Any employee with prior service for the State of Ohio or any political subdivision within Ohio will have his/her total years of such public service employment added together to determine years of service for vacation eligibility.

(UX 1). In the 2014-2016 contract, language was added so that employees hired after December 31, 2013 would not have prior public service included. (UX 2). According to Peterson, the District had three other employees with prior service with other political subdivisions, but the others have retired and the Grievant is the only current employee with such service. The Grievant was employed by Newcomerstown and had five years of total service in November 2017. The Grievant approached him and asked if he would get the extra week of vacation. Peterson testified that he asked the Superintendent, Donnie Fawcett, who said the Grievant would not. Peterson tried to work out a solution with the District, but could not. He further testified that this grievance should have been resolved, but the District would not do so.

Lisa O’Hara is the Office Manager for the District and has been employed by it for over 18 years. Her duties include processing all financial items, including vacation accruals. O’Hara testified that she follows the collective bargaining agreement and, if she has any questions, she asks Fawcett. According to O’Hara, on the employee’s annual date of hire, she looks at the employee’s service with the District and years of service with a prior public employer to determine the years of service for vacation accrual. While the Grievant had eight months of prior service, on his first anniversary date, he had one year and eight months. In July 2017, he had four years and eight months, so he was entitled to two weeks of vacation. This has been her approach consistently, she has always used years of service as of an employee’s anniversary date. She has never used an employee’s anniversary date of hire with a prior employer.

V. POSITION OF THE UNION

The grievance should be granted. The Grievant should be granted the vacation time due to him and otherwise made whole. The contract is clear that employees hired before December 31, 2013 will have their prior public employment added to service with the District to determine years of service for vacation accrual. The Grievant had eight months of prior service with the Village of Newcomerstown that should have been added to his employment with the District so that he had five combined years of service beginning November 27, 2017 that entitled him to an extra week of vacation.

There is no dispute Newcomerstown is a political subdivision of the State of Ohio. Article 7, Section 3 of the Agreement provides that vacation is earned in the preceding year that it is taken. The Union proved the Grievant should have earned vacation at the five years of service level on November 27, 2017, since he had a total of five years of combined service. This gave him over 106 hours on July 22, 2017, his anniversary date with the District. The only way to recognize his prior service is to give him his accrued vacation time as intended by the contract. If the anniversary date cannot be changed, then the Grievant should have received another 26 hours of vacation on the anniversary date either prior to or after his five years of service. This is based on his 239 days of service with Newcomerstown. While the District recognized his combined service, he was not compensated for it.

VI. POSITION OF THE EMPLOYER

The grievance should be denied in its entirety. The language of the contract is clear and the Employer has complied with it. The Union is essentially seeking a change in the Grievant's anniversary date, yet he did not file a grievance until more than four years after he was hired. The Employer has applied the contract language consistently as it did here.

The Union has the burden of proving the collective bargaining agreement was violated. It failed to prove a violation here. The Union seems to argue here that the Grievant's anniversary date be changed to his date of hire with Newcomerstown, not with the District. This is contrary to the clear language of Article 7 and the stipulation that the Grievant's anniversary date for

purposes of Article 7 is July 22nd. The Union's sole witness presented no testimony in support of this theory. Peterson's testimony essentially was that the parties should have resolved the grievance prior to arbitration. Even when one considers the Union's theory, the Grievant could have and should have grieved his seniority date in any year since he was hired, from 2013 on. That he did not would constitute a waiver of his right to grieve his seniority date now.

Clear language of a contract should be given its plain and ordinary meaning. Article 7 provides that an employee earns vacation in the preceding year, but is not entitled to take it until the employee has completed one year of service. Thereafter, the employee must use all vacation accrued in the year following its accrual. An employee qualifies for vacation time each anniversary date. The parties do not dispute that the Grievant had prior service with Newcomerstown equal to approximately eight months. Article 7, Section 4 sets forth that any prior service is combined with total years of service. Since 2014, the Employer has credited the Grievant with vacation accrual on July 22nd, the anniversary date of his hire. On July 22, 2017, he was credited with four years, plus the eight months with Newcomerstown. Therefore, he had more than four years of public service, but not enough to qualify for five years of service and another week of vacation. O'Hara testified that all employees receive their vacation accrual on their anniversary date of hire and that the Employer has never used an employee's anniversary date of hire with a previous employer.

Additionally, the grievance cites only Article 7, Section 4 of the Agreement and the parties stipulated that the issue was whether Section 4 was violated, not any other provision. Nothing in Section 4 addresses an employee's anniversary date and the District has complied with Section 4 by combining the Grievant's eight months of service with Newcomerstown. However, Section 4 provides for total years of public service employment, which the District has followed.

VII. OPINION

In contract interpretation cases, the Union bears the burden of persuasion. In such cases, the Arbitrator's first obligation is to determine whether disputed language is clear and

unambiguous. If so, he must give the language its plain meaning, even if one party finds the result somewhat harsh or contrary to its initial expectations. If, however, disputed language is found to be unclear and ambiguous, or sometimes silent, extrinsic evidence such as bargaining history or past practice may be used to help determine the parties' intent. In addition, words and phrases are rarely interpreted on their own. To give full force and effect to the entire agreement, disputed language must be interpreted in context with its paragraph, section, article, and the agreement as a whole. On this record, the Arbitrator finds that the Employer did not violate Article 7 of the Agreement when it determined the Grievant was not entitled to three weeks of vacation as of November 2017.

The grievance in this matter reads:

> Matt Thomas had 8 months of previous service at Newcomerstown Water and Sewer. He was told by Donnie that those months do not transfer for vacation.

Article 7, Section 4 is cited as the provision of the Agreement that was violated. In the "Where did this happen" section, the grievance indicates that Superintendent Fawcett informed the Grievant that only years of service are counted. (JX 2). The Union argues that Section 4 requires that prior public employment be combined so that, here, the Grievant's eight months with Newcomerstown be added to his four years with the District. This was done in this case. The evidence established that O'Hara used his combined four years and eight months, but that this left the Grievant short of the five years of service needed to get a third week of vacation. The Union appears to take the position that either the Grievant's hire date with Newcomerstown should be used so he would have received three weeks of vacation in November 2017 or he should have received an additional 26 hours of vacation on his anniversary date, July 22, 2017. The Arbitrator disagrees.

Section 1 of Article 7 sets forth the amount of vacation an employee earns. For the first four years of employment, an employee earns two weeks of vacation. An employee begins

earning three weeks of vacation when he or she has five years of service. Section 1 is clear that it is "YEARS OF SERVICE" that count. Section 2 then provides that vacation time earned must be used in the year immediately after the year it is earned. It cannot be combined with vacation earned in prior or subsequent years. Section 3 is clear that vacation time and pay is earned in the preceding year. It also is clear that an employee qualifies for vacation each anniversary date. Thus, on an employee's first anniversary date, the employee qualifies for the two weeks of vacation earned during the first year of employment and can then begin to take those two weeks. On the employee's fifth anniversary date, he or she qualifies for three weeks. Section 1 through 3 apply to all employees, so the term "anniversary date" must refer to the employee's anniversary date with the District, not with any other employer. O'Hara testified that this is the Employer's practice and was done here. On the Grievant's anniversary date in 2017, July 22, 2017, the Grievant had four years and eight months of combined public service employment, not enough for three weeks of vacation.

Section 4 deals specifically with employee's with prior service for the State of Ohio or any political subdivision. There is no dispute that Newcomerstown is a political subdivision of the State of Ohio. The only dispute is whether the Grievant's service with Newcomerstown entitled him to more vacation. Section 4 also refers to combining "total years of public service employment…to determine years of service for vacation accrual…" Again, the contract is clear that it is years of service, not months or combined service time.

Reading Article 7 as a whole, the Arbitrator concludes that it is clear that an employee's vacation is determined as of the employee's anniversary date with the District, and that vacation is determined based on years of service. Thus, on the Grievant's anniversary date in 2017, July 22nd, he had combined service of four years and eight months. Section 1 is clear that an employee with one through four years of service is entitled to two weeks of vacation. Three weeks is not earned until an employee has a total of five through 11 years of service.

The Arbitrator acknowledges that this effectively disregards the Grievant's service time with Newcomerstown. He had less than a year of service there, so it does not give him the additional time needed to earn another year of vacation. It seems clear, though, that Section 4 was negotiated to allow years of service with another employer to count toward an employee's vacation. The language negotiated in the 1986-1988 contract specified that employees with prior service elsewhere would have their "total years of such public service employment added together to determine years of service for vacation eligibility." (UX 2). Again, the key language is "years of service," not combined service time or something similar. It appears the parties simply did not anticipate the situation here, where an employee had less than a year of service elsewhere.

Based on the language in the Agreement, the Arbitrator cannot decide that the Grievant's anniversary date be changed. First, the parties stipulated that July 22nd was the Grievant's anniversary date for purposes of Article 7. Additionally, Section 3 is clear that "anniversary date" means the anniversary with the District. Section 3 addresses vacation time for all employees. Section 4 alone deals specifically with employees who have service with another public employer. It includes nothing about an anniversary date and uses the same term, "years of service," used elsewhere in Article 7. Allowing the use of the Grievant's anniversary date with Newcomerstown would ignore the language of Article 7. The Union further submits that the Grievant should have been paid an additional 26 hours of vacation on July 22, 2017, based on his 239 days with Newcomerstown. However, the only part of Article 7 that mentions pro-rate time for vacation is Section 3. It provides that an employee leaving the employment of the District shall receive vacation pay for accrued or pro-rate time. The Grievant was not leaving the employment of the District, so this language does not apply. Again, deciding that the Grievant was entitled to an additional 26 hours of vacation would ignore the language of Article 7.

On this record, the OCSEA has not proved that the Employer violated Article 7, Section 4 when the Employer did not count the Grievant's eight months of service with Newcomerstown as an additional year of service on July 22, 2017, or when it did not use his anniversary date of hire with Newcomerstown for vacation purposes.

VIII. AWARD

The grievance is denied.

Dated: August 14, 2018

Daniel G. Zeiser
Arbitrator