

ORDINANCE No. 111757

COUNCIL BILL No. 104825

Law Department

UP

AN ORDINANCE relating to annual vacations for City employees' providing proportionate vacations for full-time and part-time personnel and premium pay in lieu of paid vacation for interim employees and temporary workers; making ancillary revisions; amending Seattle Municipal Code Sections 4.34.010 and -.020, adding new sections to SMC Chapter 4.34, and repealing SMC 4.34.050.

The City of Seattle--Legislative Department

REPORT OF COMMITTEE

Honorable Member

Your Committee on City Operations

to which was referred the within Council Bill No. 104825 report that we have considered the same and respectfully recommend that

Do Pass

COMPTROLLER FILE No.

Introduced: JUN 4 1984	By: <u>CREDITIVE REQUEST</u>
Referred: JUN 4 1984	To: <u>City Operations</u>
Referred:	To:
Referred:	To:
Reported: JUN 25 1984	Second Reading: JUN 25 1984
Third Reading: JUN 25 1984	Signed: JUN 25 1984
Presented to Mayor: JUN 26 1984	Approved: JUL 2 1984
Returned to City Clerk: JUL 2 1984	Published:
Vetoed by Mayor:	Veto Published:
Passed Over Veto:	Veto Sustained: <u>OK</u>

Junito Williams

Committee Chair

Law Department

The City of Seattle Legislative Department

REPORT OF COMMITTEE

Date Reported
and Adopted

Honorable President:

Your Committee on City Operations

to which was referred the within Council Bill No. 107325
report that we have considered the same and respectfully recommend that the same

Do Pass

Janette Williams

Committee Chair

111757

✓ LIGHT ✓ HEALTH
✓ FOG ✓ PARKS
✓ BCLU ✓ I & CA
✓ DCD ✓ DAS
✓ LA ✓ Water
Muni

ORDINANCE 111757

AN ORDINANCE relating to annual vacations for City employees; providing proportionate vacations for full-time and part-time personnel and premium pay in lieu of paid vacation for interim employees and temporary workers; making ancillary revisions; amending Seattle Municipal Code Sections 4.34.010 and -.020, adding new sections to SMC Chapter 4.34, and repealing SMC 4.34.050.

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

Section 1. There is added to Seattle Municipal Code Chapter 4.34, a new section, designated Section 4.34.005, as follows:

4.34.005 Definitions.

As used in this chapter, the following terms shall have the meanings indicated unless another meaning is clearly indicated from the context:

A. "Employee" means an individual who works for wages or a salary in the service of the City other than (1) a person elected or appointed to a term of office, or (2) a person who, individually or with others, is the head of an employing unit. It includes full-time and part-time personnel, interim employees, and temporary workers.

B. "Employing unit" means any department of the City, and within the Executive Department, the Division of Purchases and any office created by ordinance; and any City board or commission that is an appointing authority.

C. "Interim employee" means an employee appointed to fill a permanent position for which no certification is available.

1 D. "Regular pay status" means regular straight-time
2 hours of work and includes paid time off such as vacation
3 time, holiday time off and sick leave. It excludes hours of
4 work outside regular straight-time hours for overtime pay.

5 E. "Service year" means the period of time between
6 an employee's date of hire and the one-year anniversary date
7 of the employee's date of hire, and thereafter, the period
8 of time between any two consecutive anniversaries of the
9 employee's date of hire.

10 F. "Temporary worker" means an employee who is hired
11 to fill a temporary, emergency or short-term need. It
12 includes an employee who occupies a seasonal or intermittent
13 position or who works less than an average of twenty hours
14 per week during a year.

15 Section 2. Seattle Municipal Code § 4.34.010 (the part
16 of Section 2 of Ordinance 110195 identified as § 4.34.010)
17 is amended as follows:

18 4.34.010 Annual vacations provided - Exemptions.

19 Annual vacations with pay or premium pay in lieu of
20 paid vacation shall be provided to City employees in
21 accordance with the provisions of this chapter, except as
22 otherwise provided in authorized collective bargaining
23 agreements ((, for regularly appointed full-time and part-time
24 employees; for exempt employees; excluding elected official
25 and for employees who are appointed to a position for which
26 no register exists at the time of appointment and who work
27 more than one thousand forty hours in such position)).
28

1 Section 3. Seattle Municipal Code § 4.34.020 (as last
2 amended by Ordinance 111621) is amended as follows:

3 4.34.020 Vacation ((time)) credit accrual rate
4 ((Termination)). ((Annual vacation allowances shall be
5 accrued by all such employees except department heads and
6 uniformed Fire Department employees as follows:))

7 A. ((Annual vacation with pay shall be computed at the
8 rate shown in Subsection D below for each hour on regular
9 pay status as shown on the payroll, but not to exceed eighty
10 hours per pay period, except in the Health Department where
11 such maximum shall be eighty-seven hours per pay period as
12 long as the King County payroll system is utilized by the
13 Health Department for its employees.

14 B. "Regular pay status" is defined as regular
15 straight-time hours of work plus paid time off such as
16 vacation time, holiday time off and sick leave.

17 C. "Service year" is defined as the period of time
18 between an employee's date of hire and the one-year
19 anniversary date of the employee's date of hire or the
20 period of time between any two consecutive anniversaries
21 of the employee's date of hire thereafter.

22 D.) Basic Structure: Except as provided in SMC
23 4.34.055 D and E, City employees shall accrue annual
24 vacation credit at the rate and up to the maximum vacation
25 balance shown in the "Accrual Rate and Maximum Accumulation
26 Table" in SMC 4.34.020B for each hour worked on regular pay
27 status as shown on the payroll.
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B. Accrual Rate and Maximum Accumulation Table:

The vacation accrual rate shall be determined in accordance with rates set forth in Column No. 1. Column No. 2 depicts the corresponding equivalent annual vacation ((for)) creditable to a ((regular)) full-time employee. Column No. 3 depicts the normal maximum number of hours of vacation ((hours)) credit that can be accrued and accumulated ((by an employee)) at any time.

1	COLUMN NO. 1		COLUMN NO. 2		COLUMN	
2					NO. 3	
3	ACCRUAL RATE		EQUIVALENT ANNUAL VACATION ((FOR)) CREDITABLE TO A FULL-TIME EMPLOYEE		NORMAL MAXIMUM VACATION BALANCE*	
4						
5	Hours on	Vacation		Working		
6	Regular Pay	((Earned))	Years of	Days Per		
7	Status	Accrued	Service	Year	Hours	
8		Per Hour			(Hours)	
9	((0 through					
10	08320)) Less					
11	than 08321					
12	...	.0460	0 thru 4	12	(96)	192
13	08321 thru		5 thru 9	15	(120)	240
14	18720 ...	.0577	10 thru 14	16	(128)	256
15	29120 ...	.0615	15 thru 19	18	(144)	288
16	29121 thru		20	20	(160)	320
17	39520 ...	.0692	21	21	(168)	336
18	39521 thru		22	22	(176)	352
19	41600 ...	.0769	23	23	(184)	368
20	41601 thru		24	24	(192)	384
21	43680 ...	.0807	25	25	(200)	400
22	43681 thru		26	26	(208)	416
23	45760 ...	.0846	27	27	(216)	432
24	45761 thru		28	28	(224)	448
25	47840 ...	.0885	29	29	(232)	464
26	47841 thru		30	30	(240)	480
27	49920 ...	.0923				
28	49921 thru					
29	52000 ...	.0961				
30	52001 thru					
31	54080 ...	.1000				
32	54081 thru					
33	56160 ...	.1038				
34	56161 thru					
35	58240 ...	.1076				
36	58241 thru					
37	60320 ...	.1115				
38	60321 and over	.1153				

*SMC 4.34.055 D & E authorize temporary exceptions to this maximum balance.

((E. Employees covered by this chapter shall accrue vacation from the date of entering city service and may accumulate vacation to the maximum number of hours shown in 4.34.020D, Column No. 3, above, provided, however, such

1 accrual will not be credited to the full time employee until
2 the employee has completed one thousand forty hours on
3 regular pay status with the city and will not be credited
4 to the part time employee until the employee has completed
5 one thousand forty hours or six months of service,
6 whichever comes first, on regular pay status with the city.

7 ((F.)) C. Maximum Accrual: No employee may accrue
8 credit for annual vacation time for more than eighty hours per
9 pay period except employees in the Health Department paid
10 through the King County payroll system, who may accrue credit
11 for annual vacation time up to eighty-seven (87) hours per pay
12 period. Except as is provided in SMC 4.34.055 D and E,
13 accrual and accumulation of vacation time shall cease at the
14 time an employee's vacation credit balance reaches the normal
15 maximum balance ((allowed)) and shall not resume until the
16 employee's vacation credit balance is below the normal maximum
17 balance ((allowed)).

18 Section 4. There is added to Seattle Municipal Code
19 Chapter 4.34, a new section, designated Section 4.34^A 045, as
20 follows:

21 4.34.045. Eligibility for Use of Accrued Vacation Credit.

22 A. Except as provided in SMC 4.34.065B, upon attaining
23 eligibility for the same, a City employee may use accrued
24 vacation credit, with approval of the head of the employing
25 unit, or, as provided in SMC 4.34.070, be paid premium pay in
26 lieu of annual paid vacation. An employee shall attain eligi-
27 bility for the use of vacation credit or the payment of pre-
28 mium pay in lieu of vacation by completing more than 1040
 hours of work or more than six months of continuous service,

1 whichever is earlier, each on regular pay status with the
2 City.

3 B. The hours of work and continuous service requirements
4 of SMC 4.34.045A, shall be measured from (1) the date of a
5 regularly appointed full-time or part-time employee's initial
6 regular appointment unless a break in service occurs prior
7 to the attainment of eligibility, in which case such
8 measurement shall be from such employee's most recent
9 regular appointment; (2) the date of an interim employee's
10 most recent interim appointment; and (3) the date of a
11 temporary worker's most recent temporary appointment. In
12 measuring six months of continuous service, no credit shall
13 be given an employee for any single period of fifteen days
14 or more during which he or she was excused from work by
15 an unpaid leave of absence or was suspended from work
16 for disciplinary purposes.

16 Section 5. There is added to Seattle Municipal Code
17 Chapter 4.34, a new section, designated Section 4.34.055,
18 as follows:

19 4.34.055. Use and Scheduling of Vacations.

20 A. The minimum vacation allowance to be used by an
21 employee shall be one-half day or, at the discretion of
22 the head of the employing unit, such lesser amount as may
23 be approved by the department head.

24 B. The head of the employing unit shall arrange
25 vacation time for employees on such schedules as shall least
26 interfere with the functions of the employing unit.

27 C. An employee must use all accrued vacation credit
28 prior to beginning an unpaid leave of absence, except that

1 where an employee has exhausted his/her sick leave balance,
2 the head of the employing unit may deny the use of vacation
3 to an employee who requests further paid leave for medical
4 reasons.

5 D. In the event that the City cancels an employee's
6 already scheduled and approved vacation leaving no time to
7 reschedule such vacation before the employee's maximum
8 balance will be reached, the head of any employing unit may
9 request the Personnel Director to allow an employee to
10 exceed the normal maximum vacation balance and to continue
11 to accrue vacation credit above the normal maximum credit
12 balance for three months after such maximum has been reached.
13 Any such request must contain an explanation of the
14 circumstances and reasons leading to the need for such
15 allowance. When the explanation submitted documents
16 circumstances and reasons consistent with the conditions
17 specified herein, the Personnel Director shall authorize
18 such an exception being made; otherwise, the Personnel
19 Director shall deny the request. No similar exception shall
20 be authorized for such employee until twelve months after
21 the Personnel Director's authorization.

22 E. Any employee receiving disability compensation
23 pursuant to SMC Chapter 4.44 may exceed the normal maximum
24 vacation balance until such time as the employee ceases to
25 receive such disability compensation. If the employee
26 returns to regular pay status upon discontinuance or
27 exhaustion of such disability compensation, such employee's
28 vacation balance may exceed the normal maximum vacation
balance specified in SMC 4.34.020B for three months after

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the date of such employee's return; otherwise, the employee shall be paid in a lump sum for any unused vacation credit balance.

F. Upon transfer, the employing unit receiving the employee shall grant any earned vacation due such employee at its expense, subject to the provisions set forth in this chapter.

Section 6. There is added to Seattle Municipal Code Chapter 4.34, a new section, designated Section 4.34.065, as follows.

4.34.065. Payment in Lieu of Use of Vacation Credit.

A. An employee who assumes an elective office in the City, accepts appointment as a head of an employing unit, or transfers from a position in which he or she receives vacation benefits to a position in City employment in which he or she is not entitled to accrue annual vacation credit, shall be paid in a lump sum for any unused vacation credit balance upon leaving or transferring from his or her regular position.

B. An employee who is separated from the payroll shall be paid in a lump sum for all of his/her accrued vacation credit even though such employee may not have been able to use such vacation credit because of his/her ineligibility to do so pursuant to SMC 4.34.045; Provided, that in the event such separation occurs as a consequence of the death of the employee, such payment shall be made to the employee's beneficiary.

1 Section 7. There is added to Seattle Municipal Code
2 Chapter 4.34, a new section, designated Section 4.34.070,
3 as follows:

4 4.34.070. Premium Pay in Lieu of Annual Paid Vacation for
5 Interim Employees and Temporary Workers.

6 A. An interim employee or temporary worker shall receive
7 premium pay in lieu of annual paid vacation, which premium pay
8 shall be calculated according to the following formula:

9
$$H \times R = V_1$$

10
$$V_1 \times R = V_2$$

11
$$(V_1 + V_2) \times B = C$$

12 where

13 H = hours on regular pay status.

14 R = vacation rate applicable to such employee's hours on
15 regular pay status, as shown in Column 1 of the
16 Accrual Rate and Maximum Accumulation Table in
17 Section 4.34.020B.

18 B = such person's base hourly rate of compensation.

19 C = premium pay.

20 Except as is provided in SMC 4.34.070B, no such payment shall
21 be made until the interim employee or temporary worker has
22 attained eligibility as provided in Section 4.34.045. The
23 first such payment after the attainment of eligibility shall
24 compensate for vacation credit accrued during the first 1040
25 hours of work or six months of continuous service on regular
26 pay status, whichever is earlier; thereafter, premium pay in
27 lieu of annual paid vacation shall be paid with each suc-
28 cessive pay period as a supplement to the interim employee's
or temporary worker's regular compensation.

1 B. An interim employee or temporary worker who is
2 separated from the payroll before completing more than 1040
3 hours of work or more than six months of continuous service,
4 whichever is earlier, each on regular pay status with the
5 City shall be paid premium pay in lieu of annual paid
6 vacation, in a lump sum following separation, even though
7 such person normally would not have been able to receive
8 such premium pay because of his/her ineligibility to do so
9 pursuant to SMC 4.34.070A; Provided, that in the event such
10 separation occurs as a consequence of the death of the
11 employee, such payment shall be made to the interim
12 employee's or temporary worker's beneficiary.

13 C. In the event an interim employee or temporary worker
14 receives a regular appointment to a full-time or part-time
15 position, he or she must attain eligibility, as a regularly-
16 appointed employee, to be able to use accrued vacation
17 credits. No hours on regular pay status as an interim
18 employee or temporary worker shall be included in any credit
19 accrued for use as paid vacation, nor be used to accelerate
20 eligibility, nor otherwise be recognized for any purpose
21 related to such person's employment under a regular
22 appointment.

23 D. An interim employee or temporary worker who has
24 previously been employed by another employing unit shall
25 inform the employing unit currently providing him or her
26 employment about his or her prior service. If such person's
27 failure to do so results in a delay in making payment or
28 in an underpayment of the premium pay in lieu of annual
paid vacation, no interest or other charge shall accrue on
the balance payable.

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Section 8. Seattle Municipal Code Section 4.34.050
(part of Section 2 of Ordinance 110195) is repealed.

Section 9. Any act consistent with the authority and
prior to the effective date of this ordinance is ratified
and confirmed.

GBD:v-ord7.

(To be used for all Ordinances except Emergency.)

Section 1.0 This ordinance shall take effect and be in force thirty days from and after its passage and approval, if approved by the Mayor; otherwise it shall take effect at the time it shall become a law under the provisions of the city charter.

Passed by the City Council the 25th day of June, 1984,
and signed by me in open session in authentication of its passage this 25th day of June, 1984.

Norman B. ...
President of the City Council.

Approved by me this 2nd day of July, 1984,
Filed by me this 2nd day of July, 1984.

Charles Royer
Mayor.

Attest: *Jim Hill*
City Comptroller and City Clerk.

(SEAL)

Published

By: *SA Delee*
Deputy Clerk.

CS 0.1.6

**Your
Seattle
Personnel Department**

Susan B. Pavlou, Personnel Director
Charles Royer, Mayor



July 10, 1984

TO: Department Heads and Personnel Officers

FROM: Susan B. Pavlou *S. B. Pavlou*
Personnel Director

SUBJECT: Vacation Benefits for Temporary Workers

As you are aware, on July 29, 1982, the Washington Supreme Court ruled that the City's temporary workers are entitled to earn vacation benefits in accordance with City Charter Article XVII Section 2. Subsequent to the Supreme Court decision, the City entered into a class-action suit in Superior Court in order to resolve a wide variety of issues affecting the final settlement of this case. Even though the class-action suit is still in progress, it has been determined that the City can begin payments of vacation benefits to certain temporary workers. Effective with the pay period beginning June 27, 1984, for non-City Light workers, and July 4, 1984, for City Light workers, the City will include premium pay in lieu of paid vacation time off to temporary workers who are currently employed in the following categories:

BU
CODE BARGAINING UNIT NAME

INDEPENDENT BARGAINING UNITS

078 International Brotherhood of Electrical Workers, Local 77 -
Engineering

077 International Brotherhood of Electrical Workers, Local 77 - City
Light

043 Seattle Fire Chiefs Association, IAFF Local 2898

005 Seattle Fire Fighters Association, IAFF Local 27

038 Seattle Police Dispatchers Guild

033 Seattle Police Management Association

003 Seattle Police Officers Guild

018 Service Employees International Union, Local 6 - Admissions Unit

021 Service Employees International Union, Local 6 - Parking
Enforcers

029 Service Employees International Union, Local 6 - Parking Meter
Repairers

Department Heads and Personnel Officers
July 10, 1984
Page 2

7

BARGAINING UNIT GROUPS

INTERNATIONAL FEDERATION OF PROFESSIONAL & TECHNICAL ENGINEERS,
LOCAL 17

PROFESSIONAL & TECHNICAL CONTRACT

- 042 Professional & Technical Engineers, Local 17 - Human Relations Rep Unit
- 034 Professional & Technical Engineers, Local 17 - Professional Unit
- 041 Professional & Technical Engineers, Local 17 - Recreation Specialist Unit
- 031 Professional & Technical Engineers, Local 17 - Senior Business Unit
- 032 Professional & Technical Engineers, Local 17 - Senior Professional Unit
- 004 Professional & Technical Engineers, Local 17 - Technical Unit

Exception To BU 004 Inclusions:

Dining Room Attendant - Int (#9920.6) does not receive the vacation premium.

NON-REPRESENTED

- 076 Non-Represented IBEW 77 Supervisors
- 030 Other Non-Represented Employees

Exceptions To BU 030 Inclusions:

The following BU 030 titles do not receive the vacation premium:

#9999.9	Contract Employee	9900.4	-1- Youth Employment Enrollee - Summer
0850.9	-1- Dentist Hourly	9900.5	-1- Youth Work Training Enrollee
9895.8	-1- Work Study Intern-Int.	89XX.X	All Library Payroll Titles

Temporary workers in other categories may become eligible for vacation benefits as the class-action suit progresses.

Department Heads and Personnel Officers

July 10, 1984

Page 3

For your additional information, on June 25, 1984, the City Council adopted Ordinance No. 111757 amending the Vacation Ordinance to:

- a) permit premium pay in lieu of paid vacation time off for temporary workers;
- b) permit cashout of accrued vacation credit for permanent employees and temporary workers even though the employee/worker does not complete the 1040 hour or six month eligibility requirement;
- c) establish certain other provisions relative to vacation benefits for temporary workers.

If there are any questions concerning these provisions, please contact Ron Tegard on extension 2961.

SBP:rth

JH/50

REC'D OMB MAY 29 1984

**Your
Seattle
Personnel Department**

Susan B. Pavlou, Personnel Director
Charles Royer, Mayor
May 17, 1984



826582

TO: City Council
City of Seattle

Via: Mayor Charles Royer

ATTN: Gary Zarker, Director
Office of Management and Budget

FROM: Susan B. Pavlou *S. B. Pavlou*
Personnel Director

SUBJECT: Proposed Amendment to Vacation Ordinance (110195)

Attached for your consideration is a proposed amendment to the Vacation Ordinance. This amendment is for the purpose of implementing the Washington State Supreme Court ruling of July 29, 1982 (copy attached) that extended paid vacation benefits to the City's temporary workers, and which, by interpretation, provided "cash-out" of earned vacation benefits to employees who separate from City service with less than 1040 hours or six months of employment.

The Supreme Court's decision climaxes an action which began in approximately 1975 as a grievance filed by John Scannell, an intermittent worker at Seattle Center. The grievance was denied by the City. Scannell appealed the denial of the grievance to the Civil Service Commission, but the Commission declined to hear the appeal for lack of jurisdiction. On May 3, 1978 Scannell and 16 other intermittent workers filed suit in Superior Court. In November 1979, the Superior Court ruled in favor of the City. Scannell and his group appealed the Superior Court decision to the Washington State Court of Appeals. The Appeals Court subsequently sustained the Superior Court decision; Scannell then appealed to the Washington Supreme Court. On July 29, 1982 the Washington Supreme Court reversed the decision of the Court of Appeals and remanded the case back to the Superior Court for a determination of the settlement. The case is now before the Superior Court as a class-action suit. On March 13, 1984, the Superior Court ordered the City to commence paying vacation benefits to temporary workers not later than July 1, 1984.

The grant of vacation benefits to temporary workers represents a significant departure from long standing City policy. Such benefits cannot be granted under the provisions of the current Vacation Ordinance.

May 17, 1984
Page Two

The proposed ordinance amendment implements the Supreme Court order by: providing for temporary workers to be eligible to earn vacation effective with the date of employment; prohibiting the use of vacation during the first six months of employment; providing a "cash-out" upon exceeding six months of employment for all vacation accrued during the preceeding six months; and, providing that subsequent vacation benefits be paid as premium pay. Payment of these benefits in the form of paid time off is impracticable because temporary workers are normally employed to work during peak work load periods or to replace regular staff who are on vacation. Temporary workers are also employed on an intermittent ("on-call") basis rather than a regularly scheduled basis. This situation precludes the possibility of scheduling vacation periods.

The provisions of this proposed amendment will be applicable to only non-represented temporary workers. Most temporary workers in represented positions already receive a 10% premium in lieu of benefits as provided in their collective bargaining agreements, or such benefits have been the subject of negotiation and denied by the City during the bargaining process.

We also are proposing that the Vacation Ordinance be amended to permit an employee to be cashed-out for earned vacation credit in those cases where the employee separates from City service before completing the eligibility requirement of 1040 hours or six months of service, whichever is eariler.

In reaching its decision, the Washington Supreme Court relied upon the language of City Charter Article XVII, Section 2 which mandates all City employees "shall receive" earned vacation benefits. Accordingly, the Law Department has advised that the City's policy of requiring completion of 1040 hours or six months of service, which is reached first, of City service before granting vacation benefits to City employees is not consistent with the Supreme Court's interpretation of the Charter article.

The Vacation Ordinance provides that City employees begin earning vacation benefits upon the date of hire. Yet, permanent employees who leave City service before reaching the eligibility requirement are not paid for vacation earned during their term of employment. Temporary workers are not permitted to work more than 1040 hours or six months in a year. Consequently, temporary workers are prevented from completing the eligibility requirement and cannot be paid the vacation benefits that the Supreme Court has determined they are entitled to receive. The eligibility requirement, therefore, exceeds Charter authority by restricting an employee from receiving earned vacation benefits which are provided by the Charter. The eligibility requirement will still need to be completed before an employee will be granted paid time off from work. In all other respects, the proposed amendments are consistent with the City's present practice for eligibility and accrual of vacation by permanent full-time and permanent part-time employees.

April 17, 1984
Page Three

Please let me know if you need any further information; I will be available to assist you with any questions you may have.

SBP:rth

Enclosure

JH/29

City of Seattle

Executive Department-Office of Management and Budget

Gary Zarker, Director
Charles Royer, Mayor



May 25, 1984

Honorable Douglas Jewett
City Attorney
City of Seattle

Campbell *Jewett* *6328*

Dear Mr. Jewett:

The Mayor is proposing to the City Council that the enclosed legislation be adopted.

REQUESTING
DEPARTMENT: Personnel

SUBJECT: An ordinance relating to annual vacations for City employees.

Pursuant to the City Council's S.O.P. 100-014, the Executive Department is forwarding this request for legislation directly to your office for review and drafting.

After reviewing this request and drafting appropriate legislation:

- (X) File the legislation with the City Clerk for formal introduction to the City Council as an Executive Request.
- () Do not file with City Council but return the proposed legislation to OMB for our review. Return to _____

Sincerely,
Charles Royer
Mayor

By
Gary Zarker
GARY ZARKER
Budget Director

GZ/gwc/db

Enclosure

cc: Susan B. Pavlou, Personnel Director

JUL 29 1982
 Douglas N. Jorvat
 CITY ATTORNEY

[No. 47960-7. En Banc. JUL 29 1982

JOHN SCANNELL, ET AL, Petitioners, v. THE CITY OF SEATTLE, Respondent.

[1] Public Employment -- Compensation -- Remedies -- Action for Damages. Public employees may seek a judgment for monetary damages for unpaid compensation owing under a contract or by law.

[2] Municipal Corporations -- Charter -- Construction -- Considered as a Whole. City charter provisions are construed in light of the entire charter so as to give effect to its general purpose.

[3] Statutes -- Construction -- Meaning of Words -- "Shall". The statutory term "shall" is normally given a mandatory meaning, particularly when the statute uses the term "may" as well as "shall" and an individual's right depends upon giving the term "shall" a mandatory meaning.

Brachtenbach, C.J., concurs by separate opinion.

Nature of Action: Action by intermittent city employees seeking unpaid vacation compensation.

Superior Court: The Superior Court for King County, No. 844600, William C. Goodloe, J., granted a summary judgment denying the claim on November 26, 1979.

Court of Appeals: Holding that the employees were not entitled to vacation benefits under the city charter, the court affirmed the judgment at 29 Wn. App. 175.

Supreme Court: Holding that mandamus was not the exclusive remedy available to the plaintiffs and that the city charter required vacation benefits to be granted to intermittent employees, the court reverses the decision of the Court of Appeals and remands for a determination of compensation owed.

Bendich, Stobaugh & Strong, David F. Stobaugh, and Stephen K. Strong, for petitioners.

Douglas N. Jewett, City Attorney, and P. Stephen DiJulio and Debra F. Hankins, Assistants, for respondent.

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IN THE SUPREME COURT OF THE STATE OF WASHINGTON

JOHN SCANNELL, MARIE MASUNAGA,)
LUCILLE ROSETTI, JOSEPH HORMITCH,)
MARTHA MURPHY, ROSA THOMAS, THOMAS)
BARNETT, ALLAN VULLIET, STEVEN SEIM,)
MERVIN SLADE, THEARTIS CALDWELL,)
DONALD MONSON, SAMUEL SANTOR,)
CHARLES DOUGLAS, VAITUKI LATU,)
KEVIN SCHAFER and THOMAS BANNISTER,)

Petitioners,)

v.)

CITY OF SEATTLE,)

Respondent.)

No. 47960-7

En Banc

Filed JUL 29 1982

DORE, J.--Seventeen intermittent employees of the City of Seattle appeal the trial court's summary judgment order dismissing their case, holding that they were not entitled to vacation pay. We reverse, holding the City is liable to intermittent employees for vacation compensation, pursuant to the Seattle City Charter.

The City of Seattle classifies employees as permanent full time, permanent part time, intermittent and temporary. Although all these positions are within the City's classified service,

intermittent employees are not protected by civil service rules and procedures and do not receive fringe benefits. An "intermittent position" is defined by the City as one comprising duties that "occur, terminate and recur according to the needs of the City".

Intermittent positions are funded as line items in each department's miscellaneous expenses budget. A position is designated as intermittent exclusively upon the source of its funding as a line item expense, and this designation is unrelated to the regularity of the employee's work schedule, total hours worked, type of work or the number of years continuously employed in the same position. Intermittent employees are hired in the same manner as full-time employees, and may work the same hours and perform the same duties. Even when not working, intermittent employees remain City employees until resignation, layoff or firing. Nevertheless, these intermittent employees receive no paid vacation benefits.

The Seattle City Charter provides for employees' paid vacations as follows:

ANNUAL VACATIONS: Officers and employees on a five-day-week basis shall receive annual vacations with pay at the rate of at least twelve working days per year, and others shall receive proportionate annual vacations as prescribed by ordinance. Provided, that longer vacation periods may be prescribed by ordinance on a uniform basis.

Seattle City Charter, art. 17, § 2.

Permanent part-time City employees receive annual paid vacations proportionate to that provided for permanent full-time employees. The City vacation ordinance does not specifically exclude intermittent employees from paid vacation benefits, and the only direct reference to intermittent employees is found in section 4.32.020(D) of the Seattle Municipal Code, which states:

Temporary or intermittent employees who leave the employment of the city and later are reemployed, shall for the purposes of this chapter, commence their active service with the date of reemployment.

Before bringing suit, intermittent employee Scannell pressed his claim for vacation pay through the City's grievance procedure. His grievance was denied on the ground that various Seattle ordinances and the City's long-standing practice precluded employees in intermittent positions from receiving various benefits, including vacation pay. The City's Civil Service Commission declined to hear the issue on the basis that it lacked jurisdiction.

After the City denied Scannell's claim for compensation, he and 16 other intermittent employees brought a class action suit against the City. The trial judge deferred the employees' motion for class certification until a decision on the City's liability for vacation pay could be made. The trial court granted the City's motion for summary judgment, dismissed the employees' case and denied the employees' motion for partial summary judgment on the question of the City's liability. The Court of Appeals affirmed. We reverse.

I

We are not persuaded by the City's argument that mandamus is the appellants' exclusive remedy in compelling the City to compensate the appellants for vacation time. Mandamus exists to provide a remedy where there is no plain, speedy and adequate remedy at law. RCW 7.16.170.

The appellants in the present case have a civil action for a declaratory judgment, an injunction prohibiting the City from denying the plaintiffs vacation pay and a money judgment for their back vacation pay owed under the charter. Public employees have regularly obtained money judgments in civil actions for back

compensation owed under contracts or by law. See, e.g., Vallet v. Seattle, 77 Wn.2d 12, 459 P.2d 407 (1969); Malcolm v. Yakima County Consol. School Dist. 90, 23 Wn.2d 80, 159 P.2d 394 (1945); Watkins v. Seattle, 2 Wn.2d 695, 99 P.2d 427 (1940). We hold that the petitioners are not required to pursue a writ of mandamus against the City of Seattle to secure delinquent vacation pay.

II

We next consider the question of whether article 17, section 2 of the Seattle City Charter mandates the grant of vacation benefits to its intermittent employees. In applying this charter provision, we must look first to the charter language itself to determine the Seattle City Council's intent. State v. Sponburgh, 84 Wn.2d 203, 525 P.2d 238 (1974); In re Estate of Kurtzman, 65 Wn.2d 260, 396 P.2d 786 (1964). Legislative intent is to be ascertained from the statutory text as a whole, interpreted in terms of the general object and purpose of the legislation. State v. Sponburgh, supra; Amburn v. Daly, 81 Wn.2d 241, 501 P.2d 178 (1972).

We interpret the charter provision to contain three separate clauses: (1) employees working on a 5-day-week basis shall receive annual paid vacations of at least 12 working days; (2) other employees not working on a 5-day-week basis shall receive proportionate annual paid vacations as prescribed by ordinance; and (3) vacations longer than 12 working days per year may be prescribed by ordinance on a uniform basis. Thus, the charter provision provides for vacation benefits for both 5-day-week employees and other employees not working on a 5-day-week basis.

Where a provision contains both the words "shall" and "may," it is presumed that the lawmaker intended to distinguish between them, "shall" being construed as mandatory and "may" as

permissive. State ex rel. Public Disclosure Comm'n v. Rains, 87 Wn.2d 626, 633-34, 555 P.2d 1368 (1976). When an individual's rights depend upon giving the word "shall" an imperative construction, "shall" is presumed to have been used in reference to that right or benefit and it receives a mandatory interpretation. Jordan v. O'Brien, 79 Wn.2d 406, 410, 486 P.2d 290 (1971). We, therefore, construe the clauses containing "shall" as mandatory, such that the City has a duty to provide all employees with vacation pay, whether they work a 5-day-week or not.

Article 17, section 2 of the Seattle City Charter does not define "employees working on a 5-day-week basis" or "others". Section 4.20.170 of the Seattle Municipal Code, entitled "Eight-hour day--Five-day week," provides, "Eight hours shall constitute a days' work and five days a weeks' work for all except supervisory and administrative employees of the City". The word "others" must similarly refer to those City employees who work either more or less than an employee working the normal business week of five 8-hour days. The City currently includes within this category employees working in positions budgeted as full time who work on schedules different from the normal 5-day week, employees who work part time, and those who split a single full-time job with another employee. Intermittent employees, who do not fit within the 5-day-week definition, must be designated as "others". The City must apply the same formula¹ for affording

¹Seattle City Ordinance No. 86799 provides that employees working on a 5-day-week basis receive 1 day of vacation per month worked for service less than a year. The ordinance further provides for increased vacation for longer City service.

Under the City's formula, the amount of paid vacation for employees other than those working on a 5-day-week basis is determined by prorating their hours worked in a given year to the 2,080 hours in a full-time position and multiplying this ratio by the number of vacation days for the full-time position.

proportionate vacation pay to intermittent employees as it applies to all other employees who fit within the "others" category.

The petitioners have requested a judgment against the City of Seattle for the amount of their unpaid vacation compensation plus interest. Section 4.34.020(D) of the Seattle Municipal Code provides that employees may not accumulate more than 192 hours of vacation time during the first 4 years of service, or more than 240 hours for the first 9 years of service. The City is, therefore, required to reimburse petitioners only for the maximum amount of vacation time each has accumulated under section 4.34.020(D).

Handwritten notes:
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1/17/76
1/21/76

We reverse the trial court's judgment of dismissal and remand to the trial court for a determination of the amount of compensation to be awarded to the 17 petitioners in accordance with the provisions of this opinion.

Doer, J.

We concur:

Dolan, J.

Boellinger, J.

Williams, J.

Steffen, J.

Alvord, J.

Wheeler, J.

Leason, J.

Scannell v. Seattle
Majority by: Dore, J.

No. 47960-7

BRACHTENBACH, C.J. (concurring)--I hope the majority opinion will not be construed to foreclose the City from enacting constitutionally permissible provisions that distinguish among different types of employees in granting vacation benefits. Policy considerations behind vacation benefits are generally to afford employees a rest period from their work; differences in the hours and regularity of the work may justify differential treatment. As the city charter and ordinances are now worded, however, the majority's interpretation is correct, and I concur.

Brachtenbach, C.J.

ACTING CLERK
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The Supreme Court

State of Washington

Olympia
98504

January 14, 1983

753-5081
APR 6 1983

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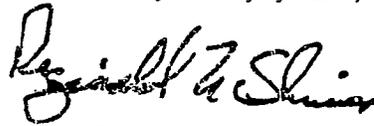
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Re: Supreme Court No. 47960-7 - John Scannell, et al.
v. The City of Seattle

Enclosed is a conformed copy of an Order Changing
Opinion entered in the Supreme Court on January 13,
1983 in the above entitled cause.

Very truly yours,



REGINALD N. SHRIVER
Acting Clerk

RNS:db

Encl.

cc: Honorable William C. Goodloe, Judge
King County Superior Court