

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

LARRY REITEN and the NORTHWEST UNITED
EDUCATORS,

Complainants,

vs.

JOINT SCHOOL DISTRICT NO. 1, WINTER,
ET AL.,

Respondent.

Case VIII
No. 18701 MP-426
Decision No. 13276-A

Appearances:

Mr. Robert West, Executive Director, Northwest United Educators,
appearing on behalf of the Complainants,
Mr. Charles Ackerman, Labor Consultant, appearing on behalf of the
Respondent.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

The above-named Complainants, having on January 9, 1975, filed a complaint with the Wisconsin Employment Relations Commission, alleging that the above-named Respondent has committed a prohibited practice within the meaning of Section 111.70(3)(a)5 of the Municipal Employment Relations Act; and the Commission having appointed Dennis P. McGilligan, a member of its staff, to act as Examiner, to make and issue Findings of Fact, Conclusions of Law and Order as provided in Section 111.07(5) of the Wisconsin Employment Peace Act; and hearing on said complaint having been held at Dayward, Wisconsin on April 17, 1975 before the Examiner; and the Examiner having considered the evidence and arguments of the parties, and being fully advised in the premises, makes and files the following Findings of Fact, Conclusions of Law and Order.

FINDINGS OF FACT

1. That Larry Reiten, hereinafter referred to as Complainant Reiten, is an individual residing at Winter, Wisconsin; and that, at all times material hereto, Complainant Reiten has been employed by Joint School District No. 1, Winter, et al., as a public school teacher.
2. That Northwest United Educators, hereinafter referred to as Complainant NUL, is a labor organization representing employes for the purpose of collective bargaining, and has its offices at Rice Lake, Wisconsin.
3. That Joint School District No. 1, Towns of Winter, Draper, Ojibwa, Meadowbrook, Radisson, Courderay and Villages of Radisson and Courderay, Sawyer County and Town of Hubbard, Rusk County, State of Wisconsin, hereinafter referred to as the Respondent, is a School District, organized under the laws of the State of Wisconsin, with principal offices at Winter, Wisconsin.
4. That at all times material hereto, Respondent has recognized Complainant NUL as the exclusive bargaining representative for all full-time employes of the Winter School District engaged in teaching, and including the classroom teachers, guidance counselors and librarians, but excluding the following: administrators and principals; non-instructional personnel; office, clerical, maintenance and operation employes; substitute teachers, student and/or intern teachers.

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5. That Complainant HUE and the Respondent were signators to a collective bargaining agreement effective from July 1, 1974 until June 30, 1975 covering wages, hours and conditions of employment of the employes in the aforesaid unit; and that said agreement contained the following provision:

"SECTION V - Sick Leave, Personal Leave

Sick Leave

- A. Teachers may earn sick leave with a maximum to ten (10) days per year.
- B. Sick leave may be accumulated to seventy (70) days.
- C. Teachers who take more than their accumulated sick leave allowance shall have deducted from their payroll, one day's pay for each days [sic] absence, as determined by salary and length of employment as stipulated on the current contract.
- D. Sick Leave shall be defined as personal injury or illness.

Personal Leave

- A. Teachers shall be eligible for three (3) days personal leave per year. Such leave is non-accumulative and prior notice to the administration is required in all situations.
- B. The first day of personal leave may be taken by a teacher without permission from the Administrator. Permission in advance of taking personal leave is required for the two remaining days.
- C. Personal leave shall be defined as leave granted for events or business that cannot be scheduled at any other time, and for which the employee's attendance is necessary. Examples would be: Court appearances, IRS hearings, selective service exams, college exams, etc."

and that said agreement makes no provision for the final and binding resolution of disputes concerning its interpretation or application.

6. That Section IV, A, 7 part d of the Written Policy for the Winter School Board, an agent of the Respondent, states that:

- "d. Sick leave shall be defined as personal injury or illness, and serious illness, injury or death in the immediate family. Immediate family are considered to be husband or wife, children, parents, parents-in-law, brothers and sisters or a member of the immediate household."

7. That Complainant Reiten was absent from work on August 28, 29 and 30, 1974, to attend to his father who was ill and who died on August 30, 1974; that Complainant Reiten was absent from work on September 3, 1974, to attend his father's funeral; that High School Principal Mr. William Neigan, Complainant Reiten's immediate supervisor and an agent of the Respondent, told Complainant Reiten on August 28, 1974, that absences to take care of his father would be considered sick leave; that District Administrator Mr. Louis Behrens, an agent of the Respondent, wrote to Complainant Reiten on November 18, 1974, and agreed that Complainant Reiten's absences had in the past been treated as sick leave but stated that the contract superseded and overrode any Board policy in conflict with the contract and denied Complainant Reiten's request for sick leave; that on November 25, 1974, the Board of Education of the Respondent acted to consider the four days of absence by Complainant Reiten for his father's death and funeral as three days of personal leave and one day of sick leave.

8. That a grievance was filed and processed under the terms of the collective bargaining agreement; that the Complainants herein took the position that Complainant Reiten had been denied sick leave

in violation of the collective bargaining agreement between the Complainant NUE and the Respondent; that said grievance was denied by Respondent; and that the grievance procedures contained in the collective bargaining agreement have been exhausted.

On the basis of the above and foregoing Findings of Fact, the Examiner makes the following

CONCLUSIONS OF LAW

1. That the Complainants exhausted the grievance procedure established by the collective bargaining agreement between Complainant NUE and the Respondent and, therefore, the Examiner will assert the jurisdiction of the Wisconsin Employment Relations Commission to determine the merits of said grievance.

2. That, by the action of its agent, Winter Board of Education, the Respondent denied Complainant Reiten three days of sick leave in violation of the terms of the collective bargaining agreement existing between said Respondent and Complainant NUE and has violated Section 111.70(3)(a)5 of the Municipal Employment Relations Act.

Upon the basis of the above and foregoing Findings of Fact and Conclusions of Law, the Examiner makes the following

ORDER

IT IS ORDERED that Respondent, Joint School District No. 1, Winter et al., its officers and agents shall immediately:

1. Cease and desist from refusing to adhere to the terms of the collective bargaining agreement between the parties effective from July 1, 1974 until June 30, 1975.
2. Take the following affirmative action which the undersigned finds will effectuate the purposes of the Municipal Employment Relations Act:
 - (a) GRANT the Complainant, Larry Reiten, three days' sick leave for those days which he took leave to attend to his father's illness and which the Respondent Board treated as personal leave.
 - (b) PAY the Complainant, Larry Reiten, at his pro-rated daily rate for the three personal leave days that he has been denied as a result of the Respondent Board's action.
 - (c) Notify all employees, by posting in conspicuous places on its premises where notices to employees are usually posted, copies of the notice attached hereto and marked "Appendix A". That notice shall be signed by Respondent, and shall be posted immediately upon receipt of a copy of this Order and shall remain posted for thirty (30) days thereafter. Reasonable steps shall be taken by the Respondent to insure that said notices are not altered, defaced or covered by other material.

- (d) Notify the Wisconsin Employment Relations Commission, in writing, within twenty (20) days following the date of this Order, as to what steps have been taken to comply herewith.

Dated at Madison, Wisconsin this 30th day of July, 1975.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Dennis P. McGilligan
Dennis P. McGilligan, Examiner

APPENDIX "A"

NOTICE TO ALL EMPLOYEES

Pursuant to an Order of an Examiner of the Wisconsin Employment Relations Commission, and in order to effectuate the policies of the Municipal Employment Relations Act, we hereby notify our employees that:

1. WE WILL grant Larry Reiten three days' sick leave for those days which he took leave to attend to his father's illness and pay Larry Reiten, at his pro-rated daily rate for the three personal leave days that he was denied as a result of the Winter Board of Education's action on November 25, 1974.
2. WE WILL comply with all of the terms of the 1974-1975 collective bargaining agreement, including Article V therein, which provides for sick leave and personal leave.

Dated this _____ day of _____, 1975.

By _____
Joint School District No. 1,
Winter, et al.

MEMORANDUM ACCOMPANYING FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

The complaint alleges that the Respondent violated the 1974-1975 collective bargaining agreement between the Respondent and the Complainant NWE, by not granting sick leave to Complainant Reiten. The Examiner held a hearing on April 17, 1975. Complainant NWE filed a brief on July 8, 1975. Respondent did not file a brief.

POSITION OF THE COMPLAINANTS:

On January 9, 1975, Complainants filed a complaint with the Commission alleging:

"6. That the Respondent Joint School District No. 1, Winter et al. violated Wisconsin Statutes 111.70 (3) (a) 5 by not complying with the collective bargaining agreement in that said Respondent has refused to grant sick leave as provided in Section V, part D."

Complainants argue that Section V, part D of the collective bargaining agreement provides for sick leave for personal injury or illness as in Complainant Reiten's case. Complainants also point to the written policy of the Winter Board of Education which states in Section IV, A, 7, part d that:

"d. Sick leave shall be defined as personal injury or illness, and serious illness, injury or death in the immediate family. Immediate family are considered to be husband or wife, children, parents, parents-in-law, brothers and sisters or a member of the immediate household."

Complainants argue in addition to the above that the past practice of the Respondent has been to grant sick leave for illness and death in the immediate family.

Complainants would have the Examiner find the Respondent guilty of violating the collective bargaining agreement and Section 111.70 (3) (a) 5 and ask that the Respondent be required to grant the sick leave and reimburse Complainant Reiten at his pro-rated daily rate for the personal leave days he was denied as a result of the Board action. Complainants also ask that as a result of the blatant action by the Board, the Examiner award expenses in the processing of the complaint and an additional \$500.00 to the Complainants for damages incurred.

POSITION OF THE RESPONDENT:

The Respondent argues that the contract does not provide sick leave for Complainant Reiten's absences to take care of his ill father, and the language of the contract should take precedence over any past practice or Board policy to the contrary.

Respondent would have the Examiner deny and dismiss the complaint.

EXHAUSTION OF GRIEVANCE PROCEDURE:

The question of whether the Complainants herein exhausted all steps of the grievance procedure must first be determined, for, if it is decided that Complainants failed to exhaust all steps of the grievance procedure, the Examiner would refuse to assert the juris-

diction of the Commission. 1/ The matter was not contested at the hearing and, as noted in the Findings of Fact, the contract did not contain procedures for final and binding arbitration. The Complainants did, in fact, exhaust all steps of the grievance procedure. Therefore, the Examiner has asserted the jurisdiction of the Commission to determine the merits of said grievance.

SUBSTANTIVE ISSUE:

As noted above, the primary issue herein is whether Respondent breached its collective bargaining agreement with Complainant NUZ, when it denied Complainant Reiten three days' sick leave to attend to his father, who was ill, and instead make him take personal leave. The Examiner would agree with the Respondent's contention that if the language of a contract is clear and unequivocal, one generally will not give it a meaning other than that expressed. However, where the contract language is ambiguous and subject to differing interpretations, one looks to custom or past practice of the parties to determine its proper meaning.

Section V, part D of the contract defines sick leave as personal injury or illness. The Respondent argues that this means injury or illness to the employee, not to some other person as described in the Board policy or practices in the past and thus Complainant Reiten does not qualify for sick leave under the terms of the contract. The Complainants argue that Reiten was sufficiently ill and distraught in attending to his father's illness and subsequent death that he qualified under the definition of sick leave provided in the contract and which, Complainants add, is consistent with the Board policy and practice in the matter.

The Examiner finds the language of Section V, part D to be ambiguous and subject to differing interpretations. The Examiner turns to past practice to give meaning to the above ambiguous contract language. At this point, the Respondent's case must fail. It is uncontroverted that past practice of the Winter Board of Education, as agent for the Respondent has been to grant sick leave for illness and death in the immediate family. This practice is stated in the Board's own written policy in Section IV, A, 7, part d as noted above. The Respondent abandoned both past practice and policy in denying Complainant Reiten sick leave because it felt the language of the contract permitted it to do so. The Examiner finds the Respondent incorrectly relied on the language of the contract to support its position.

Accordingly, the Examiner finds that the Respondent has violated Section V of the 1974-1975 collective bargaining agreement by failing to grant Complainant Reiten three days' sick leave, and instead of requiring him to take personal leave. In view of the above, the Examiner finds that the Respondent thereby has committed a prohibited practice in violation of Section 111.70(3)(a)5 of the Municipal Employment Relations Act.

In the complaint, Complainants request that the Examiner order the Respondent to reimburse Complainants for all expenses incurred in the preparation, filing and processing of this complaint. In their brief, Complainants request an additional \$500.00 for damages incurred.

1/ Lake Mills Joint School District No. 1 (11529-A) 7/73; Oostburg Joint School District No. 1 (11196-A) 11/72.

It has never been the Commission's policy to order a party (prevailing or nonprevailing) to pay any such costs or fees except where the parties have agreed in advance that such remedy is appropriate. 2/ The Examiner finds nothing in the instant case warranting an exception to or modification of that approach. Therefore, the request for expenses and damages has been denied.

Dated at Madison, Wisconsin this 30th day of July, 1975.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Dennis P. McGilligan
Dennis P. McGilligan, Examiner

2/ See, e.g., Monona Grove Joint School District No. 4, (11614-A, B) 7/73, United Contractors, Inc. (12053-A, B) 12/73, Rice Lake School District (12756-A) 12/74.