

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

JAMES W. MEVERDEN AND THE TWO RIVERS
EDUCATION ASSOCIATION (TREA),

Complainants,

vs.

JOINT SCHOOL DISTRICT #1, CITY AND
TOWN OF TWO RIVERS, WISCONSIN, AND
THE BOARD OF EDUCATION OF SAID SCHOOL
DISTRICT,

Respondents.

Case XII

No. 20532 MP-626

Decision No. 14687-B

ORDER AFFIRMING EXAMINER'S FINDINGS OF
FACT, CONCLUSION OF LAW AND ORDER

Examiner Peter G. Davis having, on February 17, 1977, issued his Findings of Fact, Conclusion of Law and Order, with Accompanying Memorandum in the above-entitled matter, wherein he concluded that Joint School District #1, City and Town of Two Rivers, Wisconsin, and the Board of Education of said School District had violated the 1976-1977 collective bargaining agreement existing between said Respondent District and Complainant Two Rivers Education Association, with respect to the termination of a leave of absence previously granted to Complainant James W. Meverden; and said Complainants having, on March 9, 1977, pursuant to Section 111.07(5), Wisconsin Statutes, timely filed a petition requesting the Commission to review the decision of the Examiner; and on May 17, 1977, said Complainants having filed a brief in support of their petition for review, wherein they basically contended that the Examiner erred in not concluding that Meverden was entitled to a leave of absence for a longer period of time than that determined by the Examiner; and the Respondents thereafter, and on June 2, 1977, having filed a brief in response to the petition for review; and the Commission, having reviewed the entire record, the decision of the Examiner, the petition for review, and briefs filed in support thereof and in opposition thereto, being advised in the premises makes and issues the following

ORDER

IT IS ORDERED that, pursuant to Section 111.07(5) of the Wisconsin Statutes, the Examiner's Findings of Fact, Conclusion of Law and Order, issued in the above-entitled matter, hereby are considered as the Commission's Findings of Fact, Conclusion of Law and Order. 1/

Given under our hands and seal at the
City of Madison, Wisconsin this 28th
day of February, 1978.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

Morris Slavney Chairman

Herman Torosian Commissioner

1/ The Respondents on March 7, 1977, in writing advised the Commission that it had complied with the Examiner's Order.

MEMORANDUM ACCOMPANYING ORDER AFFIRMING EXAMINER'S
FINDINGS OF FACT, CONCLUSION OF LAW AND ORDER

The Examiner's Decision:

James W. Meverden and the Two Rivers Education Association filed a complaint with the Commission alleging that the Two Rivers School District, by non-renewing Meverden while he was on a medical leave of absence granted to him under a provision in a collective bargaining agreement, committed a prohibited practice within the meaning of Section 111.70(3)(a)5 of the Municipal Employment Relations Act. After hearing and consideration of the briefs filed by the parties, the Examiner, in essence, concluded that the district had committed a prohibited practice by violating the leave of absence provision in the 1976-1977 collective bargaining agreement existing between the District and Association by non-renewing Meverden's individual teaching contract for the school year 1976-1977 thus terminating his leave of absence. The Examiner, among other things, ordered the District to return Meverden to a medical leave status until the end of the 1976-1977 school year.

BACKGROUND:

Meverden, as a result of a stroke, was granted a medical leave of absence on December 12, 1974 under the then existing collective bargaining agreement, the pertinent provisions of which provided that a teacher "shall be granted a medical leave of absence for the period of time during which he or she is physically or emotionally unable to perform his regular duties due to a non-occupational disability," upon medical proof thereof, and further that the teacher would be required to report for duty when he "is physically or emotionally able to perform his regular duties."

On December 13, 1974, in a letter over the signature of the Superintendent Meverden's medical leave of absence was confirmed. Said letter indicated that Meverden be granted a leave of absence "on your 1974-1975 teaching contract . . . beginning at your request on December 1 and terminating according to contract when the doctor indicates that you are capable of continuing in your teaching position."

In February, 1975 the District had received medical reports reflecting the opinion that Meverden would be able to resume his teaching duties in the fall of 1975, and as a result on March 12, 1975, the District issued Meverden a teaching contract for the school year 1975-1976, with the following condition stated therein "renewal of this contract is contingent upon receipt of a doctor's report showing that James Meverden is physically and emotionally able to perform his regular duties".

Meverden executed said individual teaching contract on April 9, 1975. In July, 1975, a further medical report indicated that Meverden had not sufficiently recovered to return to his teaching duties in the fall of 1975 and in fact Meverden did not return to his teaching duties during the 1975-1976 school year. On February 26, 1976, the Superintendent, by letter advised Meverden that the District had not received a medical report indicating that Meverden was able to perform his regular duties during the 1976-1977 school year and subsequently Meverden's individual teaching contract was non-renewed in April, 1976.

In the collective bargaining agreement covering the school year 1976-1977, the Association and the District altered the leave of absence provision by adding the following language with respect to medical leaves of absence: "A medical leave of absence shall not exceed two (2) full contract years following the contract year in which the disability took place".

The Examiner concluded that, under the latter provision, Meverden's medical leave should have been extended through the end of the 1976-1977 school year, and therefore that the District violated the 1976-1977 collective bargaining agreement, and thus the District and its agents committed a prohibited practice within the meaning of Section 111.70 (3)(a)5 of the Municipal Employment Relations Act.

The Petition for Review:

Meverden and the Association filed a petition for review of the Examiner's decision, contending that Meverden's leave of absence should be deemed to continue under the provisions of the collective bargaining agreement in existence at the time the leave was granted, arguing, in essence, that Meverden had a vested right to such leave, and that, therefore, the District could not non-renew Meverden or terminate his medical leave of absence. The Association contends that the District did not have the right to retroactively apply the modification of the new medical leave provision to the original leave granted to Meverden.

The District, on the other hand, argues that Meverden's leave was subject to whatever collective bargaining agreement was "now in effect", and that the change in the leave provisions as reflected in the subsequent collective bargaining agreement was perspective rather than retroactive, and further, that the leave granted to Meverden was not a vested right. The District argues that nothing in Complainant's petition for review requires any modification of the Examiner's decision, but that the Commission should, nevertheless, dismiss the complaint on the basis of the District's argument originally put forth to the Examiner. 2/

Discussion:

We adopt the Examiner's rationale in support of his conclusion of law and order. Contrary to the Association's argument, the right granted to Meverden, under the original leave of absence provision, was not a vested right which survived the contract, but rather was a contractual right to which he was entitled only as long as the agreement provided same.

The Association in support of its position analogizes the right to a medical leave of absence with an employee's pension and vacation rights. There is a significant difference however between pension and vacation rights and leaves of absence. Pension rights like vacation rights, are earned or accrued and are treated as deferred compensation, and therefore entitlement of same may survive the term of a collective bargaining agreement. A leave of absence, however, is not earned or accrued, or a form of deferred compensation and as such did not survive the contract. An employee on leave of absence is entitled to that which is provided by the collective bargaining agreement. Accordingly, had the parties intended the leave of absence provision of the previous agreement to apply to Meverden, they should have "grandfathered" Meverden to accomplish same.

The Association's reliance on the Commission's decision in Prairie Farm Schools 3/ and Barneveld Schools 4/ is misdirected. In those cases,

2/ Prior to the filing of the petition for review the Respondents, in writing, advised the Commission that they had complied with the Examiner's order.

3/ Decision No. 12740-A, B; 6/75.

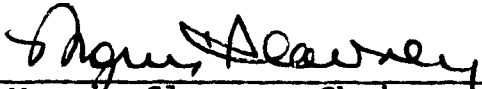

4/ Decision No. 12538-B; 11/75.

the Commission was called upon to determine whether provisions in a new collective bargaining agreement, if retroactively applied from the initial date of the term of the agreement, would invalidate an otherwise prior valid action by the employer, which action occurred prior to the date of the execution of the collective bargaining agreement. Here, the issue is whether in a new collective bargaining agreement the term of a leave of absence can reduce the period established in a previous agreement where an individual was granted a leave of absence under the previous agreement and was not able to return to employment prior to the negotiated change in the medical leave of absence provision.

Therefore, we are today issuing an order affirming the Examiner's Findings of Fact, Conclusions of Law and Order as well as his Memorandum supporting same.

Dated at madison, Wisconsin this 28th day of February, 1978.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By 
Morris Slavney, Chairman

Herman Torosian, Commissioner