

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Respondent.

No. 16325-A

ARTICLE 13: PERSONAL LEAVE

Two days leave of absence per school year, non-cumulative, for matters which require absence during school hours shall be allowed with full pay and the day(s) shall not be deducted from sick leave. These personal days may be taken in half or full days and the Board shall deduct from the teacher's salary the cost of a substitute, prorated on the length of the teacher absence. Days of absence from school for school related business, as authorized by the District administrator, shall not be considered personal days and shall not be deducted for the purpose of this provision. These days shall not be taken the day before or the day after a holiday or vacation nor the first or last day of the school year except with consent of the District administrator."

4. Margaret Schliepp, employed by Respondent as a teacher, requested personal leave for December 1 and 2, 1977 so as to accompany her husband on an expense paid trip to a convention in Florida, which trip her husband had won. Respondent denied Schliepp's request for personal leave, but allowed her to take the days off as leave without pay.

5. Respondent has allowed other employes to use personal leave in the following, among other, situations: (1) Stephen Englebert accompanied his wife on a trip to Boston to attend the wedding of her sister; and, (2) Ruth Krause visited some elderly people residing in Texas.

6. During the negotiations in which the parties agreed to add the current personal leave language to the contract, there was no discussion about the use of personal leave for vacations. However, the parties did agree that personal leave would not be used for deer hunting.

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

CONCLUSIONS OF LAW

1. Inasmuch as the grievance procedure does not provide for binding arbitration, Complainant has the right to seek relief for the contractual violations alleged herein through the Commission's procedures as specified in Section 111.70(3)(a)5 of MERA.

2. Based on Respondent's need to evaluate a request for personal leave to determine whether or not that request meets the contractual requirements for said leave, coupled with Respondent's right to operate its schools, Respondent can require an employe to furnish the reason for requesting the use of personal leave.

3. Respondent's denial of Schliepp's request to use personal leave on December 1 and 2, 1977 was not consistent with its administration of said contract language with respect to other employes, and therefore, said denial was unreasonable and violated Article 13 of the contract; thereby violating Section 111.70(3)(a)5 of MERA.

4. As the representative of the bargaining unit in which Schliepp is included, Complainant is a proper party to initiate a complaint alleging a violation of an employe's contractual rights and seeking relief for those claims. 1/

1/ Melrose-Mindoro Joint School District No. 1, (11627) 2/73; City of Milwaukee, (8017) 5/67.

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

ORDER

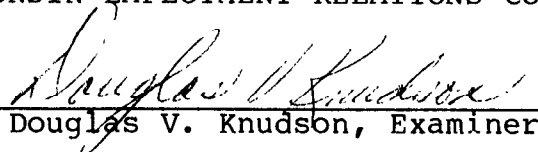
IT IS ORDERED that Respondent Berlin Area School District, its officers and agents, shall:

1. Immediately, in accordance with Article 13 of the collective bargaining agreement, reimburse Margaret Schliepp for the salary she lost as a result of her being denied personal leave for December 1 and 2, 1977.
2. 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 1st day of November, 1978.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Douglas V. Knudson, Examiner

MEMORANDUM ACCOMPANYING FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

POSITIONS OF THE PARTIES:

Complainant contends that the only restrictions on the use of personal leave are those contained in Article 13 of the contract. Said language does not prohibit the use of personal leave for vacations. The intent of the parties, when said language was placed in the contract, was that employees would not be required to give a reason when they took personal leave.

Respondent argues that vacation is not a proper basis for using personal leave. Vacation was neither on the list of reasons for using personal leave contained in Complainant's original proposal in negotiations, nor, discussed during contract negotiations as a possible reason for using personal leave. Schliepp did not have urgent personal business, but rather was going on a vacation. Her request was distinguishable from that of Ruth Krause's, wherein Krause implied an immediate need to go to Texas. While the personal leave language is silent on whether or not reasons are required, Respondent believes it has the right to require such reasons under the contractual management rights language and the need for the orderly administration of its operation.

DISCUSSION:

The personal leave language in Article 13 clearly requires Respondent to grant an employee up to two days of paid leave for matters requiring the employee's absence during school hours. Said language explicitly allows Respondent to refuse such leave if it falls on certain days, i.e., those immediately preceding or following holidays, vacations, or the first or last days of the school year. Implicit, albeit unstated, in the personal leave language is Respondent's ability to require the employee requesting personal leave to offer the reason for such request. In the absence of an offered reason, Respondent would not be capable of determining whether or not the request to use personal leave was for a matter requiring absence during school hours. Further, Respondent is responsible for the orderly operation of its schools, and, if faced with more requests to use personal leave on the same date than it can accommodate, Respondent may find it necessary to deny certain of those requests even if said requests may otherwise meet the contractual requirements. Thus, Respondent has both a reasonable basis for requiring, and, the right to require, an employee to furnish the reason for a request to use personal leave.

During the negotiations which resulted in the addition to the contract of the current personal leave language, the parties did not discuss the concept of personal leave being used as vacation days. However, the parties did agree that personal leave could not be used for deer hunting.

In the incident at issue herein, Schliepp did offer the reason for her request to use personal leave. Schliepp's husband had won an expense paid trip for two people to a convention in Florida. The dates of the convention were fixed. Schliepp requested to have November 30, 1977 as a day off without pay and December 1 and 2, 1977 as personal leave days, so as to accompany her husband on that trip. Although her supervisor initially approved said request, the next day he refused the use of personal leave days. Schliepp was allowed to take said three days as leave without pay, which she did.

In November, 1977 Ruth Krause was allowed to use her two days of personal leave as part of a five day leave, during which she and her

husband went to Texas to visit some elderly people. Apparently, Krause's supervisor was of the impression that the trip could not be delayed due to the age and health of the residents in Texas, and therefore, he approved the personal leave request.

Another teacher, Stephen Englebert, received approval to take personal leave on March 22 and 23, 1978 so as to accompany his wife to her sister's wedding in Boston.

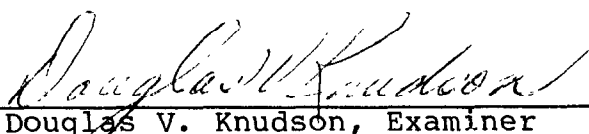
As evidenced by its approval of Englebert's and Krause's requests to use personal leave, Respondent has allowed employees to use personal leave to attend certain events of a personal or social nature as well as for business engagements of a compelling nature and emergency situations, like a family illness. Schliepp had no more control over the dates of her husband's trip than did Englebert, who went to a wedding in Boston. Krause certainly had more control over the scheduling of her trip to Texas than Schliepp possessed over her trip. Schliepp did not plan and schedule her trip in the same manner that employees normally schedule trips during vacation periods. Such trips involve discretion in scheduling and would not constitute matters requiring absence during school hours. In Schliepp's case, if she had not gone when the trip was scheduled, she would have forfeited the trip. In that respect, her situation was identical to Englebert's situation. Apparently, Krause was in a more flexible position as to the scheduling of her trip to Texas.

In situations involving an employer's exercise of discretion in administering contract language, the employer is obligated to exercise its discretion in a consistent and equitable manner. Applying those tests to the instant situation, the undersigned is not persuaded that Schliepp's circumstances were sufficiently distinguishable from those situations wherein Englebert and Krause were allowed to use personal leave for their trips, so as to justify a denial of her request for personal leave. On that basis the undersigned concludes that Respondent's denial of Schliepp's request to use personal leave on December 1 and 2, 1977, was inconsistent with its administration of the contractual personal leave language, and consequently, was unreasonable. Thus, said denial by Respondent cannot be sustained.

Respondent argued that, inasmuch as Schliepp was not a named Complainant in this proceeding, the Examiner is without authority to order a payment to her. Respondent did not offer any legal basis for said argument. The Commission has consistently ruled that a labor organization, as the representative of the bargaining unit, is a proper party in interest to seek relief through the Commission's procedure for an alleged violation of an employee's contractual rights. 2/ Therefore, in the instant proceeding, Complainant can request backpay for Schliepp, and, the granting of such relief is proper.

Dated at Madison, Wisconsin this 1st day of November, 1978.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By 
Douglas V. Knudson, Examiner

2/ Id.