

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Respondent.

No. 16882-A

does not culminate in a binding arbitration step for the resolution of contractual disputes.

4. At all times material hereto, Darrell Ruder was employed by the District as a full time teacher.

5. On December 15, 1977, Ruder made written application for a two day leave - January 12 and 13, 1978 - to attend a family gathering/vacation in Denver, Colorado.

6. On December 18, 1977, his request was denied by his principal Zweifel.

7. On December 21, 1977, following resubmission of his request, same was denied in writing by the District's superintendent Carter.

8. Ruder had been granted leave to take a similar vacation the previous year, by his principal, Mr. Tony Kajawa. The District's superintendent was unaware that Kajawa had granted the leave until after Ruder had taken it.

9. On January 10, 1978, Ruder directed the following letter to Zweifel:

Mr. Zweifel

I agree that my request for two days of leave does not fit the category of special leave. It seems that my request does not fit into any leave category authorized in the contract. Therefore, on that basis it seems that a pay deduction of 1/190 of my contract salary for each of the two days I will be gone is not only in order but is in compliance with paragraph G on page 25 of the contract.

Thank you

Darrell J. Ruder /s/

10. Paragraph G, p. 25 of the collective bargaining agreement states:

G. Unauthorized Absences:

Pay deductions will be made for all leaves not authorized in this agreement on the basis of 1/190 of contracted salary for each day involved.

11. On January 11, 1978, Zweifel sent the following response to Ruder:

Mr. Darrell J. Ruder
P.O. Box 250
Salem, WI 53168

Dear Mr. Ruder:

I have received your letter dated Jan. 10, 1978. I believe it indicates you are going to be absent from school on Thurs., Jan. 12, and Fri., Jan. 13.

As we have discussed previously, and indicated to you both orally and in writing, this absence is in direct violation of board policy, the master agreement, a decision by the board, and the specific direction of the administration. This leave is unauthorized and does not have administrative or board approval.

If you do decide to go and are absent from school on the above dates, additional penalties may be imposed by the school board.

Very truly yours,

J. R. Zweifel /s/
Jim Zweifel, Principal

12. On January 12th and 13th 1978, Ruder failed to report to teach his classes and instead attended a family gathering/vacation in Denver, Colorado. Prior to the time he left for this vacation, Ruder told Zweifel that he intended to go to Denver whether or not he was granted permission by the District to do so.

13. On January 16, 1978, Ruder reported to school to resume his teaching duties. Ruder was met by Zweifel who suspended him with pay for that day. This action was memorialized by the following letter:

Mr. Darrell Ruder
P.O. Box 250
Salem, Wi 53168

Dear Mr. Ruder:

Because of your unauthorized absences on Thurs., Jan. 12, and Fri., Jan. 13, I am informing you, at the direction of the Board, that you are suspended with pay for Monday, Jan. 16th.

The Board will be meeting this evening to determine whether additional disciplinary action will be taken.

I will call you on Tuesday morning, Jan. 17th, before 7:00 A.M., to inform you of any further action the Board may have taken.

Very truly yours,

James Zweifel, Principal

14. On January 17, 1978, Zweifel sent the following letter to Ruder:

Mr. Darrell Ruder
P.O. Box 250
Salem, Wi 53168

Dear Mr. Ruder:

At the direction of the Board, I am informing you of their action concerning your unauthorized absence of Thurs., Jan. 12, and Fri., Jan. 13.

You have violated Board Policy, and Board and Administrative directives. The Board and Administration view your action as a serious act of insubordination. We are especially disappointed because you had been warned prior to your absence, and notified both orally and in writing that your absence was unauthorized.

The Board has decided to suspend you without pay for Thurs., Jan. 19, and Fri., Jan. 20. We expect that your duties will be performed satisfactorily during this time, which would include that adequate arrangements for giving the final exams be made for Thursday, and that all school procedures and assignments such as grade reporting, etc. be performed to our satisfaction. It is your responsibility to ensure that all school assignments be completed.

In the future we expect your full cooperation in following Board and school policy, and administrative directives. Any further incidence of violation of policy and administrative directives would lead us to seriously consider your ability to hold a responsible position in the Waterford Union High School District.

This letter will be placed in your file, along with all previous letters that were written to you.

Please see me if you have any questions.

Very truly yours,
FOR THE BOARD OF EDUCATION

James Zweifel, Principal

15. Ruder was suspended without pay from his teaching duties on January 19 and 20, 1978.

16. On January 30, 1978, Ruder filed a written grievance regarding his suspension. Zweifel denied the grievance in writing on January 31, 1978. Ruder indicated in writing that he was dissatisfied with the principal's response and indicated that he sought the following:

"The relief I am seeking is to receive pay for January 19-20 and to have all records of these suspensions removed from my files."

17. School Board policy No. 3935, which was in effect at all times material hereto, provides:

Board Policy

3.935

leave on school business or recognized personal or professional leave and,

WHEREAS, The tentative calendar for the coming school year is made known to all teachers prior to signing contracts,

THEREFORE, Be it resolved, that teachers be denied permission to take part days off for early departure or late return on trips, or take one or more days off not covered by personal or professional leave, or take vacation periods which coincide with periods when school is in session.

18. On April 3, 1978, Ruder and his Union Representative received permission to present the grievance to the District's School Board. Following said presentation the Board denied Ruder's grievance.

19. On February 26, 1979, the Union filed the instant complaint alleging that the District violated the collective bargaining agreement by earlier described suspension of Ruder.

Based upon the above and foregoing Findings of Fact, the Examiner hereby makes and issues the following

CONCLUSION OF LAW

1. The District by its suspension of Darrell Ruder has not violated the terms of a collective bargaining agreement within the meaning of Section 111.70(3)(a)5, Wis. Stats.

On the basis of the above and foregoing Findings of Fact and Conclusion of Law the Examiner hereby enters the following

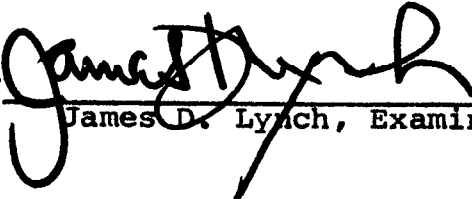
ORDER

IT IS HEREBY ORDERED that the complaint filed herein shall be and hereby is dismissed.

Dated at Madison, Wisconsin this 4th day of March, 1981.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By



James D. Lynch, Examiner

MEMORANDUM ACCOMPANYING FINDINGS OF FACT,
CONCLUSION OF LAW AND ORDER

Introduction

The relevant facts are briefly recited. Darrell Ruder was, at all times material hereto, employed by the District as a full-time teacher. In December, 1977, Mr. Ruder made written request to attend a two day "family gathering" on January 12 & 13, 1978 in Denver, Colorado. The record establishes that the term "family gathering" was used by Mr. Ruder as a euphemism for the term "vacation". The leave was denied in writing by both the Principal and the District's Superintendent who informed Ruder that no such leave was authorized by the contract. Ruder himself admits that his leave request was not authorized by the contract. The District by its agents notified Ruder in writing that any such absence would be in direct violation of "board policy, the master agreement, a decision by the board and the specific direction of the administration" and warned him that if he absented himself from his duties on those days that penalties might be imposed by the board.

Mr. Ruder did not appear for work on January 12 and 13, 1978 and instead went to Denver, Colorado. Prior to the time he left for Colorado he informed the District's Principal that he intended to go to Denver whether or not the District gave him permission to do so. As a result of his action the District did not pay Ruder for those days and additionally suspended him for three days - one with pay and two without pay contending that his unauthorized absence constituted insubordination.

Ruder grieved the suspensions contending that they were improper. Specifically he contended and the Union herein contends that he may only be denied pay for the two days he willfully absented himself from his employment and that any further suspension is precluded by the contract. Both Ruder and the Union apparently rely on paragraph G, p. 25 of the agreement which states:

G. Unauthorized Absences

Pay deductions will be made for all leaves not authorized in this agreement on the basis of 1/190 of contracted salary for each day involved.

Discussion

This case does not warrant extended discussion as the Examiner finds the Union's complaint to be totally without merit. In this respect, the Examiner notes that he was without guidance as to the Union's theory herein save as set forth above and which he deduced from the record made at hearing. While the Union notified the Examiner that it intended to file a brief herein it neither did so nor responded to the Examiner's inquiry regarding its intention to do so sent to the Union long following the date said brief was to be submitted.

Apparently, the Union argues that the contract provision recited above relating to unauthorized absences precludes the District from taking any action against Mr. Ruder same to deduct 1/190 of his salary for each day he was on such unauthorized leave. As noted above, the Examiner finds this argument to be totally without merit. First, the

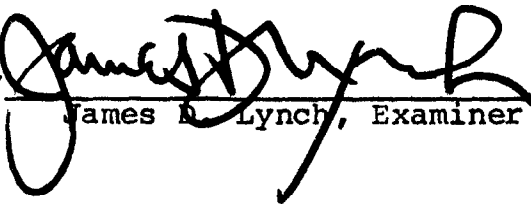
record is clear that Ruder's conduct was in willfully absenting himself from work on the aforementioned dates constituted insubordination. Ruder had clearly been put on notice that he was to report for work and that his failure to do so would subject him to additional penalties. Nevertheless, Mr. Ruder advised the District that no matter what action it took regarding his request he intended to go to Denver, Colorado on those days and he did so. Inasmuch as the language of paragraph G does not purport to speak to insubordinate conduct, it cannot be said to limit the District's right to levy appropriate discipline in such circumstances. Ruder's suspension herein was clearly for such a purpose.

As such, the District's imposition of such suspension can not be said to violate the terms of the collective bargaining agreement. Accordingly, the complaint filed herein shall be and the same hereby is dismissed.

Dated at Madison, Wisconsin this 4th day of March, 1981.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


James R. Lynch, Examiner