

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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NORTHWEST UNITED EDUCATORS,	:	
	:	
Complainant,	:	
	:	
vs.	:	
	:	Case XXI
JOINT SCHOOL DISTRICT NO. 1, CITY OF	:	No. 26180 MP-1106
RICE LAKE & TOWNS OF BARRON, BEAR LAKE,	:	Decision No. 17839-A
BIRCHWOOD, CEDAR LAKE, DOYLE, LONG	:	
LAKE, OAK GROVE, RICE LAKE, SARONA,	:	
STANFOLD, STANLEY, SUMNER, WILKINSON,	:	
WILSON & VILLAGE OF HAUGEN,	:	
	:	
Respondent.	:	
	:	

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Appearances:

Mr. Robert West, Executive Director, Northwest United Educators, 16 West John Street, Rice Lake, Wisconsin, appearing on behalf of Complainant.

Losby, Riley, Farr & Ward, S.C., Attorneys at Law, 204 East Grand Avenue, P.O. Box 358, Eau Claire, Wisconsin, by Mr. Stevens L. Riley, appearing on behalf of the Respondent Municipal Employer.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

Northwest United Educators, hereinafter Complainant or NUE, filed a complaint of prohibited practices on May 14, 1980 with the Wisconsin Employment Relations Commission, against Joint School District No. 1, City of Rice Lake, et. al., hereinafter Respondent, in which Complainant alleges Respondent violated Section 111.70(3)(a)5 of the Municipal Employment Relations Act (MERA). The Commission appointed Sherwood Malamud, a member of the Commission's staff to make and issue Findings of Fact, Conclusions of Law and Orders in the matter. Hearing in the above captioned matter was held in Rice Lake, Wisconsin on June 13, 1980. On August 5, 1980, the briefs of the parties were exchanged through the Examiner. The Examiner considered the evidence presented at the hearing and the arguments made in the parties' written briefs, and being fully advised in the premises, the Examiner makes and issues the following Findings of Fact, Conclusions of Law and Order.

FINDINGS OF FACT

1. Northwest United Educators is a labor organization, and it is and has been since 1972 the exclusive collective bargaining representative of all regular full and part-time teachers employed by Respondent. Complainant maintains its offices at 16 West John Street in Rice Lake, Wisconsin.
2. Respondent is a kindergarten through twelfth grade public school district which provides educational opportunities to persons residing within the boundaries of the district. Respondent maintains its offices in Rice Lake, Wisconsin.
3. Complainant and Respondent are parties to a collective bargaining agreement. It contains a grievance procedure which culminates in a hearing before the Board of Respondent; said agreement does not provide final and binding arbitration for the resolution of disputes between the parties. In addition, the parties 1979-81 collective bargaining agreement contains the following pertinent provisions:

ARTICLE XII

Absences, Leaves and Retirement

A. Sick Leave

2. Each teacher under contract for the regular school year shall be granted twelve (12) days sick leave per year, cumulative to 100 days.
4. Upon request a teacher shall be notified within five school days as to his sick leave status; not to exceed one request per teacher per year.

4. Since 1972, the administration of the contractual sick leave provision has remained unchanged. Respondent has consistently credited an employe's sick leave account on July 1 of each year while Respondent has debited an employe's sick leave account at the time sick leave is used. With respect to teachers who have accumulated the maximum number of sick days, Respondent has used the following method in the administration of Article XII Section A. 2: it debits their sick leave balance of 100 days as they use sick leave. On July 1, it credits the employe's sick leave bank with twelve days or fewer sick days if fewer than 12 sick days will put the employe at the maximum of 100 sick days.

5. During the 1979-1980 school year, Complainant filed a grievance with regard to Respondent's administration of the sick leave benefit and its impact on teachers with an accumulation of 100 sick days. The parties exhausted the contractual grievance procedure. Respondent Board denied the grievance. Complainant filed the within complaint.

6. Respondent's conduct with regard to its administration of the sick leave benefit, particularly with respect to those teachers covered by the agreement who have achieved the maximum accumulation of 100 days, complies with the parties collective bargaining agreement.

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

CONCLUSIONS OF LAW

1. The Examiner asserts the jurisdiction of the Wisconsin Employment Relations Commission to determine the contractual dispute between Complainant and Respondent under section 111.70(3)(a)5 of the Municipal Employment Relations Act.

2. Respondent has complied with the clear and unambiguous language of the parties agreement in its administration of the sick leave benefit; therefore, Respondent by its conduct described above has not violated Section 111.70(3)(a)5 of the Municipal Employment Relations Act.

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

ORDER

That the complaint in the above captioned matter be, and the same hereby is, dismissed.

Dated at Madison, Wisconsin this 8th day of June, 1981.

By   
Sherwood Malamud, Examiner

MEMORANDUM ACCOMPANYING FINDINGS OF  
FACT, CONCLUSIONS OF LAW AND ORDER

In its complaint, NUE alleges that Respondent violated the parties collective bargaining agreement, and thereby violated Section 111.70(3) (a)5 of the Municipal Employment Relations Act. The contractual provision at issue, Article XII, Section A 2 establishes that teachers shall receive twelve sick days per year. NUE argues that Respondent denies the twelve day sick leave benefit to teachers who have accumulated 100 sick days or who are within twelve sick days of the maximum accumulation. NUE asserts that Respondent violates the agreement when it debits the sick leave account of those teachers at the maximum when they use sick leave. NUE argues that Respondent should first offset any sick leave used against the twelve sick day annual accumulation. For example, if a teacher with a sick leave account of 100 sick days carries over that accumulation into the 1980-1981 school year, and if during the 1980-1981 school year he/she took 6 sick days, Complainant argues that the sick days used should be offset against the current annual accumulation. The 100 day sick leave accumulation should be left in tact until the annual accumulation (up to 12 days) is exhausted. NUE argues that the clear language of the agreement requires that teachers receive 12 sick days per year. NUE anticipates Respondent's argument that a practice has been established with regard to the administration of sick leave. NUE counters that argument and states that it is unaware of that practice; it has never agreed to it. It grieved as soon as Respondent's method of administration came to light.

Respondent acknowledges that it administers the sick leave benefit in the manner described by Complainant. Respondent argues that it has administered the sick leave benefit in this manner since at least 1972, and NUE has never objected to the manner in which the benefit is administered, nor has it brought up the issue during negotiations for any of the agreements entered into by the parties from 1972 to the date of the hearing. Respondent concludes that the contractual language is clear; no teacher may accumulate more than 100 sick days. Respondent argues as well, that since this is a prohibited practice proceeding, Complainant must prove its case by a preponderance of the evidence, and:

. . .where an ambiguity exists in the language of a collective bargaining agreement, or where there is a legitimate question over the interpretation of contract language, an Employer has the right to resolve the issue in a manner it feels reasonable. If it selects an allowable interpretation . . ., no contract violation can be said to have occurred even if there exist other reasonable and permissible interpretations of the same language. (Respondent's brief at p. 6 emphasis that of Respondent).

Discussion

The last and final step of the contractual grievance procedure is the hearing before Respondent's Board. The agreement does not provide for final and binding arbitration of disputes. Accordingly, the Examiner asserted the jurisdiction of the Commission to determine this contractual dispute.

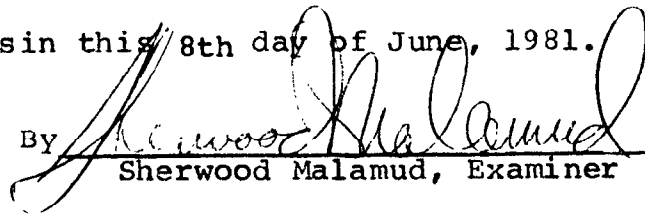
The Examiner finds the language of Article XII, A, 2 clear and unambiguous. The contractual language provides employes 12 sick days per year. However, no employe covered by the agreement may accumulate more than 100 sick days.

Complainants interpretation of the above language permits employes to use more than 100 days of sick leave. The following example demonstrates this point. If one were to stop the clock at a point during or at the end of a school year for a teacher who carried over 100 sick days from the prior year, one would find that under Complainant's interpretation of the language the teacher would have up to 112 sick days; or one hundred accumulated in prior years plus the 12 sick leave days granted in the year in which the clock has been stopped. The agreement caps the number of sick days available for use at 100. As

with any limit or cap, those at the limit do not benefit from additional accumulations. For the above reason, the Examiner concludes that Respondent did not violate the parties agreement, nor did it violate section 111.70(3)(a)5 of MERA. Accordingly, the complaint was dismissed.

Dated at Madison, Wisconsin this 8th day of June, 1981.

By

  
Sherwood Malamud, Examiner