

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

WILMOT TEACHERS ASSOCIATION :
and JOY COVELLI, :
 :
Complainants, :
 :
vs. : Case IX
 : No. 28278 MP-1233
 : Decision No. 18820-A
WILMOT UNION HIGH SCHOOL :
DISTRICT, :
 :
Respondent. :
 :

Appearances:

- Mr. Bruce Meredith, Staff Counsel, Wisconsin Education Association Council, 101 West Beltline Highway, P. O. Box 8003, Madison, Wisconsin 53708, appearing on behalf of the Complainants.
- Mr. Karl M. Monson, Wisconsin Association of School Boards, 122 West Washington Avenue, Madison, Wisconsin 53703, appearing on behalf of the Respondent.

FINDINGS OF FACT, CONCLUSION OF LAW
AND ORDER

The Wilmot Teachers Association and Joy Covelli, Complainants, filed a complaint of prohibited practices on June 26, 1981 with the Wisconsin Employment Relations Commission, against the Wilmot Union High School District, Respondent, alleging that Respondent violated the parties' collective bargaining agreement and thereby violated Section 111.70(3)(a)5 of the Municipal Employment Relations Act. The Commission appointed Sherwood Malamud, Examiner to make and issue Findings of Fact, Conclusions of Law and Order in the matter. Hearing in the matter was held on September 24, 1981, in Twin Lakes, Wisconsin, at which time the parties were afforded full opportunity to present testimony and evidence. Briefs were submitted by November 13, 1981 and record in the matter was closed on December 8, 1981. The Examiner considered the evidence and briefs of the parties and being fully advised in the premises, makes and issues the following Findings of Fact, Conclusion of Law and Order.

FINDINGS OF FACT

1. Joy Covelli is an individual; she resides at 125 West Highland, Burlington, Wisconsin.
2. The Wilmot Teachers Association, hereinafter the Association, is a labor organization and maintains its offices c/o Michael R. Mulkeen, Southern Lakes United Educators, 202 East Chestnut Street, Burlington, Wisconsin 53105.
3. The Wilmot Union High School District, hereinafter the District, is a municipal employer, and it maintains its offices in Wilmot, Wisconsin.
4. At all times material herein, the Association and the District are parties to a collective bargaining agreement which contains the following provisions pertinent hereto:

ARTICLE IX. LEAVES: SICK, EMERGENCY, PERSONAL

- 9.1 Every contracted teacher shall be entitled to sick leave of ten (10) days per school year.
- 9.2 Sick leave shall be cumulative to 100 days.
- 9.3 Emergency leave in the event of serious illness or death not to exceed four (4) days per contract year, is hereby authorized. This leave or leaves, without loss of pay and without charges to sick allowance, will be granted in the event of a serious illness or death of the employee's mother, father, mother or father-in-law, sister, brother, wife, husband, child and grandparent. One (1) day of the four (4) emergency leave days may be used for serious illness or death of a person unnamed above and claimed by the faculty member. All leaves of absence under this paragraph shall be subject to the approval of the District Administrator.

The parties' collective bargaining agreement contains a grievance procedure, the final step of which is the Board of Education of the District. The agreement does not provide for final and binding arbitration for the resolution of disputes.

5. Prior to her resignation in February, 1981, Joy Covelli was employed for eleven years at the Wilmot Union High School. During that period she served as a Business Education Teacher and Guidance Counselor at the high school.

6. In August, 1980 1/ Covelli's father died of a heart attack. At the moment of death, Covelli was not at her father's bedside.

7. On the evening of October 7, Covelli's brother called and told her that her mother was dying. Covelli's mother had cancer for eleven years prior to her death. Prior to this last illness, the disease had been in remission.

8. Covelli was unable to sleep that night. On the morning of October 8, Covelli called the Supervisor of Instruction, the person designated by the District to receive sick leave calls, told him she could not sleep that night and that she would be absent from school that entire day. Covelli took her children out of school that day and drove to Batavia, Illinois to see her mother. Covelli returned to her home in Burlington, Wisconsin that evening. The District treated her absence on this day as sick leave.

9. On October 9, Covelli returned to work. She taught her morning business education classes. However, she was distraught and cried during her classes. That afternoon, she spoke with Mr. Clouse. She told him of her father's death and her mother's terminal illness. She requested a leave until her mother died. She told Clouse that she would leave lesson plans for a substitute teacher for the following week. Clouse approved these arrangements. He suggested Covelli speak with District Administrator Olson concerning the manner in which this leave would be handled; whether the leave would be paid or unpaid. By the end of her meeting with Clouse, Covelli was so upset that she did not speak with Olson concerning the leave.

10. On October 10, Covelli taught her morning classes. In the afternoon, she departed for Batavia, Illinois.

11. On October 11, Dr. Nelson, the physician attending to Covelli's mother, told Covelli the cancer had spread to her mother's liver, and as a result, her mother would probably die that day.

12. Covelli's mother was at home with a private duty nurse in attendance from October 11 to her death on October 27. A nurse's aide was hired to care for the mother's personal needs, and another person was hired to shop, to clean and cook. Covelli did not sleep well during this period; she cried frequently. However, she did not take nor was any medication prescribed for her during the 16 day period prior to her mother's death.

1/ Unless otherwise specified, all dates refer to 1980.

13. Complainant called the School Secretary every other day and spoke with the other Business Education Instructor, Jean Wickman, on several occasions.

14. Her mother's funeral was on October 30, and Covelli returned to work on November 3.

15. On or about November 6, District Administrator Olson told Covelli she would be docked ten (10) days pay.

16. On November 7, Covelli talked with Olson concerning her loss of ten days pay. She offered to work those ten days during the summertime, even though she had sufficient sick leave accumulated to offset her absence during her mother's final illness. Hinterberg, the Principal, informed Olson that he did not need any assistance with curriculum or any other work that Covelli could perform during the summer.

17. When Olson got back to Covelli to inform her that summer work was not available, Covelli noted that another teacher, Shirley Williams, was not docked any pay when her son was in an accident and Williams absented herself from school. Olson stated that unlike Covelli, Williams was under a physician's care. Covelli then offered to obtain a letter from her mother's physician concerning Covelli's condition during her mother's illness. In the past, employees were granted emergency leave and not sick leave to attend to a seriously ill relative. Although Covelli contacted her mother's physician, Rodney B. Nelson III, M.D., shortly after the conversation described in Finding of Fact No. 16, Olson did not receive said letter which is dated December 31, 1980 until January 5, 1981, which in material part states as follows:

This letter is in reference to the thirteen and half days absence (sic) of Mrs. Covelli from her teaching duties during the month of November, 1980.

Mrs. Covelli was in Batavia, Illinois caring for her mother, Mrs. Carolyn Hanke who was in the terminal stage of cancer. Waiting for her mother to die is not conducive to good mental and emotional health and puts even the strongest person under a tremendous amount of stress. Add to the prolonged suffering of Mrs. Hanke the further loss of Mrs. Covelli's father only a short time prior to the loss of her mother added a still greater strain to her emotional well being. It would have at best most difficult to deal with classroom situations during this very trying and sad time.

It is my opinion that this time away from teaching was necessary not only for Mrs. Covelli but extremely necessary for her mother who needed the support of her daughter in her final days.

19. Within several days of receiving Dr. Nelson's letter, Olson informed Covelli that he believed the doctor's letter did not state that she was ill during her mother's final illness, and that under the agreement only four days could be applied to her absence and ten days pay be docked from her salary.

20. On January 20, 1981, the Association filed a grievance on Covelli's behalf. Olson met with the Association's grievance committee.

21. On February 4, 1981, Olson denied the grievance. On February 12, 1981, the Association appealed the grievance to the Board of Education step of the grievance procedure.

22. On February 12, 1981 Covelli submitted the following letter of resignation to District Administrator Olson and the Board of Education:

Please consider this my letter of resignation from Wilmot Union High School as a business education teacher/counselor effective Friday, February 27, 1981. I have been under a great deal of stress and strain in the last few months. I have been under a great deal of pressure especially in pursuing my grievance relating to a situation during the month of October, 1980. I do not feel I have had any support of the administration and part of the school board, and I have taken this grievance very personally.

This has been an extremely difficult decision for me to make as I am a very dedicated, professional educator. The young people have been my strength, and I have been very devoted to them. I shall miss them tremendously. My rapport and respect of them have been my strong points. I have been very proud to be a faculty member of the Business Education Department as it is an excellent department and so are the members of it. Mr Pape and I have worked very diligently together to make the Guidance Department much better, but it has been a very difficult task.

Wilmot High School has a very dedicated faculty and staff, but we need to be treated with more respect, as professionals, and in more positive ways or this school is in very serious trouble. If more of the experienced teachers and staff also begin to leave, this could cause a number of problems.

I have appreciated and enjoyed the eleven years at Wilmot Union High School. Thank you.

23. On February 24, 1981, the Board of Education met with the Association's grievance committee to consider the Covelli grievance. At this time, the Association presented a second letter from Dr. Nelson. Although this second letter was addressed to Mr. Olson, he did not see the letter until it was presented by the Association at this February 24, 1981 meeting. The content of this second letter was similar to Dr. Nelson's first letter. The Board affirmed Olson's decision and denied the Covelli grievance at its February 24 meeting.

24. From October 11 through November 3 grievant was sufficiently ill to justify her use of sick leave to absent herself from her teaching duties.

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

CONCLUSION OF LAW

That the Wilmot Union High School District violated Article IX of its collective bargaining agreement when it refused to grant and pay Joy Covelli ten days sick leave for her absence from the afternoon of October 10 to her return to work on November 3, 1980. By violating Article IX of the parties' agreement, the Wilmot Union High School District violated Section 111.70(3)(a)5 of the Municipal Employment Relations Act.

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

ORDER

In order to effectuate the policies of the Municipal Employment Relations Act, the Examiner hereby orders: 2/

2/ Any party may file a petition for review with the Commission by following the procedures set forth in Sec. 111.07(5), Stats.

Section 111.07(5), Stats.

(5) The commission may authorize a commissioner or examiner to make findings and orders. Any party in interest who is dissatisfied with the findings or order of a commissioner or examiner may file a written petition with the commission as a body to review the findings or order. If no petition is filed within 20 days from the date that a copy of the findings or order of the commissioner or examiner was mailed to the last known address of the parties in interest, such findings or order shall be considered the findings or order of the commission as a body unless set aside, reversed or modified by such commissioner or examiner within such time. If the findings or order are set aside by the commissioner or examiner the status shall be the same as prior to the findings or order set aside. If the findings or order are reversed or modified by the commissioner or examiner the time for filing petition with the commission shall run from the time that notice of (Continued on page 5)

1. That the Wilmot Union High School District, its Board of Education and administrators and supervisory personnel shall cease and desist from violating Article IX of the parties' collective bargaining agreement by its refusal to reimburse Joy Covelli ten days sick leave for her absence on October 10 through October 31, 1980.
2. That the Wilmot Union High School District, its Board of Education and its administrative personnel shall take the following affirmative action:
 - a. Reimburse Joy Covelli ten days sick leave pay at her appropriate rate of pay during her absence from October 10 through October 31, 1980, plus any benefits docked as a result of said ten day leave;
 - b. Notify the Wisconsin Employment Relations Commission within twenty (20) days of this decision what action the District has taken to comply with this order.

Dated at Madison, Wisconsin this 29th day of July, 1982.

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2/ (Continued)

such reversal or modification is mailed to the last known address of the parties in interest. Within 45 days after the filing of such petition with the commission, the commission shall either affirm, reverse, set aside or modify such findings or order, in whole or in part, or direct the taking of additional testimony. Such action shall be based on a review of the evidence submitted. If the commission is satisfied that a party in interest has been prejudiced because of exceptional delay in the receipt of a copy of any findings or order it may extend the time another 20 days for filing a petition with the commission.

MEMORANDUM ACCOMPANYING FINDINGS OF FACT,
CONCLUSION OF LAW AND ORDER

The parties' agreement does not provide for final and binding arbitration of contractual disputes. Complainants, Wilmot Teachers Association and Joy Covelli, filed a complaint of prohibited practices against the Wilmot Union High School District. Complainants allege that the District violated the parties' agreement and consequently Section 111.70(3)(a)5 of the Municipal Employment Relations Act when the District failed to grant and pay grievant's sick leave request. The District raised no issue with regard to the jurisdiction of the Commission to determine the matter. However, the District denies it breached the parties' agreement or violated the Municipal Employment Relations Act.

Positions of the Parties

Complainants argue that the agreement does not set forth the method in which sick leave shall be administered. The District's long standing practice was to approve all sick leave requests on the basis of the employee's representation. Grievant told the District she was sick during the period in question. Complainants conclude that the District was compelled to honor Covelli's sick leave request. Complainants submit that the District failed to show that grievant was not sick during this period. On the contrary, Complainants point to the traumatic effect of the death of Covelli's mother as demonstrated by her failure to deal with her sick leave request in an orderly manner, and by the emotional stress she suffered during her mother's final illness. Complainants assert that underlying the District's position is the notion that Covelli was "babying" herself and she overreacted to her mother's death. Complainants argue that whether or not the District believed Covelli should have been sick under the circumstances she experienced in October, 1980, the central question here is whether Covelli was in fact sick from October 11 through November 3. Complainants cite the arbitration award rendered in Penn Manor School District 73 LA 1227 (1979) in support of their position. Complainants argue, as well, that the emergency leave provisions found at Article 9.3 of the agreement do not supercede the sick leave provisions found at Article 9.1 and 9.2 of the agreement. Article 9.3 provides paid leave in the event the absence of a unit employe is occasioned by the serious illness of a family member. It does not preclude an employe taking sick leave for an illness triggered by the death of a loved one. Article 9.3 permits a teacher to take a paid leave of absence to make arrangements for a funeral for example, without regard to their individual physical or emotional reaction to the death.

The District concedes that Covelli had sufficient sick days accumulated to cover her absence. The District asserts that Covelli did not comply with the District's procedure and call in and inform the District of her illness. Article 9.3 provides for leave in the event of serious illness or death in the family and these days are used without charging such leave to sick leave. Covelli's absences from October 13 through 16 were charged to emergency leave. Covelli was entitled to no other sick leave. The District argues that Complainants were unable to establish that Covelli was ill. The District notes Covelli was never hospitalized; she received no medication for her illness; and she saw her mother's physician only 2-3 times. Only when Covelli was told by Mr. Olson that no work was available for her to work during the summer months, only then did she claim she was ill during that period. The District argues, as well, that the doctor's note ultimately provided by Covelli does not substantiate her illness claim, but it does establish that grievant's presence was for her mother's good. The doctor, who never treated Covelli herself, never states that she was sick during this period. The District concludes that a decision in favor of Complainants' position would violate several principles of contract construction. Accordingly, the District concludes that Covelli was not sick during this period. She was not entitled to sick leave, and this complaint should be dismissed.

Discussion

The underlying facts in this case are fully set forth in the Findings above. 3/ There is little dispute as to whether or not the events described occurred. The record reflects minor differences between Olson and Covelli as to the dates and sequence of their meetings in early November. There is little conflict in their testimony as to the substance of their conversations.

The District argues that Covelli did not comply with its established procedure for requesting sick leave. While Covelli failed to speak with District Administrator Olson on October 9, soon after speaking with Mr. Clouse, it is clear that the District knew and approved Covelli's extended absence from her teaching and counseling responsibilities during the month of October. Covelli and Clouse made arrangements for a substitute to teach her classes during her absence in October. The District was not surprised by her absence on Monday, October 13, or on any other day prior to her return on November 3.

The Examiner agrees with the District's argument that the leave provided under Article 9.3 is the one available for use by teachers in the event of serious illness or death in the family. Article 9.1 sick leave is to be used solely for employe illness. The issue here is whether Covelli herself was ill during the period of time she attended to her mother during her final illness.

The following reflects the manner in which the Examiner weighed the evidence to determine if Covelli's sick leave claim is justified. The evidence supporting the District's position is as follows. The stated reason for Covelli's absence during this period was to be with her mother for the last days of her life. Covelli initially did not request sick leave. In fact, her sick leave request was proffered as a last effort to be paid for those ten days. Covelli did not rebut Olson's testimony that she requested to work during the summer to make up the time lost. Although Covelli had an opportunity (through rebuttal testimony, which Covelli did not give) to explain the reason she requested to work during the summer, she did not do so. The Examiner draws an inference from her failure to testify on this point, to the effect that Covelli believed it was necessary to make up the days missed in order to be paid for those days. However, the Examiner cannot infer from her failure to explain the reason for her request to make up the ten days during the summer that she was not ill during the period in question. In addition she was not under any physician's care during this period, nor were any medications prescribed for her use. Yet, the above inference together with the evidence recited above would be sufficient, absent any evidence by Complainants, to support an ultimate finding that Covelli was not ill during this period.

Weighed against the above record made by the District is the evidence submitted by Complainants. First, Covelli testified that on Saturday, October 11, Dr. Nelson informed her that her mother would die on that day. She testified she did not sleep and she cried a great deal until her mother's death on October 27. Her mother's physician, Dr. Nelson, wrote that he believed that:

It would have at best most difficult to deal with classroom situations during this very trying and sad time.

Covelli's "illness" during the period from the afternoon of October 10 through her return on November 3 was no different from her "illness" on October 8. On the morning of October 8, she called Clouse, told him that she could not sleep that night, and that she would be absent from school. Clouse accepted a sleepless night as an adequate reason for a one-day absence under the parties' sick leave provision.

Clouse, the Supervisor of Instruction, testified that Covelli was distraught, and she cried a great deal when, on October 9, she requested a leave to be with her mother. When this evidence is weighed together with Covelli's testimony that her distraught state, sleepless nights and extensive crying continued during the period of the October leave, Complainants have established that Covelli's physical

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3/ It should be noted that the District applied all emergency leave days provided under 9.3 and available to Covelli, and thereby reduced the number of days of unpaid leave or sick leave days in dispute here to ten (10) days.

condition during the period from the afternoon of October 10 through October 31 was no different from her condition on October 8. Certainly the District could ask to verify the illness. Complainants volunteered to provide such verification. Dr. Nelson's belated letter of January 5 satisfies this requirement.

The resolution of disputes arising under sick leave provisions are made on the basis of the standards established by the parties' agreement and practice for sick leave use. Here, the agreement provides no guidance in the area of sick leave administration. However, the administration of a contemporaneous request for sick leave use by Covelli on October 8 reflects the standard used by the District in its administration of sick leave. A sleepless night and a self-declared inability to teach were adequate reasons for sick leave use under the parties practice.

Covelli's offer to make up the ten day absence and the belated sick leave request provide a basis for the District's questioning Covelli's claim. However, the Examiner concludes that Complainants established that Covelli had a reason, acceptable under the standards used for the administration of the parties' sick leave provision, for the use of sick leave during the ten day period in question. 4/ Accordingly, the Examiner concludes the District's denial of ten days sick leave pay is a breach of the agreement, and thereby, it violates Section 111.70 (3)(a)5 of the Municipal Employment Relations Act. The Examiner has ordered that Covelli be reimbursed the ten days pay and any benefits she might have lost during the ten day absence.

Dated at Madison, Wisconsin this 29th day of July, 1982.

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4/ As a result of its position, the District charged 3/7 day emergency leave for Covelli's absence on October 10, and her absences on October 13 through October 16 were charged to emergency leave, as well. Although there is no impact on the ultimate outcome of this case, it is more appropriate to charge Covelli's absence from October 10 through October 27, the date of her mother's death, to sick leave, and October 28 through October 31 to emergency leave. November 3, the date of Covelli's return to work, was the first work day after October 31.