

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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NORTHWEST UNITED EDUCATORS, :  
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Complainant, :  
 :  
vs. : Case 26  
 : No. 34082 MP-1647  
 : Decision No. 22219-B  
TURTLE LAKE SCHOOL DISTRICT, :  
 :  
Respondent. :  
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Appearances:

Mr. Alan D. Manson, Executive Director, Northwest United Educators, 16 West John Street, Rice Lake, Wisconsin 54868, appearing on behalf of the Northwest United Educators.  
Mr. Stephen L. Weld, Mulcahy & Wherry, S.C., Attorneys at Law, 21 South Barstow, P. O. Box 1030, Eau Claire, Wisconsin 54702-1030, appearing on behalf of the Turtle Lake School District.

FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND ORDER

Northwest United Educators filed a complaint with the Wisconsin Employment Relations Commission on November 8, 1984, in which the Northwest United Educators alleged that the Turtle Lake School District had committed prohibited practices within the meaning of Municipal Employment Relations Act (MERA). The Commission, on December 18, 1984, appointed Christopher Honeyman, a member of its staff, to act as an Examiner to make and issue Findings of Fact, Conclusions of Law and Order, as provided in Sec. 111.70(4)(a) and Sec. 111.07 of the Wisconsin Statutes. On January 10, 1985, the Commission vacated its order appointing Christopher Honeyman as Examiner and issued an order substituting Richard B. McLaughlin, a member of its staff, to act as Examiner. A hearing on the matter was conducted in Barron, Wisconsin, on February 12, 1985. The transcript of that hearing was provided to the Examiner on March 1, 1985. The parties filed briefs in the matter by May 7, 1985.

FINDINGS OF FACT

1. Northwest United Educators (NUE) is a labor organization which has its offices located at 16 West John Street, Rice Lake, Wisconsin 54868.
2. The School District of Turtle Lake (the District) is a municipal employer which has its offices located in Turtle Lake, Wisconsin, and which has a mailing address of P. O. Box 1000, Turtle Lake, Wisconsin 54889.
3. NUE is the exclusive collective bargaining representative for certain certified teaching personnel of the District. The District and NUE are parties to

D. All rules and regulations governing instructional staff activities and conduct shall be interpreted and applied uniformly throughout the District.

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### XIII. GRIEVANCE PROCEDURE

The purpose of this Article is to provide an orderly method for expeditiously resolving grievances. A determined effort shall be made to settle any such differences at the lowest possible level in the grievance procedure. Meetings or discussions involving grievances or these procedures shall not interfere with teaching duties or classroom instruction.

Definition. For the purpose of this Agreement, a grievance is defined as any difference or dispute regarding the interpretation or application or enforcement of the terms of this Agreement. "Days" are defined as school days, except during the summer recess, when "days" shall mean calendar days, exclusive of weekends and holidays.

Step I. An aggrieved teacher at his or her own option may be accompanied by a union representative when presenting the grievance.

If the grievance is not resolved informally, it shall be reduced to writing by the teacher who shall submit it to the principal. If a teacher does not submit his grievance to the principal in writing in accordance with Step I within seventeen (17) days after the facts upon which the grievance is based first occur or first become known to the teacher, the grievance will be deemed waived.

The Principal will reply in writing to the teacher with a copy to the Union within five (5) days after receipt of the written grievance.

Step II. If the grievance is not settled in Step I and the teacher wishes to appeal the grievance to Step II, the teacher may file the grievance in writing to the Superintendent of Schools within ten (10) days after receipt of the Principal's written answer or failure of the principal to answer. The written grievance shall give a clear and concise statement of the alleged grievance, including the fact upon which the grievance is based, the issues involved, the agreement provisions involved, and the relief sought. The Superintendent or his representative shall thoroughly review the grievance, arrange for necessary discussions, and give a written answer to the teacher no later than ten (10) days after receipt of the written grievance.

Step III. If the grievance is not resolved in Step II, or the Superintendent fails to answer within the ten (10) day limit, the grievant may file the grievance in writing with the Clerk of the Board, provided that said grievance shall be filed within ten (10) days after the answer or failure of the Superintendent to answer. Failure to file with the Clerk of the Board within ten (10) days shall deem the grievance resolved against the teacher.

The Board shall consider the grievance at its next meeting, or the following regular meeting or at any special meeting called for that purpose in the interim.

The Board shall, within ten (10) days after the meeting, advise the teacher in writing of the action taken with regard to the grievance.

#### XIV. SICK, EMERGENCY, AND PROFESSIONAL LEAVES

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E. Up to two (2) days of professional leave shall be granted to each teacher upon request to attend professional meetings pertaining to his/her field of teaching or co-curricular assignment. Substitutes will be paid by the School District. All other expenses will be paid by the teacher.

F. Personal leaves shall be available for teachers on Turtle Lake staff at the rate of two (2) days per year. After they have completed their third year of experience at Turtle Lake, it will accumulate at the rate of two days per year to a maximum of five days. The teacher taking personal leave must have an approved substitute to take duties and will have the cost of the substitute deducted from their regular salary. The dates of the contemplated leave must have the approval of the District Administrator. A teacher having accumulated five personal leave days may take leave in the first semester and accumulate one day during the second semester. If such teacher takes leave in the second semester, the personal leave will begin to accumulate the following year.

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K. Up to 10 days of leave per year shall be available to the Union for bargaining unit business including, grievance arbitration, prohibited practice, or other WERC hearings. Attendance by a grievant or witness shall be charged to the 10 days. After the 10 days have been used, the provisions for an individual person's personal leave prevail. A maximum of five teachers, only one teacher per grade level, will be allowed to utilize this provision on any given school day unless mutually agreed otherwise by the parties.

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#### XVI. MILEAGE

All teachers who drive their personal automobile on school business shall be paid at the rate of 23¢ per mile.

A school car shall be used when available. When the school car is not available the teacher shall secure administrative approval to use the teacher's personal car.

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#### XXVIII. EXTRA DUTY PAY

	<u>1982-83</u>	<u>1983-84</u>
. . .	. . .	. . .
Bus Chaperone		
Evening Event		
(0-15 miles - one way)	11.83	12.59
(15-45 miles - one way)	13.98	14.88
(+45 miles - one way)	16.13	29.77
Afternoon & Evening	27.95	29.77
	34.40	36.64
Morning, Afternoon & Evening		

This collective bargaining agreement does not contain any provision for the final and binding arbitration of disputes not resolved by the processing of a grievance through the three steps of Article XIII.

4. Sybil Thompson is employed by the District as a teacher of Home Economics and is an individual member of the bargaining unit represented by NUE mentioned in Finding of Fact 3. Thompson has been employed by the District as a Home Economics teacher since the 1977-78 school year. During the 1983-84 school year, the District employed Thompson as a Home Economics teacher and as a Cheerleader Advisor for the football and wrestling teams. Thompson also served as a member of the NUE's bargaining team for the purposes of negotiating a collective bargaining agreement covering the 1984-85 school year. In the spring of 1984, one member of the District's wrestling team qualified to participate at the state wrestling tournament held in Madison. The District had not sent a wrestler to the state wrestling tournament for at least the previous five years. On the Monday following the sectional tournament at which the wrestler qualified to participate in the state wrestling tournament, Mr. Hougahl, the high school Wrestling Coach and a member of the bargaining unit represented by the NUE, Michael Seiser, the District's High School Principal, and Douglas Hendrickson, the District's Superintendent, met to determine whom the District would send to the state tournament. Hougahl, Seiser and Hendrickson determined that the Wrestling Coach, his assistant and the wrestler could attend the state tournament at District expense. Hougahl and Seiser discussed whether cheerleaders should attend and decided it would not be appropriate to send the entire squad. Thompson became involved in the discussions regarding the cheerleading squad. Ultimately, it was determined that two of the District's cheerleaders would attend the state tournament at District expense and Hougahl would serve as their chaperone. Sometime during these discussions, Thompson informed Seiser that she wished to go to the state tournament and would use, if necessary, a personal day to attend. Seiser informed Thompson that he would seek to obtain permission for her to use a professional leave day which Thompson ultimately did receive. The use of professional leave instead of personal leave meant that Thompson would not be responsible for the cost of a substitute teacher. Thompson has attended past state wrestling tournaments as has Hougahl. Hougahl has used professional leave for these past tournaments, while Thompson has used personal leave. Seiser did not ask Thompson to chaperone or to perform any supervisory duties for the cheerleaders. Ultimately, after the discussions noted above, Seiser made room reservations at the Inn on the Park in Madison for the two coaches, the wrestler, and the two cheerleaders. Sometime after Seiser had made these room reservations, Hougahl made additional room reservations at the Quality Inn in Madison. The Quality Inn is roughly five miles from the Inn on the Park. The additional room reservations were made because, even though the District was going to pay the expenses for only two cheerleaders, two other cheerleaders had decided to attend the tournament at their own expense, as had a number of individual members of the wrestling team. On Thursday morning of the week preceding the state tournament, Hougahl and four wrestlers left for Madison. Hougahl drove a District-owned car. On the following morning Thompson left for Madison with four cheerleaders in her personal car. Thompson and the four cheerleaders arrived in Madison on Friday about noon and remained in Madison through the following Sunday. Thompson supervised the four cheerleaders during that period. Thompson never went to the Inn on the Park during this period and Hougahl never went to the Quality Inn. Thompson did not drive the cheerleaders to Madison at Seiser's request, and the District did not order Thompson to transport or to supervise the cheerleaders. Seiser did not play any role in obtaining any room reservations beyond those that he made at the Inn on the Park for the two wrestling coaches, one wrestler and two cheerleaders. Seiser was aware, early in the week preceding the state tournament, that certain students besides those attending at District expense would be attending the tournament. Neither Seiser nor Hendrickson, however, was aware that separate room or travel arrangements had been made for the cheerleaders and the wrestlers.

5. Shortly after the state wrestling tournament, the District sent a girls' basketball team to Madison to participate in the state basketball tournament. For that event, Seiser made room reservations for nine basketball players, two managers, five cheerleaders and three advisors including the Cheerleader Advisor. The District paid the Cheerleader Advisor for her expenses. The Cheerleader Advisor and the cheerleaders stayed in Madison on Friday and Saturday evenings and returned home on Sunday. The District requested the Cheerleader Advisor to chaperone the cheerleaders for that event.

6. In a letter to Hendrickson dated May 2, 1984, Al Manson, the NUE's Executive Director, stated:

This letter is to notify you that Sybil Thompson will be taking a Union Leave (Article XIV - K) on May 11, 1984. She will be consulting with me and the WEAC counsel regarding

grievances and negotiations in Turtle Lake. She will be gone the entire day.

I shall assume, unless you contact me, that this leave is approved and that arrangements will be made by the Administration for a substitute for Ms. Thompson.

Hendrickson responded to this letter in a letter to Manson dated May 4, 1984, which states:

The School District of Turtle Lake will not recognize a Union Leave Day for Sybil Thompson on May 11, 1984. The intent of Article XIV-K is for WERC scheduled meetings and this does not qualify.

The meeting between you and Sybil Thompson certainly can be scheduled outside of interfering (sic) with our school schedule. If not she has other leave provisions provided she has not used all available.

Thompson did meet with Manson regarding the status of negotiations on May 11, 1984, and took a personal leave day to do so. Steven Eichman is a Physical Education/Health teacher at Turtle Lake High School, and has been so employed since 1977. During the 1979-80 school year, Eichman served as Grievance Chair for NUE. Eichman testified he consulted with Manson regarding a potential grievance during the winter of the 1979-80 school year. Eichman testified he notified the District in writing of his request for a Union leave day, but that he did not have a copy of that notice. Eichman testified that he was not charged a day of sick leave for attending that meeting. The meeting in fact occurred on December 17, 1980. District records regarding sick leave usage indicate that Eichman was absent on December 17, 1980, and received a day of sick leave for that date. The District has not approved, and NUE had not requested until May 2, 1984, Union leave for collective bargaining purposes during hours in which school is in session unless the matter in issue has involved a mediator-investigator, staff member or mediator-arbitrator appointed by the Wisconsin Employment Relations Commission.

8. When Thompson discovered that the District had paid the expenses of the Cheerleader Advisor for the girls' basketball team, she submitted to the District a voucher of her expenses for the wrestling tournament. That voucher sought \$249.90 in reimbursement for expenses due to lodging, meals and mileage. Hendrickson returned the voucher to Thompson on March 22, 1984. Sometime in early April of 1984 Thompson submitted a written grievance regarding the voucher to Seiser. That grievance stated:

The grievance is that the District has refused to pay the expenses incurred by Sybil Thompson while she was chaperoning cheerleading students (as the Cheerleading Advisor) during a school approved trip.

The District denied her voucher of \$249.90 for the February 24-26 State Wrestling Tournament. That voucher is attached.

The failure of the District to grant Sybil Thompson the same type of leave and expenses as granted other teachers who work co-curricular positions which involved supervising students while attending events away from school violates the following

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cheerleaders but rather took the same type of leave granted to others who supervise students during the school day at events which take place away from school.

Thompson testified that Seiser told her he would pass her grievance on to Hendrickson. Seiser testified that he did not believe he made this statement to the grievant. Seiser testified that he advised her that he was not going to process her grievance but was going to "let it sit and die on my desk. . ." Thompson did not file her written grievance with Hendrickson. In a letter to Hendrickson dated May 18, 1984, under the heading "RE: Grievance Over Denial of Union Day", Manson stated:

This letter is to serve as a grievance on the above matter. I am processing the grievance as the representative of Ms. Sybil Thompson. It is being sent directly to you since all communications on this matter to date have been with you, including our telephone conversation on 5/18 which was an informal attempt to resolve this matter. If you believe this grievance should be filed with Ms. Thompson's principal, then please pass it on to him. Direct any reply to this grievance to me with a copy to Ms. Thompson.

The facts of the case are these: Article XIV-K makes available to NUE up to ten days of leave per year for bargaining unit business. The language refers to Union business as involving grievances, arbitrations, prohibited practices, or other WERC hearings. NUE has interpreted and the District and NUE have applied the language to allow Union leave for Union business including, but not limited to, WERC hearings. Examples have been bargaining sessions and a consultation with a bargaining unit grievance committee member.

Ms. Sybil Thompson serves on the NUE bargaining team, and is currently processing a grievance over reimbursement of expenses for chaperoning students to Madison. On May 2 I notified you that she would be taking a Union leave day on May 11 to consult with me and WEAC counsel regarding grievances and negotiations in Turtle Lake.

On May 4 you replied with a letter denying the leave, and advanced a new, narrower interpretation of the language by the District--i.e. that Union leave can only be used for WERC scheduled meetings. The refusal to all (sic) Sybil Thompson Union leave on May 11 is a violation of XIV-K.

The remedy sought is that Ms. Thompson, who was charged for a personal day on May 11, should have her personal day restored and have the record show that NUE has used one of its ten Union days in the 1983-84 year.

Hendrickson, in a letter to Thompson dated May 25, 1984, stated:

Your grievance over denial of a union day was received May 21, 1984. It will not be necessary to process at step 1 since the principals would not have been involved in the decision.

Article IV (sic) paragraph K states, "Up to 10 days of leave per year shall be available for bargaining unit business including (sic) grievance, arbitration, prohibited practice, or other WERC hearings." Since there is no period after bargaining unit business the sentence goes on to delineate the specific types of bargaining unit business that is covered in this paragraph. The balance of the paragraph is not in dispute.

Article XXIX spells out that past practices (if there were any) shall not be binding upon either party unless executed in writing.

Your grievance is hereby denied.

In a letter dated June 1, 1984, to Dennis Zemke, the Clerk of the District's School Board, Manson stated:

Enclosed please find two grievances by Sybil Thompson. NUE is representing her in these matters. One is for expenses on her trip to Madison as a chaperone for cheerleaders; the other is over a Union day denied by the Administration.

Both of these grievances have been denied or ignored by the Superintendent and therefore are being appealed to the School Board.

Please let me know if you have any questions or want me to appear at the Board meeting when you will be considering these.

In a letter to Hendrickson dated June 4, 1984, Manson stated:

This letter is to serve as the vehicle for processing three grievances, two of which have already been initiated.

There are two grievances currently filed by Sybil Thompson, or by NUE on her behalf. One deals with the District's denial of a Union day, the other with the District's denial of certain expenses incurred by Ms. Thompson on a trip during which she was chaperoning cheerleaders in Madison. Both are being appealed to the School Board, and a copy of the letter of transmittal to Mr. Zemke is enclosed.

. . .

Hendrickson replied to Manson's letter of June 4, 1984, with a letter dated June 20, 1984 which stated:

You (sic) letter dated 6-04-84 did not include a copy of the letter to Mr. Zemke.

To date I have only received the grievance in which Sybil Thompson was denied a union leave day. This has been placed on the Board Agenda for 6-25-84.

The high school principal informed me that Sybil did file a grievance with him concerning denial of expenses for a trip to Madison. At no time had this grievance been submitted at step 2 of the grievance procedure.

. . .

Manson responded to Hendrickson's letter of June 20, 1984, with a letter dated June 25, 1984, which states:

I am representing Sybil Thompson in the above grievance; please direct any reply to me with a copy to Ms. Thompson.

Enclosed is a copy of the above grievance. Sybil Thompson presented it to her principal, and it was denied by him. It seems that in their discussion of the grievance, both thought the other had sent it on to you. Sybil believed from what Mr. Seiser said that the grievance was being passed on by him to you, and Mr. Seiser believed that the grievance would be appealed to you.

In your communication of 6/20/84 to me, you note that the above grievance had not yet been submitted to you. In my letter to Mr. Zemke of 6/1/84 I stated my belief that it had been processed to you.

The NUE - Turtle Lake grievance procedure provides that a grievance will be deemed resolved against the teacher if not processed to the Board within ten days after a reply from the

Superintendent. Since you now have the grievance, and the Board does also, please let me know what your response is. If it is to deny the grievance, then the already sent appeal to the Board should suffice (let me know if you want me to file that appeal again, unless you contact me I shall assume that that appeal will suffice should you deny this grievance). If it is granted, that appeal can be ignored. In any event, NUE reserves the right to process the grievance and/or any appropriate prohibited practice should it be denied or unsatisfactorily resolved.

Hendrickson responded to Manson's letter of June 25, 1984, in a letter dated June 27, 1984, which states:

Your letter dated June 25, 1984 in regards to a grievance concerning Sybil Thompson over an expense allowance has been received.

It is apparent that you have a complete disregard for the grievance procedure as spelled out in the 1982-84 master agreement. You have demonstrated that neither timelines nor procedure have any meaning.

Since the purpose of our grievance procedure is to provide an orderly method for expeditiously resolving grievances, this alone is grounds for denial of this grievance. Timelines has (sic) been completely ignored.

The petty grievance itself is completely without merit. The facts are:

1. We had one wrestler competing in the state wrestling tournament on February 24-25, 1984.
2. We have a squad of 4 wrestling cheerleaders, two of which were selected to go to the tournament.
3. Mr. Hougdaahl, wrestling coach agreed to supervise and chaperone the two cheerleaders at the tournament.
4. Mrs. Thompson was not sent as an advisor or chaperone and was told so by the principal.
5. Mrs. Thompson requested and was granted a professional leave day for February 24 to attend the tournament. We have permitted such leave to other coaches in their sports.
6. Article XIV Sick, Emergency and Professional Leaves paragraph E. Second and third sentences "Substitutes will be paid by the School District. All other expenses will be paid by the teacher."
7. The principal denied the expense voucher. It was never submitted to the Board.

Based on the merits of this case, I also deny the grievance.

Manson responded to Hendrickson's letter of June 27, 1984, with a letter to Hendrickson dated August 3, 1984 which states:

. . .

Both of the Thompson grievances appear, by NUE records (voucher grievance - 6/1/84 letter to Mr. Zemke and 6/25/84 letter to you; union day grievance - 6/1/84 letter to Mr. Zemke), to have been processed to the School Board. I have not received any copy, as requested, of any Board reply to these grievances. I note that the District placed the union day grievance on its 6/25/84 meeting agenda, and that



the District has ten days after the meeting to advise the teacher in writing of action taken. Please advise me of any action taken by the District in these two grievances.

. . .

Hendrickson responded to Manson's letter of August 3, 1984, in a letter dated August 6, 1984, which states:

Sybil Thompson's grievance in regard to a denial of a union leave day was denied by the Turtle Lake Board on June 25, 1984.

As far as I know the Board has not received Ms. Thompson's grievance in regards to her wxpense (sic) voucher since it was denied by me. The Board did not expect to act on a grievance that did not go through proper procedures. I did not receive her grievance until June 26, 1984. It was mentioned in a letter to the clerk dated 6-1-84, a copy of which I received on 6-26-84.

Manson responded to Hendrickson's letter of August 6, 1984, in a letter to Zemke and Hendrickson dated August 14, 1984, which states:

Superintendent Hendrickson's letter of August 6, 1984 informs me for the first time, as the representative of Sybil Thompson in the above matters, that the Turtle Lake Board of Education denied the Union Leave Grievance on June 25, 1984.

As to the grievance of Ms. Thompson regarding her expense voucher, NUE records show the following: On June 1, 1984 I sent that grievance to Mr. Zemke; on June 4, 1984 I sent a letter to Mr. Hendrickson which informed him of the status of the expense voucher grievance, providing a copy of the June 1 letter to Mr. Zemke; Mr. Hendrickson wrote me on June 20, 1984 acknowledging the receipt of my June 4 letter but claiming no copy of my letter to Mr. Zemke was enclosed, and further claimed that the Expense Voucher Grievance had not been submitted to him; on June 25 I wrote to Mr. Hendrickson and processed the grievance to him and wrote that if it was to be the Superintendent's position "to deny the grievance, then the already sent appeal to the Board should suffice (let me know if you want me to file that appeal again, unless you contact me I shall assume that that appeal will suffice should you deny this grievance)."; on June 27 Mr. Hendrickson wrote to NUE denying the grievance, but did not indicate that it was necessary to reinstitute the appeal with the Board.

Now, in a letter from Mr. Hendrickson dated August 6, 1984, the Superintendent says that as far as he knows the Board has not received Ms. Thompson's expense voucher grievance. I take that to mean that the Superintendent has not informed the Board of my letter of June 25. Therefore, Mr. Zemke, please take this letter as an appeal of Mr. Hendrickson's denial of the Expense Voucher Grievance of Ms. Thompson.

Let me know if you have any questions or want me to appear at  
enclose copies of the June 1 correspondence. Including the

wrestling tournament in the knowledge that Thompson would do so on her own initiative.

#### CONCLUSIONS OF LAW

1. Sybil Thompson is a "Municipal employee" within the meaning of Sec. 111.70(1)(i), Stats.

2. The Turtle Lake School District is a "Municipal employer" within the meaning of Sec. 111.70(1)(j), Stats.

3. Northwest United Educators is a "Labor organization" within the meaning of Sec. 111.70(1)(h), Stats.

4. The Turtle Lake School District, by granting Sybil Thompson professional leave to attend the state wrestling tournament and by refusing to reimburse Sybil Thompson for the expenses incurred at that tournament did not knowingly take the benefit of Thompson's work as a supervisor of the District's cheerleaders and thus did not violate the provisions of the collective bargaining agreement mentioned in Finding of Fact 3. The District's conduct did not, therefore, violate the provisions of Sec. 111.70(3)(a)1 or 5, Stats.

5. The Turtle Lake School District, by refusing to grant Sybil Thompson a Union leave day to confer with representatives of the Northwest United Educators on May 11, 1984, violated the provisions of Article XIV-K of the collective bargaining agreement mentioned in Finding of Fact 3. The District's violation of Article XIV-K constitutes a violation of Sec. 111.70(3)(a)5, Stats., and, derivatively, of Sec. 111.70(3)(a)1, Stats.

6. The Turtle Lake School District, by refusing to grant Sybil Thompson a Union leave day to confer with representatives of the Northwest United Educators on May 11, 1984, did not commit a violation of either Sec. 111.70(3)(a)2, Stats., or of Sec. 111.70(3)(a)4, Stats.

#### ORDER 1/

1. The Turtle Lake School District, its officers and agents, shall immediately:

(a) Credit Sybil Thompson, to the extent allowable under Article XIV-F, one day of personal leave.

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1/ 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 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.

- (b) Make Sybil Thompson whole for the deduction from her regular salary of the cost of a substitute teacher for Thompson's absence on May 11, 1984, if such a deduction was made, and if such a deduction would not have been made had Thompson's absence on May 11, 1984, been accounted for as Union leave under Article XIV-K, by paying her an amount of money equal to that deduction together with interest at the rate of 12% per year from the date the deduction, if any, was made until the date any payment required by this Order is offered to Thompson.
- (c) Deduct from the Northwest United Educators, for the 1983-84 school year, one day of Union leave under Article XIV-K.

2. The portions of the complaint alleging violation by the Turtle Lake School District of Sec. 111.70(3)(a)1 and 5, Stats., regarding the District's granting Sybil Thompson professional leave to attend the state wrestling tournament and the District's refusal to reimburse her for the expenses incurred at that tournament, are dismissed.

3. The portions of the complaint alleging violation by the Turtle Lake School District of Sec. 111.70(3)(a)2 and of Sec. 111.70(3)(a)4, Stats., regarding the District's refusal to grant Sybil Thompson a Union leave day to confer with representatives of the Northwest United Educators on May 11, 1984, are dismissed.

Dated at Madison, Wisconsin this 26th day of June, 1985.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Richard B. McLaughlin  
Richard B. McLaughlin, Examiner

## TURTLE LAKE SCHOOL DISTRICT

### MEMORANDUM ACCOMPANYING FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

#### THE PARTIES' POSITIONS

The NUE argues that Thompson submitted and processed a grievance regarding reimbursement for her expenses for the wrestling tournament in a timely fashion. Specifically, the NUE notes that the collective bargaining agreement contains no timelines for submitting expense vouchers, and asserts: "The real question of timeliness arises after the initial grievance was presented." This question, according to the NUE, constitutes a confusion over communication which resulted in the grievance being processed to the Board level "as soon as the confusion . . . was discovered." Contending that Seiser violated the collective bargaining agreement by not responding to the written grievance and that, in any event, "excessive reliance on procedures and formality would frustrate the purpose of collective bargaining. . . .", the NUE concludes that the merits of the expense voucher grievance are properly before the Examiner. Regarding the merits of that grievance, the NUE asserts that District arguments that Thompson was under no obligation to chaperone the cheerleaders, in light of the circumstances of the present matter, and especially in light of the District's payment for the girls' basketball Cheerleader Advisor, constitute nothing more than "the most transparent of fictions." The NUE adds that Thompson's meal voucher should, however, be adjusted to seek a total reimbursement for that area of expense of \$34.00. The NUE argues that District assertions that Union leave can be used exclusively for WERC related functions is unfounded on the language of the collective bargaining agreement. According to the NUE: "The language of the provision provides a sufficient basis for finding for NUE on this point." Citing Webster's New Collegiate Dictionary, The Oxford English Dictionary, and John Stuart Mill, the NUE concludes that: "To apply an 'exclusive' sense to the word 'including' which the Respondent in this case has done, would result in such nonsensical results as man is the only mortal creature and that WERC hearings are the only business of NUE." Even if the language could be considered ambiguous, the NUE asserts that bargaining history establishes the soundness of its interpretation since the Union gave up an arguably unlimited emergency leave provision for the Union leave provision. As the NUE puts it: "A Union leave with as many restrictions on it as NUE already acknowledges, plus the additional limitation--that it only applied to WERC hearings--sought by the District, would not represent a quid pro quo in any reasonable bargaining away of emergency leave; it would represent an out-and-out loss of extensive emergency leave use for no gain whatsoever." Even acknowledging the absence of a clear past practice in the present matter, the NUE asserts that adopting the District's interpretation would represent "a linguistic about-face which defies the basic meaning of the key words involved." To remedy the District violations in the present matter, the NUE requests that Thompson be made whole for any losses, together with interest, that the District be ordered to reimburse the NUE for its attorneys' fees and costs, and that the District post appropriate compliance notices.

After an extensive review of the provisions of the grievance procedure, the District concludes: "To permit the Complainant to pursue this grievance through the prohibited practice mechanism would, in effect, condone the reckless and slipshod manner in which the Complainant chose to follow (or, more accurately not to follow) the grievance procedure. It would render the grievance procedure meaningless and only encourage further violations of that procedure by the Complainant." Even if the grievance was to be considered properly before the Examiner, the District urges that: "The Complainant's claim that the employee is entitled to reimbursement for expenses on her Madison trip is not supported by the facts or the bargaining agreement." Specifically, the District urges that Thompson was acting voluntarily, without any knowledge on the District's part, and that she was not performing any assigned duty for which reimbursement in any manner is due or owing under the collective bargaining agreement. In addition, according to the District, the NUE's claim for reimbursement has no support in the collective bargaining agreement. Specifically, the District urges that Article IX governs matters of discipline and compensation and is clearly inappropriate to the present facts. In addition, the District urges that Article XII-D does not apply to the present situation since the girls' basketball Cheerleader Advisor was specifically requested to chaperone students while Thompson was not. The District

also urges that Article XVI does not apply to the present matter since that Article demands that the teacher seeking mileage reimbursement secure administrative approval prior to the use of the teacher's personal vehicle. Finally, the District argues that Article XXVIII is not relevant to the present matter since "the Complainant offered no evidence whatsoever to explain how the bus chaperone extra duty pay schedule is to tie into the reimbursement sought by the Complainant, nor does the expense voucher submitted by the Complainant indicate a correlation." In sum, according to the District, the NUE has demonstrated no contractual basis for Thompson's requested reimbursement. In marked contrast to this, according to the District, is Article XIV-E which provides for professional leave and states that except for the cost of a substitute, allowed expenses must be borne by a teacher. Even if Thompson's reimbursement claim can be considered appropriate, the District urges that Thompson's meal reimbursement must be limited to \$28.25. The District rejects the violation of Article XIV-K alleged by NUE, claiming that even though Thompson's absence on May 11, 1984, was for Union business, that particular use of Union leave is not permitted under the language of Article XIV-K or its historical application. Noting that both the language and the bargaining history surrounding that provision are disputed, the District urges that the actual application of the language must be used to establish its meaning, and that the actual application of the language has been to restrict such leave to matters involving WERC related functions. The District closes by requesting that the complaint be dismissed in its entirety.

#### DISCUSSION

The complaint alleges District violations of Sec. 111.70(3)(a)1, 2, 4 and 5, Stats., regarding the District's handling of Thompson's requested reimbursement for the wrestling tournament and of Thompson's request for a Union leave day to confer with NUE representatives on May 11, 1984. The allegations regarding the District's handling of the reimbursement matter will be addressed first.

The complaint alleges the District's handling of Thompson's reimbursement request violates Sec. 111.70(3)(a)5, Stats. This allegation, if proven, would also establish a derivative violation of Sec. 111.70(3)(a)1, Stats. The parties' collective bargaining agreement contains a grievance procedure which does not contain any provision for final and binding arbitration. Thus, an Examiner can exercise the Commission's jurisdiction to determine a contract violation under Sec. 111.70(3)(a)5, Stats., and derivatively of Sec. 111.70(3)(a)1, Stats., if the grievance procedure has been exhausted and if the Complainant has complied with the procedural requirements of the grievance procedure. A failure of the Complainant to comply with the procedural requirements of the grievance procedure would bar a determination of the merits of the grievance. 2/

The parties' grievance procedure consists of three steps. Thompson initially presented her grievance at Step I sometime in early April of 1984. The written grievance form is not dated, but there is no dispute regarding the timeliness of this initial presentation. Under Step I Seiser had five days to respond in writing. It is undisputed that Seiser did not respond in writing. Seiser and Thompson differ on whether Seiser informed Thompson that he would pass the grievance on to Hendrickson. Step II demands that the teacher submit the grievance in writing to the Superintendent of Schools within ten days after receipt of the Principal's written answer or the failure of the Principal to answer. The reimbursement request was not directly submitted to the Superintendent until Manson's letter of June 25, 1984, although letters from Manson dated June 1, 1984 and June 4, 1984, one of which was sent directly to the Superintendent, do mention the reimbursement grievance. 3/ Step III of the grievance procedure demands the grievant file the grievance in writing with the Clerk of the School Board within

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2/ Winter Joint School District No. 1, Dec. No. 17867-C (WERC, 5/81).

3/ Manson's May 18, 1984, letter to Hendrickson does state Thompson "is currently processing" a reimbursement grievance. That statement is not a request for Hendrickson to process the reimbursement grievance, but is an assertion of fact offered by Manson to underscore the "bargaining unit business" reasons underlying the request for Union leave on May 11, 1984. That letter is headed "RE: Grievance Over Denial of Union Day".

ten days after the answer or failure of the Superintendent to answer. The Definition section of the parties' grievance procedure establishes that "days" are defined as school days for the purposes of the present matter.

The reimbursement grievance cannot be considered timely processed under any view of the facts. Assuming, for the sake of argument, that Seiser told Thompson he would process the grievance to Hendrickson accounts only for the processing of the grievance to Step II. The parties' agreement demands a grievant process the grievance to Step III within ten days of Hendrickson's answer or failure to answer the grievance. Manson's June 1, 1984, letter seeks to process the reimbursement grievance at Step III. It is impossible to conclude, even under this view of the facts, that the June 1, 1984, letter can be considered within ten school days of the failure of Hendrickson to answer a grievance which was processed to him sometime in early to mid-April. The timeliness problem is apparent from Manson's June 1, 1984, letter since that letter concurrently processes the reimbursement and the Union leave grievances. The Union leave grievance had been denied by Hendrickson at Step II in a letter of May 25, 1984. Even assuming the reimbursement grievance had been submitted at Step II, the submission would have been made sometime in the prior month.

Any other view of the facts only makes the untimeliness of the reimbursement grievance more evident. If Seiser did not tell Thompson he was processing the grievance to Hendrickson, then the Step II requirement was not met until Manson's letter of June 25, 1984.

Step III of the parties' grievance procedure provides that: "Failure to file with the Clerk of the Board within ten (10) days shall deem the grievance resolved against the teacher." The Commission's case law, as noted above, demands that the procedural requirements of a grievance procedure be complied with before an Examiner exercises the Commission's jurisdiction to determine a contractual violation under Sec. 111.70(3)(a)5, Stats. Under Step III and under the Commission's case law, then, the reimbursement grievance cannot be considered properly before the Examiner under Sec. 111.70(3)(a)5, Stats. 4/

Because this decision is appealable by right to the Commission, and because the parties' conflicting contentions regarding the merits of the reimbursement grievance are a part of the record, those contentions will be addressed for the sake of completing the record which may ultimately be presented to the Commission.

Article XIV-E provides that teachers using professional leave are responsible for their expenses, other than the cost of a substitute teacher. Thus, to show a District violation of Sec. 111.70(3)(a)5, Stats., the NUE must establish some contractual basis to ground the District's obligation to reimburse Thompson's expenses. The NUE has cited, in its complaint, a number of possible contractual bases to ground a District obligation to pay Thompson. None of these provisions offers a persuasive basis to conclude the District had a contractual duty to reimburse Thompson's expenses. The first provision cited by the NUE is Article IX. That article is entitled "DISCIPLINE PROCEDURE" and provides that "No teacher shall be . . . reduced in compensation without cause." The present matter is not disciplinary. Article IX, in any event, begs the question for decision here. A conclusion that the District's failure to reimburse Thompson is a reduction in compensation assumes she is entitled to such reimbursement. That entitlement is, however, the question presented for decision here.

Article XII-D appears to be the crux of the NUE's argument. That Article provides: "All rules and regulations governing instructional staff activities and conduct shall be interpreted and applied uniformly throughout the District." The District's treatment of Thompson and the girls' basketball Cheerleader Advisor cannot be considered to evince a disparity of treatment since the girls' basketball Cheerleader Advisor was specifically assigned to chaperone the cheerleaders by the District while Thompson was not. Thompson, unlike the girls'

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4/ The NUE has not specifically argued that the District waived the applicability of the timelines in the grievance procedure. Hendrickson's letters of June 20 and of June 27 of 1984 preclude, in any event, finding such a waiver.

basketball Cheerleader Advisor, attended the tournament expecting, as she had in the past, to pay her expenses. The case might be different if the District withheld the assignment knowing Thompson would, in any event, provide needed supervision. This is a factual issue and the evidence in the present record will not support the conclusion that the District knowingly took the benefit of Thompson's labor. Seiser's knowledge of the chaperoning arrangements was limited to the arrangements he made with Hougdaahl for two cheerleaders and one wrestler. Hougdaahl agreed to chaperone these students. These arrangements were ultimately changed, but there is no persuasive reason to believe the District played any role in, or had advance knowledge of, the changes. At most, it appears Hougdaahl relied on Thompson to transport and to supervise the cheerleaders. No District involvement is apparent in this reliance. Hougdaahl is a member of the NUE and there is no reason to infer he acted on the District's behalf. Since the District did not know that Thompson was to function as a chaperone and did not expressly assign her to do so, Thompson's case is not that of the girls' basketball Cheerleader Advisor.

Article XVI, also cited by the NUE in its complaint, does not offer a contractual basis to conclude the District was under any obligation to reimburse Thompson for her mileage expenses. Article XVI provides reimbursement for teachers "who drive their personal automobile on school business." This provision assumes that "the teacher shall secure administrative approval to use the teacher's personal car." No such administrative approval was given in this case. Without such approval, the Article cannot be considered to apply to Thompson. Here too, a different conclusion might follow if the District withheld such approval knowing Thompson would, in any event, transport the cheerleaders. The evidence will not, however, support such a conclusion. The transportation arrangements appear to have been worked out between Thompson and Hougdaahl without District involvement.

Article XXVIII, also cited by the NUE in its complaint, governs extra duty pay and provides certain reimbursement rates for teachers who function as bus chaperones. This provision offers some guidance regarding the amount of reimbursement afforded to certain teachers, but does not offer an independent basis to conclude the District was under any obligation to reimburse Thompson for her expenses.

In sum, the NUE has not established the existence of any contractual provision which would support a conclusion that the District was under a duty to reimburse Thompson's expenses for the wrestling tournament. In the absence of such a provision, the District cannot be considered to have violated Sec. 111.70(3)(a)5, Stats., or derivatively, Sec. 111.70(3)(a)1, Stats., by refusing to reimburse Thompson.

The second matter covered by the complaint concerns an alleged District violation of Sec. 111.70(3)(a)1, 2, 4 and 5, Stats., when the District denied Thompson a Union leave day for May 11, 1984.

The District has not questioned NUE's compliance with the grievance procedure regarding the Union leave grievance and did not question that the NUE requested and used that day for bargaining unit business. The dispute centers on the parties' differing contentions regarding whether or not this type of leave must be restricted to hearings or meetings called by a WERC designee.

Whether or not the language of Article XIV-K can be considered clear, that language is the sole basis for interpretation in the present matter. Evidence was adduced by the parties regarding the existence of a past practice. This evidence is inconclusive regarding the existence of any past practice. Eichman's recall on his use of Union leave was spotty. District records indicate Eichman received a day of sick leave for the absence he claimed he received Union leave for. Eichman stated he gave written notice of the leave to the District, but did not have a copy of that notice. Whatever may be said of this evidence, it does not constitute proof of a practice by which the parties manifested a mutual understanding regarding the use of Union leave.

The District's assertion that the past use of Union leave represents a persuasive guide to interpreting the disputed language cannot be accepted. The NUE's past use of the leave would be of benefit only to the extent that use indicates the NUE's understanding regarding what Union leave can be used for. As the District asserts, the NUE's failure to use Union leave except for meetings

called by a WERC designee can serve as a basis for the inference that the NUE, by so using the leave, has acknowledged the leave can be used only in such cases. However, this use can also serve as a basis for the inference that the NUE did not deem it necessary to request the leave for any other purpose until May 11, 1984. The evidence does not offer a conclusive basis to determine if the NUE's past use of Union leave represents an acknowledgement that it lacked the authority to use the leave for any other purpose, or an acknowledgement that it simply did not exercise the authority to so use the leave.

Similarly, evidence of bargaining history is of limited use in the present matter. Manson and Hendrickson drew different conclusions from the discussions which resulted in the creation of Article XIV-K. Manson stated that the parties did not specifically discuss whether or not the language was to be limited to WERC related hearings. The NUE forcefully argues that if the bargaining context is closely scrutinized, it is evident that the District's interpretation would result in the NUE receiving nothing for bargaining away an arguably uncapped emergency leave provision. To attempt to interpret contractual language based on a conclusion regarding the sufficiency of the exchange which resulted in the disputed language is a guide of questionable worth. In the present matter the language of Article XIV-K, however viewed, cannot be considered so ambiguous to warrant reliance on the evidence of bargaining history submitted on the present matter. In sum, the question regarding the interpretation of Article XIV-K begins and ends with the express language of that section.

The District's interpretation of the language of Article XIV-K is unpersuasive. The District reads the term "including" as a restrictive term which introduces a specific list which defines the sole types of "bargaining unit business" for which Union leave can be granted. While the term "including" can plausibly be interpreted in this fashion, that interpretation strains the normal meaning of the term 5/ and in effect denies meaning to the terms "bargaining unit business including" since under the District's interpretation of Article XIV-K, that section reads: "Up to 10 days of leave per year shall be available to the Union for grievance arbitration, prohibited practice, or other WERC hearings." There is no reason to believe the parties inserted "bargaining unit business including" for no reason and there is, then, no reason to adopt an interpretation which renders those words superfluous. Bargaining unit business is, then, the broader principle of which grievance arbitration, prohibited practice, or other WERC hearings, are component parts introduced by the term "including". Thus, the District's interpretation is not persuasive. Since there is no dispute that Thompson was absent on May 11, 1984, due to bargaining unit business, it follows that the District's denial of a Union leave day for that date violated Article XIV-K of the collective bargaining agreement. As a violation of Article XIV-K, that wrongful denial constitutes a violation of Sec. 111.70(3)(a)5, Stats., and, derivatively, of Sec. 111.70(3)(a)1, Stats.

The complaint can be read to allege an independent District violation of Sec. 111.70(3)(a)1, Stats. Conduct by a municipal employer which has a reasonable tendency to interfere with, restrain or coerce municipal employees in their exercise of rights guaranteed in Sec. 111.70(2), Stats., constitutes an independent violation of Sec. 111.70(3)(a)1, Stats. 6/ The District's denial of Union leave is a contractual matter in the present case, and it has not been demonstrated how the District was under any obligation to grant Thompson a Union leave day absent the provisions of Article XIV-K. Thus, the NUE's allegation regarding a Sec. 111.70(3)(a)1, Stats., violation is fully addressed in the derivative violation found above, and no independent violation of that section can be found on the present record.

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5/ The NUE cites Webster's New Collegiate Dictionary (1976), and The Oxford English Dictionary (1933), to establish the meaning of the term "include". Black's Law Dictionary, (Revised 4th Edition, West, 1968), states the following regarding the legal use of the term "including": "including may, according to context, express an enlargement and have the meaning of and or in addition to, or merely specify a particular thing already included within general words theretofore used."

6/ Beaver Dam Unified School District, Dec. No. 20283-B (WERC, 5/84).



The NUE's assertion that the District's denial of a Union leave day violated Sec. 111.70(3)(a)2, Stats., cannot be accepted. That section makes it a prohibited practice for a municipal employer to "initiate, create, dominate or interfere with the formation or administration of any labor or employee organization. . . ." This provision assumes active involvement 7/ of a magnitude which threatens the independence of a labor organization as the representative of employee interest. 8/ The District's denial of Thompson's requested Union leave day was not accompanied by any further active involvement by the District with the NUE regarding the leave. Thompson was permitted to use personal leave and no further action toward Thompson or the NUE is apparent on the record. It cannot be said that the District's denial constitutes anything greater than its assertion of an interpretation of Article XIV-K which conflicts with that of the NUE. This interpretation has been addressed above and does not constitute behavior which threatens the independence of the NUE as the representative of employee interests. Accordingly, no violation of Sec. 111.70(3)(a)2, Stats., has been found.

Section 111.70(3)(a)4 makes it a prohibited practice for a municipal employer to "refuse to bargain collectively with a representative of a majority of its employees in an appropriate collective bargaining unit." There is no evidence of a demand by the NUE to bargain regarding the Union leave issue and no evidence of a District refusal to so bargain. The District did process the NUE's grievance through the grievance procedure. There is, then, no basis to conclude that the District's behavior violated Sec. 111.70(3)(a)4 in any way.

Little need be said regarding the remedy ordered above. Thompson unnecessarily used a personal leave day for her absence on May 11, 1984, and the order entered above requires the District to credit her with a personal leave day, and to make Thompson whole for the deduction, if any, from her regular pay of the cost of a substitute, if such a deduction would not have been made when Union leave is granted. The record is silent on whether such a deduction was made, and on whether the deduction would have been made had Union leave been granted. Should the payment be necessary, the need for, and the amount of, interest is governed by Wilmot Union High School District. 9/ Since Thompson's May 11, 1984, absence should have been granted as a Union leave day, that day's absence must be counted against the NUE's ten day allotment under Article XIV-K. None of the remaining remedial requests made by the NUE has been granted. The NUE has requested attorneys' fees and costs in light of the District's alleged pattern of "repeated violations of Wisconsin Statute 111.70". That pattern, if any, is not apparent on the present record, and in any event the award of attorneys' fees and costs has not been favorably received by the Commission. 10/ No compliance notice has been included in the order because there is no persuasive evidence to establish that the present issue has affected employees other than Thompson.

Dated at Madison, Wisconsin this 26th day of June, 1985.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Richard B. McLaughlin  
Richard B. McLaughlin, Examiner

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7/ Kewaunee County, et al., Dec. No. 21624-B (WERC, 5/85).

8/ Winnebago County (Department of Social Services), Dec. No. 16930-A (Davis, 8/79), aff'd by operation of law, Dec. No. 16930-B (WERC, 9/79).

9/ Dec. No. 18820-B (WERC, 12/83). The statutory rate of interest under Sec. 814.04(4), Stats., at the time the complaint was filed was 12% per year.

10/ Madison Metropolitan School District, et al., Dec. No. 16471-D (WERC, 5/81).