STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

NORTHLAND PINES EDUCATION ASSOCIATION, Complainant,

vs.

NORTHLAND PINES SCHOOL DISTRICT, Respondent.

Case 45
No. 58840
MP-3644

Decision No. 29978-A

Appearances:

Mr. Gene Degner, Executive Director, Northern Tier UniServ – Central, P.O. Box 1400, Rhinelander, Wisconsin 54501, appearing on behalf of the Complainant Association.

Mr. Greg Ladewski, Davis & Kuelthau, S.C., 111 East Kilbourn Avenue, Suite 1400, Milwaukee, Wisconsin 53202, appearing on behalf of the Respondent District.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

On May 5, 2000, Northland Pines Education Association filed a complaint with the Wisconsin Employment Relations Commission which alleged that the Northland Pines School District had committed prohibited practices within the meaning of Secs. 111.70(3)(a)1 and 5, Stats., by violating the terms of the parties' existing collective bargaining agreement. Thereafter, hearing on the complaint was held in abeyance pending efforts to settle the dispute. Those efforts were ultimately unsuccessful. On September 8, 2000, the Commission appointed Raleigh Jones, a member of its staff, to act as Examiner in this matter and to make and issue Findings of Fact, Conclusions of Law and Order, as provided for in Secs. 111.07(5) and 111.70(4)(a), Stats. On November 6, 2000, the District filed an Answer to the complaint. Hearing on the complaint was held on November 16, 2000, in Eagle River, Wisconsin. During the hearing, the parties were given full opportunity to present their evidence and

arguments. Following the hearing, both sides filed briefs and reply briefs, whereupon the record was closed on March 12, 2001. Having considered the record evidence and arguments of the parties, I make and file the following Findings of Fact, Conclusions of Law and Order.

FINDINGS OF FACT

1. Northland Pines Education Association, hereinafter referred to as the Association, is a labor organization with its offices located at Northern Tier UniServ – Central, 1901 West River Street, P.O. Box 1400, Rhinelander, Wisconsin 54501. At all times material herein, Gene Degner has been the Executive Director of the Northern Tier UniServ-Central and has served as the Association's agent.

2. Northland Pines School District, hereinafter referred to as the District, is a municipal employer which operates a public school system in Eagle River, Wisconsin. Its offices are located at 1780 Pleasure Island Road, Eagle River, Wisconsin 54521. At all times material herein, Linda Kunelius has been the District's Superintendent and has served as its agent.

3. The Association is the exclusive collective bargaining representative for the District's regular teaching personnel. There are about 130 teachers in the bargaining unit. At all times material herein, Sherry Stecker and Mike Reimer were members of the teacher bargaining unit.

4. The Association and the District have been parties to a series of collective bargaining agreements (hereinafter CBA) which govern the wages, hours, and working conditions of the employees in the bargaining unit referenced in Finding 3. The parties' current CBA is effective for the 1999-2001 school years, and contains the following pertinent provisions:

SECTION I – BOARD RESPONSIBILITIES

> The Board of the Northland Pines School District, on its own and on behalf of the electors of the District, hereby retains and reserves unto itself, except as herein otherwise specifically provided and agreed to, all powers, rights, authority, duties and responsibilities.

. . .

SECTION VI – DISCIPLINE, DISCHARGE AND SUSPENSION

. . .

D) No teacher shall be dismissed, suspended, reduced in rank or compensation or otherwise disciplined without cause.

. . .

SECTION X – TEACHER LEAVE

A) PERSONAL LEAVE: Each teacher shall be granted up to two (2) days of personal leave per year and one (1) day without pay.

1. Requests for Personal Leave shall be submitted to the District Administrator three working days prior to the date requested.

2. The total number of approved requests for any given day cannot exceed seven (7).

3. Personal Leave requests for any given day will be approved on a first come basis.

4. Days before and after holidays or vacations and the last week of school shall be considered high priority and requests must be submitted by September 30th.

    a. Requests for high priority time period shall be referred to the NPEA to determine which seven are to be approved if the number of requests received is in excess of seven (7).

    b. If less than seven (7) requests are submitted by September 30th, requests for Personal Leave shall continue to be approved on a first come basis up to seven (7).

5. The District Administrator may grant approval for requests based on emergencies when they are submitted in less than three working days.

6. No "moonlighting" will be allowed under this provision. Such action could result in the loss of a day's pay and a letter of reprimand in the teacher's file.

7. Any requests for additional leave shall be made through the Teacher Association. Such leave shall be without pay.

8. Unused Paid Personal Leave will be banked and converted to the Substitute Daily Pay Rate at the time of the teacher's retirement. This amount will be applied to the increase in health insurance premiums over the teacher's health insurance premium exit rate.

. . .

C) SICK LEAVE: Teachers are allowed twelve (12) days sick leave per year, cumulative to one hundred and twenty (120) days, for illness to the teacher himself/herself.

1) Except in emergencies, it is the responsibility of the teacher to inform the administration of personal illness which makes it impossible for him/her to report for work. Failure to do so within a reasonable time will result in less of sick leave payment for the period of that individual illness. Reasonable shall be defined as at least one hour before the scheduled start of school on the day of the illness.

2) If, after a teacher has reported ill, he/she anticipates that the illness will extend for more than one day, it is the responsibility of the teacher to notify his/her principal accordingly. Failure to do so may, at the option of the principal of the individual teacher, result in the loss of sick leave payments.

3) A teacher who has been absent from work three (3) consecutive days or more, due to illness, may be required to submit to an examination by a licensed physician at the Board's expense.

4) The Board retains the right to require that any teacher employed by the district, whether on sick leave or not, submit to a medical examination at the Board's expense by a licensed physician who is to determine and certify that said teacher is physically able to work and does not present a health hazard of any kind to the children of the district or his/her co-workers.

5) It is hereby agreed that no teacher may gain economically over and above the amount equal to their regular take-home pay by virtue of any of the sick leave provisions of this agreement in conjunction with any and all insurance provisions of this agreement or the insurance provisions to which the district makes any contribution.

. . .

SECTION XV – GRIEVANCE PROCEDURE

A) PURPOSE: The grievance procedure is designed to assure adequate consideration of questions concerning the violation of employment policies, but not to prevent the continuation of rapport between teacher, principal, the Administrator, his staff, and the School Board.

B) DEFINITIONS: For the purpose of this Agreement, a grievance is defined as any disagreement regarding the interpretation or application of a specific provision of this Agreement. Whenever the words "day or days" are used in this section with reference to a time period to elapse prior to proceeding to the next step, such words shall refer to working days, which in turn are defined as Mondays through Fridays with the exception of legal holidays.

C) STEPS OF GRIEVANCE PROCEDURE:

STEP 1: The grievant shall make a sincere effort to resolve the matter informally by oral discussion between himself/herself or his/her immediate supervisor.

STEP 2: If the matter is not resolved through means of informal discussion, it shall be presented by the grievant to a committee established by the Association for this purpose. The committee shall determine the merit of the alleged grievance.

If no merit is found, the committee shall instruct the grievant to cease pursuit of the matter. If merit is found, the grievance shall advance to the next step.

STEP 3: The grievant shall present the grievance, in writing, to his/her principal within fifteen (15) days of the facts upon which the grievance is based first occur or first became known. The principal shall advise the grievant, in writing, of the disposition of the grievance within ten (10) days of the time the grievance was presented to him.

STEP 4: If the grievance is not adjusted in a satisfactory manner within ten (10) days as per Step 3, the grievant has five (5) days in which he/she may present the written grievance to the Administrator for discussion. Such discussion shall be held within ten (10) days at a mutually convenient time. The Administrator shall advise the grievant, in writing, of the disposition of the grievance within ten (10) days of the time of such discussion. The discussion required by this paragraph may be waived by mutual consent of the grievant and the administrator.

STEP 5: If the grievance is not adjusted in a satisfactory manner in Step 4, the grievant may present his/her written grievance to the School Board.

Such presentation must be made within five (5) days after the time limitations specified in Step 4. The School Board shall act upon the grievance either at the next regular, scheduled meeting, or at a special meeting held for that purpose, whichever is earlier. The School Board shall issue a written answer to the grievance within fifteen (15) days after the meeting with the grievant.

D) PRESENCE OF THE GRIEVANT: The grievant may be present every step of the procedure and shall be present at the request of the principal, Administrator, School Board, Association, or teacher as the case may be. At any appearance, the grievant may be represented by counsel, a representative of the Association or a representative of the WEAC.

E) MULTIPLE GRIEVANT: To avoid the filing of multiple grievances by teachers with identical claims, the Association may process the grievance beginning at the third step hereof

F) The parties shall agree to follow each of the foregoing steps in the processing of grievances. Should the grievant fail to receive written answer within the time limits established for any step, the grievant may immediately appeal to the next step. Grievances not processed to the next step within the prescribed time limits shall be considered dropped.

G) The written grievance shall give a clear and concise statement of the alleged grievance including the facts upon which the grievance is based, the issues involved, the specific section of the agreement alleged to have been violated, and the relief sought by the grievant.

5. The grievance procedure referenced in Finding 4 does not contain a provision for the arbitration of unresolved grievances. Thus, the grievance procedure does not end in final and binding arbitration. Instead, the grievance procedure ends with a decision by the School Board.

6. Bargaining unit employees have a number of ways to get time off from work. Specifically, they can get time off via sick leave, personal leave, bereavement leave and professional leave. When an employee wants to use one of these types of leave, they complete a District leave request form, mark the appropriate box, and submit it to their building principal for approval.

7. The following facts relate to the contractual personal leave language. In bargaining for the 1995-97 CBA, the District sought to eliminate personal leave on those days immediately before or after (school) breaks. The reason the District made this bargaining proposal was because it felt that some teachers were using personal days to extend school vacations or breaks. The record indicates that teacher attendance was often low on the days before and after breaks. The District's bargaining proposal concerning personal leave was ultimately dropped, and not incorporated into the parties' 1995-97 CBA. The District raised the issue again in negotiations for the 1997-99 contract. This time, the personal leave language was changed. The changes which were agreed upon are summarized thus. First, previously there was no cap on the number of teachers who could take personal leave on a given day. The parties agreed that henceforth, just seven teachers could take personal leave on what came to be called "high priority days". High priority days are the days immediately before and after breaks and holidays, and the last week of school. There are about 15 high priority days in the school year. Since the parties capped the number of teachers who could use personal leave on high priority days, it can be inferred that they recognized that excessive teacher absences on those days posed problems for the District and hindered its educational mission. Second, if the number of personal leave requests by teachers on high priority days exceeds seven, the Association determines which seven get the personal leave. Thus, when that situation arises,

the Association decides who gets it - not the District. When the aforementioned personal leave language was discussed and agreed on, the sick leave language and sick leave usage was not addressed. The 1997-99 CBA was ratified by the parties in February, 1998.

8. Teachers in the District have long used sick leave to attend doctor appointments on school days. This happened on numerous occasions over the years with management's knowledge.

9. Prior to the 1998-99 school year, employees who used sick leave for their doctor appointments did not have to provide verification of their doctor appointment. Since then, the District has required verification of them under certain circumstances. The circumstances are addressed in the findings which follow.

10. In the 1998-99 school year, the District began asking teachers who used sick leave for doctor appointments to provide verification of their doctor appointment. In that school year, the District asked six teachers who used sick leave for doctor appointments to provide verification of same. All six did. Just one of the six instances involved a high priority day. The remaining five instances involved days that were not considered high priority days (i.e. non-high priority days).

11. In the 1999-2000 school year, the first two teachers who requested sick leave for doctor appointments were Sherry Stecker and Michael Reimer. High School principal Mike D'Angelo asked them to provide verification of their doctor appointments. They refused to do so, whereupon D'Angelo denied their sick leave requests. This matter is elaborated on further in Findings 12 and 13.

12. Stecker originally scheduled a doctor appointment for a school day in early November, 1999, but cancelled it after she learned that no substitute teachers were available on that particular day because of a high profile school activity (i.e. the state soccer tournament). She subsequently rescheduled the doctor appointment to Monday, November 29, 1999. That date happened to be the Monday following Thanksgiving, which made it the first day of school following the Thanksgiving break. On Tuesday, November 23, 1999, Stecker completed a District leave request form wherein she asked for sick leave for the afternoon of Monday, November 29, 1999. This completed form was submitted to Stecker's principal, Michael D'Angelo, for approval. After D'Angelo reviewed it, he returned the form to Stecker unsigned, along with a note which said in part: ". . .please submit appointment verification." Thus, D'Angelo made his approval of the sick leave contingent on receiving the appointment verification; if no verification was received, the requested sick leave was denied.

This was the first time Stecker was asked by management to provide verification for a doctor appointment. She never provided it. Over the past 15 years, Stecker had used sick leave to attend doctor appointments about a dozen times. When she did so, she was not asked to provide verification for any of those doctor appointments.

Stecker worked the morning of Monday, November 29, 1999. She left school sometime around noon and went to her doctor appointment. She was gone for the remainder of the day.

13. Reimer scheduled a doctor appointment for January 3, 2000 in Marshfield, Wisconsin. That date happened to be the Monday following New Year's Day, which made it the first day of school following the holiday break. On December 13, 1999, Reimer completed a District leave request form wherein he asked for sick leave for Monday, January 3, 2000. This completed form was submitted to Principal D'Angelo. After D'Angelo reviewed it, he returned the form to Reimer unsigned along with a note which said in part: " . . .I am unable to approve your sick leave request without appointment verification. Please submit verification." Thus, D'Angelo made his approval of the sick leave contingent on receiving the appointment verification; if no verification was received, the requested sick leave was denied.

This was the first time Reimer was asked by management to provide verification for a doctor appointment. He never provided it. In the 1998-99 school year, Reimer used sick leave to attend doctor appointments about nine times. When he did so, he was not asked to provide verification for any of those doctor appointments.

Reimer went to his scheduled doctor appointment on January 3, 2000. He was gone from school for the entire day.

14. On January 19, 2000, the Association filed a grievance over the denial of sick leave days for Stecker and Reimer.

15. The grievance was denied at every step of the grievance procedure. When the Board denied the grievance, it sent the grievants separate letters dated May 3, 2000 wherein it explained the basis for their decision. With this action, the parties completed all the steps of the contractual grievance procedure.

16. After the grievance was filed and while it was being processed, two more teachers requested sick leave for doctor appointments on high priority days. Both were asked to provide verification of their doctor appointment and both did.

17. In the 2000-2001 school year, three more teachers requested sick leave for doctor appointments on high priority days. All three were asked to provide verification of their doctor appointment, and all three did.

18. On May 5, 2000, the Association filed a prohibited practice complaint with the Wisconsin Employment Relations Commission to have the grievance referenced in Finding 14 heard and decided in the instant proceeding.

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

CONCLUSIONS OF LAW

1. Since the parties' collective bargaining agreement referenced in Finding of Fact 4 does not contain a provision for the arbitration of unresolved grievances, the Examiner exercises the Commission's jurisdiction to decide whether said agreement was violated in violation of Sec. 111.70(3)(a)5, Stats.

2. The District did not violate the collective bargaining agreement referenced in Finding of Fact 4 by requiring that the grievants supply verification of their doctor appointment on a high priority day, or by denying their sick leave requests when they refused to supply the requested verification. Therefore, the District did not violate Section 111.70(3)(a)5, Stats.

3. The District has not been shown to have violated Sec. 111.70(3)(a)1, Stats., by its conduct herein.

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

ORDER

The complaint is dismissed.

Dated at Madison, Wisconsin this 2nd day of May, 2001.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Raleigh Jones /s/

Raleigh Jones, Examiner

NORTHLAND PINES SCHOOL DISTRICT

MEMORANDUM ACCOMPANYING FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

BACKGROUND

In its complaint, the Association alleged that the District committed prohibited practices in violation of Sec. 111.70(3)(a)1 and 5, Stats. when it denied Reimer's and Stecker's requests for sick leave. The District denied it committed prohibited practices by its conduct herein.

POSITIONS OF THE PARTIES

Association

The Association contends that the District's conduct herein violated both its contractual and statutory rights.

The Association first addresses their contractual claim. According to the Association, the District's actions violated the parties' CBA.

The Association starts with the premise that since the District denied the grievants' requests for sick leave, this is a sick leave case, not a personal leave case (as the District sees it). Accordingly, the Association looks exclusively at the contractual sick leave language. The Association avers that the sick leave language is not as plain, clear, and unambiguous as the District makes it out to be. To support this premise, the Association calls attention to the sentence in the sick leave language which provides thus: "Except in emergencies, it is the responsibility of the teacher to inform the administration of personal illness which makes it impossible for him/her to report for work." The Association then focuses on the word "impossible" which is used in this sentence and asks rhetorically: "Is it up to the employee to determine what is 'impossible'? Does 'impossible' mean a toothache and the employee goes to a dentist? Does 'impossible' mean the employee has a medical appointment?" The Association believes that the contract language does not specifically answer those questions. Furthermore, the Association submits that the sick leave language does not say anything about sick leave being used for medical and dental appointments. Under these circumstances, the Association believes it is appropriate for the Examiner to look at the parties' past practice for guidance in resolving this contractual dispute.

Given the foregoing, the Association views this case primarily as a past practice case. Consequently, it makes the arguments traditionally made in such cases, namely that a binding past practice exists which the Employer unilaterally changed. The Association contends that

the parties' past practice covers doctor appointments and how they are handled. According to the Association, the past practice is that teachers can use sick leave for doctor appointments and do not have to provide "a doctor's excuse" afterwards. The Association submits that this is how doctor appointments were handled on numerous occasions going back many years (i.e. 26 years). It further maintains that until the situation involved here arose, employees were not required to provide a doctor's excuse for attending a doctor's appointment. Thus, as the Association sees it, no doctor verification was required to use sick leave for a doctor appointment. The Association avers that this practice establishes how the parties have come to interpret their sick leave language.

The Association argues that the District changed the past practice noted above when it unilaterally implemented the new requirement that a teacher who uses sick leave for a medical appointment on a high priority day has to submit a verification. The Association asserts that if the District wants to change the meaning of the sick leave language (as it has come to be interpreted by the parties via their past practice), the place to do so is in negotiations – not the instant arbitration. The Association therefore maintains that the District cannot simply unilaterally change the practice. To support this premise, it cites several arbitration awards wherein the arbitrator found that the past practice was entitled to contractual enforcement. Additionally, the Association calls attention to the fact that the normal procedure for terminating a practice is for one side to put the other side on notice that it will no longer adhere to the practice. The Association asserts that never happened here (specifically, that the District never repudiated the existing practice of teachers using sick leave for doctor appointments without having to provide a doctor's verification for same.) That being so, the Association believes the practice should continue.

Next, the Association contends that what the District is doing now (namely, requiring verification for doctor appointments) is not being done uniformly and across-the-board. It notes in this regard that the verification does not have to be provided for all days in which it is taken – just on the high priority days. The Association sees this as disparate treatment.

Next, the Association responds to the District's argument concerning high priority days. As the Association sees it, this argument is a red herring that does not have anything to do with this case. The Association's contention is based on the premise that high priority days applies only to personal leave and has nothing whatsoever to do with sick leave. According to the Association, what the District has done here is to intermingle a term from the personal leave area (i.e. high priority days) with the sick leave area in an attempt to obfuscate the matter and, as the Association puts it in their brief, "draw the examiner's attention away from the real issue" (which the Association sees as the denial of sick leave).

Finally, the Association raises a statutory claim against the District. According to the Association, the District's conduct also violated Sec. 111.70(3)(a)1 of the Municipal Employment Relations Act. The Association characterizes the District's new practice of requesting verification for doctor appointments on high priority days as "a blatant attempt by the District to intimidate and coerce members from exercising their contractual rights" under the CBA to use sick leave. The Association notes that at the hearing, the District stipulated that it did not deny the requested sick leave because it suspected the employees of misusing their sick leave. The Association then asks rhetorically "what other reason can there be for asking for a doctor's verification other than to harass the employees if, indeed, the motive of suspicion of misuse is not there?" The Association sees the reason as being self-evident, namely that the District is attempting to intimidate and coerce employees from exercising their contractual right to use sick leave for a medical appointment on the day before or after a holiday or vacation period (i.e. the "high priority days"). As the Association sees it, the change imposed by the District intimidated, degraded, humiliated and harassed the teaching staff in an attempt to get them to not use sick leave on certain days.

In sum then, the Association believes the District committed both contractual and statutory violations herein. As a remedy for same, the Association asks that the grievance be sustained, and that the District henceforth be prohibited "from unilaterally requiring employees to provide a doctor's excuse when using a sick leave day before or after a vacation or holiday period."

District

The District denies that its conduct herein violated the Association's contractual or statutory rights.

The District first addresses the contractual claim. It argues it did not violate the parties' CBA by imposing the verification requirement at issue herein.

The District begins by focusing on the contractual sick leave language. It maintains at the outset that the so-called "right" to use sick leave when the employee is not actually sick was never negotiated between the parties. Thus, the District submits that notwithstanding the Association's contention to the contrary, there is no contractual "right" to take sick leave for routine or pre-scheduled doctor or dental appointments. As the District sees it, the sick leave language makes it clear that such use is not authorized by the contract because it defines personal illness as that "which makes it *impossible* for [the teacher] to report for work." The District argues that the term "impossible" connotes the necessity, or absolute unavoidability, of the absence. It submits that describing sick leave as applying to situations where attendance is *impossible* excludes those cases where attendance is possible, even though inconvenient. The District argues that under the traditional canons of construction, the sick leave provision

should not be interpreted in a way that eviscerates the term "impossible." To support this premise, it cites the accepted arbitral notion that words used in an agreement should be given effect, and if a word is used, this indicates that the parties intended it to have some meaning. The District therefore argues that the term "impossible" is there for a reason, and to read it out as mere surplusage is not proper or valid. Aside from that, the District contends that the sick leave provision does not countenance sick leave absences at any time for simple check-ups or routine examinations by a doctor or dentist. It maintains that the very term "*sick* leave" implies illness or similar incapacity (which was not present here). The District therefore argues that under this particular sick leave provision, teachers do not have the right to take sick leave for checkups or other routine visits to the doctor or dentist which could be scheduled outside of work hours. As the District sees it, it has the power to strictly enforce the sick leave provision, notwithstanding the District's past permissiveness on this point which it can remove or alter at will.

The District argues that to the extent that routine doctor or dentist appointments are covered by the contract at all, it must be, if anywhere, under the personal leave language. To support this premise, it notes that in stark contrast with the term "impossible" in the sick leave provision, the lack of definitional or limiting language in the personal leave clause puts the basis for the personal leave within the reasonable, professional discretion of the teacher. The District then calls attention to the following requirements to get personal leave: three days notice, a cap of seven teachers who may be on personal leave on high priority days, and finally that requests for personal leave on high priority days must be submitted by September 30. The District opines that here, neither of the grievants' requests were submitted by September 30, so it was free to turn them down. However, it emphasizes that it did not do that; instead, it merely asked for verification.

Next, the District asserts that its verification requirement is a moderate, reasonable and appropriate use of its managerial power. In its view, it is easily met, not intrusive and non-stigmatizing. For purposes of emphasis, the District again notes that nothing in the contract allows for sick leave to be taken for a routine doctor visit. The District argues that in the absence of such a contractual right, it could exercise its authority under the management rights clause to implement a verification requirement. As the District sees it, its verification requirement preserves intact the teacher's ability to take time off for a doctor's appointment, even during working hours on a high priority day, while providing the District with some assurance that the appointment actually took place. In addition, the District believes that it gently reminds the teacher that he/she is a professional, who is missed when not in the classroom, particularly on high priority days. The District avers that the verification which it would, and does, accept are appointment confirmation cards or slips, physician service bills, and other documentation. According to the District, all the employee needs to do is submit *some* piece of paper that demonstrates an appointment was kept; it does not have to be an "excuse" from the doctor. The District asserts that once the employee does so, the leave

request will be approved. The District also contends that notwithstanding the Association's argument to the contrary, its verification requirement is uniformly and narrowly-tailored because it is applied to all teachers on high priority days.

Next, the District addresses the Association's past practice argument. It acknowledges at the outset that it "has been somewhat permissive" in policing the sick leave provision. Be that as it may, it believes "there are limits to its leniency." First, it claims that the alleged practice should have no binding force when, as is the situation here, the contract unambiguously defines sick leave as a circumstance where attendance is "impossible". The District cites the accepted arbitral notion that when the words of a contract are plain and clear, the contractual language is applied and enforced - not the past practice - because there is no ambiguity to be resolved. Second, even if the Examiner finds an ambiguity in the sick leave language, several exceptions apply which should prevent the so-called "practice" from becoming an established, unchangeable right. Those exceptions are that the "practice" was not "fixed", "unequivocal", or "clearly enunciated". Third, the District asserts that arbitral authority holds that a practice may unilaterally be discontinued or modified if it involves a gratuity rather than a major condition of employment. According to the District, the ability to use sick leave for a doctor appointment cannot be considered a "major" condition of employment; rather, it is incidental. Fourth, the District believes that its previous "permissiveness" does not tie its hands now. To support this premise, it cites the general arbitral principle that an employer's failure to exercise a management right is not a surrender of that right. Fifth, it maintains that a change in circumstances (namely, greater awareness of the control/safety issues on high attendance days) as reflected in the contract (i.e. the high priority day provision) further reinforces the basis of the District's position. Sixth, the District argues that even if it were obliged to allow teachers to use sick leave for routine visits to the doctor or dentist, the verification requirement would still be a valid exercise of the District's right to regulate the practice and police it against abuse. The District notes in this regard that it has reason to suspect there might be some misuse of the supposed right to use sick leave for routine appointments because the Superintendent testified that teachers have stated that if they could not get personal leave on a high priority day, they would simply call in sick.

Next, the District asserts that the verification requirement was *not* meant to cast aspersions on teachers in general, or the grievants in particular. As the District sees it, verification of doctors' visits, like requiring receipts for expense reimbursement, is a simple, painless, sensible and moderate step. The District submits that a teacher may supply the required verification in a variety of non-intrusive ways. The District emphasizes that all it is looking for is documentation that the appointment was in fact scheduled as claimed. The District avers that approval of the leave is assured once the requisite verification is turned in.

Next, the District responds as follows to the Association's contention that the grievants received a written warning. It asserts that the grievants were not disciplined. Building on that premise, it maintains that since there was no discipline imposed here, it is unnecessary to parse the well-known just cause standard and equally unnecessary to analyze the discipline provision of the contract.

Next, the District asks the Examiner to instruct the Association and its members on the principle of "obey first, grieve later". According to the District, both the Association and the grievants failed to follow this well-known rule, and it wants to ensure that next time they do.

Turning now to the Association's statutory claim, the District avers that its verification requirement, contrary to the testimony of the Association witnesses, did not humiliate, harass, dehumanize, shock, intimidate or threaten the teaching staff. The District asserts that the Association's recourse to such melodramatics and intemperate verbiage serves to underscore the vacuity of their claim. It believes that any shame or humiliation felt by a teacher who is asked to provide verification for their absence is an unreasonable response where, as here, the individual is *not* being stigmatized or singled out. The District notes that its policy is to require verification from *all* teachers, not just some who are absent from work on high priority days. That being so, the District claims that it does not pick the particular employees who are subject to the verification requirement; instead, they pick themselves by voluntarily scheduling a routine appointment for a high priority day. Aside from that, the District points out that it requires receipts as a condition for expense reimbursement. In the District's view, the parallel between financial receipts and medical verification is obvious and compelling. As the District puts it in their brief, "Sometimes, it is necessary and appropriate to 'trust but verify'."

Finally, the District claims it has more at stake in this case than the Association does. From its perspective, all the Association faces is "the mild prospect of submitting verification for a small fraction of its leave requests (for routine appointments), and even of these, for only a small fraction of the work days (the fifteen or so high priority days of the 180 day school year)." In contrast, the District sees its stake in this case as follows. First is the right to police – and gently discourage – absences on high priority days for routine appointments, which can and should be scheduled for non-working hours. Second is the District's duty to meet its educational mandate as it sees fit. Third is what the District calls its right to the benefit of its bargain with the Association concerning the contractual sick leave and personal leave provisions. As the District sees it, its past lenience in enforcing the sick leave provision has not created a brand new right for teachers to take a "sick day" off because it is deemed not convenient to be at school.

Overall, the District believes its position herein is supported by arbitration precedent, by principles of statutory construction, and the facts of this case. It therefore maintains that the District should prevail, and the complaint be dismissed.

DISCUSSION

The Association contends that the District's conduct violated both its contractual and statutory rights. In the discussion which follows, the breach of contract claim will be addressed first. After it is resolved, the statutory claim will be addressed. Any matter not addressed in the discussion which follows has been deemed to lack sufficient merit to warrant individual attention.

Alleged Violation of Sec. 111.70(3)(a)5

I. Jurisdiction

In their Answer to the complaint, the District alleged as an affirmative defense that the WERC does not have jurisdiction to hear this complaint. For background purposes, it is again noted that the instant complaint contends that the District violated Sec. 111.70(3)(a)5, Stats., by its conduct herein. That section provides that it is a prohibited practice for a municipal employer:

> 5. To violate any collective bargaining agreement previously agreed upon by the parties with respect to wages, hours and conditions of employment affecting municipal employees, including an agreement to arbitrate questions arising as to the meaning or application of the terms of a collective bargaining agreement. . .

This provision makes it a prohibited practice for a municipal employer to violate a CBA. The traditional mechanism for enforcing a CBA is via grievance arbitration. Given the existence of that traditional mechanism for resolving grievances and enforcing the CBA, the Commission does not usually exercise its jurisdiction to determine the merits of a Sec. 111.70(3)(a)5 breach of contract claim where the parties' CBA provides for arbitration of unresolved grievances. Here, though, the parties' grievance procedure does not end in final and binding arbitration. Instead, it ends with a decision by the School Board. Under these circumstances, Commission examiners have routinely exercised the Commission's jurisdiction under Sec. 111.70(3)(a)5 and acted as *de facto* arbitrators to determine if the employer's conduct breached the CBA. 1/ This Examiner will do likewise here. Accordingly, the undersigned invokes the Commission's jurisdiction under Sec. 111.70(3)(a)5 and will act as a de facto arbitrator to determine if the District's conduct breached the CBA. Obviously, this ruling will require an interpretation of the parties' CBA.

1/ ***See, for example, HAYWARD COMMUNITY SCHOOL DISTRICT, DECISION NO. 28619-A (Burns, 11/96) and WINTER JOINT SCHOOL DISTRICT NO. 1, DECISION NO. 17867-C (WERC, 5/81).***

II. Timeliness

In their Answer to the complaint, the District also alleged as an affirmative defense that Stecker and Reimer "failed to present their grievance in a timely manner under Section XV, paragraph C, step 3 of the collective bargaining agreement." The alleged untimeliness of the grievance was not mentioned thereafter. Specifically, it was not mentioned in the District's opening statement, during the hearing itself, or in either of the District's briefs. That being so, the Examiner finds that the timeliness issue has been waived. Given that finding, it is presumed that the grievance was timely filed. Accordingly, the substantive merits of the grievance will be addressed.

III. Scope of the Grievance

Next, the Examiner believes it is necessary to address the scope of the instant grievance. While both sides certainly see this case as being a contract interpretation case, the Association adds another component to it which the District does not. The component is discipline. The Association implies that the grievants were subjected to discipline, while the District expressly disputes it.

This disagreement stems from the letters which Principal D'Angelo sent to Reimer and Stecker wherein he informed them that he was unable to approve their request for sick leave until they submitted verification of their medical appointment. Except for listing different dates, the letters D'Angelo sent were almost identically worded. The letter to Stecker read as follows:

> You requested sick leave for one-half day (pm) on November 29, 1999 to go to a doctor appointment. Upon receiving your request, I returned it to you and indicated I would need verification of your medical appointment to approve your sick leave request.
>
> Since the School District began approving the absence of seven staff members for personal leave on the day(s) before and after breaks (1998-99) we have requested and received appointment verifications for doctor and dental appointments to approve sick leave on these days. Due to the potentially large number of staff members being gone on the day before or after break it is imperative for the safety of our students and to maintain the quality of education, steps be taken to ensure maximum attendance of staff on those days.

> To date, you have not provided verification of your medical appointment and have on two previous occasions indicated you would not be providing verification because it was not in the contract language. As a result, I am unable to approve your sick leave. Failure to provide for appointment verification for those days before and after break in the future may result in disciplinary action.
>
> If you have further questions or concerns, please feel free to contact me.

In their brief, the Association characterized the letter just referenced as a "letter of reprimand". In labor relations circles, a letter of reprimand is synonymous with a written warning. A written warning can certainly be considered discipline. That being so, the threshold question is whether this particular letter constituted a written warning. I find it did not. My reasoning is this: Normally, when an employee is disciplined, they do not have to ask rhetorically whether they have been disciplined. If they have been disciplined, they know it because some adverse personnel action is taken against them. Simply put, they are punished. That did not happen here. Additionally, when an employee is disciplined, the employer usually tells the employee that they have, in fact, been disciplined so that it is documented. That did not happen here either. When the School Board responded to the grievants in their May 3, 2000 letters, it expressly told them that they had not been disciplined by D'Angelo's letter. The Examiner accepts that assertion at face value because nothing in the record shows otherwise. Since no discipline was imposed on the grievants, the Examiner need not apply the just cause standard referenced in Section VI, D, here.

IV. Merits

What happened here is that the District asked two employees who wanted to use sick leave for doctor appointments to provide verification of their doctor appointments. Both employees refused to provide same, so the Employer denied their sick leave requests. Those employees were not asked for verification because the Employer suspected them of sick leave abuse. Instead, they were asked for verification because of the particular day that each chose for their doctor appointment. Both employees scheduled their doctor appointments for the Mondays which followed holiday vacations. The day after a vacation ends is known as a high priority day. Management wants its regular teaching staff (as opposed to substitutes) present at school because teacher absences on those days in particular pose problems for the District and hinder its educational mission. To help it achieve that goal, the District discourages employee absences on high priority days. It instituted the verification requirement to do that (namely, discourage employees from scheduling doctor appointments on high priority days).

At issue here is whether the District violated the CBA when it made the granting of leave contingent on the grievants providing verification of their doctor appointments. The Association contends that it did, while the District disputes that assertion. The type of leave involved will be dealt with in greater detail later in this discussion, as will the type of verification sought by the District. Here, though, it suffices to note that what the District says it is looking for is an assurance that the scheduled doctor appointment actually took place. The District avers that all the employee needs to provide is an appointment card. Nothing more. The Examiner accepts that assertion at face value. Consequently, what the parties are fighting over in this case, in part, is whether employees who have doctor appointments on high priority days have to show their appointment card to management as a condition to getting their leave request approved.

The District opines in their brief that "this is not a close or hard case." I initially thought so too. However, the case proved far more troublesome to write than I originally envisioned. Consequently, it was a difficult case to decide. The following discussion shows why.

The parties approach this case from different analytical perspectives. The Association views it exclusively as a sick leave case and therefore looks only at the sick leave language. In contrast, the District essentially sees it as both a sick leave and a personal leave case. Thus, it looks at both the sick leave and personal leave language.

Before reviewing those leave provisions though, I have decided to make the following introductory comments concerning leaves in general. Bargaining unit employees who want to take time off from work have several different ways of doing so. Specifically, they can avail themselves of sick leave, personal leave, bereavement leave and professional leave. To do so, they simply complete a District leave request form and mark the appropriate box. They check whether they are taking sick leave, personal leave, etc. The completed form is then submitted to the building principal for approval.

The reason the foregoing has been noted is because it sets the stage to address the threshold question of whether this case will be analyzed as a sick leave or a personal leave case. When the grievants filled out the leave request form, they had the discretion to pick the type of leave they wanted to use to cover their absence. Bereavement leave and professional hardly seem applicable under the circumstances, so this left them with two possible choices: sick leave or personal leave. They picked sick leave. That was their call to make so long as there is no contract language which specifies that employees have to use a particular type of leave to cover absences caused by doctor appointments. A review of the parties' CBA indicates there is no such language. In particular, there is nothing in the personal leave provision which says that employees have to use personal leave when they go to routine doctor appointments. While an employee can certainly do so if they wish, the critical point is that

they do not have to use personal leave for doctor appointments. It follows from this finding that the personal leave language is inapplicable here. Consequently, this case will be analyzed as a sick leave case – not as a personal leave case.

A point of clarification follows. While the remainder of this case will not be analyzed as a personal leave case, the Examiner has previously used a phrase in the discussion, and will continue to do so, which the parties know is from their personal leave language bargaining history. The phrase is "high priority days". In using this phrase, I am not bootstrapping the personal leave language into my analysis of the sick leave language, or trying to blur the distinction between these two different types of leave. Instead, I decided to use that phrase throughout the discussion because the District's verification requirement is being applied on just certain days, and the phrase "high priority days" clearly identifies the days involved. It is for that reason alone that the phrase "high priority days" is used in the discussion.

Attention is now turned to the sick leave language. The Examiner's first interpretative task is to decide whether the meaning of this provision is clear and unambiguous, or whether it is ambiguous. Language is considered clear and unambiguous when it is susceptible to but one plausible interpretation/meaning. Conversely, language is considered ambiguous when it is capable of being understood in two or more different senses, or where plausible arguments can be made for competing interpretations. If the language is found to be clear and unambiguous, my job is to apply its plain meaning to the facts. If the language is found to be ambiguous though, my job is to then interpret it to discern what the parties intended it to mean, and then to apply that meaning to the facts. Either way, in the context of this case, what I will be deciding is whether sick leave can be used for doctor appointments.

There is no dispute about the meaning of the introductory sentence to Section C (the sick leave provision). It provides in plain and easily understandable terms that teachers can use sick leave "for illness to the teacher himself/herself." It also specifies how many days of sick leave the employee gets per year (namely 12, cumulative to 120 days).

The next five paragraphs of the sick leave provision go on to set certain parameters for sick leave usage. Sections 1 and 2 specify that teachers who use sick leave have to notify the District within a certain time frame of their absence. Sections 3 and 4 specify that under certain conditions, teachers may have to submit to a doctor's examination. Section 5 is not summarized here because it has no applicability to this case.

In the context of this case, the portion of the sick leave language which is in issue is Section 1 and a single word contained therein. The word is "impossible" which is found in the following sentence: "Except in emergencies, it is the responsibility of the teacher to inform the administration of personal illness which makes it impossible for him/her to report for work." The parties disagree on what the word "impossible" means.

The term "impossible" is not contractually defined. One plausible interpretation of that term in its overall context is that it connotes the necessity, or absolute unavoidability, of the absence. If that meaning were applied, an employee would have to be on their proverbial deathbed in order to qualify for sick leave. Obviously, this interpretation sets the sick leave eligibility bar very high. Another plausible interpretation sets the eligibility bar lower and requires that the teacher who uses sick leave simply be "ill". This less restrictive interpretation is based on the premise that when the parties crafted the wording of the introductory sentence in Section C, they specified that sick leave was to be used for teacher "illness". The word "illness" was not defined in that sentence and no clarifiers were included therein. It is possible for someone who is ill to nevertheless report to work. The practical difference between these two plausible yet conflicting interpretations can be illustrated with the following example. Assume that a teacher gets the common flu, and decides to stay home. The question then becomes whether the teacher is eligible for sick leave. If the parties intended to answer this question by relying on just Section 1 and applying the word "impossible" literally, then the employee with the flu would not qualify for sick leave because it is not "impossible for him/her to report for work." The employee could, in fact, still report to work, albeit sick with the flu. On the other hand, if the parties intended to answer this question by applying the introductory sentence to Section C, which contains no restriction on the type or severity of the "illness" involved, then the employee with the flu would indeed qualify for sick leave. Even the District acknowledges the plausibility of this interpretation in their brief on page 21 via the following statement: "If a teacher is ill, so be it. That is what 'sick leave' is for." The Examiner finds that both proposed interpretations of the sick leave provision are plausible. Since both are plausible, it follows that the contract cannot be termed clear and unambiguous on whether sick leave can be used for doctor appointments. That being so, it is necessary for the undersigned to look beyond the words used in the sick leave provision to determine what the parties intended it to mean.

In litigating their case, the Association relied on matters external to the CBA to buttress their interpretation of the sick leave provision. Specifically, it relied on the alleged bargaining history and an alleged past practice. Bargaining history and past practice are forms of evidence which are commonly used to help interpret ambiguous contract language. The rationale underlying its use is that they can yield reliable evidence of what an ambiguous provision means. Thus, the manner in which the parties have carried out the terms of their agreement in the past provides reliable evidence of its meaning. Accordingly, each of the foregoing will now be addressed.

Attention is focused first on the alleged bargaining history. The Association contends that "the use of sick leave for doctor appointments" was negotiated with the District. The problem with this contention can be simply put: it is not supported by any record evidence. In point of fact, there is no testimony or evidence whatsoever regarding any negotiations on this

point. The only bargaining history in the record pertains to the personal leave language – not the sick leave language. That being so, the parties' bargaining history is of no help in deciding this case.

Attention is now turned to the alleged past practice. The Association contends, and the District does not dispute, that for many years teachers used sick leave when they went to doctor appointments during work hours. To substantiate this point, one need look no further than the grievants and their own personal experience in this regard. Stecker has used sick leave for doctor appointments about a dozen times over the past 15 years. Reimer's experience is not only identical, but more recent. In the 1998-1999 school year alone, he used sick leave about nine times for doctor appointments. In each instance, the doctor appointment was scheduled during work hours.

As previously noted, the District does not dispute that teachers used sick leave for doctor appointments. Instead, it disputes that this created a practice which is entitled to contractual enforcement. In its view, just because it "has been somewhat permissive" in allowing employees to use sick leave for doctor appointments, this should not tie its hands now. In other words, the Employer believes its past practice should have no binding force. I find otherwise. Based on the rationale which follows, I conclude that the record evidence establishes that a practice exists that teachers can use sick leave for doctor appointments. To begin with, it cannot be said that this situation occurred infrequently. To the contrary, as shown by Reimer's experience in the 1998-99 school year, it happened frequently. Second, other than the two denials which led to the instant grievance, there are no other instances documented in the record where a teacher wanted to use sick leave for a doctor appointment and the District denied the request. Third, in all prior instances where employees used sick leave for doctor appointments, management was aware of it, and approved it. Thus, it was not simply an error or mistake by management. The foregoing persuades me that notwithstanding the District's contention to the contrary, there is indeed a practice between the parties that employees can use sick leave for doctor appointments. This practice establishes how the sick leave provision has come to be mutually interpreted by the parties themselves, namely that employees can use sick leave for doctor appointments.

Having found the existence of that practice, the final question concerning same is whether that practice conflicts with the sick leave provision. I find it does not. In my view, the practice can be reconciled with the sick leave provision. As previously noted, the introductory sentence in Section C provides that sick leave is for teacher "illness". While that term is not contractually defined, its conventional meaning can be simply put: it refers to a person being not healthy or sick. Building on that meaning, it is noted that people commonly go to the doctor when they are not healthy and/or sick. That being so, it is held that the term "illness" is broad enough to encompass doctor visits.

My final comment concerning this practice involves the verification aspect of it. The Association lumps the practice just noted together with the fact that the District previously did not seek verification from employees who used sick leave for doctor appointments. I do not lump them together. In my view, the practice is a completely separate matter from verification. The former matter (i.e. the practice) has already been addressed. The latter matter (i.e. verification) will be addressed next.

As was just noted, the focus now turns to the crux of this case – the District's verification requirement. Prior to the 1998-99 school year, employees who used sick leave for their doctor appointments did not have to provide verification of their doctor appointments. Since then, the District has required verification of them under certain circumstances. Those circumstances will now be reviewed.

The District first required verification in the 1998-99 school year. That year, the District asked six teachers who used sick leave for doctor appointments to provide verification of their doctor appointment. All six did. Just one of these six instances involved a day that the parties consider a high priority day (i.e. a day before or after a vacation). The remaining five instances involved non-high priority days. In the next school year, the 1999-2000 school year, the District narrowed the circumstances in which it asked for verification. That school year, the District only asked for verification from the teachers who used sick leave for doctor appointments on high priority days. The grievants were the first two teachers that year who requested sick leave for doctor appointments on high priority days. The grievants were not singled out when they were asked for verification because the District subsequently asked for verification from five other teachers who used sick leave for doctor appointments on high priority days. Insofar as the record shows, the District has uniformly asked for verification from all teachers who used sick leave for doctor appointments on high priority days since the start of the 1999-2000 school year.

When the parties litigated this case, both sides focused on the narrower verification requirement which was used in the 1999-2000 school year rather than the broader one which was used in the 1998-1999 school year. The Examiner will do likewise.

Next, the focus turns to why the District implemented the verification requirement. The reason the District did so was this: it wanted to minimize, and discourage, teacher absences on certain days (namely, high priority days) which were caused when teachers scheduled their non-emergency doctor appointments for those days. The District believes those appointments should be scheduled during non-working hours or on non-high priority days.

When the District implemented the requirement that employees who use sick leave for doctor appointments on high priority days have to provide verification of same, what it did was change one part of how it administered, and policed, sick leave. The District had the contractual right to do that because it reserved to itself, via the Management Rights clause, "all powers, rights, authority, duties and responsibilities" except as "specifically otherwise provided. . ." This clause is certainly broad enough to give management the right to police for potential sick leave abuse. One way that employers traditionally do that is with a verification requirement. Nothing in this CBA precludes the District from seeking verification for sick leave usage. Additionally, the verification requirement which management implemented here does not conflict with the sick leave provision.

Having just found that the contract language does not preclude the District's verification requirement, the next question is whether it (i.e. the District's verification requirement) is reasonable under the circumstances. I find that it is. To begin with, it preserves intact the teacher's ability to use sick leave for doctor appointments. By that, I mean that the verification requirement does not change the practice. It still exists. Employees can still use sick leave for doctor appointments, even on high priority days. If they do though, they have to provide verification of their appointment. Second, the verification documentation sought by the District is not, as the Association calls it, a "doctor's excuse". That characterization is not supported by the record evidence. Simply put, the doctor does not need to write up anything to explain the underlying reason for the appointment. Instead, as previously noted, the verification that the District says it is looking for is merely an appointment card. An appointment card is a relatively simple and moderate step that is analogous to requiring receipts for expense reimbursement. Said another way, it is non-intrusive and non-stigmatizing. Finally, the District's verification requirement is being applied uniformly to all teachers who use sick leave for doctor appointments on high priority days. If a teacher schedules a doctor appointment for one of those days, they know they will have to provide verification of their doctor appointment. That being the case, the verification requirement is not being applied in a disparate manner.

Based on the foregoing, it is held that the District's verification requirement passes contractual muster. The District therefore had the contractual right to require that employees who want to use sick leave for doctor appointments on high priority days show their appointment card to management as a condition to getting sick leave approved. In this case, both grievants refused to supply the requested verification. They should have. Since the grievants failed to supply the requested verification, the District had the right to deny their sick leave requests. Consequently, the District did not violate the CBA by requiring that the grievants supply verification of their doctor appointment on a high priority day, or by denying their sick leave requests when they refused to supply the requested verification. Accordingly, no violation of Section 111.70(3)(a)5 has been shown, and that portion of the complaint has been dismissed.

Alleged Violation of Sec. 111.70(3)(a)1

The focus now turns to the Association's claim that the District's conduct also violated Sec. 111.70(3)(a)1, Stats. That section provides that it is a prohibited practice for a municipal employer "to interfere with, restrain, or coerce municipal employes in the exercise of their rights guaranteed in sub. (2)." In order for a complainant to prevail on its complaint of interference with employee rights it must demonstrate, by a clear and satisfactory preponderance of the evidence, that respondent's complained of conduct contained either some threat of reprisal or promise of benefit which would tend to interfere with its employees in the exercise of their rights guaranteed by Sec. 111.70(2) of MERA.

The Association's first argument in this regard is that the District's motive and intent in imposing the verification requirement on teachers was to embarrass, intimidate, harass and humiliate them. The record evidence does not support those melodramatic assertions. Moreover, even if the grievants felt embarrassed or humiliated by the District's verification request, their subjective feelings regarding same are insufficient to warrant finding a statutory violation. What the objective facts in the record show is that the District's verification requirement is being applied to all teachers who use sick leave for doctor appointments on high priority days – not just some of them. This means that individual teachers are not being singled out for verification purposes.

The Association's second argument is that the District's verification requirement intimidates, coerces and prevents employees from exercising their contractual sick leave rights. I find otherwise. My discussion begins with the premise that employees have a contractual right to use sick leave for illness, and that pursuant to a practice, they can use sick leave for doctor appointments. That said, verification of sick leave usage is a completely separate matter. The District has retained the right to police for sick leave abuse. The limited and narrow verification requirement which the District has imposed here does not interfere with the employees' use of their contractual right to sick leave for illness, or their right, via a practice, to use sick leave for doctor appointments.

Given the foregoing, the record will not support a finding that the District attempted to interfere with, restrain or coerce the Association and/or its members in the exercise of its/their statutory or contractual rights. Accordingly, no violation of Sec. 111.70(3)(a)1, Stats., has been shown, and that portion of the complaint has also been dismissed.

Dated at Madison, Wisconsin this 2nd day of May, 2001.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Raleigh Jones /s/
Raleigh Jones, Examiner

REJ/gjc
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