

BEFORE THE ARBITRATOR

 :
 In the Matter of the Arbitration :
 of a Dispute Between :
 :
 SHEBOYGAN EDUCATION ASSOCIATION :
 :
 and : Case 83
 : No. 41376
 : MA-5370
 SHEBOYGAN AREA SCHOOL DISTRICT :
 :

Appearances:

Mr. Charles S. Garnier, Acting UniServ Director, Kettle Moraine UniServ
 Mulcahy & Wherry, S.C., Attorneys at Law, by Mr. Paul C. Hemmer, on
 behalf of the Sheboygan Area School District.

Council

ARBITRATION AWARD

The Sheboygan Education Association, hereinafter the Association, requested that the Wisconsin Employment Relations Commission appoint a staff arbitrator to hear and decide the instant dispute between the Association and the Sheboygan Area School District, hereinafter the District, in accordance with the grievance and arbitration procedures contained in the parties' labor agreement. 1/ The District subsequently concurred in the request and the undersigned was appointed to arbitrate in the dispute. A hearing was held before the undersigned on April 26, 1989 in Sheboygan, Wisconsin. There was a stenographic transcript made of the hearing and the parties submitted post-hearing briefs in the matter by June 1, 1989. Based upon the evidence and the arguments of the parties, the undersigned makes and issues the following Award.

ISSUE

The parties stipulated that there were no procedural issues and stipulated to the following statement of the substantive issue:

Did the Sheboygan School District violate the collective bargaining agreement when it denied the Grievant, Dorothy Burhop, her request for a sabbatical leave for the '88-'89 school year? If so, what is the appropriate remedy?

CONTRACT PROVISIONS

The parties cite the following provisions of their 1987-1989 Agreement:

ARTICLE II - BOARD FUNCTIONS

2.1 Nothing in this Agreement shall interfere with the right of the Employer in accordance with applicable laws, rules and regulations to:

- A. Carry out the statutory mandate and goals assigned to the Board of Education utilizing personnel, methods and means in the most appropriate and efficient manner possible.
- B. Manage the employees of the Board of Education; to hire, promote, transfer, assign or return employees to positions within the employment of the Board of Education, and in that regard to establish reasonable work rules.

. . . .

2.2 The exercise of the foregoing powers, rights, authority, duties and responsibilities by the Board, the adoption of the policies, rules, regulations and practices in furtherance thereof, and use of judgment and discretion in connection therewith, shall be limited only by the specific and express terms hereof and in conformance with the Constitution and laws of the State of Wisconsin.

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ARTICLE VI - LEAVES

6.1 Professional Improvement.

1/ This arbitration is also pursuant to the terms of the settlement agreement previously reached on the instant grievance.

- A. The Board, upon the recommendation of the Superintendent, may grant a leave to qualified personnel without compensation for the purpose of study toward professional advancement and for such other purposes as may be approved by the Board. Teachers who are in summer sessions and such sessions extend into the precession week may be granted a leave of absence by the Superintendent without loss of salary.
- B. The number of teachers receiving a leave for professional improvement shall not exceed four (4) in any one year.
- C. A teacher on such a leave shall be returned to his/her former position or to one of comparable status. He/she shall make such reports of his/her activities as may be required by the Superintendent.
- D. Teachers may, if they wish, see and discuss their "Evaluation of Professional Success" form with their principals on or before February 15.

6.2 Sabbatical Leave.

- A. Definition. Sabbatical leave is a plan for providing teachers an opportunity for professional improvement with compensation being rendered, after a specified number of consecutive years of employment in this school system or part of their employment in another school district.
- B. Objective. To attempt to improve instruction in the system by stimulating professional growth.
- C. Eligibility
 - 1. A teacher must have served:
 - a. Five years as a staff member of the Sheboygan Area School District or 10 years of teaching experience with at least 3 years within the Sheboygan system - 4/9 of present semester salary.
 - b. Six years as a staff member of the Sheboygan Area School District or 11 years of teaching experience with at least four (4) years within the Sheboygan system - 1/2 of present semester salary.

- c. Seven years as a staff member of the Sheboygan Area School District or 12 years of teaching experience with at least five (5) years within the Sheboygan system - 5/9 of present salary.
2. Must have a minimum of a bachelor's degree.
 3. Application must be filed before the semester that precedes the leave period.
 4. The teacher must be on the experienced staff schedule at the time of application.
 5. If a staff member receives a grant in addition to the sabbatical, the total income shall not exceed the salary the individual would receive if he remained on the instructional staff. It shall be the responsibility of the teacher involved to present to the Superintendent of Schools an affidavit stating the total amount of the grant or grants he/she is receiving in order for the Board of Education to determine the amount of the sabbatical leave compensation.
- D. Quota - A maximum of leaves would not exceed 1% of the professional staff per semester. Leave would be allowed only on a semester basis, but renewable at the discretion of the Board of Education. This allows a total of 2% of the teaching staff to participate during a school year.
- E. Activities
1. Experience must be related to present staff responsibilities.
 2. May be used for professional study, research and/or travel.
- F. Employment - Additional employment while granted leave shall be discouraged and shall be allowed only as it pertains to the teacher's field of study while attending classes or in participating in a research project. The Superintendent shall consent to any such employment.
- G. Obligations
1. The teacher must return to the school system for a period of three (3) years.
 2. A teacher may accept employment elsewhere but would be required to reimburse the Board for the amount invested in him while on sabbatical leave.

The teacher receiving a sabbatical leave of absence shall sign an agreement with the Board of Education. The agreement shall include the provisions as stated in this contract.

H. Guarantees

1. Upon returning from a program taken during sabbatical leave, the teacher shall have the opportunity to return to his/her same position or a similar position in accordance with his/her training and experience.
2. The teacher shall be placed on the salary schedule on the same level that he/she would be on had he/she remained as a member of the instructional staff.
3. Reclassification shall be in accordance with Article V of this Agreement.
4. While on leave, the teacher shall continue to participate in the health insurance group.
5. The teacher's sick leave accumulation shall remain in force and be a part of the record.

I. Reports - As directed by the Superintendent of Schools.

6.3 Leaves Without Compensation.

- A. Personal leave of absence without compensation, may be granted, without precedent, by the teacher's responsible administrator for five school days per school year.
- B. A teacher who wishes a leave of absence beyond five school days per school year for personal reasons, may request such leave in writing to the Director of Personnel Services. The Director of Personnel Services may grant such leave for a reasonable period of time without precedent and providing it in no way causes injury to the program of the position and/or the instruction program.
- C. The conditions under which a teacher may return from an extended leave of absence of one year shall be determined by the Board of Education upon the recommendation of the Superintendent. This should be planned at the time the request is made.
- D. A teacher on extended leave shall be guaranteed no loss of earned sick leave or earned seniority within the layoff procedure and shall have the right to continue in the insurance program at the employee's expense.
- E. The above leave of absence will not be granted for the purpose of working for another employer unless approved by the Board of Education.

6.4 Leaves With Compensation.

- A. Personal leave of absence, with compensation, shall be granted by the individual's responsible administrator for up to six (6) school days per school year for the following reasons:
 1. Marriage of the staff members or member of the immediate family. (2)
 2. Military pre-induction physical. A second day will be allowed if required to complete the examination. (1)
 3. Leave to attend a high school, college, or university graduation of a person in the immediate family. (1)
 4. Religious holidays. (1)
 5. Required appearance in court involving no

moral turpitude on the part of the teacher. (1)

6. Birth (own child) or day of acquiring an adopted child. (1)
7. Death of a parent, grandparent, sibling, children, spouse, spouse's parent and grand-parent, grandchildren, in-laws, nieces and nephews' (sic) and a personal friend. The responsible administrator shall have the authority, based upon information supplied by the teacher requesting leave for the death of a personal friend, to decide if the leave is appropriate. The action of the responsible administrator will be without precedent and not subject to the grievance procedure.
8. Illness in the family: parents, spouse, own children. (3)
9. One additional day of leave per school year may be added to the limits stated in items 1-8 at the discretion of the responsible administrator. This action shall be without precedent and shall not be subject to the grievance procedure.
10. One day may be taken by a full-time employee during the school year as a personal leave day. Such day shall not require explanation. The day used shall be deducted from the employee's sick leave. The employee shall give his or her responsible administrator 24 hours advance notice in writing.

The personal day may not be taken during the first of the week of school, on an inservice day, or immediately before or after a holiday or recess period as defined in the calendar. No more than two (2) employees per school may be granted a personal leave on any given day. In the event that more than two (2) employees request personal leave for the same day at any given school, those employees with greater seniority shall have their request honored.

- B. Requests for leaves with compensation for reasons other than those mentioned above must be submitted in writing to the Director of Personnel Services for consideration and action without precedent. The granting or rejection of such requests shall not be subject to the grievance procedure.

- C. The total of all such emergency leaves with compensation granted by the responsible administrator and/or the Director of Personnel Services shall not exceed six (6) days total in one (1) school year must be made in writing to the Board of Education. The Board's decision shall not be subject to the grievance procedure.
- D. The above leave of absence will not be granted for the purpose of working for another employer.
- E. Teachers shall notify the Director of Personnel Services when they receive initial notification from the court that the teacher is on a panel for jury duty. When called for jury duty, the teacher shall notify the building administrator. Employees who are released for jury duty shall receive full salary during the period of absence, provided the staff member remits to the Department of Business Services an amount equal to the compensation received, excluding payment for expenses, for such services.

6.5 Association Leave Days. The SEA may be permitted to send representatives to various professional and legislative committee meetings dealing with education during the school day. The total number of days for attendance shall not exceed seven (7) per year for the Association. The SEA will pay the salary and fringe benefits of the substitute teacher if a substitute is required. The teacher who requests leave shall make written request to the Director of Personnel Services with a copy given to the teacher's building administrator at least two (2) days prior to the leave. Granting of the leave shall be without precedent and the denial shall not be subject to the grievance procedure.

6.6 Health and Hardship Leaves - With Compensation.

A. Illness, Injury or Pregnancy

- 1. The teacher shall be allowed eleven (11) days per school year with compensation because of personal illness, injury or pregnancy.
- 2. In case the eleven (11) day sick leave benefit is not used in one (1) school year, the balance may be accumulated up to one hundred and ten (110) days. The total shall not exceed one hundred and twenty-one (121) days for any one school year.
- 3. A teacher new to the system must enter upon the execution of his contract and duties with the Board in order to be eligible for sick leave. This does not apply to teachers who have been under contract with the Sheboygan Area School District for the previous school year.
- 4. If any employee exhausts his/her sick leave during a school year and does not return to school at the beginning of the next school year, that teacher shall not have any earned sick leave available until he/she returns to work. The amount of sick leave available to the employee upon his/her return will be prorated in terms of the number of days allowed during the academic year.
- 5. Summer School Staff
 - a. Summer school staff shall be granted one (1) day of sick leave for the summer session.
 - b. Sick leave granted as in (a) above, shall not be accumulated beyond the

summer session.

ARTICLE VII - GRIEVANCE PROCEDURE

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D. Step Four - Arbitration

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3. The expenses of the arbitration, including arbitrator's fees, shall be divided equally between the Board and the Association.

The arbitrator shall have no power or authority to add to, disregard, subtract from, or modify any of the terms of this Agreement or any amendments hereto, or to establish or change any wage or wage structure, nor to change the structure of a classification, nor to interpret an administrator's evaluation of a teacher or guidance counselor.

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5. In rendering a decision, an arbitrator shall give due regard to the responsibility of management and shall so construe the Agreement that there will be no inter-ference with such responsibilities, except as they may be specifically conditioned by this Agreement.

ARTICLE VIII - TERM OF AGREEMENT

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8.4 This Agreement reached as a result of collective bargaining the current contract term, whether or not referred to in this Agreement, shall not be open for negotiations except as otherwise provided herein, or as otherwise mutually agreed by the parties. All terms and conditions of employment not covered by this Agreement shall continue to be subject to the Board's direction and control, provided, (sic) however, that the bargaining agent shall be notified in advance of any changes having substantial impact on the bargaining unit, given the reason for such change, and provided an opportunity to discuss the matter.

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BACKGROUND

The Grievant, Dorothy Burhop, is employed as a teacher by the District in a bargaining unit represented by the Association. The Grievant requested, under Section 6.2 of the Agreement, Sabbatical Leave, to take sabbatical leave for the 1988-89 school year and her request was approved by the District's Board of Education, hereinafter the Board, on January 19, 1988. Under the parties' Agreement sabbatical leave is compensated at a fraction of the teacher's present salary, with the fraction determined by the length of the teacher's teaching experience, and the teacher is guaranteed the right to return to the same or similar position with the District and continues to participate in the health insurance group.

In considering the budget for the 1988-89 school year, the Board directed that the budget not be increased by more than 5% for the 1988-89 school year, which was 1.67% below the budget recommended by the District's administration.

In an attempt to develop a budget within the Board's guidelines the District's Superintendent, in addition to other cost saving measures, recommended to the Board that no employes, teachers or administrators, be authorized to take sabbatical leave for the 1988-89 school year.

On March 16, 1988 the Board approved the Superintendent's recommendation and revoked its authorization of the Grievant's sabbatical leave. The revocation was grieved and the matter was processed to arbitration; however, the parties settled the grievance at the hearing on July 19, 1988 by entering into the following agreement that stated in relevant part:

The undersigned, being duly authorized representatives and/or agents for the indicated parties hereto, agree that the following terms represent the settlement of the grievance of Ms. Dorothy Burhop, relating to sabbatical leave and identified as WERC Case 82 No. 40620 Ma-5125:

1. Ms. Dorothy Burhop will submit, to the Board of Education, an application to enter upon sabbatical leave for the 1989-90 school year. The Board of Education will approve the sabbatical leave subject to revocation on or before January 20, 1989.
2. If the Board of Education revokes its authorization of a sabbatical leave for Ms. Burhop for the 1989-90 school year; the parties will immediately submit to arbitration, under the terms of a final step of the grievance procedure, a grievance filed by Ms. Burhop objecting to the revocation decision of the Board of Education. The parties agree to cooperate in taking all steps necessary to expedite the decision of the arbitrator.
3. If the decision of the Board of Education to approve the sabbatical leave is not revoked on or before January 20, 1989, Ms. Burhop will enter upon a sabbatical leave for the 1989-90 school year, subject to all of the terms and conditions which have customarily been applied to sabbatical leave.
4. The grievance, identified as WERC Case 82 No. 40620 MA-5125 is withdrawn without prejudice, consistent with the terms set forth herein.
5. The terms of this settlement shall not be considered as precedent or as establishing the terms of a past practice between the parties, in future cases, if any, of a similar or identical character.

On August 10, 1988 the Grievant was informed that her request for sabbatical leave for the 1989-90 school year had been approved by the Board. In developing the District's budget for the 1989-90 school year the Board decided to again deny all requests for sabbatical leave and on November 16, 1988, revoked its approval of the Grievant's request for sabbatical leave for the 1989-90 school year. That revocation resulted in the instant grievance and the parties proceeded to arbitration, per the terms of the settlement agreement, before the undersigned.

POSITIONS OF THE PARTIES

Association:

The Association takes the position that the primary issue here is whether the District has the discretion to deny requests for sabbatical leave for reasons other than those stated in Section 6.2 of the Agreement, and contends that, assuming the eligibility requirements are met, the District does not have such discretion.

In support of its position the Association first asserts that Section 6.2, Sabbatical Leave, of the Agreement, is clear and unambiguous and covers all of the contingencies as to the granting of sabbatical leaves. There are no ambi-guities or contradictions in that provision. The Association contends that Section 6.2 obligates the District as follows:

1. To grant sabbatical leave requests (up to a maximum of 1% of the total staff per semester and 2% of the total staff per school year) to staff members if such staff members met the eligibility requirements contained in Section 6.2.C. and if such staff met the "activity" requirements contained in Section 6.2.H.
2. To implement certain guarantees to staff members when they return from leave as outlined in Section 6.2.H.

There is nothing in the provision that grants the District the right to deny such leaves on the basis of budgetary constraints or a desire to direct funds to other areas, or for any reason not stated in Section 6.2,H. There is no dispute in this case that the Grievant met the eligibility and activity requirements of the provision and that her application fell within the quota limitation.

As to an argument that Section 6.1 modifies Section 6.2, the Association contends each of the six sections of Article VI, Leaves, deal with separate types of leave, and that there is nothing in any of those sections that even suggests that they are interconnected or that Section 6.1 modifies any of the other sections. Moreover, Section 6.1 deals with unpaid leaves, while Section 6.2 deals with paid sabbatical leave.

Third, the Association concedes that the District has the discretion to deny requests for sabbatical leave if the eligibility requirements or other requirements in Section 6.2 are not met and that the District has exercised that discretion in the past. The evidence shows that in the past:

- (1) several people were granted requests but were later released from such requests, (2) several requests were not immediately granted because the District was contemplating laying those people off, (3) one person's request was denied because her request was untimely and (4) one person's request was denied because he wanted to do studies in a field other than his present educational responsibility.

The validity of those denials is not contested; however, the District's discretion to deny a request for sabbatical leave is limited and must fall within the parameters of Section 6.2, and does not extend to reasons outside that section. Thus, the District exceeded its authority by denying the Grievant's request on the basis of budgetary restraints. Further, while the District presented evidence as to other educational options available to the Grievant, there is no basis in Section 6.2 for denying a request on that basis.

The Association also asserts that the District did not assert that basis for denying the request prior to the arbitration hearing.

Next, the Association contends that although it is unnecessary to look beyond the language of 6.2, the parties' bargaining history also demonstrates that they did not intend that the District have total discretion over the granting of requests for sabbatical leave. The record shows that Section 6.2 has been in existence since the parties' first labor agreement and that the District has attempted several times to remove the clause in bargaining. In one instance the District delayed granting requests for sabbatical leave pending the outcome of negotiations, and then granted the requests after being unsuccessful in bargaining the deletion of the clause. Also, the District's claim that it has total discretion did not arise until the denial of the Grievant's request.

The Association also asserts that past practice supports its position. Up until the 1987-1988 school year the District approved at least one request, and usually more, for sabbatical leave each year. How many requests were granted is irrelevant as the District did not claim to deny the request on the basis that it would exceed the 1% or 2% quotas. It is claimed that the District presented no evidence to establish that such requests had been denied in the past for budgetary reasons or that the past practice was modified with the Association's acquiescence. The deferral of requests where a teacher was potentially to be laid off does not establish a past practice contrary to the Association's position, as it would be clearly inappropriate to grant a request under such circumstances.

Lastly, the Association asserts that the District's claim that it did not act arbitrarily or capriciously in denying the Grievant's request is irrelevant. The District is attempting to establish a new standard that is not now a part of Section 6.2. Moreover, the District has claimed that it has the "complete authority" over whether to deny the Grievant's request. If it is determined that the District does not have complete authority, but must follow the standards in Section 6.2, an arbitrary or capricious test also would not apply. It is asserted that the District's blanket denial and failure to budget any monies for sabbatical leaves are consistent with its claim of complete authority. While that action probably would not meet an arbitrary or capricious test, such a test would not be required if the District had the complete control it claims. The Association also contends the imposition of such a test as a compromise would be improper on the basis that this would exceed the arbitrator's authority.

On the basis of the above, the Association requests that the District be directed to grant the Grievant's request for sabbatical leave for the 1989-1990 school year.

DISTRICT

The District takes the position that the Board acted within its authority in denying the Grievant's requests for sabbatical leave and makes a number of arguments in support of that position.

First, the District contends that in the absence of a clear contractual limitation of its authority, the granting or denial of requests for leaves of absence is a prerogative of management, and that management's judgement in that regard should not be questioned so long as the action taken is not unreasonable or discriminatory. The District cites Section 2.1, A. and B., of the parties' Agreement which provides:

2.1 Nothing in this Agreement shall interfere with the right of the Employer in accordance with applicable laws, rules and regulations to:

- A. Carry out the statutory mandate and goals assigned to the Board of Education utilizing personnel, methods and means in the most appropriate and efficient manner possible.
- B. Manage the employees of the Board of Education; to hire, promote, transfer, assign or return employees to positions within the employment of the Board of Education, and in that regard to establish reasonable work rules.

The District cites arbitral precedents for the proposition that the granting or denial of leaves of absence is matter within management's discretion under the "managements rights" clause and that the Union has the burden of establishing that the decision was unreasonable, arbitrary or capricious. Section 6.2, Sabbatical Leave, does not clearly and specifically provide that employes are entitled to take sabbatical leave as a matter of right. This is in contrast to Section 6.4, Leaves With Compensation, which expressly provides that such leave "shall be granted" for the specified reasons. While Section 6.2, H., details five guarantees, the entitlement to take sabbatical leave is not among them. If such a guarantee had been intended, it could have been included in that section, but it was not. Section 6.2, D., establishes the maximum number of sabbatical leaves that may be taken in an academic year, and does not prescribe a minimum number of leaves that must be granted. The wording of this section supports that interpretation and there was no evidence presented that shows the Board ever granted sabbatical leave requests on the basis of the maximum number. There is no evidence as to how the Board selected the employes to be granted leaves when the number of applicants exceeded the maximums. If it were only a matter of applying the quotas, there would be no need to follow the existing procedure of applying to the Board for sabbatical leave and the Board rendering a specific decision on the request.

The District also cites Section 6.2, D., which provides in part:

Leave would be allowed only on a semester basis, but renewable at the discretion of the Board of Education.

That language clearly recognizes the Board's authority to approve requests for sabbatical leave that exceed one semester at its discretion. The overwhelming majority of requests for sabbatical leave are for an entire academic year, but there are some for a semester. The requests are "compelling evidence" of the employes' and the Association's acquiescence in the Board's authority to approve all requests, whether for one or two semesters. If that were not the case, employes would have requested renewal of their sabbatical leave after merely submitting notice of their intent to take such leave for the first semester. This has not happened, rather, every employe who has sought to take sabbatical leave has requested prior approval from the Board, whether the request was for a semester or a full academic year. This practice would be unnecessary under the Association's interpretation. The evidence shows, however, that the procedure for at least twenty-two years has been for the employe to submit his/her request for sabbatical leave to the Director of Personnel Services, who in turn takes the request to the Superintendent. Together they make a joint recommendation on the request for submission to the Board. This procedure has always been followed and there have been requests denied under the procedure.

The District disputes any claim that Section 6.2, E., Activities, prescribes the exclusive basis for approving or rejecting requests for sabbatical leave. Section 6.2, E., must be read in conjunction with Section 6.2, A., Definition, and describes what an appropriate plan for sabbatical leave will encompass. That section is not intended as a limitation on the Board's discretion. While the Board may not have previously denied a request for budgetary reasons, that does not create a specific contractual limitation.

The District asserts that in this case the Grievant's request for sabbatical leave for the 1988-89 school year was denied for budgetary reasons and, thus, its decision was not unreasonable, arbitrary or capricious. It is contended that the District is not required to conclusively prove inability to pay for the requested sabbatical leave, rather, it must only establish it had a legitimate, non-arbitrary reason to deny the request. The evidence establishes that the fiscal and budgetary situation in the District in 1988 was worse than the five years previously and that in the course of reducing the budget increase to 5% for 1988-89, the administration examined all District programs to identify reductions that would cause a minimum of disruption in programs. In view of the number of programs of direct benefit to the students that were reduced or eliminated in order to reduce the budget, the Grievant's sabbatical leave is far less important in comparison. Therefore, the Board had a legitimate reason for denying the Grievant's request for 1988-89. The Board cannot be deemed to be required by the Agreement to value sabbatical leave over the programs that were reduced or eliminated.

The District also contends that the Board made its decision to deny all previously approved requests for sabbatical leave for the 1988-89 academic year and applied that determination to all of the applicants, whether they were in the bargaining unit or were administrators. Therefore, the Board's action in denying the Grievant's request was not discriminatory and should be left undisturbed.

The District's second major argument is that Section 7.5, D., 5., of the Agreement requires that, in rendering a decision, the Arbitrator must give "due regard" to the Board's responsibility to manage the District, and should construe the Agreement so as not to interfere with those responsibilities except as they are specifically conditioned by the Agreement. In carrying out

its responsibility the Board determined that the significant amount of money that otherwise would be spent on sabbatical leaves was better spent on programs that directly related to educating the students. There being no provision of the Agreement that requires the Board to grant requests for sabbatical leave, and given the provision requiring that due regard be given to the Board's responsibilities, the Arbitrator is compelled to defer to the Board's decision.

Third, the District disputes that the denial of the Grievant's request for sabbatical leave denies her the ability to complete her Master's Degree program. There are outreach programs offered by several universities that are readily accessible to the Grievant. The Grievant testified that she had not checked to see if some of the needed courses were offered in summer session or in the evenings or if other colleges offered them.

Fourth, the District denies that it is attempting to gain through arbitration what it could not obtain through bargaining. The Board's proposal to eliminate sabbatical leave arose from an incident involving a voc-ed teacher granted sabbatical leave to earn work experience credits and the teacher using the leave to build his own home. Board members were criticized for this and the proposal to eliminate sabbatical leave was made for the purpose of conveying a message to the Association without a reasonable expectation of reaching an agreement on it. Once the message was conveyed, and recognizing the Board's discretion under the existing provision, the proposal was withdrawn. The unsuccessful proposal does not compel a conclusion that the discretion does not already exist in the Agreement. Under the Agreement, the Board may not eliminate sabbatical leave, rather, its decision to grant or deny such leave may not be unreasonable, arbitrary or discriminatory. Further, it should be noted that the cover sheet to the Board's proposals stated that none of the proposals were to be construed as precedent or to the prejudice of existing practices of the Board.

Although asserting there has been no violation, the District contends that if a violation is found, the remedy should not exceed granting one semester of sabbatical leave for the 1990-91 academic year. Section 6.2, D., is clear that any extension beyond one semester is at the Board's discretion and the Board has determined not to exercise that discretion in the Grievant's favor. The Board has not budgeted funds for sabbatical leaves for the 1989-90 academic year and the Superintendent testified that it would be impractical for a faculty member to schedule sabbatical leave after the July preceding the school year in which the leave is to occur.

DISCUSSION

Essentially the District argues that pursuant to the Board Functions provision and absent an express limitation on its authority, the Board has the discretion to deny or approve requests for sabbatical leave subject only to the test that its action not be unreasonable, arbitrary, capricious or discriminatory. For the following reasons the District's position is rejected.

First, a review of the various sections of Article VI, Leaves, indicates that the absence of such words as "shall be granted" in Section 6.2, Sabbatical Leave, does not necessarily lead to the conclusion that the Board possesses the discretion to grant or deny requests for such leave. While Section 6.4, Leaves With Compensation, and Section 6.6, Health and Hardship Leaves - With Compensation, expressly state that those leaves "shall be granted," Section 6.1, Professional Improvement, and Section 6.3, Leaves Without Compensation, expressly provide that those leaves "may be granted." Just as the word "shall" has generally been construed to be mandatory, the word "may" has generally been interpreted as being discretionary. Section 6.2 is silent to the extent that it does not expressly state that sabbatical leave either "shall" or "may" be granted. If, however, such silence was intended to connote that the Board has discretion, then it would be unnecessary to state in Sections 6.1 and 6.3 that those types of leave "may" be granted. Thus, the absence of an express statement in Section 6.2 that sabbatical leave "shall be granted" is not determinative.

Secondly, a review of the subsections of Section 6.2 indicates that, rather than giving the Board discretion to grant or deny sabbatical leave for any legitimate reason, there are certain built-in protections to avoid abuse or excessive use of the leave provision. Subsection 6.2, C., Eligibility, sets forth the requirements that must be met in order to be eligible for sabbatical leave. Subsection 6.2, D., Quota, sets the maximum number of leaves that will be granted per semester, i.e., 1% of the professional staff. That provision does not set a minimum number of leaves that must be granted and taken per semester or per year, rather, it provides a built-in protection for the District from its being used excessively by the staff, protecting the District from both the inconvenience of having to seek numerous replacements and an excessive financial burden. These express protections militate against a finding that the Board has discretion, as they would not be necessary if the District had the authority to deny sabbatical leave applications for any legitimate reason. Third, and perhaps more importantly, Subsection 6.2, D., provides, in part, that "Leave would be allowed only on a semester basis, but renewable at the discretion of the Board of Education." If the Board has discretion in approving sabbatical leave, it renders unnecessary the wording

stating that the Board has discretion as to whether to renew the leave for a second semester. It is a principle of contract construction that if the parties used a word, they intended it to have meaning, and, therefore, an interpretation that would render a part of the contract meaningless is to be avoided if the wording can be given a reasonable meaning consistent with the rest of the agreement. 2/ The construction of Section 6.2 that employees are entitled to take sabbatical leave for a semester if they meet the stated eligibility requirements and the number of eligible employees is within the quota, but that the renewal of such leave for a second semester is within the Board's discretion to grant or deny, gives meaning and purpose to all of the wording and avoids making the above quoted wording in subsection 6.2, D. a meaningless redundancy.

The consistent practice in the past of employees submitting requests for sabbatical leave, be it for a full school year or one semester, is not inconsistent with the above construction of Section 6.2. Subsection 6.2, C., 3., requires that an employee file his/her "application ... before the semester that precedes the leave period." The provision requires that application be made and it also must necessarily be determined whether the requesting employee meets the eligibility requirements, and whether the number of requesting employees falls within the quota allowed. There is also the practical need for advance notice so that the necessary arrangements can be made. Thus, there are recognized purposes for submitting a request and an express requirement that it be done in a timely manner, that are consistent with the above construction. Further, the fact that the Board has disapproved requests for sabbatical leave in the past is not dispositive, nor is it inconsistent with the above construction of Section 6.2. The record indicates that the requests were denied on the basis that the request was untimely or that the area of study was not appropriate, i.e., they did not meet the eligibility requirements. In another instance where a request was denied, the requesting teacher was potentially to be laid off, and when it was determined he would not be laid off, his request was approved.

The Arbitrator recognizes the Board's responsibility to manage the District and to make decisions as to whether and how District funds are to be spent; however, the parties have negotiated a sabbatical leave provision into their labor agreement. As noted previously, that provision, Section 6.2, is unlike the other provisions of Article VI in that it does not state that such leave "may" or "shall" be granted; however, it does contain specific eligibility requirements that must be met and the quota provision limits the financial impact of such leave. In other words, the Board exercised its responsibility when it negotiated the provision with those restrictions and continues to do so when it determines whether the employee requesting sabbatical leave meets the eligibility requirements.

In this case it is undisputed that the Grievant met all of the eligibility requirements and that the quota would not be exceeded. Therefore, based upon the foregoing, it is concluded that the District violated the parties' Agreement when it denied the Grievant's request for sabbatical leave for the 1988-89 school year. It is, however, further concluded that Subsection 6.2, D. of the Agreement limits the taking of leave to a semester basis and places the renewal of sabbatical leave for a second semester at the Board's discretion. Therefore, as to remedy, the Arbitrator is limited by the Agreement to requiring that the Board approve the Grievant's request only as to one semester. Pursuant to Subsection 6.2, D., the Grievant must seek the Board's approval of her request that the leave be renewed for the second semester. The Grievant made her second request for sabbatical leave for the 1989-90 school year pursuant to the parties' settlement agreement; however, due to the passage of time, the Grievant is to have the option of taking the leave in that school year or waiting till the 1990-91 school year. While the District's good faith is not questioned, the fact that the District has not budgeted monies for sabbatical leave does not relieve it of its obligation to comply with the parties' Agreement, and is not a defense to complying with particular contractual requirements. If it were recognized as such, the Board could avoid its contractual obligations simply by budgeting the monies elsewhere.

Based upon the above and foregoing, the record, and the arguments of the parties, the undersigned makes and issues the following

AWARD

The grievance is sustained. The District is directed to approve the Grievant's request for sabbatical leave at least as to one semester with the Grievant having the option of taking the leave in either the 1989-90 school year or the 1990-91 school year and she may seek the Board's approval of having the leave renewed for a second semester as pursuant to Section 6.2 D., of the Agreement.

2/ Elkouri and Elkouri, How Arbitration Works, 3rd ed., pp. 308-09.

Dated at Madison, Wisconsin this 20th day of July, 1989.

By _____
David E. Shaw, Arbitrator