

BEFORE THE ARBITRATOR

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 In the Matter of the Arbitration :
 of a Dispute Between :
 :
 MATC TEACHERS' UNION LOCAL 243, :
 WFT/AFT, AFL-CIO :
 :
 and : Case 71
 : No. 41932
 : MA-5507
 MADISON AREA TECHNICAL COLLEGE :
 :

Appearances:

Mr. Steve Kowalsky, Staff Representative, Wisconsin Federation of Teachers, appearing on behalf of the Union.
 Mulcahy & Wherry, S.C., Attorneys at Law, by Mr. Jon Anderson, appearing on behalf of the Employer.

ARBITRATION AWARD

The above-captioned parties, hereinafter the Union and College or Employer respectively, were signatories to a collective bargaining agreement providing for final and binding arbitration of grievances. Pursuant to a request for arbitration, the Wisconsin Employment Relations Commission appointed the under-signed to hear a grievance. A hearing was held on November 6, 1989 in Madison, Wisconsin. The hearing was not transcribed and the parties filed briefs which were received by January 12, 1990. Based on the entire record, the undersigned issues the following award.

ISSUE

The parties were unable to agree upon the issue and requested the arbitrator to frame it in his award. 1/ The arbitrator hereby adopts the Employer's suggested framing of the issue as his own.

PERTINENT CONTRACT PROVISIONS

The parties' 1987-89 collective bargaining agreement contained the following pertinent provisions:

PREAMBLE

. . . This agreement that is entered into shall supersede and cancel all previous agreements, verbal or written or based on alleged practices between the parties. Any amendment or agreement supplemental thereto shall not be binding upon either party unless executed in writing by both parties.

. . .

ARTICLE VIII

LEAVES OF ABSENCE

. . .

Section G-Sabbatical Leave

1. Sabbatical leave may be granted after six (6) years of continuous teaching within Area Vocational, Technical and Adult Education District No. 4.
2. No more than two percent (2%) of the teachers in Area Vocational, Technical and Adult Education District

1/ The Union states the issue as:

Did the District violate the collective bargaining agreement when it unilaterally cut off funds for sabbatical leave for school year 1988-89? If so, what is the remedy?

While the Employer states the issue as:

1. Did the Board violate Article VIII, G of the labor agreement when it did not include within its budget specific funds earmarked for sabbatical leaves for school year 1988-89?
2. If so, what is the appropriate remedy?

- No. 4 shall be absent on sabbatical leave at any one time.
3. Requests for sabbatical leave are to be made in writing to the District Director before March 1 of the school year preceding the school year for which the leave is sought.
 4. Such leave shall be granted for the purpose of study, foreign teaching or other approved reasons for a period not to exceed one year at full salary for the first semester and 70% salary for the second semester; all fringe benefits with continuing seniority shall accrue.
 5. The teacher shall remain in the employ of the District for a period of one year following his/her return from sabbatical leave, or reimburse the District for funds received while on leave.
 6. Such leave shall be subject to the following financial arrangements:
 - a. If leave is granted for a full school year of ten (10) months, the teacher shall be paid at the rate of 100% of salary for the first semester; 70% of salary for the second semester based on his/her current salary as of the date such leave begins. The amount shall be paid in equal bi-weekly installments during the period of the leave.
 - b. If such leave is granted for a semester, payment of 100% shall be prorated.
 - c. No sabbatical leave shall be granted for less than a full semester.
 - d. All such leaves shall be approved by the Board.
 7. In the event that a teacher has a specific grant which will afford him/her some financial aid, the Board and the Union will adjust the special circumstances within the meaning of Section G.

FACTS

Sabbatical leaves have been granted by the Employer since at least 1970. Prior to 1984, such leaves were directly approved or denied by the MATC Board. In 1984, following discussions with the Union, the Board created a committee known as the Professional Improvement Committee to deal with requests for sabbatical leaves. This committee's mission was detailed in the following resolution passed by the Board:

That a new committee be formed which would include two board members, two administrators, and two instructional staff members which would receive proposals starting as of July 1, 1984. These proposals would focus primarily on high technology and computerized instruction. The committee would have \$150,000 to allocate (\$100,000 curriculum development for 1984-85 plus \$50,000 cut from the 1983-84 allocation). In carrying out the intent of pursuing a high technology objective, the staff member would (a) do curriculum work, (b) participate in an occupational competency project, not to exceed two weeks, (c) attend relevant seminars, etc., (d) one-semester sabbaticals. Seventy-five thousand dollars would be utilized each semester. The sole objective would be to upgrade the instructional program of the District.

This committee thereafter reviewed sabbatical leave requests on a case-by-case basis and approved some and denied some.

Three requests for sabbaticals were made to the Professional Improvement Committee for leave to commence in 1988-89 but none were granted. Two of them (Victor Johnson's and Ken Kowalski's) were denied on their merits. The third, Marilyn Carien's, was initially turned down because of its length. Carien resubmitted her request and was notified in August, 1988 that her request for sabbatical would not be considered by the Professional Improvement Committee because funds for the 1988-89 school year had been denied. No grievances were filed concerning the denial of these sabbatical leave requests.

Expenditures for sabbatical leaves were earmarked and identified as such in College budgets from 1984 through 1987. In the 1984-85 budget, \$68,634 was allocated for sabbatical leaves; in the 1985-86 budget, \$63,250 was allocated for sabbatical leaves; in the 1986-87 budget, \$20,958 was allocated for sabbatical leaves; and in the 1987-88 budget, \$48,800 was allocated for sabbatical leaves. These budgets also included funds earmarked for other types of professional development, such as "seminars, workshops, conferences, etc."

In developing the 1988-89 school year budget, the MATC Board decided to not earmark or budget specific funds for sabbatical leaves or other forms of professional development as had been the case in previous years. The Board eliminated the line items for professional development (i.e. those three items

identified in the 1987-88 school year budget as "sabbatical leaves," "seminars, workshops, conferences, etc." and "MATC classes taken by staff members") and transferred those funds into individual departmental budgets under the control of department heads. As a practical matter, this action also eliminated the Professional Improvement Committee. The Board's rationale in doing so was that it felt that division/department heads would be more knowledgeable than a committee of staff and board members in determining the value of various conferences, etc., requested by staff. In addition, the Board decided to spread monies around to a wider number of staff members than to tie up funds in sabbatical leave for a few staff members.

The Union grieved this action in the following letter dated September 16, 1988:

At the September meeting of the District 4 Area Board members of the Board's Personnel & Finance Committee made statements to the effect that sabbatical leave funds have been totally removed from this year's budget.

The Teachers' Union grieves this action. Arbitrary removal of sabbatical leaves by the Board of Administration constitutes unilateral cancelling of one of the provisions of the contract.

As a remedy, the Union asks reinstatement of sabbatical leave funds to a degree that the intent of the contract clause is fulfilled. (See Article 8, Section G, pp 42-43)

. . .

The College denied the grievance in the following letter dated December 19, 1988:

. . . the Board determined that the agreement was not violated and, therefore, voted to deny the grievance.

The Board does share your concern relative to professional improvement opportunities for staff. In taking the action to deny this grievance, the Board wants the teachers' union to know that they have not cancelled any contract language relative to sabbatical leave.

The reasoning of the Board is as follows:

- 1.The budget is a plan of anticipated expenditures by the College for a defined period of time. Experience would indicate that the budget itself is flexible and has changed over time.
- 2.Statements made by the members of the Board's Finance & Personnel Committee concerning the allocation of money within the budget are not subject to the grievance procedure. This is especially true where the contract itself does not prescribe that a certain amount of money must be budgeted for sabbatical leaves.
- 3.The language of the collective bargaining agreement clearly indicates that sabbatical leaves must be approved by the Board and such leaves are discretionary with the Board.

While the budget itself does not contain a specific line item for sabbatical leaves, that does not mean that requests for sabbatical leaves will not be considered. The Board shared with you its commitment to professional improvement of its staff as well as its philosophy to utilize available resources to the maximum extent appropriate as determined by the Board. Its action in not including a specific line item for sabbatical leave within the budget at this time is not a violation of the labor agreement.

The matter was ultimately appealed to arbitration.

POSITIONS OF THE PARTIES

The Union contends that although the Employer is contractually obligated to offer sabbatical leaves under the terms of the collective bargaining agreement, it has, in essence, refused to offer them by eliminating their funding. In this regard, the Union notes that the Employer has historically granted one to five sabbaticals per year. In the 1988-89 school year though, one teacher (Marilyn Carien) was not granted a sabbatical leave based solely on

the District's refusal to fund. According to the Union, this removal of funds to pay for sabbaticals by the Employer has made the sabbatical leave clause meaningless and without value. The Union submits that the parties' intent in interpreting the sabbatical leave clause can be found in their past practice concerning same. In this regard, the Union asserts the parties made a deal in 1984 concerning sabbatical leaves when the Professional Improvement Committee was created. As part of this deal, the Union contends it was assured that sabbaticals would be offered and that one to three sabbaticals per school year would be allowed (by the Professional Improvement Committee). In the Union's view, the Employer's deviation from the terms of this 1984 agreement and its unilateral cancelling of funds for sabbaticals constitutes a violation of the contract. As a remedy for the alleged contractual violation, the Union requests the following action: 1) an order to the District to cease and desist from eliminating sabbatical leaves; 2) back sabbatical pay to Marilyn Carien and any other affected teacher; and 3) restoration of sabbatical leave funds.

The Employer's position is that the Union's grievance misses the mark and should be denied for the following reasons. First, the Employer believes the contract clearly provides that sabbatical leaves are discretionary with the Board. In this regard, the Employer contends that the contract does not guarantee any specific number of sabbatical leaves, nor are any funds guaranteed for such leaves. Thus, in the Employer's view the Board's authority to determine its priority in regard to staff development (via sabbatical leaves) is not limited by the labor agreement. Second, it is the Employer's position that it has not unilaterally cancelled any contractual provisions, and specifically the sabbatical leave provision, by its actions here. The Employer believes that the contract language continues in full force and provides a vehicle for the granting of sabbatical leave requests in future years. Next, the Employer argues that since the contract language is clear and unambiguous, there is no need to look outside the contract. According to the Employer, the Union's attempt to establish a practice of granting sabbatical leaves is not persuasive and should therefore not be dispositive in resolving this grievance.

The Employer further contends in this regard that the Union's reference to the alleged 1984 agreement on sabbatical leaves is unavailing because all prior agreements, including that one, have been merged into the existing labor agreement. Finally, in the event the arbitrator accepts the Union's arguments herein, the Employer asserts that the various remedial requests of the Union are inappropriate. In this regard the Employer expressly objects to the Union's proposed remedy of restoring leave funds and granting sabbatical leaves to individual members of the bargaining unit; in its view, the arbitrator lacks contractual authority to grant the former and the latter, (i.e. granting a specific sabbatical leave) is beyond the scope of the instant grievance. The Employer therefore requests that the grievance be denied.

DISCUSSION

The central issue presented here is whether the Employer violated the labor agreement by not budgeting monies for sabbatical leave. The Union contends that it did while the Employer disputes this assertion.

What happened here can be summarized as follows. Prior to 1984, all requests for sabbatical leave were reviewed and acted upon by a Board committee. In 1984, after discussion with the Union, a joint employer-employee committee, known as the Professional Improvement Committee, was created to deal with sabbatical leave requests. For the next four years, that committee reviewed requests for sabbatical leave on a case by case basis. During that time, funds for sabbatical leaves and other forms of professional development (such as seminars, workshops and conferences) were specifically earmarked in the budget. Effective with the 1988-89 school year budget though, the Board eliminated the Professional Improvement Committee and did not provide any express funding for sabbatical leave or other forms of professional development.

In deciding whether this violated the labor agreement, attention is focused first on the language of the sabbatical leave clause itself (Article VIII, Section G). This clause provides that sabbatical leaves are available to bargaining unit employees but subjects their availability to certain limitations and preconditions, the most significant being, for purposes of this discussion, Section 1 which provides "sabbatical leave may be granted . . ." (emphasis added) and Section 6, D which provides "all such leaves shall be approved by the Board." The word "may", as used in Section 1, does not guarantee that a particular event will occur (in this case, the granting of sabbatical leave); instead, there is simply a possibility it will occur. Reading the word "may" in Section 1 in conjunction with the requirement in Section 6, D that all such leaves be approved by the Board, it is clear that the Employer has discretion in granting or denying approval for sabbatical leave. Thus, the Employer is not contractually required to grant such leaves. The only contractual limitation on the Employer's discretion regarding sabbatical leaves is that Section 2 places a limitation on the maximum number of staff members that can be on sabbatical leave at any one time (i.e. "no more than two percent of the teachers").

The fact that the Employer has broad discretion in granting or denying approval for sabbaticals does not make the provision meaningless. To the

contrary, it continues to provide employes with a mechanism for the granting of sabbatical leave requests in future years, albeit at the Employer's discretion.

This is no different though from other situations wherein management has discretion in granting a benefit (such as personal day language found in many labor contracts which require prior approval by management). Moreover, if a sabbatical leave request is denied for arbitrary reasons, the applicant can seek redress via the grievance procedure.

Having made that last point, it is specifically noted that although the Union seeks a remedy herein for particular individuals who were denied sabbatical leaves (namely Marilyn Carien and other affected teachers), those individuals did not grieve their denial of sabbatical leave. Likewise, the instant grievance is not individual specific. That being so, the question of whether Carien or any other individual was denied sabbatical leave for arbitrary reasons is simply not before the undersigned.

What is before the undersigned is whether the District has to appropriate monies for sabbatical leaves. If it does, then the College violated the contract because employers are obligated to fund those contractual provisions which, by their terms, require same. Were it otherwise, an employer could make a contractual commitment to pay a particular benefit and then evade same by refusing to fund it. However, such is not the case here because there is no contractual requirement in the sabbatical leave clause that the District fund a certain level of sabbaticals. Contrary to the Union's argument in this regard, Section 2 of the sabbatical leave clause does not set the standard for how many sabbaticals are to be offered in a given year. Instead, as previously noted, that provision only places a limit on the maximum number of staff members that can be on sabbatical leave at any one time. Since the contract does not guarantee any level of funds for sabbaticals in any particular school term, it follows that the Employer does not have to budget specific funds for sabbatical leaves. The College therefore retains authority to determine the amounts it includes within its budget and what priority it gives to staff development (in this case, sabbatical leaves). Accordingly, the Employer's actions herein in not listing funds in the budget for sabbatical leave for the 1988-89 school year did not violate the contract. 2/

Having so found, the Union nevertheless contends that the District has what it characterized as a "historic obligation" to fund sabbaticals. According to the Union, a deal was reached between the parties in 1984 concerning sabbatical leaves which contained the following elements: 1) control of the sabbatical leave clause was transferred to the Professional Improvement Committee; 2) this committee, in place of the Board, would be allowed to grant one to three sabbaticals per school year based on the merits; and 3) that sabbaticals would be offered in the future. In the Union's view, the Board's elimination of the Professional Improvement Committee and its funding for sabbatical leaves violated this agreement.

There are several problems with this contention. First and foremost is that the existing sabbatical leave language controls here; not the 1984 agreement. In this regard it is noted that the Preamble to the parties' labor agreement provides: "This agreement that is entered into shall supersede and cancel all previous agreements, verbal or written or based on alleged practices between the parties." With this language the parties have contractually agreed that parole evidence will not be allowed to change or vary the contract language and that is exactly what the Union is trying to do here. Accordingly, the 1984 agreement is not dispositive; rather the contract language is. Second, even if the above-noted assurances regarding sabbaticals were given to the Union in 1984, they were not incorporated into the existing contract language. For example, nothing is mentioned in the sabbatical leave clause about control over sabbaticals being transferred from the Board to the Professional Improvement Committee as alleged by the Union. In fact, the Professional Improvement Committee is not even mentioned in the clause. The same is true of the Union's assertion that the Employer agreed to grant one to three sabbaticals per year. Simply put, there is no guarantee in the sabbatical leave clause that a set number of sabbaticals (such as one to three) will be granted per year. Said another way, the contract does not contain a guaranteed minimum participation level for sabbaticals. Finally, with regard to the Union's contention that the Board allegedly promised to offer sabbaticals in the future, it is noted that no contract language exist which expressly guarantees future sabbaticals. Instead, as previously noted, the contract language gives the Board full discretion to grant or deny sabbatical leave requests.

A final remaining point concerns the District's defacto elimination of the Professional Improvement Committee. While that committee was created to review sabbatical leave requests, the Board never ceded ultimate authority over same to that committee but instead retained it for itself. Moreover, as noted

2/ In reaching this conclusion, no weight has been given to the Union's bargaining proposal to modify the sabbatical leave clause in the successor labor agreement because that bargaining proposal was made after the instant grievance arose.

above, there is no mention of the Professional Improvement Committee in the sabbatical leave clause. That being the case, its elimination cannot be said to be a contractual violation.

In sum then, it is held that no violation of the labor agreement occurred when the Employer did not budget monies for sabbatical leave because that benefit (i.e. sabbatical leave) is provided to staff at the discretion of the Board. In addition, it has also been held that the 1984 agreement concerning sabbaticals relied upon by the Union is not controlling herein.

Based on the foregoing and the record as a whole, the undersigned enters the following

AWARD

That the Board did not violate Article VIII, G of the labor agreement when it did not include within its budget specific funds earmarked for sabbatical leaves for school year 1988-89. Therefore, the grievance is denied.

Dated at Madison, Wisconsin this 16th day of March, 1990.

By _____
Raleigh Jones, Arbitrator