BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between	
SCHOOL DISTRICT OF WAUKESHA EMPLOYEES UNION LOCAL 2485, affiliated with DISTRICT COUNCIL 40, AFSCME, AFL-CIO	Case 56 No. 42215 MA-5611
and	
WAUKESHA SCHOOL DISTRICT	

Appearances:
Mr. Jack Bernfeld, Staff Representative, Wisconsin Council 40, 5 Odana Court, Davis and Kuelthau, S.C., 111 East Kilbourn Avenue, Suite 1400, Milwaukee, Wisconsin 53202-3101 by Mr. Gary M. Ruesch, Attorney at Law, appearing on behalf of the District.

ARBITRATION AWARD

School District of Waukesha Employees Union Local 2485, affiliated with District Council 40, AFSCME, AFL-CIO, hereinafter the Union, and Waukesha School District, hereinafter the District or Employer, are parties to a collective bargaining agreement which provides for the final and binding arbitration of grievances arising thereunder. The Union, with the concurrence of the Employer, requested the Wisconsin Employment Relations Commission to appoint a staff member as a single, impartial arbitrator to resolve the instant grievance. On June 9, 1989, the Commission appointed Coleen A. Burns, a member of its staff, as arbitrator. Hearing was held on May 24, 1990 in Waukesha, Wisconsin. The hearing was transcribed and the record was closed on August 20, 1990, upon completion of the briefing schedule.

ISSUE

The parties were unable to agree upon a statement of the issue. The Union frames the issue as follows:

> Did the District violate the contract when it did not allow the Grievant to attend the Spring 1989 Code Update Sessions on work time with pay?
>
> If so, what is the appropriate remedy?

The District frames the issue as follows:

> Whether the Employer violated the collective bargaining agreement when it denied the Grievant's request to attend a three-day building inspector's continuing education seminar on regular work time?
>
> If so, what is the appropriate remedy?

The Arbitrator frames the issue as follows:

> Did the District violate the 1987-89 collective bargaining agreement when it denied the Grievant's request to attend the 1989 Code Update on work time?
>
> If so, what is the appropriate remedy?

RELEVANT CONTRACT PROVISIONS

AGREEMENT

> This Agreement is made and entered into and to be effective July 1, 1987, by and between the School District of Waukesha, hereinafter referred to as the "Employer", and the School District of Waukesha Employees Union, Local 2485, of the American Federation of State, County and Municipal Employees, AFL-CIO, hereinafter referred to as the "Union", for the purpose of maintaining harmonious labor relations, maintaining a uniform scale of wages, working conditions and hours among the employees, members of the Union, and facilitating a peaceful adjustment of all grievances and disputes which may arise between the Employer and the employees.
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> . . .
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> SECTION 1.01 - RIGHTS. Unless otherwise herein provided, the management of the work force and the

direction of the working forces, including the right to hire, promote, demote or suspend, or otherwise discharge for proper cause, and the right to relieve employees from duty because of lack of work or other legitimate reason is vested in the Employer. Effective February 1, 1984, the District shall have the right to subcontract second shift cleaning at Butler Middle School for the term of the labor agreement. The employees laid off as a result of this section shall be subject to the layoffs and recall provision of the contract.

1.02 Employer Action. If any action taken by the Employer is proven not to be justified, the employee shall receive all wages and benefits due him/her for such period of time involved in this matter.

1.03 Rules. The Employer may adopt reasonable rules and amend the same from time to time.

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ARTICLE III - UNION ACTIVITY

3.01 Union Business. The Union agrees to conduct its business off the job as much as possible. This Article shall not operate as to prevent a steward from the proper conduct of any grievance in accordance with the procedures outlined in this Agreement, nor to prevent certain routine, reasonable business, such as the posting of Union notices and bulletins.

3.02 Grievances and Negotiations. The Employer hereby agrees that time spent in the presentation of grievances and in negotiations during regular working hours shall not be deducted from the pay of delegated employee representatives of the Union.

3.03 Convention Delegates. A member of the Union who is called upon to serve as a delegate or representative of the Union for conventions, conferences, or in an elected capacity shall be granted leave time necessary. Convention or conference delegates shall be allowed leave without pay, not to exceed three (3) days, and limited to four (4) delegates.

3.04 Copies of Agreement. The Employer shall provide, and the Union shall share equally in the cost of providing copies of this Agreement for all members of the Union and an additional twenty (20) copies to AFSCME District Council 40.

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SECTION 15.09 - PERSONAL LEAVE DAYS. Employees shall be allowed two (2) personal leave days each year to conduct personal business. Personal business shall include business activity that cannot be conducted outside the normal work day and shall not include recreational activity. The employee's personal day request will normally be accepted with a statement of the basic purpose but without detailed information. Such personal leave days shall be noncumulative, and shall be deducted from the employee's sick leave accumulation. Employees shall give as much advance notice as possible prior to taking personal leave.

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ARTICLE XX -- LEAVE OF ABSENCE

20.01 Application. Any employee who wishes to absent him/herself from his/her employment for any reason not specifically provided for in this Agreement must make application for a non-paid leave of absence from the Employer. All requests for leave of absence shall be made in writing at least fifteen (15) days prior to the start thereof. In the event of emergency conditions, a shorter notice will be accepted.

20.02 Employer Determination. The Employer shall determine whether or not justifiable reason exists for granting a leave of absence.

20.03 Restriction. No leave of absence shall be granted for the purpose of seeking other employment.

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APPENDIX B -- OTHER AGREEMENTS

1. Any benefit presently in effect but not specifically referred to in this Agreement shall remain in effect for the life of this Agreement.

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BACKGROUND

Brad Gamroth, hereinafter the Grievant, began his employment as a District Heating/ Air Conditioning/Ventilation Technician, hereinafter HVAC Technician in May, 1987. 1/ In February, 1989, the Grievant requested permission to attend the three day Spring Code Update, hereinafter Code Update, on work time. The Grievant's supervisor, Daniel Streeter, denied the request. The Grievant attended the three day Code Update by utilizing two personal days and one day off without pay.

One day of the Code Update was devoted to each of the following: General Electrical Code Update; Uniform Dwelling Code Update (Construction, Energy, HVAC, and Electrical) and Commercial Building Code Update. The Code Update, which is sponsored by building trades organizations, provides information on changes and proposed changes in building codes, including plumbing, electrical, structure, heating, ventilating, sound systems, and fire systems. 2/ The Grievant, who at all times material hereto has held both a Mechanical Contractor - Heating, Ventilation and Air Conditioning License and a State of Wisconsin Electrical Building Inspector License, wished to attend the Code Update to satisfy the educational requirement which he understood was necessary to maintain his State of Wisconsin Electrical Building Inspector License. 3/ The District does not require an HVAC Technician to have a State of Wisconsin Electrical Building Inspector License.

On or about March 6, 1989, the Grievant filed a grievance alleging that the denial of his request deprived the Grievant of a benefit he had enjoyed in the past, contrary to the provisions of Appendix B(1) and other applicable articles of the collective bargaining agreement. The grievance was denied at all steps and, thereafter, submitted to arbitration.

POSITIONS OF THE PARTIES

Union

On or about March 6, 1989, the Grievant, Brad Gamroth, requested time off with pay to attend the 1989 Code Update sessions. The District's Facilities Manager, Dan Streeter, denied this request. In order to attend, the Grievant was required to use two (2) paid personal days and one (1) day without pay. While denying the Grievant the opportunity to attend on work time with pay, the District allowed William Gonzales, a night substitute custodian and painter, and Rick Oremus to attend some of the sessions during work time with pay.

Appendix "B" (1) of the parties collective bargaining agreement provides that:

> "Any benefit presently in effect but not specifically referred to in this Agreement shall remain in effect for the life of this Agreement."

Attendance at the Code Update sessions on an annual basis during work time with pay is clearly a benefit. It is a benefit not specifically referred

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1/ Previously the Grievant had worked for the District in a part-time non-bargaining unit position.

2/ T. 27 and 194.

3/ The Grievant understood that he needed to take three credits per year to maintain his State of Wisconsin Electrical Building Inspector License. It is unclear as to whether the Grievant's understanding was correct. The Grievant believes that there are courses other than the Code Update which would satisfy the educational requirements for his State of Wisconsin Electrical Building Inspector License.

to in the contract, but one that is enforceable by its terms. At the time that the Grievant was interviewed for his position, District representatives agreed to allow the Grievant time off from work with pay to attend Code Update sessions. The Grievant relied upon this agreement when he decided to accept the position. In 1988, the District respected its committment to the Grievant and allowed the Grievant to attend the Code Update sessions with pay. The following year, when the Grievant found himself under fire by the District for his assertive activities as a Union Steward, the Grievant was denied his request to attend the 1989 Code Update on work time with pay. The District's denial of the Grievant's request was retaliation for their disagreement with his Union activities, which retaliation violates the statement of Agreement, Article I and Article III of the collective bargaining agreement.

While the District asserts that no promise was made to Gamroth at his employment interview, credible evidence demonstrates otherwise. The issue of whether or not the Grievant needs an Electrical Inspector license to work in his position for the District is not relevant to this grievance. Similarly, it is irrelevant whether the Code Update training is required in order to maintain an Electrical Inspector license. The Union is not relying on the existence of a continuing education requirement to prevail in this matter.

The issue of whether or not the District sends employes to other types of training, or to only a portion of the Code Update sessions, is also irrelevant to a determination of this dispute. District Representative Gruell committed the District to sending the Grievant to the Code Update sessions annually. He had the authority to make this commitment (a fact the District does not dispute) and the commitment was not inconsistent with the terms of the parties' collective bargaining agreement. The District's commitment must be observed, until mutually altered, regardless of who holds the position of Facilities Manager. This philosophical difference between Gruell and Streeter regarding the desirability of training has no bearing on whether or not the District violated the contract in this matter.

The District promised the Grievant that he could attend the Code Update sessions annually during work time with pay. It is a benefit presently in effect under the terms of the contract. This benefit was based on a promise, a promise kept in 1988, not inconsistent with the contract. The Grievant does not need to establish a past practice over a period of time, as asserted by the District, in order to enforce this benefit. Continuation of this benefit is not contingent upon attendance of other employes to training seminars.

The District violated the contract by not allowing the Grievant to attend the 1989 Code Update sessions during work time with pay. In order to remedy this contract violation, the Arbitrator should order the District to cease and desist from denying the Grievant this benefit and, further, order the District to make the Grievant whole for his losses.

District

The Grievant wanted the Employer to pay him to attend a course which is completely unnecessary for him to do his job for the Employer. While the Employer does pay employes to attend job-related opportunities, the District does not pay employes to attend seminars unrelated to their job.

The Grievant testified that, during the interview process, he asked and was promised the opportunity to attend a three-day Update Code seminar ad infinitum by Mr. Gruell. Mr. Gruell's testimony, that there was no discussion regarding the Code Update course, is entitled to be credited herein. Indeed, there is no logical reason why any supervisor would make such a commitment during the interview process. The Union's allegation that the alleged promise of Mr. Gruell to allow the Grievant to continue attending the three-day seminar was a primary factor in his decision to accept employment with the District is not substantiated by the record evidence.

Under Sec. 26.01 of the Agreement, a grievance is defined as: "An alleged violation of a specific Article or Section of this Agreement." Given the absence of any provision relating to continuing education courses for employes, the Grievant has failed to raise an issue which can be resolved through arbitration.

The Grievant's reliance on Appendix "B", Section 1 is misplaced for two reasons: (1) It places an employe continuing education course in the same category as health insurance or sick leave and (2) it assumes that a so-called "benefit" was "in effect", although not referred to anywhere in the Agreement.

Given the fact that the Grievant was allowed to attend the full three-day seminar only once in 1988, with prior supervisory approval, this hardly constitutes a binding practice. "In effect" means a practice which has occurred over a period of time and not an isolated incident. Attending work-related seminars has been entirely discretionary with the Employer in the past, depending on the Employer's needs and the merits of the seminar. In this instance, the determination was made by Mr. Streeter that the three-day Code Seminar was not beneficial to the Employer because the Grievant was not employed as an Electrical Inspector or as an Electrician. As an accomodation

to the Grievant, Mr. Streeter offered the Grievant the use of his personal days to attend two of three days of the seminar and to take the third day on an unpaid or compensatory time off basis. This is consistent with the intended use of personal days, as defined in Sec. 15.09 of the Agreement.

Under Article XXII, Leave of Absence, a time off request for an employe's own purpose is to be considered on an individual basis. Given the evidence of the need for prior approval of a seminar and the evidence that employes are allowed to attend only those seminars that benefit the employer, there is no basis to determine that Appendix "B", Section 1, applies to this grievance.

Acceptance of the Union's position herein would broaden Appendix "B", Section 1 to include virtually every condition of employment or any event which occurred at least once. The Grievant has failed to show any violation of the Agreement as a result of the Employer's refusal to allow him to attend the three-day Electrical Inspection seminar on the Employer's time. To the contrary, the Employer reasonably accomodated the Grievant by allowing the use of personal days to attend the seminar.

There is no provision in the contract relevant to discrimination based on Union activity nor was this issue raised prior to the arbitration hearing. Mr. Streeter, the supervisor who made the decision not to allow the Grievant to attend the seminar on a paid work time basis, denied any discriminatory intent. This declaration is borne out in the remainder of his testimony. Additionally, Mr. Streeter's testimony that he refused to allow other employes to attend seminars, contradicting the Grievant's assertion that he was somehow singled out and discriminated against, confirms the Employer's contention that Mr. Streeter made the determination on a case-by-case basis, considering whether it was valuable to the District to have an employe attend a particular seminar.

The Grievant is alleging a so-called benefit that applies only to him and not to other bargaining unit employes. The alleged benefit is based only on one occurrence rather than an established past practice. The "practice" according to the Grievant, depends upon a single conversation which occurred prior to his employment with the District. Not only is the substance of this conversation in dispute, there is no evidence that the Union had any knowledge of the purported practice. The element of "mutual acceptance", necessary to establish a past practice, is not present.

Under the collective bargaining agreement, at Sec. 26.01, a grievance is defined as: "An alleged violation of a specific article or section of this agreement." Given the absence of a non-discrimination provision, and since the Union failed to raise this issue at any prior step of the grievance procedure, the Arbitrator should ignore this issue as irrelevant to the actual contract dispute. The Grievance should be denied and dismissed.

DISCUSSSION

The grievance which was filed in this matter alleges that the Distict's denial of the Grievant's request to attend the 1989 Code Update on work time was in violation of "B-1 and other applicable articles". The Union also argues that the Grievant's union activity was a factor in the denial and, therefore, the District has violated the Agreement Statement, Article I and Article III of the collective bargaining agreement.

Appendix B(1) states as follows: "Any benefit presently in effect but not specifically referred to in this Agreement shall remain in effect for the life of this Agreement." There is no evidence that the parties intended the language of Appendix B(1) to be given any construction other than that which is reflected in the plain language of Appendix B(1). Giving effect to the plain language of Appendix B(1), the undersigned is persuaded that the District is required to maintain, during the term of the 1987-89 agreement, those benefits not specifically referred to in the agreement which were enjoyed by the Union's bargaining unit members at the time that the parties entered into the 1987-1989 agreement. 4/

Time off from work with pay to attend seminars and training sessions, such as the 1989 Code Update, is a benefit which is not specifically referred to in the agreement. As such, it is subject to the provisions of Appendix B(1). The question to be determined is whether the Union's bargaining unit members enjoyed such a benefit at the time that the parties entered into the 1987-89 collective bargaining agreement.

At the time that the Grievant interviewed for the position of HVAC Technician, the Grievant was not a member of the Union's collective bargaining unit. Assuming arguendo, that during the Grievant's employment interview, District Representatives did promise the Grievant that he could attend Code

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4/ The collective bargaining agreement, by its terms, was effective from July 1, 1987 - June 30, 1989. The agreement was executed on September 14, 1988.

Updates on work time, such a promise would not give rise to a benefit which is protected by the provisions of Article B(1). To be protected by the provisions of Article B(1), the benefit must have been enjoyed by bargaining unit employees during their employment as bargaining unit employes.

At the time of hearing, Robert Gruell was employed by the District as a High School Principal. Prior to assuming this position, Gruell was the District's Facilities Manager. Gruell was Facilities Manager from January of 1986 through May of 1988. As Facilities Manager, Gruell had supervisory authority over the custodial and maintenance employees in the Union's collective bargaining unit. Gruell was the Grievant's supervisor from the time of the Greivant's employment as an HVAC Technician on May 27, 1987, until Gruell left his position as Facilities Manager. During his tenure as Facilities Manager, Gruell received no less than five requests to attend courses and granted all such requests.

In 1988, Gruell granted the Grievant's request to take three days off work with pay to attend the three day Code Update which was held in March of 1988. Gruell recalls that he also allowed Bill Huebner, Bob Wallace, William Gonzalez and Rick Oremus to attend courses. Huebner and Wallace, who held the same position as the Grievant, were granted permission to attend a course on heating, ventilating, air conditioning and boiler repair and maintenance. This course involved a portion of one day. Oremus, a District electrician, and Gonzalez, a District painter who also performs electrical work for the District, were permitted to attend an electrical update course which involved, at most, one day. 5/

Gruell recalls that when he approved the Grievant's request to attend the 1988 Code Update, he told the Grievant that future requests would be considered on an individual basis and would require approval by Gruell. 6/ Gruell believed that it was advantageous to the District to have the Grievant attend the Code Update because District flexibility was enhanced when employees with multiple certifications received training in the certifications. 7/

In July of 1988, Daniel Streeter succeeded Gruell as Facilities Manager. Prior to obtaining this position, Streeter had been employed as the District's Supervisor of Custodial Services. Streeter does not recall having any discussions with the Grievant concerning the 1988 Code Update, but does recall discussing the 1989 Code Update with the Grievant in February, 1989, when the Grievant requested permission to attend this Code Update. As Streeter recalls the conversation, he asked the Grievant why the Grievant wished to attend the Code Update and that the Grievant responded that he was required to attend the course to maintain his licensing with the District as an HVAC Technician and his electrical license. 8/ According to Streeter, he expressed a concern that the Grievant did not need to attend the course to perform his work for the District and that he indicated to the Grievant that he would consider the request, but did not think that it was appropriate. 9/ Streeter recalls that the Grievant advised Streeter that Gruell had guaranteed the Grievant that the Grievant could attend the Code Update. According to Streeter, he told the Grievant that he would discuss the matter with Gruell. Streeter recalls that when he discussed the matter with Gruell, Gruell denied that he had guaranteed that the Grievant could attend the Code Update classes. 10/

As the Grievant recalls the conversation, he did not tell Streeter that he needed to attend all three days to maintain his electrical license, but rather, that he told Streeter that portions of the Code Update were required to maintain his license. 11/ The Grievant further recalls that Streeter responded to his request to attend the Code Update by stating that he did not see a need for the Grievant to attend. 12/ The Grievant recalls that he reponded by telling Streeter that, when he was hired, it was agreed that he could attend the Code Update, to which Streeter replied that he would inquire into the matter and get back to the Grievant. 13/

5/ T. 183 - 184. When Gonzalez performed electrical work for the District, he was compensated at the maintenance rate of pay.

6/ T-128, 134 - 135.

7/ T. 133-134.

8/ T. 146-47.

9/ T. 147.

10/ Id.

11/ T. 81 - 83.

12/ T. 51.

13/ Id.

Following Streeter's conversation with Gruell and discussions with State of Wisconsin personnel concerning requirements for maintaining an electrical license, Streeter denied the Grievant's request to attend the Code Update on District time. At hearing, Streeter indicated that this denial was based upon (1) Streeter's conclusion that, contrary to statements made by the Grievant, the Grievant was not required to attend the Code Update to maintain his electrical license 14/ and (2) Streeter's belief that the maintenance of an electrical license was not a requirement for the Grievant's position with the District. 15/

At hearing, Streeter stated that, prior to his denial of the Grievant's request, he had denied employe requests to attend courses and training sessions. 16/ Streeter maintains that, in denying the Grievant's request, he considered the same factors that he considered when responding to the other employe requests, i.e., the relationship between the seminar and the employee's position with the District and the staffing requirements of the District. 17/ Streeter believes that seminars attended by employes on work time should be related to their duties as a District employee. 18/

Streeter recalls that he has permitted HVAC personnel to attend seminars directly related to the operation of heating, ventilation and air conditioning equipment; has not permitted HVAC personnel to attend the three day Code Update or any seminar that relates to electrical licensing; and has permitted Rick Oremus, a District electrician, to attend electrical code updates. 19/ Gonzalez also attended portions of the 1989 Code Update on work time.

Streeter maintains that, he has denied requests when he did not believe that the seminar provided pertinent information. 20/ Streeter recalls that, prior to his denial of the Grievant's request, quite a few employees had asked for permission to attend a trade show at the State Fair Grounds, which show contained seminars on a variety of subjects such as roofing, asbestos, heating and air conditioning products, etc. According to Streeter, he posted a sign-up sheet requesting interested employees to indicate whether they had attended the seminar in the previous year. Streeter recalls that he denied approximately ten requests to attend the seminar. 21/ In determining who would attend the seminar, Streeter gave priority to those who did not attend the seminar in the previous year and attempted to balance requests among the various employee positions. 22/

In November of 1987, the Grievant became a Union Steward. According to the Grievant, Streeter has commented about his conduct as a Union Steward by indicating that Gamroth was too aggressive. According to the Grievant, such comments were made both before and after Streeter denied his request to attend the Code Update on work time. 23/ Streeter did not deny making such statements, but did deny that the Grievant's Union activity was a factor in his decision to deny the Grievant's request to attend the Code Update on work time. 24/

Prior to February 21, 1989, Streeter contacted Paul Roberts, the

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14/ Apparently, Streeter's discussions with State personnel involved licensing for electricians. The Grievant does not have an electrician's license, but rather has an electrical building inspector license.

15/ T. 155 - 56. The position of HVAC Technician does not require either an electricians license or an electrical building inspectors license. The District has paid the fee for the Grievant's Mechanical Contractor - Heating, Ventilation and Air Conditioning License. It is not clear that the District requires its HVAC Technician's to have such a license. The Grievant's testimony establishes that there is no State certification requirement for maintaining the Mechanical Contractor license (T. 197).

16/ T. 151.

17/ T. 151 - 52.

18/ T. 149.

19/ T. 153 - 154.

20/ T. 152.

21/ T. 174.

22/ Id.

23/ T. 41.

24/ T. 151.

District's Executive Director of Operations, to voice concerns that the Grievant was not following contract procedures when he processed grievances. 25/ According to Streeter, he was concerned (1) that the Grievant was filing grievances without first discussing the matters raised in the grievances and (2) that the Grievant was filing grievances without the knowledge of the employees involved in the grievances. 26/ On or about February 21, 1989, Roberts issued the following letter to the Grievant:

> With regard to your recent grievances - 89-2 through 89 - 5....
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> Under Article 26.01 of the master agreement, it states:
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> > "Prior to filing a grievance in writing, employees and supervisors are encouraged to discuss concerns in an attempt to resolve the matter in question."
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> According to Mr. Streeter, neither you nor the employees involved, made any attempt to resolve these prior to the filing of your grievances.
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> Secondly, I received copies of the grievances advanced to level 2 prior to the time limit in Step 1 of the grievance procedure. These actions indicate to me a disregard on your part for the letter and spirit of the contract as related to the grievance procedure.
>
> In the past when the Union leadership had a potential grievance, they made an appointment with the Facilities Manager to discuss and present the grievance, which is in direct contrast to your practice of dropping grievances in the mail or handing them to a secretary. (The latest four (4) grievances were dropped off at the Facilities Manager's office while he was on vacation).
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> I am very concerned about your non personal approach to problem solving and believe if it continues it will lead to an expanded confrontational atmosphere which will benefit neither the District or AFSCME Local 2485.

On or about February 21, 1989, Roberts issued the following letter to Keith Jamieson, President of the Union:

> Enclosed please find a copy of a letter sent to Mr. Bradley Gamroth regarding changes in the Union's methods of processing grievances. We believe that these changes have led, and will continue to lead, towards a greater confrontational atmosphere between the District and Local 2485. As a result, issues formerly handled locally will be settled by an arbitrator with greater frequency in the future.
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> The District is very concerned about this troubling trend. As a result, we would like to schedule a meeting with you, Mr. Bob Chybowski and Mr. Bradley Gamroth. Please contact me at your earliest convenience to set up such a meeting.

According to Streeter, the two letters were issued after the Grievant had made his request to attend the 1989 Code Update. 27/

On March 13, 1989, the Grievant and Union representatives met with District Representatives, including Roberts and Streeter, to discuss the February 21, 1989 letters. The Grievant recalls that when District representatives indicated that there was a concern that the Grievant was too aggressive in processing grievances, Union representatives protested that the Grievant was effective, not aggressive. 28/

The Grievant recalls that, when Streeter denied his request to attend the 1989 Code Update on work time, that the Grievant told Streeter that the denial was harassment for the Grievant's activities as Union Steward. 29/ The

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25/ T. 169 -171.

26/ T. 171.

27/ T. 172.

28/ T. 49.

29/ T. 59-60.

Grievant does not allege, and the record does not demonstrate, that Streeter made any reference to the Grievant's union activities at the time that Streeter denied the Grievant's request.

The record is silent with respect to practices and procedures, if any, relating to attendance at seminars and training during the time period which pre-dates Gruell's employment as Facilities Manager. During Gruell's tenure as Facilities Manager, all bargaining unit employee requests to attend courses or training sessions were granted. It is evident, however, that in granting such requests, Gruell made a determination as to whether or not the course or training session would provide employees with an appropriate educational experience. 30/ Streeter, who succeeded Gruell as Facilities Manager, did not grant all employee requests for time off from work to attend courses or training sessions. Rather, such requests were granted or denied on the basis of Streeter's determination of staffing requirements and the appropriateness of the course or training session.

Upon consideration of the record evidence, the undersigned is not persuaded that, at the time the parties entered into their 1987-89 contract, bargaining unit employes had the benefit of attending courses such as the Code Update on work time. Rather, the undersigned is persuaded that employees were permitted to attend such courses on work time when management determined that it was in the interest of the District to permit such attendance. In the present case, Streeter provided a reasonable basis for his conclusion that it was not in the interest of the District to permit the Grievant to attend the 1989 Code Update on work time. While it is evident that Streeter was not happy with the manner in which the Grievant functioned as Union Steward, the record presented at hearing does not warrant the conclusion that the denial of the Grievant's request to attend the 1989 Code Update on work time was motivated by hostility toward the Grievant's union activity, or that the denial was otherwise discriminatory.

Based upon the above and foregoing and the record as a whole, the undersigned issues the following

AWARD

1. The District did not violate the 1987-89 collective bargaining agreement when the District denied the Grievant's request to attend the 1989 Code Update on work time.

2. The grievance is denied and dismissed.

Dated at Madison, Wisconsin this 15th day of November, 1990.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Coleen A. Burns /s/
Coleen A. Burns, Arbitrator

30/ T. 127 and 133.