



Fifth's disease has been associated with fetal hydrops and death, as well as a variety of maternal conditions.

We think it is reasonable for her to stay clear of the classroom until the abundance of this problem slows down to its regular rate. The patient is going to come into office to have titers drawn to see whether or not she is immune to this problem and if she is, she will have our release to go back to teaching.

The village health officer is Dr. Randall Schmidt of the Burlington Clinic. On February 18, 1991, Dr. Schmidt sent the District the following letter:

I am writing you at the request of one of your teachers concerning a medical matter. Barbara Canales is a 30 year old female who currently is pregnant. The patient had been in contact with her gynecologist/obstetrician, Dr. Michael Majewski. This contact concerned her risks of exposure to Fifth's Disease during her pregnancy. There is evidence in the medical literature, that a good majority of pregnant mothers who are exposed to Fifth's disease could suffer possible very serious birth defects and/or spontaneous abortion if they are exposed to the disease and not immune. At the request of her gynecologist, Barb stopped working until he was able to ascertain her immune status to Fifth's Disease.

Her blood test did show that she was immune to PARVO virus. At this point, she was advised that she could return to work.

It was medically indicated, that the patient have her leave of absence from work and it is Dr. Majewski's as well as my feeling, that she should be compensated for this period of time. If I can be of any further help in this regard, please contact my office at (414) 763-0773.

The Grievant missed 13 days of school, which were taken off of her accumulated sick leave days. During this period of time, she attended an in-service day. After taking the blood test and finding she was immune to the disease, she returned to work.

Barry Forbes, representing the District in this matter, sent a letter to Dr. Schmidt on July 9, 1991, asking whether the Grievant was ill at the time of her leave of absence and whether he quarantined her or any other person at the District because of the outbreak of fifth disease. In an undated letter, the Grievant asked her doctor, Dr. Majewski, to ask Dr. Schmidt for his opinion regarding the matter. Dr. Schmidt had made no response to either request by the date of the hearing.

ISSUE:

The parties stipulated to the following issue:

Did the District violate Section 3.13 of the collective bargaining agreement when it required the use of sick leave days while Barbara Canales was away from work awaiting the outcome of tests to determine whether she was immune to fifth disease? If so, what shall the remedy be?

CONTRACT LANGUAGE:

3.13 In case of illness or quarantine of a teacher because of a communicable disease, if directly traceable to the classroom, the teacher will receive the full amount of salary due. The village health officer will be sole judge regarding responsibility of the Board in the application of this rule. This does not affect sick leave benefits.

THE PARTIES' POSITIONS:

The Association asserts that since the village health officer judged that the Grievant was to be isolated from her students, that should be the end of the debate, and her sick leave benefits should not be affected. While the District has complained that the Grievant was neither ill nor quarantined and attended an in-service day, the Grievant's condition of isolation falls within the definition of quarantine. The Grievant was advised to be away from students, and there was no danger to be present at an in-service with other adults. The District has not deducted salary for the days in question. By paying the full amount of salary due, they have acknowledged that Section 3.13 applies to the Grievant, and there is no option to give half a loaf.

The District contends that the Association must prove that the village health officer determined that the Grievant was either ill with the contagious disease or subject to a quarantine. The Grievant was not ill, and there is no evidence that she was subject to a quarantine. Section 3.13 is a unique contract provision, and applies in cases where the village health officer determines that a teacher is ill or subject to a quarantine. The essential issue to be determined by the Arbitrator is whether or not the village health officer made such a determination. The village health officer's letter of February 18, 1991, stated that it was medically indicated that the Grievant be absent from work, but it did not state that she was subject to a quarantine.

The District points out that Sec. 143.05, Wis. Stats., provides for a specific legal act whereby local health officers are required to order a quarantine under certain circumstances, and Dr. Schmidt's statement that leave is medically indicated is clearly different than ordering a quarantine. Subsequent efforts by both parties to contact Dr. Schmidt met with no response. There is no evidence of a quarantine, and the Association has not met its burden of proof.

DISCUSSION:

The parties dispute the meaning of the word "quarantine." The District cites from one dictionary which defines quarantine as restraint upon the activities or communications of persons or the transport of goods designed to prevent the spread of disease. The Association cites another dictionary which defines quarantine as a condition of isolation, and to keep from normal relations with other persons.

Black's Law Dictionary, Fifth (appropriately) Edition, has the following definition:

Isolation of person afflicted with contagious disease.  
To keep persons, when suspected of having contracted or having been exposed to an infectious disease, out of a community, or to confine them to given place therein, and to prevent intercourse between them and people generally of the community.

The Grievant was a person who was exposed to an infectious disease. She was confined in part, from continuing her work with those who could spread the disease to her, because of the special risk to her due to her pregnancy.

It would be rare for parties to bargain with dictionaries in front of them. That is why words in a contract should be given their ordinary meaning. The intent of the language of Section 3.13 is to compensate teachers who lose work through no illness or fault of their own but are kept out of the classroom due to exposure to disease in the course of their work. The Grievant falls within the intent of the contract language, as well as its actual wording.

The District is correct in stating that this is a unique contract section. The parties bargained to have the village health officer be the sole judge regarding the responsibility of the Board in applying the rule under Section 3.13. Because of the unique wording of the contract language, I agree with the District that the essential issue is whether or not the village health officer made a determination in this case.

The village health officer did render an opinion, and it was his opinion that the Grievant should be compensated for the leave of absence. The bargaining agreement does not simply call for a determination of whether a teacher is ill or to be quarantined -- it calls for the village health officer to judge the Board's responsibility in applying this section of the contract. The village health officer made such a judgment of the Board's responsibility. Dr. Schmidt's opinion stated in his February 18, 1991, letter that ". . . she should be compensated for this period of time." While the District feels the Grievant was compensated, because she lost no pay and was able to use sick leave benefits, the use of accrued benefits is not a complete method of compensation. The Grievant's loss of accrued sick leave benefits does not compensate her completely, and it is that loss of benefits which should be restored.

Section 3.13 of the collective bargaining agreement states in part that "the teacher will receive the full amount of salary due . . . This does not affect sick leave benefits." Once the village health officer determined that the Grievant should be compensated, the last part of Section 3.13 should have been applied, and the method of compensation was for full amount of salary, without affecting sick leave benefits.

AWARD

The grievance is sustained.

The District violated 3.13 of the collective bargaining agreement when it required the use of sick leave days while Barbara Canales was away from work awaiting the outcome of tests to determine whether she was immune to fifth disease.

The appropriate remedy is for the District to restore the sick leave days used by Barbara Canales to compensate her completely for her absence due to the presence of fifth disease in the school.

Dated at Madison, Wisconsin this 2nd day of October, 1991.

By \_\_\_\_\_  
Karen J. Mawhinney, Arbitrator