BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between	
NORTHWEST UNITED EDUCATORS	
and	Case 20 No. 47427
UNITY SCHOOL DISTRICT	MA-7264

Appearances:

Mr. Kenneth J. Berg, Executive Director, appearing on behalf of the Union.

Weld, Riley, Prenn & Ricci, S.C., Attorneys, by Ms. Kathryn J. Prenn, appear

ARBITRATION AWARD

The Employer and the Union above are parties to a 1990-92 collective bargaining agreement which provides for final and binding arbitration of certain disputes. The parties requested that the Wisconsin Employment Relations Commission appoint an arbitrator to resolve a grievance filed by the Union on behalf of all support staff, concerning pay for the first two snow days of the year 1991-92.

The undersigned was appointed and held a hearing on September 3, 1992 in Balsam Lake, Wisconsin, at which time the parties were given full opportunity to present their evidence and arguments. No transcript was made, both parties filed briefs, and the record was closed on October 7, 1992.

STIPULATED ISSUES:

1. Does the current language in the 1990-92 collective bargaining agreement embody the parties' agreement concerning snow days?

2. Whether or not the written collective bargaining agreement is found accurate in [1] above, did the Employer violate the agreement of the parties concerning snow days by denying two snow days in 1991-92?

3. If the agreement of the parties was violated, what remedy is appropriate?

RELEVANT CONTRACTUAL PROVISIONS:

. . .

ARTICLE XV - WORKWEEK, HOURS OF WORK

. . .

C. All employees who are not twelve (12) month employees shall not be docked for snow days over two which are not made up as instructional days. Twelve (12) month employees shall work on snow days. Any snow days, or fraction thereof, that twelve (12) month employees are unable to report to work, cannot work (sic), they can use compensatory time, during the same week, be docked for such time or take the equivalent amount of vacation time, at the employer's choice.

. . .

ARTICLE XIX - GRIEVANCE PROCEDURE

. . .

It is understood that the function of this arbitrator shall be to give a decision only as to the interpretation and application of specific terms of this Agreement. The arbitrator shall not have power, without specific written consent of the parties, to either advise on salary adjustments, except the improper application thereof, or to issue any decision that would have the parties add to, subtract from, modify or amend any terms of this Agreement. A decision of the arbitrator within the scope of its authority shall be final and binding upon the Board, NUE and the employees.

. . .

DISCUSSION:

The facts are essentially undisputed. Prior to 1990, the collective bargaining agreement provided for the following provision relating to snow days:

. . .

C. All employees who are not twelve (12) month employees shall not be docked for snow days which are not made up as instructional days. Twelve (12) month employees shall work on snow days. Any snow days, or fraction thereof, that twelve (12) month employees are unable to report to work, cannot work, they can use compensatory time, during the same week, be docked for such time or

> take the equivalent amount of vacation time, at the employer's choice.
>
> . . .

Among the School District's initial proposals to the Union was the following:

> Article XV, Workweek, Hours of Work - Section C, line 2: Change to ". . . be docked for snow days over two which are not . . ."

District Administrator Gary Lilyquist testified that at the opening meeting between the parties, the District stated that this was intended to not pay employes for the first two snow days. Sheila Berklund, then unit director of the Union, testified that there was no discussion that she could recall concerning that language to the effect that the employes would lose the first two days of snow for pay purposes. Berklund testified that the previous language had been tied to the teacher bargaining unit, and if the teachers did not make up the snow days the (9-month) support staff did not either. Berklund testified that the Union did not want any changes to snow days when this was first proposed, but did end up agreeing to language similar to what the District had proposed. According to a subsequent letter confirming agreements, sent by Employer Attorney Prenn to Union Representative Berg, this agreement was reached as one of a number of tentative agreements during the first bargaining session.

There is no dispute that on April 2, 1990 Prenn sent Berg a summary of these tentative agreements, and that these included a change in Section C, line 2 of Article XV consistent with that reprinted above. Berklund agreed that this was the same language the Board had proposed, but testified that to her this meant that employes would not get docked for the first two days and would be docked for succeeding days. There appears to be little disagreement that it is unusual in this District for there to be more than two days lost to snow in a year.

While the Union had until this point been given copies of incomplete fractions of sentences as both the District's proposal and summary of tentative agreements, when a tentative agreement was reached on the entire contract the District prepared a full copy of the proposed new contract with the new language marked in bold face. Under this language, the former Article XVI became Article XV, and it read as follows:

> C. All employees who are not twelve (12) month employees shall not be docked for snow days **over two 1/** which are not made up as instructional days. Twelve (12) month employees shall work on snow days. Any snow days, or fraction thereof, that twelve (12) month employees are unable to report to work, cannot work, they can use compensatory time, during the same week, be docked for such time or take the equivalent amount of vacation time, at the employer's choice.

Berklund admitted reviewing all of the contract with particular attention to the bold face sections, but testified that she still considered this language to mean that the employes were surrendering pay for snow days only after the

---

1/ The words marked here in bold face are as included in Joint Exhibit 6, the contract prepared by the District.

first two days.

The Union in its opening statement disavowed any belief that the Employer deliberately acted deceitfully in the negotiations. The Union argues, rather, that the word "not" was left in the existing language when the words "over two" were added, as a result of a misunderstanding by the District of what had been agreed to. The Union argues that the parties' agreement was to exclude from payment the snow days after two, not those up to two, per year. In support of this argument the Union cites Berklund's testimony to the effect that the settlement "pattern" in the area had been 4% on wages in each of two years and that this pattern was followed in Unity without any quid pro quo for the loss of the first two days' snow day pay per year. 2/ The Union argues, in the alternative, that if the Arbitrator finds that the Union must live with the language as written, that language does not explicitly allow the District to deduct for the first two snow days, because it is in fact silent as to the treatment of those days. The Union requests an award ordering that the grievants be made whole for the two lost days.

The District contends that the language of Section C on its face authorizes the District's refusal to pay nine month employes for the first two snow days of 1991-92. The District argues that there was, according to Administrator Lilyquist, discussion across the table to the effect that this was the meaning of the District's proposal, and that the Union had several opportunities to review the language involved. The District points to the fact that the Union was given copies, not only of the tentative agreement, but also of the entire contract language prior to ratification, and did not object. The District argues that the only effect that can logically be given to the words "over two" is that the nine month employes could be docked for the first two snow days, but would not be docked for snow days in excess of two. The District further contends that the Arbitrator lacks authority to issue a decision which would add to, subtract from, modify, or amend any of the provisions of the Agreement, and therefore that the scope of the Arbitrator's review is limited to the interpretation and application of the specific provision of the collective bargaining agreement. The District requests that the grievance be denied.

The initial question I must answer is that of the scope of this decision. Ordinarily I would agree with the District that limiting terms, such as those included in the grievance and arbitration procedure here, confine the inquiry to interpretation of a specific provision of the Agreement. But in this instance the parties have superseded those limitations by their framing of the stipulated issues reprinted above. In the event, however, I conclude that the outcome is not affected.

It is clear, to begin with, that there is no basis for finding that the exact language of the contract as it appears was procured by improper means. The Union admitted as much in its opening statement, and the course and conduct of the negotiations [brief as these may have been] demonstrates that the District made efforts to keep the Union apprised of the changes accurately. The final contract language mirrors exactly the content of the proposal and tentative agreement as prepared by the Board. I agree with the District that the only acceptable construction of the new language is that employes may be docked for snow days up to two. For the Union to argue that the fact that they may not be docked "over two" leaves unaddressed the subject of days below two is ingenious but unpersuasive; the converse to "shall not be docked" is clearly

---

2/ There were no snow days in 1990-91, and the issue first arose in the 1991-92 school year.

implied on the face of this language. A clause need not be an example of elegant writing to be clear and unambiguous.

That clarity also disposes of the Union's argument that the parties' joint intent in their negotiations must have been to leave unpaid snow days after the first two. It is true that the exchanges of paper which occurred prior to this document could easily have been misinterpreted, because only partial sentences were incorporated. If, as appears to be the case, the Union misapprehended the District's intent from the beginning, and thought that the District intended to strike the first use of the word "not" in incorporating the clause beginning with the word "be", the District's first proposal and summary of the tentative agreements did not on their face explain otherwise. But I need not enter into an analysis of the relative likelihood of Lilyquist's testimony that the District explained its intent in the opening bargaining meeting and Berklund's denial that any such explanation took place. The final contract as presented to the Union prior to ratification disposes of this question, because it addressed any possible concern that the District had proposed disingenuous language. What is left is simply error.

The Union may well have misunderstood that it was agreeing to the first two snow days being unpaid for nine month employes. Yet agree it did. It is axiomatic in arbitration that an error in negotiation by one party does not invalidate the resulting agreement or, without more, deprive the other party of the benefit of its bargaining. Thus, there is no basis to go beyond the clear and unambiguous language finally incorporated in the collective bargaining agreement, and I find that the grievance by that language is without merit.

For the foregoing reasons, and based on the record as a whole, it is my decision and

AWARD

1. That the current language in the 1990-92 collective bargaining agreement does embody the parties' Agreement concerning snow days.

2. That the Employer did not violate the collective bargaining agreement by denying pay for two snow days in 1991-92.

3. That the grievance is denied.

Dated at Madison, Wisconsin this 21st day of December, 1992.

By _____
Christopher Honeyman, Arbitrator