

The District stated the issues as follows:

Is the grievance procedurally arbitrable? If so, was the scheduling of parent-teacher conferences on the evenings of November 23 and 24, 1992 consistent with the parties' past practice? If not, what is the appropriate remedy?

The undersigned believes the following to be an accurate statement of the issues:

Is the grievance arbitrable? If so, did the District violate the contract by scheduling parent-teacher conferences on the evenings of November 23 and 24, 1992? If so, what is the appropriate remedy?

BACKGROUND:

On October 16, 1992, 1/ the District sent a letter to all staff members advising them that the schedule for the upcoming parent-teacher conferences would be the same as in the previous year, which meant that the conferences would be held on Monday and Tuesday evenings (November 23 and 24) and that Wednesday would be a day off, rather than a workshop/in-service day. In a letter dated October 26, the Union advised the District that the parties appeared to have different opinions as to how the calendar was to be interpreted and requested a meeting to discuss those differences. In said letter the Union also stated that it was reserving its right to file a grievance or prohibited practice in the matter. On November 11 the Union's negotiating team was meeting and happened to see one of the District's Board members. Said Board member was asked if the Board planned to respond to the letter dated October 26 and the Board member said the Board did not plan to respond to the letter. The Union filed a written grievance, dated November 24, with the District's Administrator, Raymond Norsted, which grievance Norsted received on December 3. In a letter dated December 10 Norsted denied the grievance on the basis that the grievance both was untimely and should have been filed with a principal. On December 17 the Union filed the grievance with Cheryl Meyer, the Intermediate School Principal.

The calendar for the 1990-91 school year had a teacher workshop-in-service day scheduled for Monday of the week of

1/ Unless otherwise specified, all other dates herein refer to 1992.

Thanksgiving and parent-teacher conferences scheduled during the days of Tuesday and Wednesday of that week. The parties agreed to change that schedule, so that the teacher-parent conferences were held from 6:00-9:00 p.m. on both Monday and Tuesday evenings and Wednesday was a no-school day. The calendar for the 1991-92 school year had the same schedule for the week of Thanksgiving as did the 1990-91 calendar. The parties agreed to again change the schedule for the week of Thanksgiving in 1991, just as they had done in 1990.

During negotiations for the 1992-94 contract, both parties proposed changes in the calendar for 1992-93 as compared to the 1991-92 calendar. None of the changes were agreed to by the parties.

RELEVANT CONTRACTUAL PROVISIONS:

ARTICLE XVIII

GRIEVANCE PROCEDURE

- A. Purpose - To enable employees or the Union, hereinafter called the grievant, to express a complaint about the administration of the Agreement with the assurance that the complaint will receive prompt attention by persons who can remedy it is necessary.
- B. Definition - For the purpose of this Agreement, a grievance is defined as any complaint regarding the interpretation of (sic) application of specific provisions of this Agreement.
- C. Grievances shall be processed in accordance with the following procedure:

Step I

- 1. An earnest effort shall first be made to settle the matter informally between the grievant and the principal.
- 2. If the matter is not resolved, the grievance shall be presented in writing by the grievant to the principal of the respective school within fifteen (15) days after the

grievant knew or should have known of the cause of such grievance. The principal shall give his/her written answer within five (5) days of the time the grievance was presented to him/her in writing, with a copy to NUE.

STEP II

If not settled in Step I, the grievance may within five (5) days be appealed to the Superintendent of Schools. The superintendent shall give a written answer no later than ten (10) days after receipt of the appeal, with a copy to NUE.

STEP III

If not settled in Step II, the grievance may within ten (10) days be appealed to the Board of Education. The Board of Education shall give a written answer within thirty (30) (sic) days after receipt of the appeal, with a copy to NUE.

- D. The parties hereto agree to follow each of the foregoing steps in the processing of a grievance. If the Employer fails to give a written answer within the time limits set out for any step, the grievant may immediately appeal to the next step. Grievances not processed to the next step within prescribed time limits shall be considered dropped.

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POSITION OF THE UNION:

The 1992-93 calendar, which was agreed to by the parties during the bargaining session on May 11, set November 25 as a full workday, i.e., a teacher workshop/in-service day. Even though the Union had agreed to modify the calendar in previous years, after the calendar was negotiated as part of the total contract settlement, in this case the District did not seek nor obtain the Union's consent or approval to modify the negotiated calendar.

Since there is clear and unambiguous language in the

contract, there is no past practice, status quo or otherwise, which would allow the District to unilaterally change that clear language. The fact that the Union has agreed in the past to calendar modifications after the original contract was settled, does not obligate the Union to agree such changes in the future.

There have been continuous and frequent communications between the parties on this calendar issue since it surfaced in October. Thus, any claim that this is a stale grievance or that the grievance was filed and/or processed in a fatally deficient manner should be dismissed. The District never responded to the Union's letter dated October 26. The grievance was filed within 15 days after the Union was told that the District did not plan to meet with the Union to discuss the disagreement. It was the District which was responsible for delaying the Union's informal attempts to settle the grievance. The District then further delayed any attempts to settle the grievance by requiring the Union to file the grievance with a low-level administrator when the case clearly involved a Board-level decision. The Union filed the grievance in a manner consistent with the stated purpose of the grievance procedure, i.e., that the complaint will receive prompt attention by persons who can remedy it.

The Union believes the appropriate remedy is that the District should pay additional compensation to all teachers who were required to participate in evening conferences on November 23 and/or 24 in the amount of one-half of a regular day's pay for each evening conference. In addition, the District should issue a memo to all teachers that the 1993-94 calendar will not have evening parent-teacher conferences in November and that the Wednesday of the week of Thanksgiving shall be a regular teacher workday, unless the Union specifically agrees to modify the existing agreement.

POSITION OF THE DISTRICT:

The grievance is not procedurally arbitrable. The written grievance was filed on November 24, a date at least two weeks past the fifteen day time line. The Union did not have the unilateral right to reserve the right to file a grievance after the fifteen day period. The Union did not request a waiver of the time lines. The District, therefore, never agreed to waive the time lines. Even though the Union may have anticipated discussions in an effort to voluntarily resolve this matter, it should have timely processed a grievance.

The grievance was filed at the wrong step. It should have been filed with the principal, rather than with the district administrator. There was no agreement to skip a step. The instant grievance is not the first time in which the Union has

attempted to skip a step, nor, is it the first time the District has refused to process grievances which were filed at the wrong step.

By waiting until after the parent-teacher conferences had been held to file the grievance, the Union abused the timely processing of the grievance contemplated by the grievance procedure.

Even if the grievance was timely filed, the grievance should be dismissed on its merits. Although the printed calendars for 1990-91 and 1991-92 indicated otherwise, the parties had established a practice of scheduling parent-teacher conferences on Monday and Tuesday evenings of Thanksgiving week, thereby allowing Wednesday of that week to be an additional day of vacation. That practice established the status quo as the parties entered negotiations for the 1992-93 contract. While there was considerable discussion regarding other aspects of the 1992-93 calendar, there was no discussion at the bargaining table about changing the way in which the parent-teacher conference days had been scheduled. In fact, there was a statement across the bargaining table to the effect that the schedule should be left the same and should be done as in the past year. The District believes the parties intended that parent-teacher conferences would continue to be scheduled on Monday and Tuesday evenings, consistent with the past practice and the status quo.

The arbitrator lacks the authority to award the remedy requested by the Union, since the contract provides an annual salary for each of the teachers based on a work year of an agreed upon duration. The parent-teacher conferences did not result in the teachers working any additional hours, since Wednesday became an additional day of vacation. The Union is requesting more pay for less work, which would result in a windfall to the teachers.

DISCUSSION:

The instant dispute between the parties began with the District's letter to the teachers on October 16. Said letter advised the teachers that the schedule for the week of Thanksgiving would be the same as in the previous year, which meant there would be parent-teacher conferences on Monday and Tuesday evenings and Wednesday would be a no-work day, rather than having a teacher workshop/in-service day on Wednesday. In a letter dated October 26, the Union requested a meeting with the Board to discuss unspecified differences in interpreting the calendar, but did not initiate a written grievance until November 24. It is true that the grievance was not filed within the fifteen day time period following October 16. However, the Union contends that the fifteen day period did not start until November 11, the date on

which it was advised by a member of the District's Board that the Board did not intend to respond to the Union's request for a meeting to discuss the matter. In fact, the undersigned believes that the fifteen days actually commenced on November 24 when the District implemented the previously announced schedule. Until the schedule was implemented, it was possible that the Board could rescind or modify the changes in the schedule, especially since the parties had not met to discuss the specific differences in their interpretation of the past practice of making changes in the calendar. If the parties had met and been unable to agree, then it is possible that the fifteen day time period could have been triggered by such a meeting. Thus, it is concluded that the grievance was filed in accordance with the contractual time requirements.

The District contends that the grievance should have been filed with the principal, rather than with the Superintendent. Norsted testified that other grievances have been filed directly with him in the past and that he sent some of those grievances back to the Union, so said grievances could first be filed with the principal. Norsted did not say that he returned all of those grievances which were filed directly with him without first being filed with a principal. Since it appears from his testimony that in the past he has not refused to accept all grievances which were filed directly with him, the Union's failure to initially file the instant grievance with a principal does not prevent the grievance from being processed for a decision on its merits. Further, it was unlikely that a principal would have the authority to grant the relief requested by the grievance. Thus, it was logical for the grievance to be filed directly with Norsted, which act also would be consistent with the stated purpose of the grievance procedure in Section A of Article XVIII. Such logic may be the reason that Norsted has not required all grievances to be filed with a principal in the past.

The Union accurately notes that the schedule implemented by the District varied from the schedule set forth on the calendar. It is also true that the same actual schedule, as implemented by the District in November of 1992, had been followed in the prior two years, even though the calendars for those years did not provide for such schedules. One difference between the 1990-91 and 1991-92 years as compared to the 1992-93 year is that the Union agreed to the revised schedules for 1990-91 and 1991-92, but did not so agree for 1992-93. The District believed it did not need to seek such agreement for 1992 because, during contract negotiations, the Union had agreed to continue the practice of revising the schedule for the week of Thanksgiving when the parties both dropped their respective proposed changes in the calendar and agreed that the calendar would not be changed. The undersigned credits Norsted's testimony that a statement was made

at the bargaining table that the calendar would be left the same as it had been in the preceding year. The District understood such a background to mean that the week of Thanksgiving was to be scheduled the same in 1992-93 as it had been in 1990-91 and 1991-92. Such an understanding is set forth in the District's letter of October 16. Based on how the parties had scheduled the week of Thanksgiving in the preceding two years and on the negotiations for the calendar, the District's understanding was reasonable and, in fact, represented the agreement of the parties. If it was not the intent of the Union to continue the practice of having parent-teacher conferences rescheduled to Monday and Tuesday evenings with Wednesday as a no-work day, then the Union was obligated to clearly state its intent to the District. By failing to explicitly inform the District at the bargaining table that it did not agree to continue the practice of changing the schedule for the week of Thanksgiving, the Union is estopped from now trying to enforce the alleged clear contract language, i.e., the calendar, by claiming it did not intend for the practice to continue. Therefore, the District did not violate the contract by scheduling parent-teacher conferences on the evenings of November 23 and 24.

Even if the District had been found to have violated the contract by changing the schedule for the week of Thanksgiving, the remedy requested by the Union would not have been appropriate. There is no evidence in the record to show that any of the teachers worked any additional hours as a result of the schedule changes. Thus, the payment of additional wages would be of a punitive nature and would not be justified.

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

AWARD

That the District did not violate the contract by scheduling parent-teacher conferences on the evenings of November 23 and 24, 1992 and by making November 25, 1992 a day off for teachers; and, that the grievance is denied and dismissed.

Dated at Madison, Wisconsin, this 17th day of November, 1993.

By Douglas V. Knudson /s/
Douglas V. Knudson, Arbitrator