

BEFORE THE ARBITRATOR

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In the Matter of the Arbitration :
of a Dispute Between :
 : Case 18
OCONTO EDUCATION ASSOCIATION : No. 49336
 : MA-7905
and :
 :
OCONTO SCHOOL DISTRICT :
 :
- - - - -

Appearances:

Mr. James A. Blank, Executive Director, United Northeast Educators, on
Godfrey & Kahn, S.C., by Ms. Angela M. Samsa, on behalf of the District.

behalf

ARBITRATION AWARD

The above-entitled parties, herein "Association" and "District", are privy to a collective bargaining agreement providing for final and binding arbitration. Hearing was held in Oconto, Wisconsin, on October 1, 1993. The hearing was transcribed and the parties thereafter filed briefs and reply briefs which were received by January 21, 1994.

Based upon the entire record, I issue the following Award.

ISSUES

Since the parties were unable to jointly agree on the issues, I have framed them as follows:

1. Did the District violate Article XVII, Section 1(f), of the contract when it refused to grant grievant Tamara McCarthy one-half day of personal business leave on April 29, 1993, and, if so, what is the appropriate remedy?
2. Did the District violate Article XVII, Section 1(f), of the contract when it refused to grant grievant Bruce Bartanen one day of personal business leave on April 28, 1993, and, if so, what is the appropriate remedy?

DISCUSSION

Grievant Bartanen on April 13, 1993, 1/ requested a personal/business day's leave under Article XVII of the contract to attend an April 28 meeting conducted by the State of Wisconsin's Department of Natural Resources (DNR) which centered on how to apply for clean water funding. Bartanen testified here that he needed to attend the meeting because the septic tank of his home had been condemned and because, as head of the local sanitary district which he had helped form, he needed to know how to apply for funding to correct this problem.

Grievant McCarthy on April 1 requested a half-day's personal/business leave under Article XVII of the contract so that she could serve as a "Mother's Helper" on the morning of April 29 at her son's nursery school.

School District Superintendent Jerome Sommer denied both requests on the

1/ Unless otherwise noted, all dates hereinafter refer to 1993.

grounds that: (1) Bartanen was not entitled to leave because he wanted to attend the DNR meeting in his capacity as head of the local sanitary district rather than for his own personal business; and (2) McCarthy's request was not covered under the kind of leaves given in the past and now provided for in Article XVII of the contract.

McCarthy subsequently took the requested half-day off without pay and Bartanen chose not to attend the DNR meeting. Both of them filed grievances, hence leading to the instant proceeding.

In support of the grievances, the Association mainly contends that "The newly negotiated changes in Article XVII are clear and unambiguous" in requiring the District to grant the leave requested herein and there is no merit in the District's claim that the newly-negotiated language merely clarifies the past practice which grew over this issue under the prior contractual language. It therefore asserts that it is inappropriate to consider parol evidence such as bargaining history in determining what this "clear and unambiguous" language means; that Article VI, Step 4, of the contract precludes an arbitrator from adding, subtracting, or modifying the contract in any way; and that bargaining history in fact, even if it is considered, supports the Association's position.

The District, in turn, contends that the contract and bargaining history require it "to grant leave for the reasons it has done so in the past. . ."; that the new contract language neither expands nor restricts the use of such leave; and that the Association's interpretation would lead to absurd results.

It also argues that Bartanen's request was properly denied because it did not fit within the "ordinary meaning" of "personal business" and that it properly denied McCarthy's request in "light of all the circumstances. . ."

The resolution of this issue turns on Article XVII of the contract, entitled "Leave of Absence", which provides in pertinent part:

ARTICLE XVII. LEAVE OF ABSENCE

1. Emergency/personal business leave up to three (3) days with pay will be granted by the superintendent if applied for in advance for the following reasons:
 - a. Illness in the immediate family.
 - b. Marriage in the immediate family.
 - c. Death in the immediate family.
 - d. Quarantine in the immediate family.
 - e. Required appearance in court-of-law involving no moral offense on the part of the employee.
 - f. Personal business and professional reasons. A written statement giving specific reasons must be submitted to the superintendent.

Personal business leave will not be taken on the day before or the day following any vacation or holiday. (Bona fide emergencies excepted.)

- g. One of the three days will be on the day a male teacher's wife gives birth to a baby or on the day following the birth at night if the next day is a school day.

. . .

The key phrase here is "will be granted", as it mandates that the District must grant leave for "Personal business and professional reasons." Article XVII cannot be any clearer on this point.

That is why it is inappropriate to delve into bargaining history to ascertain whether the changes in Article XVII agreed to by the parties in the 1992 contract negotiations merely reflected an agreement to codify the informal practice in this area which arose under the prior contract language as the District asserts, or whether the new language reflected an agreement to alter that practice, as the Association contends. For in this connection, it is black letter arbitration law that, "if the writing is clear and unambiguous, parol evidence will not be allowed to vary the contract." How Arbitration Works, Elkouri and Elkouri, (BNA, 4th Ed.), p. 142.

Looking only at this language, then, there is only one legitimate inquiry which can be made when employes request such leave: is it, in fact, for "personal business" or "professional" reasons? If it is, the leave must be granted; if it is not, it can be denied. Leave therefore need not be granted merely for "personal" reasons, as the addition of the word "business" to the prior contract language dealing with "personal" reasons clearly reflected the parties' intent to restrict such leave to "business" matters.

Thus, there is no merit to the District's claim that the words "approval" and "applied" in Article XVII and the requirement that reasons must be given means that the District retains the right to deny leave requests if it believes that leave should not be granted. For read in its entirety, it is clear that this language means only that teachers must "apply" for leave in order to put the District on notice that they are availing themselves of the mandatory leave proviso and that they are required to list reasons for it only to make sure that it, in fact, is related to "personal business", at which point it must be approved.

Here, Bartanen had a legitimate reason for attending the April 28 DNR meeting: his septic tank had been condemned and the meeting centered on how public funding could be obtained to help cure that problem. That, most certainly, involved his own personal finances and thus constituted "personal business". The District therefore erred in denying him that leave on the ground that he wanted to attend as president of the local sanitary district which Bartanen had helped form. For even if Bartanen were to attend in his official capacity, the fact remains that the meeting still centered on a matter which directly affected his personal finances in a significant way.

Bartanen therefore would be entitled to a day's pay if he attended the DNR meeting without pay. But since he did not attend the meeting, no back pay is warranted. Per his request, however, he is entitled to go to such meetings in the future, as is any other teacher with legitimate "personal business or professional reasons."

McCarthy's situation is different, as her requested attendance as a "Mother's Helper" did not relate to any financial interest. Instead, it only involved her personal interest in helping with her child's pre-school care. While that of course is a laudable goal, it must be remembered that Article XVII does not provide for "personal leave" the way the prior contract did. It, instead, provides for "personal business" leave. Hence, if the leave does not relate to a legitimate business reason, it need not be granted. She therefore

is not entitled to a half day's pay.

In finding that the contract is clear and unambiguous on this issue, I am of course mindful of the District's concern that granting unlimited personal business leave can result in many absences and disruptions in the classroom.

But much of this concern is overdone, as the decision herein does not stand for the blanket proposition that teachers must be given time off for any and all "personal" reasons and that they are entitled to so called, "go to Hell days." It, instead, restricts mandatory leaves for legitimate "personal business" reasons having a financial component to them.

Hence, if the requested leave does not directly center on financial or professional matters, and is not otherwise listed in subsections a, b, c, d and e, of Article XVII, it need not be granted. Without meaning to be all-inclusive, the District therefore does not have to grant leave for recreational activities, extended vacations, travel for non-emergency reasons, class assignments, friends giving birth, non-family funerals, a child's transportation, car repairs, athletic events, sports events, delivery of merchandise, shopping, grooming appointments, pet needs, union business, accompanying a spouse on a business trip, attendance at church councils, park board or library board meetings, etc.

In short, the new language in Article XVII, Section 1(f), must be given a literal reading just as the Association claims. In some cases, that will result in more leave than before; in other cases it may result in less. But, that is what the parties themselves have agreed to and that is what must be done here.

Moreover, there is no point in now trying to detail each and every kind of leave which must be given under Article XVII, Section 1(f), as it is impossible to envision the myriad of "personal business" reasons possible. It suffices to say here that Bartanen's request constituted such a reason and that McCarthy's did not.

In light of the above, it is my

AWARD

1. That the District did not violate Article XVII, Section 1(b), of the contract when it refused to grant grievant Tamara McCarthy one-half day of personal business leave on April 29, 1993; the grievance is therefore denied.

2. That the District violated Article XVII, Section 1(b), of the contract when it refused to grant grievant Bruce Bartanen one day of personal business leave on April 28, 1993. He therefore is entitled to take such leave in the future if he so desires.

Dated at Madison, Wisconsin this 14th day of March, 1994.

By Amedeo Greco /s/
Amedeo Greco, Arbitrator