



salary subject to withholding, social security, WRS, etc., the grievant's sick leave bank to be reduced four (4) days to replace the four (4) docked days, and the grievant's personnel file to be purged of any reference concerning the denial of his sick leave request for the days in dispute in this matter.

PERTINENT CONTRACTUAL PROVISIONS:

ARTICLE X SICK LEAVE, SABBATICALS, ABSENCES

- A. Sick Leave
- 1. Ten (10) days sick leave shall be available at the beginning of each school year for every teacher. Unused sick leave shall be cumulative to one hundred twenty (120) days. Sick leave is to be used only for personal illness, disability, or periods of medical confinement of the employee. The Administrator may require a certificate of an M.D. at District expense for suspected abuse of sick leave. The minimum sick leave that may be taken is one-half (1/2) day.

BACKGROUND:

The District and the Association have been parties to a series of collective bargaining agreements. On February 1, 1991 James Goeckerman, hereinafter referred to as the grievant, had requested sick leave in order to receive direct sunshine treatment on his psoriasis. This request was denied by District Administrator Donald W. Kellogg, the matter was grieved, and, on April 3, 1992 the undersigned issued an Arbitration Award finding that the District's denial violated the parties collective bargaining agreement. The parties did not dispute that the grievant was afflicted with psoriasis, that he had undergone various forms of treatment for this condition, and, that psoriasis was an illness under the terms of the collective bargaining agreement. The undersigned therein concluded that the District did not possess the medical expertise to determine whether or not to deny a sick leave request but could require a medical certificate in instances where it suspected abuse. The undersigned also found the District had not required employes to obtain therapy for illnesses in off duty hours before employes could use sick leave.

On March 11, 1993 the grievant presented a written request to

the District's High School principal, Brad Hintze, for the use of sick leave to obtain direct sunlight therapy to treat his psoriasis for the days of April 7, 8, 15 and 16, 1993. These dates immediately preceded and followed the District's scheduled one week Spring Break. The matter was referred to Kellogg who met with the grievant on March 18, 1993. At that meeting the grievant informed Kellogg that, as in the past, he would be traveling to the southern parts of the United States for direct sunlight therapy, that his family would be accompanying him as it had in the past, and, that he had a letter concerning the matter from his physician concerning the matter. Kellogg asked to review the letter and on March 19, 1993 the grievant submitted to Kellogg a statement on prescription paper signed by the grievant's physician which stated... "James Goeckerman -- Being treated for psoriasis by Dr. J.E. Schuster.", and was dated January 14, 1993. On March 24, 1993 Kellogg directed the grievant in writing to submit the following medical certification letter to his physician:

March 24, 1993

Dr. James E. Schuster  
355 North Peters Avenue  
Fond du Lac, WI 54935

Re: Your patient: James Goeckerman

Dear Dr. Schuster:

Your patient, James Goeckerman, is an employee of the School District of North Fond du Lac. We have been aware for some time of his psoriasis condition and your treatment thereof.

Mr. Goeckerman intends to travel to Tampa, Florida next month for direct sunlight treatment of his psoriasis and has stated that he will be using four (4) sick leave days on April 7, 8, 15, and 16, as well as spring break from April 9 through April 14 for this treatment.

The relevant portion of the collective bargaining agreement governing usage of sick leave by Mr. Goeckerman reads as follows:

Sick leave is to be used only for

personal illness, disability, or periods of medical confinement of the employee. The Administrator may require a certificate of an M.D. at District expense for suspected abuse of sick leave. (Article X, Section A, Paragraph 1).

In an arbitration award issued in 1992, the arbitrator found that the District had the right to raise questions concerning the timing, duration and location for direct sunlight therapy to prevent the abuse of sick leave. According to the arbitrator, such questions, in order to comply with the provisions of Article X, Section A, Paragraph 1, "must be answered by a doctor".

Therefore, consistent with the terms of the Collective Bargaining Agreement and the arbitrator's award, please certify in writing the following:

- (1) Mr. Goeckerman's psoriasis constitutes a "personal illness" or "disability" thereby qualifying for sick leave usage.
  
- (2) You have prescribed direct sunlight therapy on the dates from April 7 through April 16, 1993, in Tampa, Florida for Mr. Goeckerman due to his psoriasis condition. [Obviously, our interest in your certification is whether you certify the modality (direct sunlight therapy), timing (mid-April), duration (10 days), and location (Tampa, Florida) for the therapy.] If not, please explain.

We would appreciate your immediate attention to this matter. As noted above in the excerpt

from the collective bargaining agreement, this request and your response thereto is at District expense, not Mr. Goeckerman's.

Thank you very much for your cooperation.

Sincerely,

Donald W. Kellogg /s/  
Donald W. Kellogg  
District Administrator

On March 25, 1993 the grievant delivered the letter to his physician. On April 5, 1993 Kellogg informed the grievant he could not act on his sick leave request without a response from the grievant's physician. On April 6, 1993 the grievant, his two sons and the grievant's mother left for the southern United States. Thereafter, the following letter dated April 12, 1993 was received by the District:

School District of North Fond du Lac  
225 McKinley Street  
North Fond du Lac, WI 54937-1299

**Attn: Mr. Donald W. Kellogg**

Dear Mr. Kellogg:

I am responding to your letter dated March 24, 1993, concerning my patient James Goeckerman. In response to your two questions, I submit the following answers.

#1 question: Does Mr. Goeckerman's psoriasis constitute a "personal illness" or "disability" thereby qualifying for sick leave?

Answer: Mr. Goeckerman's psoriasis constitutes a definite personal illness resulting in minimal to moderate disability. If the degree of disability or morbidity reaches a "certain degree," the psoriasis could qualify for sick leave usage. The question becomes: How bad does the psoriasis have to be to warrant sick leave?

#2 question: Does Dr. Schuster certify that Mr. Goeckerman's treatment has to be direct sunlight therapy with the timing to coincide with mid-April? Was any direction made with regard to a ten day duration at the location of (Tampa, Florida)?

Answer: Ultraviolet therapy (direct sunlight or phototherapy unit in a doctor's office) provide a beneficial effect for most patients with psoriasis. The timing of my ultraviolet light therapy is entirely dependent upon the degree of severity of the psoriatic condition. The duration of ultraviolet light therapy depends upon the severity of the psoriasis and the patient's response to therapy. For light provided in a phototherapy light cabinet, any physicians office will do. For phototherapy from direct sunlight, any direct sunlight will do with the time of year (season) dictating some practical restrictions, such as ambient temperature,

etc.

Prior to my receiving your letter dated March 24, and a letter from Mr. Goeckerman dated March 25, I was unaware of any anticipated phototherapy in Tampa, Florida. There is no doubt that ten days in the Florida sun will in most cases be beneficial to someone that has psoriasis. The question that comes up is whether Mr. Goeckerman's psoriasis warrants time off from work. I have not seen Mr. Goeckerman for three months. When last seen in my office, his psoriasis was under good control.

I hope the above answers are adequate for your purposes. If there are any additional questions with regard to this matter, feel free to contact me.

With kindest regards,

James E. Schuster, M.D. /s/  
James E. Schuster, M.D.

The grievant's physician also submitted a bill for responding to Kellogg's letter which was paid by the District. Kellogg met with the grievant on April 22, 1993 showing the grievant his physician's April 12, 1993 letter, also showing the grievant the undersigned's 1992 arbitration award and informed the grievant he could not grant the grievant sick leave without medical certification. Thereafter, in meetings with the grievant and his representative the District informed the grievant it was denying him sick leave pay but was granting him leave without pay for the days in question. Thereafter, the matter was grieved and processed to arbitration in accordance with the parties' grievance procedure.

At the hearing in the instant matter the grievant acknowledged that prior to leaving for the southern United States he had not physically met with his physician since January 7, 1993. That at that time his physician had cut down the dosage of grievant's medication for his psoriasis. The grievant also contended his psoriasis flared up in February 1993 but he chose not to consult his physician about the matter. The grievant also acknowledged that when he delivered Kellogg's March 24, 1993 letter he did not meet with his physician.

ASSOCIATION'S POSITION:

The Association contends that when the grievant submitted his request to Hintze on March 11, for the purpose of obtaining direct sunlight therapy the grievant's psoriasis had been flaring up. The Association acknowledged that the grievant had not been to see his physician for two months but argues that his psoriasis was more serious the grievant believed a substantial period of sunlight was necessary to help contain his condition. The Association points out the undersigned has already determined that psoriasis constitutes a "personal illness" and that the grievant's physician's letter of April 12, 1993 also identifies psoriasis as a personal illness. The Association argues that the grievant's doctor's statement that direct sunlight therapy would be beneficial to someone with psoriasis compared to other formes of treatment should leave no question in the undersigned's mind concerning the benefits of direct sunlight therapy. The Association contends the grievant's psoriasis was flaring and the grievant's decision to obtain direct sunlight therapy was an appropriate use of sick leave.

The Association contends the grievant's desire to obtain direct sunlight therapy to treat his psoriasis is not an abuse of sick leave. The Association points to the grievant's testimony concerning the amount of sunlight the grievant sought on each day in question and asserts this testimony was not rebutted by the District. The Association concludes there can be no dispute the grievant used every available hour to obtain sunlight and to treat his psoriasis.

The Association also argues the timing, duration and location for the grievant's psoriasis treatment was appropriate. The Association acknowledged that it was the grievant's decision to use the days in dispute and that the grievant had last personally visited his physician on January 14, 1993. That at that time the physician reduced his medication. The Association argues that the grievant's visit to the physician on January 14, 1993 was just one of many regular office visits the grievant has to contend with in order to deal with his condition. The Association also points out that when the grievant was questioned on cross examination as to whether he consulted his physician regarding the increasing number of psoriasis patches on his back the grievant already knew what to do since his next regular visit to the physician was not until April. The Association argues that when a flare up occurred in March the grievant only followed the physician's continuing recommendation to seek direct sunlight whenever possible.

The Association also argues that if the District relies on the physician's statement that he had not seen the grievant since last January fails to account for the fact the District only

answered two questions, the District did not ask the physician to examine the grievant. Had the District done so the Association argues the physician would have confirmed the grievant's self diagnosis. The Association also asserts that had it so required the grievant would of submitted himself to a physical examination by his physician.

The Association argues the grievant had to determine the timing, duration and location of direct sunlight therapy in this case due to the circumstances present at the time. The Association contends the grievant took positive advantage of the scheduled Spring break to add non-contract days to the total period of time. The Association asserts that the grievant could have requested the leave to occur during contracted days.

The Association also argues the grievant should not be penalized because his physician did not respond prior to his leaving on sick leave. Had the grievant been aware the response of his physician would not meet Kellogg's approval the grievant would of volunteered to undergo a physical examination by his physician. The Association concludes a denial of sick leave in the instant matter is not warranted.

In its reply brief the Association argues that to conclude the grievant deliberately failed to physically contact his physician is an outright fabrication and not supported by any evidence in the record. The Association also asserts the grievant's assertions concerning his flare up of psoriasis must be accepted by the undersigned. Further, that the grievant should not be penalized because of Kellogg's failure to request a physical examination. The Association also argues that the District's reliance on the physician's statement that ultraviolet therapy provides a beneficial effect ignores the record in the previous case wherein it remains undisputed that direct sunlight therapy is more beneficial to the grievant than other forms of treatment. The Association also argues that the statement can not be intended to cover the grievant because the physician has already labeled the grievant more serious than average.

#### DISTRICT'S POSITION:

The District contends that the application of Article X, Section A,1., of the collective bargaining agreement as interpreted by the undersigned in the 1992 Arbitration Award leads to the clear determination that sick leave is not appropriate in the instant matter. The District argues that the procedure followed by Kellogg to evaluate the grievant's sick leave request was reasonable and appropriate under the sick leave provision and the interpretation thereof by the undersigned in 1992. The District asserts that there can be no dispute it has the right to

police the sick leave provision. The District argues that Kellogg's interpretation of the events, the annual repetition of the request, the duration, the location and the vagueness of the January 14, 1993 note from the physician and the fact the leave would extend an already scheduled vacation period led to the suspicion of potential abuse. The District contends Kellogg followed the collective bargaining agreement and the 1992 award in drafting a letter to the grievant's physician.

The District also asserts Kellogg acted reasonably in denying the grievant's sick leave request in light of the physician's April 12, 1992 letter. The District argues it is the grievant's responsibility to get the appropriate certification of "personal illness" requiring the use of sick leave from the physician. In the instant matter the District asserts Kellogg acted reasonably in denying sick leave to the grievant after review of the physician's letter.

The District points out the physician was unable to certify the grievant's psoriasis warranted time off from work inasmuch as the physician had not seen the grievant for three (3) months. Further, the grievant's condition was under control when he was last seen by the physician, that while ten days in Florida would be beneficial in most cases, any direct sunlight would do as well as ultraviolet light therapy in a doctor's office. The District argues that the physician's letter, at most, qualify's psoriasis for sick leave usage, it does not certify a week of phototherapy in the southern United States for the grievant as the grievant's condition was under control the last time he had been seen by the physician. In contrast to the 1992 case where the physician had recommended sunlight as a form of treatment, in the instant matter the physician was unaware of any anticipated phototherapy in the southern United States, had not seen the grievant for three months, and at that time the physician considered the grievant's condition to be under control. The District concludes these facts constitute evidence which warrant the denial of sick leave.

The District also contends that if the grievant's condition had deteriorated it was incumbent on the grievant to make an appointment with his physician prior to self prescribing four (4) days off with pay. The District asserts the requirement for a medical certificate would be meaningless if the circumstances involved in this matter constitute the valid use of sick leave.

In its reply brief the District argues that the Association contention that the grievant sought direct sunlight therapy whenever possible in accord with his physician's continuing recommendation is not supported by the record in the instant matter nor in the 1992 case. Further, that there is no evidence to support the Association's assertion that direct sunlight

therapy is the safest and best modality of treatment for the grievant. The District also points out the Association does not dispute the reasonableness of Kellogg's suspicion. The District also asserts the agreement places the burden on the grievant to obtain the medical certificate because the agreement gives the District the right to direct the grievant to obtain a medical certificate. The District points out that the grievant made no attempt to have his physician verify the need for direct sunlight therapy either when he initially gave the District's request to his physician or when he became aware the District deemed his physician's response insufficient to grant sick leave. The District concludes Kellogg had no more questions of the physician after receiving his response and the burden was on the grievant to provide the District with the required medical certificate.

The District also argues the question asked of the physician was whether the grievant's condition warranted time off from work with the response being that the grievant had not been seen for three months and at that time the condition was under control. The District concludes the physician did not confirm the severity of the grievant's psoriasis and therefore the District was justified in denying the grievant's request for sick leave.

#### DISCUSSION:

The record demonstrates that on March 24, 1994 Kellogg requested a medical certificate from the grievant's physician to verify the need for the grievant's requested sick leave; i.e., obtaining direct sunlight therapy to treat his personal illness. There is no dispute that the grievant's condition, psoriasis, is a personal illness. There is no dispute that direct sunlight therapy is an accepted form of treatment for psoriasis. It is clear from the District's letter to the grievant's physician that the real concern being raised by the District is whether such a treatment was necessary for the grievant at the time and for at the location the grievant was making his request.

It is clearly evident from Article X, Section A, paragraph 1., of the parties' collective bargaining agreement that if the District suspects abuse it has the right to request medical verification of the sick leave. The District followed the procedure of this provision and the 1992 decision of the undersigned in requesting medical verification for the grievant's treatment. The fundamental issue is therefore whether the April 12, 1993 response of the grievant's physician verifies the need for the grievant's direct sunlight therapy.

The undersigned notes here that there was no dispute that the District's suspicion was reasonable. Contrary to the arguments of the Association, once a reasonable request for medical certificate

was made the burden shifted in this matter to the grievant to demonstrate that the personal illness he has and the modality of treatment he had selected was certified by his physician. The District questioned not only the beneficial nature of the therapy but, more importantly, the timing and the duration of the therapy. Therefore, the timing and duration of the direct sunlight therapy also had to be certified by the grievant's physician.

The undersigned also finds that the grievant's testimony concerning the condition of his illness, whether it was flaring up or not, is irrelevant once the District requested the medical certificate. The Association contention that the grievant was only following the continuing advice of his physician is also irrelevant once the District requested the medical certificate for the dates and times in question. Once the District raised its concern about the grievant's use of sick leave only an individual with the expertise to medically certify the grievant's condition and modality of treatment is relevant. Herein the only evidence which is relevant to that issue is the grievant's physician's letter of April 12, 1993.

A careful review of the physician's April 12, 1993 letter demonstrates the grievant's physician clearly viewed psoriasis as a personal illness. The physician also believed direct sunlight therapy was beneficial as a form of treatment. However, the physician did not conclude that such therapy was necessary for the grievant at the time nor for the duration in question because the physician had not examined the grievant since January, 1993. Thus the undersigned finds the physician's April 12, 1993 can not be construed as certifying that it was necessary for the grievant to receive direct sunlight therapy on the dates or at the location in question. Absent such a certification the undersigned finds the District's denial of the grievant's sick leave request did not violate the parties collective bargaining agreement.

Therefore, based upon the above and foregoing, and the testimony, evidence and arguments presented the undersigned concludes the District did not violate Article X, Section A, paragraph 1., when it denied the grievant sick leave for April 7, 8, 15 and 16, 1993. The grievance is therefore denied.

#### AWARD

The District did not violate Article X, Section A, paragraph 1., when it denied the grievant sick leave for April 7, 8, 15 and 16, 1993.

Dated at Madison, Wisconsin this 27th day of May, 1994.

By Edmond J. Bielarczyk, Jr. /s/

Edmond J. Bielarczyk, Jr., Arbitrator