

BEFORE THE ARBITRATOR

In the Matter of the Arbitration	:	
of a Dispute Between	:	
GREEN BAY SCHOOL DISTRICT	:	Case 150
	:	No. 50325
and	:	MA-8215
	:	
GREEN BAY BOARD OF EDUCATION	:	
EMPLOYEES CLERICAL UNION,	:	
LOCAL 3055B, AFSCME, AFL-CIO	:	
	:	

Appearances:

Mr. John Dennis McKay, Esq., McKay Law Offices, Suite 240, 414 East Walnut Street, Green Bay, Wisconsin 54301, on behalf of the School District.

Mr. James E. Miller, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, 936 Pilgrim Way, #6, Green Bay, WI 54304.

ARBITRATION AWARD

According to the terms of the 1992-94 collective bargaining between Green Bay School District (hereafter District) and Green Bay Board of Education Employees Clerical Union, Local 3055B, AFSCME, AFL-CIO (hereafter Union) the parties requested that the Wisconsin Employment Relations Commission appoint a member of its staff to act as impartial arbitrator of a dispute between them involving whether part-time school building clerical employe Karen Klapper should have been released early on the day before Thanksgiving, November 24, 1993, under Article 14 of the labor agreement. The Commission appointed Sharon A. Gallagher as arbitrator and hearing was held in Green Bay, Wisconsin on March 15, 1994. A stenographic transcript of the proceedings was made and received by March 29, 1994. The parties filed post-hearing briefs by May 2, 1994, which were exchanged by the undersigned. The record was thereupon closed as the parties waived their right to file reply briefs at the hearing.

Issues:

The parties stipulated that the following issues should be determined in this Award:

Did the Employer violate the contract when it told Karen Klapper that she could not leave work one-half hour early on the day before Thanksgiving, November 24, 1993?

If so, what is the appropriate remedy?

Relevant Contract Provisions:

ARTICLE XIV

HOURS OF WORK - SCHOOL CLOSING

. . .

All clerical employees assigned to the schools during the hours after the student school day will be dismissed at the close of the student school day on the last workday preceding Thanksgiving, Christmas and Good Friday.

All clerical employees assigned to the Administrative Offices will be dismissed one-half hour earlier than the end of their normal workday on the last workday preceding Thanksgiving, Christmas and Good Friday.

. . .

Facts:

Karen Klapper, the Grievant, has been employed for the past year and one-half as a part-time Attendance Secretary working 5.5 hours per day at Lombardi School. The school day at Lombardi is from 7:30 a.m. to 2:34 p.m. and Klapper regularly works from 7:00 a.m. to 12:30 p.m. Klapper is the only part-time clerical employed at Lombardi School. The other five Secretaries employed at Lombardi are full-time.

Prior to her assignment at Lombardi School, Klapper was employed by the District at Southwest School, at Broadway Central Office (BCO) and at West High School. While Klapper was employed at BCO (from approximately 1983 to 1991) she was allowed to leave early on the days before the three holidays listed in Article 14.

When Klapper transferred to her current job at Lombardi School (in the 1992-93 school year), she stated that she forgot about the early release provision and did not request to use it in her first year at Lombardi.

In November 1993, probably one week before Thanksgiving, Klapper read Article 14 of the contract and called Union officer DeRubis who said she was entitled to early release on the day before Thanksgiving. Then Klapper called the District's personnel office to ask if she would get released one-half hour early on the day before Thanksgiving that year. Personnel checked into it and

later told Klapper she was not entitled to early release. Klapper then authorized filing the instant grievance because she felt that, in fairness, all part-time employes should receive the same early release benefit given to those employes working at BCO.

The Union offered evidence which it urged proved that a past practice exists whereby the District has allowed part-time secretaries to use the pre-holiday release time provision of Article 14. That evidence is as follows. Judy Sargent, currently a secretary at Langlade School, stated that in approximately 1986 when she worked as a full-time secretary at Sullivan School with another part-time secretary, the principal of the School at that time, Keith Schneider, 1/ informed her and the part-time secretary that on that day (the day before Thanksgiving) they could leave early. Schneider told Sargent, whose hours of work were then 8:00 a.m. to 4:00 p.m. with one hour for lunch, that she could leave one hour early. Schneider also told the part-time secretary, whose hours of work were 8:30 a.m. to 3:00 p.m. with one-half hour for lunch, that she could leave one hour early.

Sargent stated that as a full-time secretary she always received pre-holiday release time while at Sullivan School. Sargent admitted however that 1986 was the only year in which Sargent was sure that the part-time secretary was given pre-holiday early release time. Sargent stated that at this time the school day at Sullivan School was from 8:30 a.m. to 3:00 p.m.

Sargent also stated that Schneider made no reference to the labor agreement during the above-described conversation; that Sullivan Principal Schneider served in that capacity for only one year (1986); that he then became ill and that there were approximately eight other principals in charge during her six years at Sullivan School.

The Union also offered evidence regarding bargaining history.

Union official Sharon Ducet testified that she had been on the Union's bargaining team after school employes began receiving pre-holiday early release time under the relevant portion of Article 14. Ducet stated that she was not sure if she was on the bargaining team when the contract language regarding school employes was placed in the agreement (1986 or 87), but that she was on the Union's team when the Union proposed and negotiated pre-holiday early release time into Article 14 for BCO employes. Ducet stated that the Union made the proposal so that all BCO employes would receive one-half hour of release time despite BCO employes' staggered work hours (different starting and quitting times for various employes). 2/ Ducet stated that she could not

1/ At the time of the instant hearing Schneider was deceased.

2/ Ducet indicated that before the Union negotiated this benefit for BCO employes, Administrative employes had worked at the

recall any specific discussions during bargaining regarding what had been done in the schools with pre-holiday early release time.

Ducet stated that she believed that the language of Article 14 granting BCO employes pre-holiday early release time was proposed so that all employes would receive the same pre-holiday early release time. However, the Union proffered no bargaining notes and Ducet did not recount any specific discussions in support of her beliefs.

Positions of the Parties:

Union:

The Union argued that the central issue in this case is whether part-time school building employes should be permitted to leave work early prior to school year holidays on the same basis as part-time BCO employes and full-time school building employes.

The Union asserted that the relevant portion of Article XIV must be read in conjunction with evidence of past practice it proffered which showed that part-time school building employes have been allowed one-half hour early release time. In addition, the Union urged that the evidence it offered of the Union's negotiations intent relating to Article XIV BCO employes' benefits -- to have all employes treated the same -- supported its contentions.

The Union contended that even if the language of Article XIV is found to be clear and unambiguous on its face, that the language "is subject to being modified by the existence of contrary practice." The Union observed that the monetary value of this grievance is small, but the principle -- whether all employes will be treated equally -- is large. The Union sought an Award sustaining the grievance.

District:

The District urged that the School Closing language of Article XIV contains a clear and unambiguous statement which shows that Grievant Klapper was not entitled to leave work one-half hour before her 12:30 p.m. normal quitting time at Lombardi on the day before Thanksgiving, November 24, 1993. In this regard, the District noted that Article XIV only allows School employes like Klapper who work "during the hours after the student school day" to be released at the end of the student school day on the day before the listed holidays. Thus Klapper, who leaves work two hours and four minutes before the end of the student school day (2:34 p.m.) should have received no early release time under the clear terms of Article XIV. In addition, the District argued,

City Hall Building where hours of operation were essentially set by the City and early release was not possible. After 1986, the District moved its administrative employes to BCO and the hours of work/operation were thereafter controlled by the District.

Klapper, who is employed at Lombardi, was not entitled to the one-half hour early release time because she is not employed at BCE under the clear language of Article XIV.

The District asserted that even if such evidence were relevant, the Union failed to present sufficient evidence to demonstrate that a past practice existed allowing early release for part-time school building employes whose hours of work normally end before the end of the student school day. On this point, the District noted that one Union witness testified to one instance with one principal in just one school year where such a part-time clerical employe was given early release time.

The District therefore urged the Arbitrator to enforce the clear language of Article XIV and to deny the grievance in its entirety.

Discussion:

Article XIV on its face states that all school building clericals will be released at the end of the school day if they are assigned to work "during the hours after the school day" on the last workday preceding Thanksgiving, Christmas and Good Friday. I can find no ambiguity in this language. It is precise and clear.

It is axiomatic in grievance arbitration cases that where contract language is clear and unambiguous, evidence of bargaining history and past practice is inadmissible if it is offered to alter or vary the clear language of the agreement. Thus, the evidence offered by Ms. Sargent and Ms. Ducet may not be considered in reaching an Award herein. 3/ On this point, because the contract language regarding school building clericals is clear, whether one principal at Sullivan School released one part-time secretary prior to the three listed holidays in one year, and whether in negotiating regarding early release time for BCO employes, the Union's goal was to achieve equality of benefits among BCO and school building clericals is entirely irrelevant to this case.

I note that grievant Klapper stated that she works 5.5 hours per day at Lombardi School (7:00 a.m. to 12:30 p.m.) and that the school day at Lombardi is from 7:30 a.m. to 2:34 p.m. The language of Article XIV applicable to Klapper clearly provides, therefore, that she must work her entire work day prior to the three listed holidays because she is not assigned to work "during the hours after the student school day." It is significant that there is no reference in this language either to BCO employes or

3/ I note in this regard that the Employer objected to the receipt of this evidence at the hearing. Although I took the evidence over the District's objection, I have not considered it in reaching this Award due to the principles of contract construction I have described above.

to one-half hour early release time. Rather, the references to BCO employes and to a one-half hour early release time are stated in a separate paragraph of Article XIV, clearly applicable only to BCO employes.

In these circumstances and based upon the relevant evidence and argument herein, I issue the following

AWARD

The Employer did not violate the contract when it told Karen Klapper that she could not leave work one-half hour early on the day before Thanksgiving, November 24, 1993.

The grievance is therefore denied and dismissed in its entirety.

Dated at Oshkosh, Wisconsin this 9th day of June, 1994.

By Sharon A. Gallagher /s/

Sharon A. Gallagher, Arbitrator