BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between BLACK RIVER FALLS EDUCATIONAL SUPPORT PERSONNEL ASSOCIATION and BLACK RIVER FALLS SCHOOL DISTRICT	Case 12 No. 51249 MA-8545 Case 13 No. 51250 MA-8546

Appearances:

Mr. James Bertram, Executive Director, Coulee Region United Educators, appearing on behalf of the Association.

Lathrop & Clark, Attorneys at Law, by Mr. Peter Martin and Ms. Malina Fischer, appearing on behalf of the District.

ARBITRATION AWARD

The above-captioned parties, hereinafter the Association and the District or Employer, respectively, were signatories to a collective bargaining agreement providing for final and binding arbitration of grievances. Pursuant to a request for arbitration, the Wisconsin Employment Relations Commission appointed the undersigned to hear two grievances. A hearing, which was not transcribed, was held on both grievances on November 3, 1994, at Black River Falls, Wisconsin. Afterwards, the parties filed briefs and reply briefs which were received by January 9, 1995. Both grievances have been consolidated into this Award. Based on the entire record, the undersigned issues the following Award.

ISSUES

At the commencement of the hearing, each side gave its version of the issue(s) involved here. The Association frames the issue as:

> Did the District violate the collective bargaining agreement when it failed to allow personal business leave to accumulate from 1992-93 for use in 1993-94, and if so, what is the remedy?

The District frames the issues as:

1. Whether the District violated the collective bargaining agreement by denying the grievants' requests to use personal business leave when the hours requested were unused personal business leave from the school year prior to the ratification date of the agreement?

2. If so, what is the appropriate remedy?

Since there was no stipulation on the issue(s) to be decided, the parties asked that the undersigned frame it in the award. From a review of the record and the briefs, the undersigned has framed the issues as follows:

1. Is the accumulation part of the personal business leave clause retroactive back to the start of the parties' initial contract?

2. Did the District violate the collective bargaining agreement when it denied the grievants' requests to use personal business leave? If so, what is the appropriate remedy?

PERTINENT CONTRACT PROVISIONS

The parties' 1991-94 collective bargaining agreement contained the following pertinent provisions:

ARTICLE VI - WORKING CONDITIONS

. . .

E. Paid Leaves of Absence

5. Personal Business Leave

a. All employees are entitled to one (1) day of Personal Business Leave per year, accumulative to two (2) days as defined on

the Classified Personnel Request for Personal Business leave form. Advance notice shall be given to the employee's immediate supervisor in writing on the appropriate form.

b. Personal business which cannot be conducted on other than a school day will be deducted from available sick leave.

. . .

K. INSURANCE

1. **Health Insurance**
To be eligible for single or family health insurance, employees must work a minimum of twenty (20) hours per week.

a. The District will contribute 90% of the premium for single or family coverage for 12-month or school year employees who work thirty-five (35) or more hours per week.

b. The District will contribute 45% of the premium for single or family coverage for 12-month or school year employees who work less than thirty-five (35) hours per week. Effective during the 1993-94 contract year, the District will contribute 50% of the premium for single or family coverage for 12-month or school year employees who work less than thirty-five (35) hours per week.

c. The District reserves the right to change the insurance carrier from time to time, provided that the benefits of the total insurance program are substantially equal to or better than the health insurance program in effect for the 1992-93 contract year. If both

spouses are employed by the District, only one family plan will be provided.

. . .

ARTICLE VII - GENERAL PROVISIONS

. . .

B. DURATION OF CONTRACT

1. This Agreement, reached as a result of collective bargaining between the parties, represents the full and complete Agreement between the parties and supersedes all previous agreements between the parties.

2. It is agreed that any matters relating to this current contract term, whether or not referred to in this Agreement, shall not be open for negotiations except as the parties may specifically agree thereto. All terms and conditions of employment not covered by this Agreement shall continue to be subject to the District's direction and control. However, the Association shall be notified in advance of any changes having a substantial impact on wages, hours or conditions of employment for the bargaining unit, given the reason for such changes, and provided an opportunity to bargain the impact of the change.

3. This Agreement shall be binding and in full force and effect from July 1, 1991, until June 30, 1994 at which time it shall expire. The terms and conditions of this Agreement may be altered, changed, added to, deleted from or modified only as provided in this Agreement and by voluntary, mutual consent of the parties.

BACKGROUND

The Association was certified as bargaining representative for the District's support staff

employes in May, 1991. Thereafter, the parties entered into negotiations for an initial labor agreement.

While the parties were bargaining over their initial contract, the District maintained the status quo regarding personal business leave. The status quo concerning same was that support staff employes got one day of personal business leave per year which was deducted from the employes' accumulated sick leave. This personal business leave was not accumulative. Rather, it was "use it or lose it." In other words, if an employe failed to use his or her one personal business day in a given school year, the day was lost and the employe could not carry the day over into the subsequent school year.

During the parties' negotiations for an initial contract, the District was represented by Attorneys Mike Julka and Malina Fischer. Fischer finalized the contract on behalf of the District. The Association was represented in these negotiations by two different WEAC representatives. Jeff Roy was the Association's first representative and Joan Haag became the Association's representative in August, 1992. Haag finalized the contract on behalf of the Association.

In their negotiations, the Association presented proposals for terms to be included in the initial contract, and the District responded to same. Thus, the District worked off the proposals made by the Association.

The record shows that the personal business leave language which was ultimately incorporated into the parties' initial contract developed as follows. The Association proposed the following language on August 18, 1992:

> C. All employees are entitled to one (1) day of Personal Business Leave per year, accumulative to two (2) days. If taken said day(s) shall be deducted from sick leave. Notice shall be given to the employee's immediate supervisor using the form entitled "Classified Absentee Report" (sample attached to the Master Agreement).

The Association repeated this same proposal on October 20 and November 4, 1992. On January 13, 1993, the District made the following counter proposal:

> 5. a. All employees are entitled to one (1) day of Personal Business leave per year, accumulative to two (2) days as defined on the Classified Personnel Request for Personal Business Leave form. Advance notice shall be given to the employee's immediate supervisor in writing on the appropriate form.

b. Personal business which cannot be conducted on other than a school day will be deducted from available sick leave.

The District's counter proposal referenced above was discussed and tentatively agreed upon at a February, 1993 mediation session. During this mediation session, the parties did not discuss whether this provision would be retroactive. The personal business leave language referenced above (i.e. the counter proposal the District made on January 13, 1993) was ultimately included verbatim in the parties' 1991 - 1994 labor agreement. At no time during the course of bargaining their initial contract was the retroactive application of the personal business leave language ever specifically discussed.

Early in the parties' negotiations, the Association proposed that all provisions in the yet to be negotiated agreement be retroactive. To achieve this end, the Association made the following proposal on August 18, 1992:

> This agreement . . . shall become effective May 8, 1991, and remain in full force and effect . . . through and including June 30, 1993. Unless stated otherwise on an item-by-item basis, all provisions of this agreement shall be retroactive back to July 1, 1990.

The District did not include any retroactivity provision in its counter proposals to the Association. The subject of retroactivity was discussed in general at the previously referenced February, 1993 mediation session. During the mediation session, the District objected to including a blanket retroactivity statement in the contract and indicated it would not agree to same. The parties essentially agreed to disagree on retroactivity and decided to discuss it (i.e. retroactivity) at the end of negotiations. The next exchange of bargaining proposals occurred in March, 1993. At that time the Association dropped two of its retroactivity proposals. The following proposal however, which was on the Association's cover page, remained on the table.

> Note: Unless specifically noted herein, all provisions of this agreement shall be retroactive to May 8, 1991.

In June, 1993, the Association modified the above-noted retroactivity proposal to reflect a different date, namely July 1, 1991 (instead of May 8, 1991). The Association continued to include this retroactivity language on the cover page of the bargaining proposals made to the

District in July and August, 1993. In September, 1993, the Association made a comprehensive proposal to the District which did not include any retroactivity language whatsoever. With this action, the Association dropped its retroactivity proposal.

On September 10, 1993, Haag and Fischer met face to face to attempt to wrap up the remaining issues still on the table. They were the only two people present. At that meeting Haag gave Fischer a final offer covering the remaining unresolved items. The Association's final offer did not include a retroactivity proposal. Haag and Fischer did not discuss retroactivity at all at that meeting. Thus, there was no discussion at that meeting regarding the retroactive application of the personal business leave language. The major item which Haag and Fischer discussed at this meeting was wages. They reached a conceptual tentative agreement that day.

On September 24, 1993, Fischer and Haag had a phone conversation wherein they addressed an insurance matter. Additionally, the topic of retroactivity was addressed. With regard to the latter topic, Fischer told Haag that it was her (Fischer's) view that the contract's terms were prospective. Fischer's notes from that phone conversation indicate in pertinent part that "only salary schedule money retroactive; no other pay is retroactive. Not call time; not bus driver meals, etc. K (contract) B/GS (begins) W/ (with) ratification." The record does not indicate what Haag said in response.

The Association ratified the tentative agreement on September 28, 1993, and the Board ratified the following day (September 29, 1993). The agreement which both sides ratified did not contain any language which dealt with retroactivity.

On September 29, 1993, Fischer faxed Haag two proposed letters of understanding dealing with the topics addressed in their September 24, 1993 phone conversation: one related to the insurance matter and one related to the retroactive payment of items other than wages. The latter letter provided:

> RE: Letter of Understanding: Collective Bargaining Agreement Between the School District of Black River Falls and the BRFESPA
>
> Dear Ms. Haag:
>
> The purpose of this Letter of Understanding is to memorialize the understanding of the parties as it pertains to retroactive payment of items other than wages covered by the Collective Bargaining Agreement Between the School District of Black River Falls and the BRFESPA (Agreement).

> The parties agree that only the employee wages contained within the Agreement will be paid by the District retroactively; all other provisions for payment contained within the Agreement will commence with the 1993-94 contract year. Such items include for example purposes, but are not limited to, the following: call-in pay, vehicle use, bus parking, and bus driver meals.
>
> Please signify your concurrence in the provisions of this Letter of Understanding by signing on the line provided below and returning a copy to me.

Haag never replied to either letter. Although Fischer and Haag spoke several times thereafter, neither ever raised the subject of the faxed letters or retroactivity in general.

Shortly after the contract was ratified, the District made retroactive wage payments to bargaining unit members. While the District paid wages retroactively, it did not pay four other monetary items retroactively. The four monetary items which were not paid retroactively were holiday pay, the increase in bus driver meal pay, bus parking pay and call-in time pay. Additionally, the following five contractual provisions were not applied retroactively by the District: dues deduction, fair-share, layoff, grievance procedure and probation. The Association did not grieve the District's failure to apply any of the foregoing monetary items and contractual provisions retroactively. Insofar as the record shows, the only items applied retroactively from the parties' initial contract were wages, certain insurance benefits and those provisions of the contract which had an effective date prior to September 29, 1993.

FACTS

On April 12, 1994, aide Sue Eddy verbally requested leave to attend a relative's funeral on that date. Eddy's supervisor, Principal Jeff Martyka, verbally approved her absence from work to attend the funeral. Eddy attended the funeral and was absent from work for 1 1/2 hours. Afterwards, Eddy requested personal business leave for the 1 1/2 hours she was absent from work on that date. Eddy had previously used her one day of personal business leave for the 1993-94 school year, so she envisioned that this 1 1/2 hours would come from her unused personal business leave from the 1992-93 school year. District Business Manager Ted Kozlowski subsequently informed Eddy that she did not have any personal business leave available to her from 1992-93, and thus her absence on April 12, 1994, was an unpaid leave of absence. Eddy's pay was later docked 1 1/2 hours.

On April 22, 1994, aide Helen Jelinek verbally requested personal business leave for May 5 and 6, 1994. She requested 7 1/2 hours for May 5 and 5 1/2 hours for May 6. Jelinek

requested the leave for those dates because she was closing on a home and moving. Jelinek envisioned that the 5 1/2 hours would come from the personal business leave she had remaining for the 1993-94 school year and that the 7 1/2 hours would come from her unused personal business leave from the 1992-93 school year. Jelinek's supervisor, Principal Martyka, contacted District Business Manager Kozlowski regarding Jelinek's request for personal business leave for May 5 and 6. Kozlowski approved part of the requested leave and denied part. He approved the requested 5 1/2 hours on the grounds that Jelinek had that much personal business leave time left for the 1993-94 school year. Kozlowski denied the requested 7 1/2 hours on the grounds that employes could not use unused personal business leave from the 1992-93 school year in the 1993-94 school year. It was Kozlowski's view that unused personal business leave from the 1992-93 school year did not carry over into the 1993-94 school year. Jelinek took 5 1/2 hours of personal business leave on May 6. She worked her normal schedule on May 5. Thus, Jelinek did not take personal business leave on that date as she originally requested.

Both Eddy and Jelinek filed grievances concerning their denial of personal business leave. Their grievances were appealed to arbitration.

The record indicates that Eddy and Jelinek were not members of the Association's bargaining team. Thus, they were not involved in the negotiations referenced in the "Background" section.

POSITIONS OF THE PARTIES

The Association's position is that the District violated the contract when it failed to let the grievants use unused personal business leave from the 1992-93 school year in the 1993-94 school year. To support this premise, the Association relies on the personal business leave clause. According to the Association, that provision is clear and unambiguous in allowing employes to accumulate two days of personal business leave. It notes that no limits or restrictions are placed on this accumulation. Next, with regard to the retroactivity of this provision, it argues that the parties agreed to utilize the contractual duration clause to determine what years would be in effect for use to accumulate personal business leave. It cites the specific language contained in the Duration clause (i.e. "the Agreement shall be binding and in full force and effect from July 1, 1991, until June 30, 1994") and notes that it contains no limitations whatsoever. The Association reads this clause (i.e. the duration clause) to provide that all provisions of the contract are retroactive back to July 1, 1991, unless specified otherwise. The Association also asserts this is what the parties agreed to at the bargaining table. The Association contends there was no agreement by the parties to not apply the accumulation provision of the personal business leave clause retroactively. Applying the duration clause to the accumulation part of the personal business leave clause, the Association believes the former allows employes to carry over personal business leave from 1992-93 for use in 1993-94. As additional support for its contention, the Association cites the sick leave provision. It is the Association's view that the personal business

leave clause is similar to the sick leave provision in that both provide for an accumulation of days and neither provision contains an effective date. The Association notes that while the District allowed employes to accumulate sick leave during the 1991-92 and 1992-93 contract years, it did not allow employes to accumulate personal business leave. The Association submits that the two provisions should be administered similarly. Next, the Association argues that the parties' bargaining history supports its position here. It notes in this regard that when the parties agreed on the personal business leave language, the District did not get a commencement date limit to accumulation of personal business leave. The Association contends that what the District is trying to do here is get through arbitration what it failed to get in bargaining, namely a limit on personal business leave accumulation. With regard to the various retroactivity provisions which it offered in negotiations, the Association argues that once the duration clause was agreed upon, a retroactivity provision was no longer necessary. The Association therefore contends that the District violated the agreement when it denied the grievants' requests to use personal business leave. In order to remedy this alleged contractual breach, the Association asks the arbitrator to sustain the grievances and pay both grievants. Specifically, it seeks 1 1/2 hours pay for Eddy and 7 1/2 hours pay for Jelinek for the day she was denied leave.

The District's position is that its refusal to retroactively apply the accumulation part of the personal business leave clause did not constitute a contractual violation. In its view, the Association's contention that the personal business leave clause should be applied retroactively is contrary to the clear meaning of the contract when it is considered as a whole. The District first contends that the personal business leave clause does not specifically allow for the retroactive application of its terms to a time pre-dating its ratification. In other words, the District believes the contract does not permit the accumulation and carry over of unused personal business leave from a period in time in which the contract was not in effect, to a period of time in which the contract became effective (i.e. 1992-93 to 1993-94). To support this contention, the District notes the absence of a specific effective date in the personal business leave clause, and the inclusion of specific effective dates in other contractual provisions, namely the salary schedule provision, the health and dental insurance provisions, and the vacation provision. Given the foregoing, the District argues that the personal business leave language commenced with the ratification of the contract. Second, the District cites the general labor law maxim that labor contracts are often back dated for the purpose of retroactive application of economic items such as wage increases. According to the District, a reading of the contract in its entirety shows that the parties intended to adhere to this standard with respect to retroactive application of economic terms of the contract, and prospective application of the non-economic terms of the contract. The District submits that the parties considered personal business leave to be a non-economic item. The District therefore argues that since personal business leave accumulation is not an economic item easily capable of retroactive application, the arbitrator should conclude that the contract does not require retroactive application of the personal business leave clause. Third, if the arbitrator determines that the personal business leave clause is ambiguous and resorts to bargaining history as a means to interpret the language, the District contends that the bargaining history supports the District's administration of the language. It notes in this regard that the Association repeatedly tried in

negotiations to include specific retroactivity language in the parties' initial contract, that it (i.e. the District) repeatedly rejected the Association's retroactivity proposals, and that the Association finally dropped their retroactivity proposal. The District argues that since the Association tried to get a specific retroactivity provision into the contract and failed to do so, this omission proves that the personal business leave accumulation is not retroactive. The District also asserts that the bargaining history shows that the parties intended that only those items contained in the contract with specific effective dates pre-dating ratification were to be retroactive. According to the District, the Association failed to establish that the parties had an agreement to the contrary. With regard to Haag's testimony that the parties allegedly agreed that everything was retroactive to July 1, 1991, the District notes that the Association never explained when this agreement allegedly occurred. The District also notes that the Association offered no written evidence to back up this claim. Finally, the District argues in the alternative that should the arbitrator find that the District violated the terms of the contract, the District believes that the Association's proposed remedy (i.e. to pay both grievants for their lost time) is inappropriate here and should not be granted. With regard to Jelinek's request for 7 1/2 hours personal business leave, the District notes that she ended up working those hours and was paid for them. The District therefore submits she never lost any pay. With respect to Eddy's request for 1 1/2 hours personal business leave, the District asserts that no payment is due her for that time because she attended a relative's funeral. According to the District, attending a funeral is an acceptable reason for use of personal business leave, but attending a relative's funeral is not an acceptable reason for use of personal business leave. The District asserts that funeral attendance for relatives is covered under another part of the contract, namely Article VI, Section E, 3.

DISCUSSION

At issue is whether personal business leave which was unused from the 1992-93 school year could be carried over into the 1993-94 school year and used. Both grievants attempted to do just that, namely use some of their unused personal business leave from 1992-93 school year during the 1993-94 school year. The District took the position they could not do so and denied their personal business leave requests. The question here is whether this action complied with the parties' contract or violated same.

In the discussion that follows, attention will be focused first on the applicable contract language. If the language does not resolve the matter, attention will be given to evidence external to the agreement, namely the parties' bargaining history.

Both sides agree that the contract language applicable here is the first sentence in Article VI, Section E, 5, a. (the personal business leave clause). It provides as follows:

All employees are entitled to one (1) day of Personal Business

> Leave per year, accumulative to two (2) days as defined on the Classified Personnel Request for Personal Business Leave form.

The first part of this sentence provides in plain terms that employes get one day of personal business leave per year. The next part of the sentence goes on to provide that personal business leave is "accumulative to two (2) days . . ." Hereinafter, this part of the clause will be referred to as the accumulation part. When the accumulation part is read in conjunction with what preceded it, it means that employes can amass or accumulate a total of two personal leave days. Thus, if they do not use their personal business leave day during the course of the year, they can carry it over into the next year. This of course would give them a total of two days which they could utilize.

The crux of this dispute though is not what the language means. Instead, it is whether the accumulation part of this language is retroactive back to the start of the contract (i.e. July 1, 1991) by means of the contract's duration clause, or whether it (i.e. the accumulation part) is prospective from the date the contract was ratified by the parties (i.e. September, 1993). The Association contends it is the former (i.e. retroactive), while the District the latter (i.e. prospective).

A review of the previously cited personal business leave clause indicates it does not contain an effective date. Simply put, no date is mentioned. This is not surprising though because most of the various provisions in the contract do not contain effective dates.

As noted above, what is in question here is the effective date for the accumulation part of the clause. On its face, the provision does not say when employes begin accumulating personal business leave. For example, was it with the 1991-92, 1992-93 or 1993-94 school year? The clause does not say. Thus, the language is silent on this specific point.

Given this silence concerning when the accumulation part of the personal business leave clause became effective, attention is turned to the other evidence in the record to help fill this gap in the language. That evidence of course is the parties' bargaining history. Bargaining history is a form of evidence commonly used by arbitrators to fill the gaps that sometimes exist in contract language.

Based on the following rationale, the undersigned finds that the bargaining history does not support the Association's contention that the parties intended the accumulation part of the personal business leave clause to be retroactive. To begin with, it cannot be overlooked that the Association proposed specific retroactivity language in negotiations and failed to get it. It is undisputed in this regard that from August 18, 1992, until August, 1993, the Association proposed language to be included in the initial contract which would have provided that all provisions of the contract were retroactive to July 1, 1991. It is also undisputed that during that same time frame, the District repeatedly rejected the retroactivity proposals made by the Association. On

September 10, 1993, the Association gave the District a final offer on the remaining unresolved items. That offer did not include a retroactivity proposal. Thus, the Association dropped its retroactivity proposal as of that date. It is an established arbitral principle that when a party attempts in contract negotiations to include a specific provision in the contract, and ultimately fails in that attempt, the plain inference of the omission is that the intent to reject prevailed over the intent to include. Application of this principle here means that the Association's repeated proposal to include a specific retroactivity provision in the contract and its ultimate dropping of that proposal signifies the Association's acquiescence with the District's refusal to include such a statement in the contract. The arbitrator therefore concludes that the omission of the specific retroactivity provision in the contract is indicative of the intent of the parties to reject the retroactive application of every item contained therein.

Second, following ratification of the contract by the parties, the record indicates that a number of items/provisions in the new contract were not paid or applied retroactively by the District. Specifically, the following four monetary items were not paid retroactively by the District: holiday pay, the increase in bus driver meal pay, bus parking heater pay and call-in time pay. Additionally, the following five economic and non-economic provisions were not applied retroactively by the District: dues deduction, fair-share, layoff, grievance procedure and probation. Thus, at least nine items/provisions in the new contract were not paid or applied retroactively by the District; instead, they were paid and applied prospectively. The record further indicates that the Association did not challenge the prospective application of any of these nine items/provisions. Said another way, no grievances were filed over their prospective, as opposed to retroactive, application. The fact that these nine items/provisions were not paid or applied retroactively establishes that the parties did not intend that everything in the contract was to be retroactive. Moreover, given that at least nine items were not paid or applied retroactively, it is not much of a stretch to add a tenth item to that list, namely the accumulation part of the personal business leave clause.

Third, although the Association contends that the parties agreed in bargaining that everything in the contract was retroactive to July 1, 1991, unless specified otherwise, it never showed when this agreement allegedly occurred. To illustrate this point, it is noted that such an agreement did not occur at the February, 1993 mediation session wherein the parties agreed on the personal business leave language. Additionally, it did not occur at the parties' final meeting on September 10, 1993, because the subject of retroactivity was not discussed at all that day. While Fischer and Haag did discuss the subject of retroactivity during their September 24, 1993 phone conversation, Fischer did not agree during that conversation that everything in the contract was retroactive to July 1, 1991. In fact, Fischer told Haag just the opposite (namely that she thought the contract's terms were prospective) and this is what she wrote in her notes from that phone call. Obviously then an agreement did not occur that day either. Since the parties did not agree on retroactivity on any of the dates just noted, when did this alleged agreement on retroactivity occur? The Association never identified a particular date when the parties supposedly agreed that everything in the contract was retroactive to July 1, 1991, unless specified otherwise. Since the

District expressly challenges the existence of an agreement on retroactivity, the Association needed to prove its existence. It failed to do so. That being the case, the Association did not substantiate their claim that the parties agreed in bargaining that everything in the contract was retroactive to July 1, 1991, unless specified otherwise.

The above-noted bargaining history persuades the undersigned that the accumulation part of the personal business leave clause was not to be applied retroactively to July 1, 1991; rather, it (i.e. the accumulation part of the personal business leave clause) was to be given prospective

effect after the contract was ratified in September, 1993. Given this bargaining history, it would be a circumvention of the bargaining process to now apply the contractual duration clause to the accumulation part of the personal business leave clause (as the Association proposes) so that it was retroactive to July 1, 1991. Accordingly, I decline to do so.

Having so found, the question remains whether the District violated the contract when it denied the grievants' personal business leave requests. Based on the following rationale, I find it did not. Prior to the adoption of the parties' initial labor agreement, the District adhered to the status quo regarding personal business leave. The status quo concerning same was that each employe got one personal leave day per year, but if they did not use the day during the year it was lost. Thus, the status quo was that employes could not accumulate or carry over a personal business leave day into the next year. At the end of the 1992-93 school year (June, 1993), this status quo was still in effect because the parties were still bargaining their initial contract. This meant that at the end of the 1992-93 school year, all unused personal business leave lapsed and could not be carried over into the next school year (i.e. the 1993-94 school year). Consequently, when the 1993-94 school year started, all bargaining unit employes had just one personal business leave day available to use during the 1993-94 school year. The record indicates that both grievants used their one personal business leave day for the 1993-94 school year. What each tried to do here was also use some unused personal business leave from the 1992-93 school year in the 1993-94 school year. However, as just noted, their unused 1992-93 personal business leave time lapsed at the end of the 1992-93 school year and could not be carried over into the 1993-94 school year. Under these circumstances, the District's denial of the grievants' personal business leave requests did not violate the contract.

In reaching this conclusion, the undersigned considered the Association's contention regarding the sick leave provision and found it unpersuasive. The sick leave provision is certainly similar to the personal business leave provision in that both provide for an accumulation of days and neither provision contains an effective date. The record indicates that the District allowed employes to accumulate sick leave during the 1991-92 and 1992-93 school years, but as previously noted did not allow employes to accumulate personal business leave during those same years. That said, these provisions differ in one dramatic respect: the record also indicates that the status quo with respect to sick leave included the accumulation of sick days, while the status quo with respect to personal business leave (as noted above) did not. This means that bargaining unit employes did not accumulate sick leave days during the 1991-92 and 1992-93 school years by virtue of the contract language, but rather accumulated days during those years by virtue of the District's policy and the status quo which the District adhered to while the parties' initial contract was negotiated. In my view, this difference distinguishes the two provisions. It is therefore held that the District's administration of the sick leave provision (whereby it allowed employes to accumulate sick leave days during the 1991-92 and 1992-93 school years) does not alter the outcome herein.

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

AWARD

1. That the accumulation part of the personal business leave clause is not retroactive back to the start of the parties' initial contract; and

2. That the District did not violate the collective bargaining agreement when it denied the grievants' requests to use personal business leave. Therefore. the grievances are denied.

Dated at Madison, Wisconsin, this 20th day of April, 1995.

By Raleigh Jones /s/
Raleigh Jones, Arbitrator