BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between SUPERIOR SCHOOL DISTRICT EMPLOYEES LOCAL 1397, AFSCME, AFL-CIO, WCCME, AFL-CIO and SUPERIOR SCHOOL DISTRICT	Case 111 No. 52576 MA-9032

Appearances:

Mr. James Mattson, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, 1701 East Seventh Street, Superior, Wisconsin 54880, appearing on behalf of the Union.

Hendricks, Knudson & Gee, S.C., Attorneys at Law, 1507 Tower Avenue, Suite 312, Superior, Wisconsin 54880, by Mr. Kenneth A. Knudson, appearing on behalf of the District.

ARBITRATION AWARD

Superior School District Employees Local 1397, AFSCME, AFL-CIO, WCCME, AFL-CIO, hereafter the Union, and the Superior School District, hereafter the District or Employer, are parties to a collective bargaining agreement which provides for the final and binding arbitration of grievances. The Union, with the concurrence of the District, requested the Wisconsin Employment Relations Commission to appoint a staff member as a single, impartial arbitrator to resolve the instant grievance. Hearing was held on September 7, 1995, in Superior, Wisconsin. The hearing was not transcribed and the parties did not file written argument.

ISSUE:

The parties were unable to stipulate to a statement of the issue.

The Union frames the issue as follows:

> Did the Employer violate the terms of the collective bargaining agreement when the District refused to credit the grievants the additional earned sick days on a monthly basis and continue to maintain the grievants at a level of one hundred twenty

(120) days until in the event the grievants used more sick days than they earned in a given year?

And, if so, the Employer shall credit the grievants' sick leave accounts and shall maintain a one hundred twenty (120) day sick leave balance on a monthly basis until such time as the grievants' sick leave usage has exceeded the maximum earned sick days that the grievants earn on a yearly basis.

The District frames the issue as follows:

Did the Employer violate Article 10, Section E?

The undersigned adopts the following statement of the issue:

Does the Employer's method of calculating the 120 day maximum sick leave accumulation violate the collective bargaining agreement?

If so, what is the appropriate remedy?

RELEVANT CONTRACT LANGUAGE:

Article 10 - Leaves

Section 1. Sick Leave:

. . .

E. Full salary shall be allowed for time absent on the part of the employee on the basis of the salary currently in effect at the time of the absence divided by the number of days in the year or that portion of the year in which said salary is in effect and not to exceed twelve (12) days in any fiscal year, accumulated on a monthly basis, plus the number of days which may have been accumulated. A maximum of twelve (12) unused leave days may accumulate each year to the credit of the employee until a total of one hundred-twenty (120) days have

been reached. Employees shall receive an additional credit of sick leave up to twelve (12) days each July, pursuant to the current practice.

. . .

BACKGROUND:

In February of 1993, the Union raised a concern about the Employer's method of calculating the 120 day maximum accumulation of sick leave. Following discussions between the parties, the parties entered into a written agreement to "extend the time limits of any possible grievance arising out of this problem, until the date at which the new contract is signed."

The parties subsequently negotiated a 1993-95 contract, which was signed by the Union on January 25, 1995 and by the District on February 3, 1995. On February 13, 1995, a grievance was filed alleging that the District had violated sections of the collective bargaining agreement by denying employes their contractual right to accumulate sick days on a monthly basis. The grievance requested that the District "restore lost days for sick leave, making grievants whole, cease and desist practice."

The grievance was denied at all steps and, thereafter, submitted to arbitration.

POSITIONS OF THE PARTIES:

Union

Prior to early 1993, there were few employes who had accumulated 120 sick leave days. It was not until early 1993, that the Union became aware of the fact that the District's method of calculating sick leave accumulation discriminates against employes. At the time that the Union leadership became aware of this problem, the parties agreed to hold the matter in abeyance and discuss the issue during the ensuing bargain.

The grievants are entitled to accrue one sick leave day per month. As one sick leave day is used, the grievants are entitled to replenish their sick leave up to the 120 day cap. The grievance must be sustained.

District

The collective bargaining agreement clearly provides for a cap in sick leave accumulation. Employes are credited with an additional 12 days of sick leave each July. At that time, no

employe is, or has been, credited with more than 120 sick leave days.

The practice of crediting sick leave at the beginning of the year is long standing. The record fails to demonstrate that there has ever been a variation in this practice.

Acceptance of the Union's position would provide the Union with a benefit which it had not bargained. The grievance is without merit.

DISCUSSION:

The language contained in Article 10, Section 1 (E), which addresses the accumulation of sick leave, is not clear and unambiguous. However, the most reasonable construction of this language, as it applies to the 120 day maximum sick leave accumulation, is that the maximum accumulation will be calculated in July in accordance with "the current practice."

In July, employes who have carried forward a balance of 108 days of sick leave, or less, are credited with twelve additional days of sick leave. Employes who have carried forward a balance of more than 108 days are credited with additional sick leave days up to a maximum accumulation of 120 days of sick leave. Employes who use sick leave during the ensuing school year are not credited with any additional sick leave until the following July. This "practice" of calculating the 120 days maximum sick leave accumulation in July has been used since at least September of 1986. 1/ As the Employer argues, the evidence of this "practice" is unequivocal.

The Union agreed to contract language which incorporates "the current practice." If the Union were unsure of the current practice, then it was incumbent upon the Union to ascertain "the current practice" prior to agreeing to the language. The Union does not claim, and the record does not demonstrate, that the Employer ever advised the Union that the "current practice" was anything other than the procedure which has been used since at least September of 1986. The Union's ignorance of the "current practice" does not relieve the Union of its obligation to abide by

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1/ Employes who earn ten days, rather than twelve days, of sick leave per year are subject to the same method of calculating the 120 day maximum sick leave accumulation.

"the current practice." 2/

The Employer calculated the Grievants' maximum sick leave accumulation in accordance with the current practice, as required by Article 10, Section 1 (E). As there has not been any contract violation, the grievance has been denied and dismissed.

Based upon the above and foregoing, and the record as a whole, the undersigned issues the following

AWARD

1. The Employer's method of calculating the 120 day maximum sick leave accumulation does not violate the collective bargaining agreement.

2. The grievance is denied and dismissed.

Dated at Madison, Wisconsin, this 30th day of November, 1995.

By Coleen A. Burns /s/
Coleen A. Burns, Arbitrator

2/ At the time that the parties negotiated their 1993-95 agreement, the Union was aware of the current practice. The Union claims that it was unaware of the practice in February of 1993, when the Union first advised the Employer that there was a dispute concerning the method of calculating the 120 day maximum sick leave accumulation. The parties agreed to hold the grievance in abeyance pending the outcome of their 1993-95 contract negotiations. The parties did not negotiate any change in the relevant contract language.