

BEFORE THE ARBITRATOR

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In the Matter of the Arbitration of a Dispute Between

**THE MILWAUKEE BOARD OF SCHOOL DIRECTORS**

and

**THE MILWAUKEE TEACHERS' EDUCATION ASSOCIATION**

Case 352

No. 56136

MA-10187

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Appearances:

**Mr. Barry Gilbert**, Assistant Executive Director, Milwaukee Teachers' Education Association, 5130 West Vliet Street, Milwaukee, WI 53208, appearing on behalf of the Milwaukee Teachers' Education Association.

**Mr. Milton Ellis**, Labor Relations Specialist, Milwaukee Public Schools, P. O. Box 2181, Milwaukee, WI 53201-2181, appearing on behalf of the Milwaukee Board of School Directors.

**ARBITRATION AWARD**

Pursuant to the provisions of the Memorandum of Understanding (MOU) on Education Reform Negotiations, the Milwaukee Teachers' Education Association (hereinafter referred to as the Association or the MTEA) and the Milwaukee Board of School Directors (hereinafter referred to as the District) requested that the Wisconsin Employment Relations Commission designate Daniel Nielsen as mediator and arbitrator of several disputes over the wages, hours and working conditions of Association members employed in a variety of innovative educational programs. Under the MOU, the neutral is responsible for mediating the disputes. Those matters still in dispute after mediation are subject to the neutral's determination, choosing between the final offer of the Association and the final offer of the District. The Award is to be rendered within five working days of the close of the hearing, in a summary form.

The parties reached an impasse in negotiations over three MOUs allowing the implementation of innovative educational programs at Moltke Academy, Hamilton Lighted School House Academy (Hamilton), and the Milwaukee Transitional Academy (M.T.A.). The bulk of the disputed issues were resolved in mediation on March 19, 1998. The issues remaining after mediation concerned the cap on annual sick leave accumulation for instructors in the programs at Hamilton and at the M.T.A.. The final offers submitted to the arbitrator were:

### **MTEA Final Offer**

Any unused sick leave accumulation during the evening school shall be credited to the teacher's regular balance at the end of the semester.

### **District Final Offer**

Annual sick leave accumulation shall be capped at one hundred twenty (120) hours for all teachers participating in the evening program.

A hearing was held on May 29, 1998, at the District's offices in Milwaukee, Wisconsin, at which time the parties submitted such testimony, exhibits and other evidence as was relevant to the dispute. The matter was submitted on oral arguments at the end of the hearing, and the MTEA also provided a written summary of points. The record was then closed.

Now, having considered the evidence, the arguments of the parties, and the record as a whole, the undersigned makes the following Award.

**To maximize the ability of the parties we serve to utilize the Internet and computer software to research decisions and arbitration awards issued by the Commission and its staff, footnote text is found in the body of this decision.**

### **BACKGROUND**

The District provides general educational services to the citizens of Milwaukee, Wisconsin, and employs teachers represented by the Association. In recent years, concerns about how to provide more effective and/or accessible educational opportunities to various groups of pupils have led the District to consider alternate scheduling arrangements, including evening programs. When an alternative program is established, the parties negotiate a Memorandum of Understanding, addressing wages, hours and working conditions for teachers working in the program.

The subject of this dispute are the evening programs at Hamilton High School (Hamilton Lighted School House Academy) and at Custer High School. The program at Custer is a coalition effort of five high schools, and is known as the Milwaukee Transitional Academy. At Hamilton, the evening program runs from 2:45 p.m. to 6:21 p.m., while at M.T.A. it runs from 4:00 p.m. to 7:41 p.m. Teachers from the schools involved in each of the programs bid for teaching positions in the two Academies. The hours worked in the evening programs are in addition to the teachers' regular daytime teaching assignment.

The parties negotiated Memoranda setting forth the hours of work, the methods of selection, types of support services available and the benefits applicable to teachers in these evening programs. The parties were not able to reach agreement on the extent to which sick leave would accumulate for hours worked in the evening program.

Part III, §G(1) a and b of the collective bargaining agreement specify the formula for earning sick leave, and limits the amount that may be accumulated in a given year:

### **1. General Provisions**

- a. An employe shall earn sick leave at the rate of .067 hours for each hour paid of the employe's regularly scheduled workday during the school year. Additional paid assignments during the school year are exempt from sick leave accumulation. Earned sick leave hours are credited to each employe at the end of each payroll period.
- b. Sick leave credit hours may be earned and credited up to a maximum total of one hundred (100) hours (12.5 days) for ten (10)-month employes, one hundred ten (110) hours (13.75 days) for eleven (11)-month employes or one hundred twenty (120) hours (15 days) for twelve (12)-month employes.

This language was negotiated in 1980 to replace the old provision, which had an accumulation rate of 1.25 days per month. This revision was in response to the introduction of computers as the device for tracking sick leave accumulation. The parties negotiated an accumulation rate that reflected the relationship between the old annual accumulation (100 hours for ten month employes) and the hours in work days ( $187 \times 8 = 1,496$  hours). <sup>1/</sup> Thus  $100/1496=0.066844919$ , which was rounded to 0.067 hours of sick leave credit per hour of work. As the computer would assign sick leave credit to all paid hours, whether they represented work days or holidays, they included caps to yield the same annual accumulation.

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*1/ At the time this language was negotiated, a ten month employe in the bargaining unit was paid for 187 8-hour work days (including two convention days), and three holidays, for a total of 190 paid days. At the present time, employes also receive pay for one emergency snow day, for a total of 191 paid days.*

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Additional facts, as necessary, will be set forth below.

## **ARGUMENTS OF THE PARTIES**

### **The Position of the District**

The District takes the position that there is absolutely no precedent for allowing employees to accumulate more than 120 hours of sick leave in a given year. Every collective bargaining agreement across the District contains accumulation at 0.067 hours per hour of work, with 120 hours as a maximum cap. Full-time employees of the District, including those who work a traditional 2080 hour schedule, are capped at 120 hours.

The contract expressly prohibits any accumulation for additional paid assignments beyond normal teaching. Even where employees in this bargaining unit work in separate programs beyond the normal work year, the parties have always capped those programs in some fashion. In the Equity 2000 program, teachers work 6 additional Saturdays each year, but are not allowed to accumulate anything in excess of the 100 hours they can get for the regular school year. Likewise, teachers working in the Hope House program are limited to the contract maximums. In the MEC Middle School Saturday Remedial Math Program, teachers can accumulate an extra five hours for the six Saturdays they work for a maximum of 105 hours annually. At the Congress Year-Round program, teachers work an extra 16 days and are allowed to accumulate up to ten extra hours of sick leave. Teachers in the year-round Jail Program are capped at 120 days, even though they work a full year schedule.

The sole examples of an uncapped sick leave accumulation are those in the MOUs covering the old night school programs in 1980 and 1991. However, the employees in those programs only worked two evenings per week, so it would have been impossible for them to exceed 120 hours of accumulation. The evening programs here are scheduled for four days per week, generating twice the exposure and threatening to exceed the 120 hour maximum by fully 19 hours.

Most telling are the 1997 MOUs covering the evening programs at Washington High School, Madison University High School and Marshall High School. All three programs generate the same number of extra hours as can be worked at Hamilton. In each case, the District took the position that it would cap the accumulation, and succeeded in securing an agreement at 115 hours per year. These three cases clearly demonstrate the District's firm position in nearly contemporaneous bargaining with identically situated employees.

The arbitrator should not ignore the clear and consistent pattern of never exceeding 120 hours of annual accumulation. In this proceeding, the District has offered the teachers at Hamilton and M.T.A. the maximum amount of accumulation available to any employee anywhere in the District. There are only two employees at Hamilton who would be denied any accumulation by the District's offer. There is simply no basis for extending these employees anything beyond the 120 days. For these reasons, the arbitrator should find that the District's final offer is the more reasonable, and should issue an Award in its favor.

### **The Position of the Association**

The Association takes the position that the District misses the point of the existing caps. The bargaining history clearly shows that the cap was designed to maintain the status quo prior to the switch over to computerized accounting of sick leave accumulation. The negotiators at that time devised a crediting system based on actual hours of work, excluding vacations, holidays and other days paid but not worked. Thus a 100 hour cap on accumulation gives ten month employees full credit for the sick leave they earn by hours of actual work. The cap was intended to prevent any annual accumulation for hours paid but not worked, since the computer does not know the difference.

The purpose of the contract language is to prevent windfalls, but it is not intended to prevent employees from accumulating sick leave for additional hours of regular employment. This principle has been carried forward into each special memorandum. There is no example of any mutually agreed MOU which prevents employees from accumulating sick leave for all hours actually worked. In every case, the caps in the MOUs accommodate credit for all hours worked, with the exception of the recently negotiated agreements covering Washington High School, Madison University High School and Marshall High School. The 115 hour annual accumulation caps in these memoranda are the result of an error in bargaining, which occurred because only one semester's calendar was being negotiated when the sick leave language was being considered. Based on one semester, 115 hours would allow full credit for accumulation. These memoranda are not evidence of any mutual intent, as the Association's agreement was not truly knowing and voluntary.

As the parties have historically negotiated accumulation caps that allow employees to accumulate all of the sick leave they earn, the District should not be allowed to retreat from that principle. The night school programs represent a new era, one in which employees will be called upon to work substantially more hours than in the past. It is in the District's interest to provide incentives to employees to work these long hours, not to discourage them by denying them sick leave accumulation. Selecting the District's offer would create a penalty for these teachers, and would lead to absurd results. Four of the teachers at Hamilton work 36 days beyond the normal teaching load. They will earn up to 119 hours of sick leave, and will receive full credit for those hours. The two who work side by side with them, but put in 72 days beyond the normal load, will earn 139 hours, but be forced to forfeit 19 of those hours. This is clearly inequitable, and also foolishly encourages those teachers to use the 19 hours rather than lose them.

The impact of this decision goes well beyond the two employees at Hamilton. The MOUs at Washington High School, Madison University High School and Marshall High School must soon be renegotiated, and the Association will seek to correct its initial error on this subject. Moreover, the use of evening programs will certainly be expanded in the future. Thus the decision in this case will have far reaching implications, and the arbitrator must select the offer that encourages this expansion, rather than discouraging teachers from participation.

The contract language reflects the parties' intent that teachers be allowed to accumulate all of the sick leave they earn through hours of work, and every other teacher in the District is provided with this benefit. The arbitrator should honor the intent of this contract language and select the final offer of the MTEA. In so doing, he will provide incentives for teachers to work in these programs, and ensure their success.

### **DISCUSSION**

The issue before the arbitrator is whether the teachers in the Hamilton and M.T.A. programs should have an uncapped annual sick leave accumulation, or whether they should instead be subject to the 120 hour maximum applicable to twelve month employees of the District. There are 18 teachers at the M.T.A., and six at the Hamilton evening program. Of these 24 employees, 22 would essentially be unaffected by the outcome of this decision. Under either offer, they would be allowed to accumulate virtually all of their annual sick leave. The remaining two teachers are the manufacturing/technical teacher and the psychology teacher who work in every quarter at Hamilton. This means that they put in twice the time of the other teachers, the equivalent of 72 additional days, compared with 36 additional days for the remaining 22 teachers.

### **Bargaining History**

A large part of this dispute is attributable to the different interpretations the parties give to the current system of sick leave accumulations. Sick leave is earned at a rate of 0.067 hours for each hour of paid time, exclusive of overtime in the case of non-unit employees who get overtime, and exclusive of additional paid assignments in the case of bargaining unit employees. This may be accumulated to an annual maximum of 100 hours for ten month employees, 110 hours for eleven month employees, and 120 hours for twelve month employees. While there is some variation among the labor agreements, primarily in the case of food service and substitute employees who work relatively few hours, it appears that these caps are fairly uniform across the work force. The District takes the position that its proposed annual accumulation cap of 120 hours treats these employees to the maximum benefit available to any other District worker.

The primary argument of the Association is that a comparison of the annual caps to annual paid hours is misleading, in that the caps are really intended to allow full accumulation of sick leave earned for days of actual work, exclusive of holidays, vacations and the like. As these teachers are actually working more regular hours than any other employee, the Association's view is that they should be allowed to accumulate more sick leave.

The Association's distinction between work days and paid days is ingenious, and may well be historically correct. It appears that when the parties changed the contract language to accommodate the use of computers, the accumulation rate was set at a level necessary to generate the 12.5 day annual cap for ten month employees, using 187 work days as the multiplier. Having

said that, the arbitrator is not persuaded that this has been the central principle guiding the sick leave provisions in the District. Prior to 1980, there was no reference to work days vs. paid days, and since that time sick leave itself has been earned on the basis of all regular hours paid.

The problem with reconciling the paid hours system actually in place with its historical underpinnings in hours worked is shown by the fact that the Association's proposal to have no cap is actually inconsistent with its work hours/paid hours distinction, since it would allow accumulation of hours attributable to paid non-work days (see the summary of calculations below). If the Association seeks to maintain the principle of accumulating only the sick leave earned for hours actually worked, it too must incorporate an annual cap.

The Association's work hours vs. paid hours distinction breaks down when 12 month non-teaching employees are considered. These employees receive varying amounts of vacation time, yet sick leave is earned at a constant 0.067 hours per regular hour paid and is capped at 120 hours. There are several implications to this. While it is understandable that the Association's focus is solely on the employees it represents, the District legitimately considers the entire work force in setting its bargaining agenda. The removal of the cap for these teachers would represent an internal comparable that could ripple out to other employe groups. Moreover, to the extent that the Association is claiming that both parties have historically embraced the principle that sick leave earned for all hours worked in a regular work assignment should be accumulated, the exclusion of overtime hours from sick leave earnings is inconsistent with this principle. Unlike additional paid assignments under the teacher contract, overtime hours are time spent in performing the normal work of the twelve month employees' positions. Thus, in addition to the fact that the removal of an annual cap would represent a substantial change in the District's approach to sick leave, consideration of non-MTEA employe groups leads to the conclusion that the work hours vs. paid hours distinction does not form the basis for the sick leave provisions throughout the District's work force.

There is no inevitable link between annual sick leave accumulation caps and the Association's hours worked vs. hours paid distinction. The primary benefit derived from sick leave is the employee's ability to receive pay when ill, and neither that nor the rate at which sick leave is earned is affected by drawing the distinction between hours of work and hours of pay urged by the Association. Moreover, there is no evidence that the work hours/paid hours distinction has ever actually been discussed since 1980, and it appears that the MOUs negotiated since that time have not employed it as the primary consideration in setting sick leave caps. As detailed below, a review of the existing caps among various employe groups does not bear out the Association's claim that employees have been allowed to accumulate every earned hour of sick leave.

### **Comparables**

The following is a summary of the annual sick leave earnings, maximum accumulations, and percentage of earnings that may be accumulated, showing the calculation for total earnings and, in brackets, the calculation for earnings attributable to actual work days. Beginning with offers of the parties in this case, the range of accumulations is as follows:

**Hamilton Lighted School House Academy (2 of 6 employes)**

Earn - 263 paid days 2/ x 8 hours = 2,104 hours x 0.067 = 140.968 hours of sick leave

District Offer: Accumulation cap - 120 Hours - 85.126% of earnings

MTEA Offer: Accumulation cap - None - 100% of earnings

[259 work days x 8 hours = 2,072 hours x 0.067 = 138.824 hours of sick leave

District Offer: Accumulation cap - 120 Hours - 86.440% of work days

MTEA Offer: Accumulation cap - None - 100% of earnings]

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*2/ The listing of "paid days" and "work days" is an equivalency, based upon an eight hour day. Thus a teacher working 10 twelve hour days would be shown as working 15 days.*

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**Hamilton Lighted School House Academy (4 of 6 employes)  
Milwaukee Transitional Academy**

Earn - 227 paid days x 8 hours = 1,816 hours x 0.067 = 121.672 hours of sick leave

District Offer: Accumulation cap - 120 Hours - 98.636% of earnings

MTEA Offer: Accumulation cap - None - 100% of earnings

[223 work days x 8 hours = 1,784 hours x 0.067 = 119.528 hours of sick leave

District Offer: Accumulation cap - 120 Hours - 100.395% of work days

MTEA Offer: Accumulation cap - None - 100% of earnings]

**12 month employes**

Earn - 261 paid days x 8 hours = 2,088 hours x 0.067 = 139.896 hours of sick leave

Accumulation cap - 120 Hours - 85.778% of earnings

[1848 hours of work [2088 paid hours - 160 hours of vacation / 80 hours of holiday] x 0.067 = 123.816 sick leave. Accumulation cap - 120 Hours - 96.918% of work days]

**11 month employes 3/**

Earn - 240 paid days x 8 hours = 1,920 hours x 0.067 = 128.640 hours of sick leave

Accumulation cap - 110 Hours - 85.5% of earnings

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*3/ There is not enough information in the record concerning 11 month employes to make a meaningful calculation of work days vs. paid days.*

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**10 month employes**

Earn - 191 paid days x 8 hours = 1,528 hours x 0.067 = 102.376 hours of sick leave

Accumulation cap - 100 Hours - 97.7% of earnings

[187 paid days x 8 hours = 1,496 hours x 0.067 = 100.232 hours of sick leave

Accumulation cap - 100 Hours - 99.769% of work days]

**Equity 2000 (Six Additional Saturdays)**

Earn - 197 paid days x 8 hours = 1,576 hours x 0.067 = 105.592 hours of sick leave

Accumulation cap - 100 Hours - 94.7% of earnings

[193 work days x 8 hours = 1,544 hours x 0.067 = 103.448 hours of sick leave

Accumulation cap - 100 Hours - 96.667% of work days]

**Hope House (29 Additional Half Days)**

Earn - 205.5 paid days x 8 hours = 1,644 hours x 0.067 = 110.148 hours of sick leave

Accumulate - 100 Hours - 90.787% of earnings

[201.5 work days x 8 hours = 1,612 hours x 0.067 = 108.004 hours of sick leave

Accumulation cap - 100 Hours - 92.589% of work days]

**MEC Middle School Saturday Remedial Math (Six Additional Saturdays)**

Earn - 197 paid days x 8 hours = 1,576 hours x 0.067 = 105.592 hours of sick leave

Accumulation cap - 105 Hours - 99.439% of earnings

[193 work days x 8 hours = 1,544 hours x 0.067 = 103.448 hours of sick leave

Accumulation cap - 105 Hours - 101.500% of work days]

**Jail Program (Year Round) 4/**

Earn - 260 paid days x 8 hours = 2,080 hours x 0.067 = 139.36 hours of sick leave

Accumulation cap - 120 Hours - 86.108% of earnings

[230 work days x 8 hours = 1,840 hours x 0.067 = 123.28 hours of sick leave

Accumulation cap - 120 Hours - 97.339% of work days]

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*4/ The Jail Program includes 230 paid work days, plus 10 paid holidays, and vacation earnings at 0.076925 hours of vacation per each hour of work. This yields 80 hours of holiday pay and 160 hours of earned vacation in a standard work year.*

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**Congress Year Round Program (16 Additional Days) 5/**

Earn - 207 paid days x 8 hours = 1,656 hours x 0.067 = 110.952 hours of sick leave

Accumulation cap - 110 Hours - 99.142% of earnings

[203 work days x 8 hours = 1,624 hours x 0.067 = 108.808 hours of sick leave

Accumulation cap - 110 Hours - 101.096% of work days]

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*5/ The parties agreed that the employees in the Congress Program work an additional 16 days. The MOU refers to 207 "workdays." Given the representations of the parties, the arbitrator assumes that the term as used in the MOU includes the three paid holidays and the emergency snow day.*

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**Washington Evening Program**

Earn - 263 paid days x 8 hours = 2,104 hours x 0.067 = 140.968 hours of sick leave

Accumulation cap - 115 Hours - 81.579% of earnings

[259 work days x 8 hours = 2,072 hours x 0.067 = 138.824 hours of sick leave

Accumulation cap - 115 Hours - 82.838% of work days]

**Madison Evening Program**

Earn - 263 paid days x 8 hours = 2,104 hours x 0.067 = 140.968 hours of sick leave

Accumulation cap - 115 Hours - 81.579% of earnings

[259 work days x 8 hours = 2,072 hours x 0.067 = 138.824 hours of sick leave

Accumulation cap - 115 Hours - 82.838% of work days]

**Marshall Evening Program**

Earn - 263 paid days x 8 hours = 2,104 hours x 0.067 = 140.968 hours of sick leave

Accumulation cap - 115 Hours - 81.579% of earnings

[259 work days x 8 hours = 2,072 hours x 0.067 = 138.824 hours of sick leave

Accumulation cap - 115 Hours - 82.838% of work days]

The foregoing summary demonstrates that the District's offer is well within the range of existing ratios between paid time and sick leave accumulation, essentially paralleling the treatment of twelve and eleven month employees, including teachers in the Jail Program. It also shows that, even using the Association's proposed work hours calculation, employees do not generally get to accumulate every hour of sick leave they earn. Including the three MOUs for the evening programs at Washington, Madison and Marshall, and treating the MEC and

Congress programs as

allowing 100% accumulation, employees are on average able to accumulate for 93.2% of their earned sick leave each year, relative to actual work hours, with the lowest being 82.838% at the other three evening programs. Excluding the Washington, Madison and Marshall MOUs, the average is 97.6%, and the low is 92.589% at Hope House. The Association urges that the MOUs for Washington, Madison and Marshall must be discounted in this proceeding.

From the MOUs, it appears that a total of thirteen teachers are employed in the programs at Washington, Marshall and Madison. These thirteen teachers are working the same number of additional hours as the two teachers at Hamilton, and by terms of the negotiated MOUs, their annual sick leave accumulation is capped at 115 days. Quite clearly this is a powerful argument for the reasonableness of the District's offer, as it is offering a higher cap in this case. The caps in the three MOUs are also entirely inconsistent with the Association's position. The Association argues, however, that it entered into these three MOUs in error, basing its calculations only on a single semester's additional sick leave earnings rather than the additional earnings for the entire year. The District takes the Association's bargainer at his word on this point, as does the arbitrator. The fact that one party entered into the agreements based on a factual error reduces the weight that can be given to the three MOUs as evidence of what both parties have agreed is reasonable. At the same time, there is no evidence that the District shared the Association's misconception when it negotiated the caps in these programs, and the three MOUs cannot be treated as entirely unilateral documents. They are entitled to some weight as evidence of how far the District was willing to go in negotiations, and as proof of what actually exists as a cap for the most comparable groups of employees in the District.

Although it does not rule out acceptance of the MTEA offer, consideration of the existing arrangements among District employees, including those represented by the Association, favors the District's position.

### **Equity**

The strongest argument made by the Association is that the two teachers working in the Hamilton evening program four nights per week actually work more hours each year than any other employee, and that they should be rewarded for this greater effort by allowing them to annually accumulate more sick leave. This argument has some appeal, but on balance, it is not compelling. The annual sick leave accumulation cap is not the central benefit, nor even the central sick leave benefit, in the compensation package of these employees, and contrary to the Association's argument it seems very unlikely that participation in the program will rise or fall on this detail of the MOU. There is already some measure of benefit available to these employees that is not available to other employees working similar hours. As noted above, twelve month employees do not earn sick leave for overtime hours, while these teachers do earn sick leave for the excess hours they put in. Moreover, the teachers are more likely to actually accumulate the 120 hour maximum than twelve month employees, simply by virtue of having fewer opportunities to miss work due to illness. Whereas a twelve month employee will have 260 opportunities to be sick on a work day, and is more likely to use earned sick leave, the additional hours worked by

these teachers are by and large included in the same days as their normal classroom teaching schedule of 188 days. Assuming some normal distribution of illness across the employe population, a teacher is approximately 70% as likely as a non-teaching employe to actually use a sick leave day. Even granting that the exposure to children is likely to cause a greater risk of catching the flu or other communicable disease, a teacher is more likely to accumulate sick leave up to the cap amount than is another employe subject to that cap.

To the same extent that it is unfair for the two teachers at Hamilton to accumulate a lower percentage of sick leave than their immediate co-workers, it would be unfair for the thirteen teachers at Washington, Madison and Marshall to accumulate a substantially lower percentage than the two teachers working the same schedule at Hamilton. That outcome is guaranteed no matter which offer is selected, since the District here proposes a cap five hours higher than the 115 hour cap at the other three schools, but the difference is substantially greater (26 more hours) under the Association's offer. It is likewise unfair -- at least to some extent -- that the teachers involved with Hope House, the Jail Program and elsewhere miss their maximum possible accumulations when they work more hours than some co-workers. The logical extension of the Association's equity argument is that there should be no fixed caps on accumulation, yet the parties have always negotiated such limits.

The foregoing discussion is not intended to minimize the intensity of effort being put forth by the teachers who work in the evening program. Clearly it is very substantial. The question before the arbitrator is whether that additional work logically translates into an annual cap on sick leave accumulation that is higher than that available to any other employe. While the cap figures were originally figured on the basis of teaching days for ten month employes, it does not appear that the parties have historically been committed to calculating the caps figures on the basis of hours worked, nor to setting those caps so as to allow banking every sick leave hour earned through hours of actual work. The cap arrangements as they actually exist among various employe groups -- including some represented by the Association -- show a wide variation in the ratio of hours worked and hours banked, and the Association's own proposal is not completely consistent with the concept of tying accumulation to hours of work rather than hours of pay. Comparing the District's offer on the basis of the ratio between hours of pay -- which is how sick leave is actually earned -- and the accumulation cap, a cap of 120 hours is reasonable. As there is no proof that a cap in excess of 120 hours has ever been voluntarily negotiated by the District, and since the imposition of such a cap does not create a substantial inequity between these two teachers and the remainder of the work force, I conclude that the weight of the evidence favors selection of the District's final offer.

On the basis of the foregoing, and the record as a whole, I have made the following

**AWARD**

In the context of this specific dispute, the final offer of the District on the topic of annual sick leave accumulation caps is the more reasonable of the two, and shall be incorporated into the Memorandum of Understanding for Hamilton Lighted School House Academy and the Memorandum of Understanding for the Milwaukee Transitional Academy.

Pursuant to the Memorandum of Understanding on Education Reform Negotiations, this Award is non-precedential as to other disputes.

Dated at Racine, Wisconsin, this 18<sup>th</sup> day of June, 1998

Daniel Nielsen /s/

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Daniel Nielsen, Arbitrator