

BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between
WISCONSIN INDIANHEAD TECHNICAL COLLEGE

and

AFT – WISCONSIN, LOCAL 395, AFL-CIO

Case 92
No. 67157
MA-13779

Appearances:

James Mangan, Staff Representative, AFT-Wisconsin, 2462A Parkview Lane, Menomonie, Wisconsin 54751, on behalf of Local 395 and the Grievant.

Victoria L. Seltun, Weld Riley Prenn & Ricci, S.C., 3624 Oakwood Hills Parkway, P.O. Box 1030, Eau Claire, Wisconsin 54702-1030, on behalf of the College.

SUPPLEMENTAL ARBITRATION AWARD

On July 30, 2008, the undersigned issued an Arbitration Award. Thereafter, the parties requested that the undersigned retain jurisdiction until October 30, 2008 for the purpose of resolving issues regarding the implementation of the Arbitration Award. On October 20, 2008, the parties advised the undersigned that they were requesting clarification of the Award. The parties submitted written argument regarding this request by October 22, 2008.

POSITIONS OF THE PARTIES

WITC

Under the terms of the collective bargaining agreement, the health leave requested by the Grievant “shall not be for more than one (1) year unless by mutual agreement.” The parties request clarification as to when the health leave is/was to have run from.

Based upon the Award, WITC takes the position that the Grievant requested health leave on March 12, 2007 and that, on either February 28, 2007 or March 12, 2007, the Grievant would have been placed on the requested health leave. Inasmuch as health leave runs for a one year period, WITC takes the position that the Grievant’s health leave expired on either February 28, 2008 or March 12, 2008.

7362

Union

The parties are asking the Arbitrator to clarify the starting date of the Grievant's health leave. The Arbitration Award stated that the Grievant should be reinstated to her medical leave status as it existed prior to her discharge. At the time of her discharge, the Grievant was not on health leave. Her March 12, 2007 health leave request was denied and she was discharged.

It is only the Arbitration Award that reinstated the Grievant's employment rights. WITC refused to consider a request to discuss the Grievant's return to work in May 2007, because they believed her to be "resigned." How can WITC now argue that she was simultaneously on health leave and "resigned?"

The Union believes that the start of the health leave should coincide with the Arbitration Award. The Union would then expect WITC to deal with the Grievant according to the contract, *i.e.*, requesting documentation about her health status during the health leave and requiring documentation about her health status when she is well enough to return to work. The contract calls for a one-year health leave, which should extend to July 30, 2009, and which may be extended only by mutual agreement.

Discussion

The Award which is the subject of the parties' dispute states as follows:

1. The Grievant did not resign, as concluded by the WITC Board on March 12, 2007.
2. In accepting a resignation that had not been offered by the Grievant, the WITC Board has discharged the Grievant, effective February 28, 2007, without cause in violation of Article IV, Section A(2) of the parties' collective bargaining agreement.
3. In remedy of the WITC Board's violation of the parties' collective bargaining agreement, the Employer shall immediately:
 - a) Reinstated the Grievant to her medical leave of absence status as it existed prior to her discharge that was effectuated February 28, 2007.
 - b) Accept the Grievant's March 12, 2007 request for a contractual health leave and act upon this request, as well as any subsequent return to work request, in accordance with the applicable provisions of the parties' collective bargaining agreement, including Article VI, Section L.

The Grievant's medical leave of absence status as it existed prior to her discharge was that she was on an Employer approved unpaid medical leave through February 28, 2007. Prior to being placed on this Employer approved unpaid medical leave, the Grievant had exhausted all her paid leave, including paid sick leave. After February 28, 2007, the Grievant had no contractual right to leave, paid or unpaid, due to a physical or mental illness; except health leave as provided in Article VI, Section L.

Given the conclusion that the Grievant's discharge was not for just cause and that the Grievant's March 12, 2007 request for contractual health leave was timely, the undersigned ordered WITC to act upon the Grievant's March 12, 2007 request for a contractual health leave in accordance with the applicable provisions of the parties' collective bargaining agreement. If the Grievant's March 12, 2007 health leave request had been granted, then the Grievant's one year health leave would have started on March 1, 2007; which is the first day after the expiration of the Grievant's approved leave. To start the Grievant's one year health leave on any date after March 1, 2007 would be to provide the Grievant with unpaid leave to which she is not contractually entitled.

For example, if the Grievant's one year health leave were to start on March 12, 2007, then the Grievant would be provided with unpaid leave for one year from March 12, 2007, as well as for the days between February 28, 2007 and March 12, 2007. As stated above, the Grievant has no contractual right to unpaid leave after February 28, 2007, unless it is health leave under Article VI, Section L.

An effect of starting the Grievant's one year health leave on any date after March 1, 2007 would be to provide the Grievant with more than one year of unpaid health leave. As WITC argues, under the express terms of Article VI, Section L, an unpaid health leave of more than one year can only be provided by mutual agreement of the parties.

In summary, the parties have asked that the Arbitrator clarify the Award by identifying when the Grievant's one year health leave starts. For the reasons discussed above, the Grievant's one year health leave starts on March 1, 2007.

Based upon the record and the arguments of the parties, the undersigned issues the following

SUPPLEMENTAL AWARD

The Grievant's one year health leave starts on March 1, 2007.

Dated at Madison, Wisconsin, this 27th day of October, 2008.

Coleen A. Burns /s/

Coleen A. Burns, Arbitrator

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7362