

BEFORE THE ARBITRATOR

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In the Matter of the Arbitration of a Dispute Between

**CLINTONVILLE SCHOOL DISTRICT**

and

**CLINTONVILLE EDUCATION ASSOCIATION**

Case 51  
No. 68113  
MA-14126

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**Appearances:**

**Robert W. Burns**, Attorney at Law, Davis & Kuelthau, S.C., 318 South Washington Street, Green Bay, Wisconsin, 54301, appearing on behalf of Clintonville School District.

**David A. Campshure**, UniServ Director, Bayland and United Northeast Educators, 1136 North Military Avenue, Green Bay, Wisconsin, 54303, appearing on behalf of Clintonville Education Association.

**ARBITRATION AWARD**

The Clintonville School District (“District”) and the Clintonville Education Association (“Association”) are parties to a collective bargaining agreement (“Agreement”) that provides for final and binding arbitration of disputes arising thereunder. On June 19, 2008, the Association filed a request with the Wisconsin Employment Relations Commission to initiate grievance arbitration concerning a dispute over personal days. At the parties’ request, the Commission provided a panel of five WERC-employed arbitrators, and the parties thereafter selected the undersigned to serve as arbitrator in this matter. A hearing was held on March 30, 2009, in Clintonville, Wisconsin, at which time the parties were afforded full opportunity to present such testimony, exhibits, and arguments as were relevant. A stenographic transcript of the proceeding was made. Each party submitted an initial post-hearing brief. Thereafter, the parties informed the arbitrator of the mutual decision to waive the opportunity to file reply briefs, and, on June 15, 2009, the record was closed.

Now, having considered the record as a whole, the undersigned makes and issues the following award.

**ISSUE**

The parties agreed to allow the undersigned to frame the statement of the issue to be decided based on the evidence and arguments presented. The District proposes the following statement of the issue:

Did the District violate Article X, Section 10.3 of the Collective Bargaining Agreement when it denied Kevin Godfrey and Joy Krubsack's personal day requests during the 2007-08 school year, and, if so, what is the appropriate remedy?

The Association proposes the following statement of the issue:

Whether the Clintonville School District violated Section 10.3 of the parties' Agreement when it denied Mr. Kevin Godfrey a fourth personal day and Ms. Joy Krubsack a third personal day during their twentieth and tenth years in the District, respectively.

The undersigned adopts the following statement of the issue:

Did the District violate Section 10.3 of the Collective Bargaining Agreement when it denied Mr. Kevin Godfrey his request for a fourth personal day and Ms. Joy Krubsack her request for a third personal day during the 2007-2008 school year? If so, what is the appropriate remedy?

**REVELANT PROVISIONS**

The 2007-2009 Agreement between the District and the Association contains the following provisions relevant to this matter:

**ARTICLE V – GRIEVANCE PROCEDURE**

...

E. **LEVEL FIVE – Binding Arbitration:**

1. In order to process a grievance to Binding Arbitration, the following must be complied with:

...

4. It is understood that the function of this arbitrator shall be to provide a decision as to the interpretation and application of specific terms of this Agreement. This arbitrator shall have no power to advise on salary adjustments, except the improper application thereof, nor to issue any decisions advising the parties to add to, subtract from, modify or amend any terms of this Agreement.
5. All decisions of the arbitrator shall be final and binding upon both parties.

...

#### ARTICLE X – LEAVES OF ABSENCE

...

#### 10.3 Personal Leave

- A. Teachers with less than 10 years of service with the district shall be granted two (2) paid personal days per year. Teachers with at least 10 but less than 20 years of service with the district shall be granted three (3) paid personal days per year. Teachers with 20 or more years of service with the district shall be granted four (4) paid personal leave days per year. ...

#### BACKGROUND

Prior to the 1999-2001 Agreement between the District and the Association, members of the bargaining unit represented by the Association received two personal days per year. During the course of negotiations for their 1999-2001 Agreement, the Association and District agreed to revise Section 10.3 of their agreement, as follows, to provide bargaining unit members with two, three, or four personal days per year, depending on their years of service:

Teachers with less than 10 years of service with the district shall be granted two (2) paid personal days per year. Teachers with at least 10 but less than 20 years of service with the district shall be granted three (3) paid personal days per year. Teachers with 20 or more years of service with the district shall be granted four (4) paid personal leave days per year. ...

The 2007-2008 school year was Joy Krubsack's tenth year with the District. Ms. Krubsack believed she was entitled, under Section 10.3 of the Agreement, to a third

personal day. After Ms. Krubsack's took the time off that would have constituted a third personal day, however, she was informed by the District that it took the position that she would not be entitled to a third personal day, under the Agreement, until the 2008-2009 school year. For having taken a third personal day, Ms. Krubsack was docked one day's pay at a rate of \$240.56.

The 2007-2008 school year also was Kevin Godfrey's twentieth year of teaching with the District. As with Mr. Krubsack, Mr. Godfrey believed that he was entitled to an additional personal day that year under Section 10.3 of the Agreement, he took the personal day, and then was told by the District that he was not entitled to a fourth personal day until the 2008-2009 school year. Mr. Godfrey was docked one day's pay at a rate of \$296.56.

The denial of these personal days was grieved, leading to the present arbitration.

### DISCUSSION

The denial of this grievance is based on the conclusion that Section 10.3 of the Agreement between the Association and District unambiguously grants a third personal day to teachers who have completed their tenth year with the District and grants a fourth personal day to teachers who have completed their twentieth year with the District. While it is true, as the Association points out, that Section 10.3 does not use the word "completed", it is not a modification of the Agreement to find that the concept is one that is implicit in Section 10.3, as it is written. To be "with" ten or twenty years of service is to have completed that number of years of service. In the 2007-2008 school year, Ms. Krubsack had nine years of service with the District and was working on her tenth; Mr. Godfrey had nineteen years of service with the District and was working on his twentieth.

I am not persuaded otherwise by the fact, as the Association points out, that a teacher in the District is not required to complete any amount of service to earn the first two personal days provided for in the Agreement. As Section 10.3 is written, granting two personal days to teachers "with less than 10 years of service", there is no minimum service required before the first two personal days are earned. If the Agreement, on the other hand, granted personal days only to those teachers "with" one year of service, a teacher would not be entitled to personal days at any time prior to the completion of his or her first year of teaching.

Having found the language of the Agreement to be clear and unambiguous, I decline to consider the extrinsic evidence on the record.

**AWARD**

The grievance is denied.

Dated at Madison, Wisconsin, this 9<sup>th</sup> day of September, 2009.

Danielle L. Carne /s/

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Danielle L. Carne, Arbitrator