

BEFORE THE ARBITRATOR

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In the Matter of the Arbitration of a Dispute Between

**HARTFORD UNION HIGH SCHOOL DISTRICT**

and

**HARTFORD EDUCATION ASSOCIATION**

Case # 39

No. 70002

MA-14830

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**Appearances:**

**Ronald S. Stadler**, SmithAmundsen LLC, 4811 S. 76<sup>th</sup> Street, Suite 306, Milwaukee, WI 53220, appearing on behalf of Hartford Union High School District.

**Lucy T. Brown**, Legal Counsel, Wisconsin Education Association Council, 33 Nob Hill Drive, P.O. Box 8003, Madison, WI 53708-8003, appearing on behalf of Hartford Education Association.

**ARBITRATION AWARD**

The Hartford Union High School District, hereinafter District or Employer, and Hartford Education Association, hereinafter Association, are parties to a collective bargaining agreement that provides for the final and binding arbitration of grievances. The parties jointly requested that the undersigned be appointed to serve as the arbitrator in this grievance regarding the employment status of employee RS<sup>1</sup>. The undersigned was so appointed. A hearing was held on September 14, 2010, in Hartford, Wisconsin. The hearing was transcribed, and the transcript was filed on September 28, 2010. The record was closed on November 12, 2010, after receipt of all post-hearing written argument.

Having considered the evidence, the arguments of the parties, the relevant contract language, and the record as a whole, the undersigned makes the following Award.

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<sup>1</sup> The Grievant's initials are used throughout so as to protect his privacy inasmuch as a medical condition is at the core of this matter.

### ISSUE

There are two substantive issues in this matter. They relate to the Grievant's right to a leave of absence and whether there was just cause to non-renew his teaching contract. The parties agreed to bifurcate the issues and initially deal with the leave of absence question. They were, however, unable to agree on a statement of that issue and agreed that the arbitrator may frame the issue based on the testimony and evidence presented. The Association frames the issue as:

Whether the Employer breached the collective bargaining agreement when it denied RS a continued leave of absence under Section 14.02 of the collective bargaining agreement.

The Employer frames the issues as:

Whether Mr. S. was eligible for a leave of absence under Section 14.02 of the collective bargaining agreement.

Based on the evidence and arguments presented by the parties, the undersigned adopts the following statement of the issue:

Did the Employer violate the collective bargaining agreement when RS was not permitted to continue his leave of absence in June 2010?

### FACTS

The Grievant, RS, was a teacher in the District for approximately 14 years. Prior to the events giving rise to the instant case, he suffered from severe depression which resulted in the need for a medical leave of absence. He returned to work for the District in August 2008. According to the District, issues arose thereafter, in November 2009, with his ability to manage his classroom and his ability to teach. Disciplinary proceedings were commenced. On December 2, 2009, Cedar Lake United Educators Council UniServ Director Beth Ludeman, on behalf of RS and the Hartford Education Association, wrote to Dr. Michael Kremer, District Administrator, indicating that the concerns expressed by the District might be related to RS' medical condition. Ludeman agreed to provide documentation from medical professionals then treating RS upon her receipt thereof.

In response, Dr. Kremer wrote to Ludeman on December 3 and stated, in pertinent part:

We think it is critical at this time, however, for Mr. S, or you on his behalf, to advise us whether he is medically capable of performing his job duties. If Mr. S is capable of reporting to work, we will move forward with the disciplinary process. If Mr. S is not able to report to work and needs to utilize sick leave, Family and Medical Leave, short term or long term disability, we need to know that as soon as possible. If that is the case we certainly have more time to discuss the disciplinary aspect of this matter. . . .

Thereafter, RS applied for and was granted Family Medical Leave. He also received long term disability benefits through the District's carrier, the WEA Insurance Trust. RS had not returned to work as of the time of the hearing in this matter.

By letter dated March 26, 2010, Administrator Kremer wrote to RS. In pertinent part, the letter stated:

As you know, prior to your Family and Medical Leave you had a meeting with Dan Dobner to discuss his concerns about performance issues that had been brought to his attention. The district contemplated taking disciplinary action at that time but held off pursuing discipline because of your mental health issues and your absence due to FMLA. Your FMLA leave has now been exhausted, but you are currently receiving long term disability. At this time, the District is unclear as to whether you intend to return to the classroom this year or next year.

Because the District is unclear as to your status, it has decided to move forward with addressing your continued inability to adequately perform your duties as a classroom teacher. . . .

By letter dated March 31, 2010, Kremer wrote RS to provide notice that the "Board is considering nonrenewal of your teacher's contract." The letter further advised RS of his right to a private conference with the Board prior to being given written notice of nonrenewal, provided the request was made within 5 days of the preliminary notice. The Association, on RS' behalf, and the District agreed to extend the statutory timelines for non-renewal due to RS' medical status.

On April 27, 2010, in response to requests for information from the District as to whether RS would return to teaching for the 2010 - 2011 school year, Ludeman faxed a copy of a medical report from RS' treating physician, Maureen Leahy, to the District's attorney. Ludeman's cover letter included the notation:

Ron, please find attached the confidential LTD supplemental medical report in the above-referenced matter. As you will see, his doctor, Maureen Leahy, indicates her opinion that Mr. S will not be able to return to work. I'll look forward to discussing the final resolution with you on Wednesday.

The attached medical report indicates that the estimated date of anticipated recovery is "unknown" and that the expected date of a fundamental or marked change is "never".

Subsequent to receipt of this information, the District's attorney wrote to RS and Ms. Ludeman on May 14, 2010. The letter reviewed RS' status and the information that the District possessed and concluded as follows:

Given this information the District is compelled to set a definitive date for Mr. S's decision on whether he desires a meeting with the Board prior to a non-renewal being issued. The reason for the District's belief that things must move forward is that it now appears that regardless of whether Mr. S is non-renewed he cannot teach next year. His doctor has certified that Mr. S's ability to concentrate, organize and manage a classroom are all "significantly limited" and she does not expect a change in the future. Given this certification, it appears that it will be in everyone's best interest if Mr. S simply submits his resignation. Nevertheless, if Mr. S is unwilling to resign at this time the district will move forward with his non-renewal.

RS did not resign and the District proceeded with the non-renewal process. A private conference was held on June 9. Ms. Ludeman and Mrs. S appeared on RS' behalf. At that conference, Ms. Ludeman provided the Board with a letter dated June 8 from Katie Cook, Mr. S's therapist, addressed to the Board of Education:

I am writing to you on behalf of RS - DOB [ ], per your request. R began treatment here at Aspen Family Counseling on 3/8/10. Prior to his treatment at Aspen, R had attended counseling and received psychiatric care at Pauquette Center for approximately two years. It is my understanding that R changed providers due to Dr. Maureen Leahy leaving Pauquette Center. Dr. Leahy recommended our psychiatrist, Dr. Amy Bourne to R. R began seeing Dr. Bourne on 5/5/10.

At this time R continues to struggle with significant symptoms of anxiety and depression. R presents as open and committed to treatment and he is making advances in individual therapy. R and Dr. Bourne are working together to find a combination of medication to effectively treat his symptoms of anxiety and depression. Finding a successful combination

can often be a difficult and time consuming process. At this point in his treatment, I do not believe it is possible to identify or predict an exact point in time in which R will be able to successfully return to his work environment. However at this time, R's prognosis for the future appears to be hopeful.

Please feel free to contact me if you have any further questions or concerns, at (608) \*\*\*-\*\*\*\*.

The Board did not ask any questions regarding RS' treatment, nor attempt to obtain additional information about his prognosis. Rather, it voted to non-renew him. This fact was communicated to Ms. Ludeman by the District's attorney on June 14, 2010, and to RS by letter dated June 16 from District Administrator Kremer.

The parties agreed to waive the initial steps in the grievance process and proceed directly to arbitration on the non-renewal and leave of absence issues.

Additional facts are included in the Discussion, below.

## RELEVANT CONTRACT PROVISIONS

### **14.02 Medical Leave**

A medical leave shall be granted upon a teacher's written request specifying the reasons for such leave where the teacher is unable to perform the duties of his/her position because of illness, a temporary disability, or physical injury. A physician's certification of disability must be provided at the same time the teacher's written request is submitted to the District.

Leaves requested for illness, temporary disability, or physical injury may be allowed for a period extending up to three (3) semesters, provided the illness, injury or disability warrants it. Accumulated sick leave may be used at the option of the teacher in conjunction with this leave to the extent that it is available. The teacher shall exercise his/her option at the time the leave under this provision is requested. After all of a teacher's accumulated sick leave is used, the remainder of the leave will be without pay. Upon approval of the District Administrator and for good cause shown, such leaves may be extended.

If this medical leave qualifies for disability insurance, the District will continue to pay the insurance premiums for Life, dental and Long-term care. The teacher's accumulated sick leave will remain in tact [sic] when the employee returns to work.

Upon return from a leave of absence, the District Administrator shall have the right to require the employee to submit validated medical proof that the teacher is in physical condition to perform the job assigned, and whether the teacher's return to work will expose the students or other teachers to an abnormal hazard. The District Administrator shall also have the right after such medical statement is submitted to, if it so desires, require the teacher to take a physical examination by a District Administrator appointed doctor at the District's expense. Such examination will be conducted as soon as reasonably possible. In the event of conflict between the teacher's doctor and the District Administrator's appointed doctor, the parties shall mutually select and seek the opinion of a third doctor, the expense of which shall be shared equally by the parties.

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#### **14.07 Family and Medical Leave Act Option.**

A teacher may at his or her option take leave under the provisions of FMLA for up to twelve weeks of accumulated paid sick and personal leave to the extent it is available. A teacher taking leave under FMLA must so notify the District. Such notice shall be given at least 30 days in advance of any leave when such leave is foreseeable and such notice is practical.

#### **14.08 Upon Returning from Leave**

Teachers on an authorized leave of absence must advise the Board by March 1 of the school year in which the leave is taken whether they intend to return in the succeeding school year. Failure to make such notification nullifies any rights under the leave of absence provisions.

## DISCUSSION

The essential facts of this case are not in dispute. The Grievant, RS, has taught technology education in the District for 14 years. He suffers from severe depression and, as of sometime in November 2009, has been off work, initially on Family and Medical Leave. Thereafter, he received long term disability benefits and was on leave until the Employer issued a notice of non-renewal on June 16, 2010, after the Board of Education voted to non-renew him following a private conference held on June 9. There is no dispute that RS' medical/mental condition was such that he could not teach during the last part of the first semester and all of the second semester of the 2009 – 2010 school year. The issue to be decided at this time is whether he was entitled to a leave of absence during the 2010 - 2011 school year and if so, for what period of time.

Article 14, Section 14.02, of the collective bargaining agreement between the Association and the District provides that a teacher shall be granted leaves of absences under certain conditions. The text is quoted in full above, but the operative provisions are: “. . . because of illness, a temporary disability, or physical injury. . . .” The requirements for the leave include that the request be made in writing, and that there be a medical certification that such a leave is required. The contract also provides that the “[l]eaves requested for illness, temporary disability, or physical injury may be allowed for a period extending up to three (3) semesters, provided the illness, injury or disability warrants it.” The contract does not specify the manner in which to substantiate that the illness, injury or temporary disability warrants extension of the leave for up to three (3) semesters, nor does it specifically require that the teacher provide any medical information to the District except at the time of the initial request for the leave of absence.<sup>2</sup>

In early February, 2010, the District determined that, despite the fact that RS was on medical leave, it was going to proceed with the non-renewal of his teaching contract. The District and the Association mutually agreed to extend the statutory deadlines for the non-renewal process, but on March 31 a preliminary notice of non-renewal was issued to RS. At about the same time, the District was faced with making staffing decisions for the 2010 – 2011 school year. A need was identified to reduce the number of technology teachers. If RS was not able to return to work for the fall semester, the District would not have to layoff a more junior teacher. Accordingly, the District worked with UniServ Director Ludeman to obtain information to respond to the question of whether RS would be ready to return to work in September.<sup>3</sup>

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<sup>2</sup> A teacher applying for short or long term disability must provide periodic medical reports to the insurer, but there is no contractual requirement that these reports be provided to the District at any time throughout the period of the leave.

<sup>3</sup> Although the District had decided to move forward with the non-renewal process, it was clearly interested in knowing whether RS was physically able to perform the duties of his position. This fact lends itself to the conclusion that the District was, perhaps, considering that RS was eligible to continue his medical leave of absence at that time.

The only information Ludeman could obtain and provide to the District was a copy of a LTD Supplemental Medical Report that RS' initial treating psychiatrist, Dr. Leahy, had prepared on April 8 for the WEA Trust, the long-term disability insurance provider. That report, based on a March 28 appointment for a medication check, indicated that RS would "never" demonstrate a fundamental or marked change in condition. Ludeman faxed that report to the District's attorney on April 27. She had attempted to obtain more current information from Dr. Leahy but was unable to do so because Dr. Leahy had moved her practice and Ludeman was unable to obtain forwarding information.

Based on Dr. Leahy's April 8, 2010 report, the District argues that RS was not entitled to continue the leave of absence that began in November 2009 because the condition preventing him from teaching is not an "illness, temporary disability, or physical injury". Rather, according to the District, RS' condition is a permanent disability as evidenced by Dr. Leahy's indication that RS' condition would "never" improve.

The parties introduced extensive bargaining history, in the form of prior collective bargaining agreements, to demonstrate the genesis of the inclusion of the "temporary disability" language in the leave provision of the collective bargaining agreement. Much of this information demonstrates that "temporary disability" was included in this specific leave section when a provision for maternity leave was deleted. As interesting as this history might be, the undersigned does not find the language of Article 14.02 to be ambiguous or capable of different meanings. The language is quite clear in that it provides for a medical leave of absence for up to three semesters as a result of illness, temporary disability or physical injury. There is no doubt that a temporary disability could encompass both an illness as well as a physical injury, either of which might render a teacher incapable of performing classroom duties. It is true, as the Association argues that the word "temporary" only modifies the word disability. It is also true that the mental illness that RS suffers is an illness. The Employer's arguments notwithstanding, it matters little whether RS' condition is characterized as an illness or a disability, or whether the word temporary modifies illness and injury as well as disability.<sup>4</sup> At issue is whether, at the time of the Board's decision to non-renew RS, was he eligible to continue on his leave of absence that had previously been granted.

It is the clear and unambiguous position of the District that RS' disability was permanent and, therefore, he was not entitled to a continued leave of absence. This position was conveyed to the Association's attorney and to Ludeman on July 7, 2010:

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<sup>4</sup> The apparent intent of the contractual language is to allow a teacher to recover from a condition that affects him or her. It is anticipated by the language that three semesters is more than adequate for recovery. Implicit in the concept of a leave of absence is the ability of the affected person to return to work which implies that the condition requiring the leave is of a temporary nature, be it illness or injury.



The District has continuously sought information as to whether Mr. S was permanently disabled or would be able to return to work in 2010-2011. Prior to April 27, 2010 neither Ms. Ludeman nor Mr. S provided a response to the issue of when, or if, Mr. S would be able to return. The District did receive information on Mr. S' status on April 27, 2010 when Ms. Ludeman faxed me a report from Mr. S' physician. In her cover page to that fax, Ms. Ludeman stated "As you will see his doctor, Maureen Leahy, indicates her opinion that Mr. S will not be able to return to work." Dr. Leahy's report did in fact conclude that Mr. S was "significantly limited" in his ability to concentrate, organize and manage a classroom. She also indicated that his estimated date of recovery was "unknown" and that she "never" expected a "fundamental or marked change" in Mr. S' condition.

Based upon this information, the District moved forward with its decision to non-renew Mr. S. The District's decision was based on its belief that Mr. S would not be able to work in 2011-11, was not eligible for a leave of absence under the contract, and that even if he could return to work he was not qualified to teach due to his history of poor performance. I subsequently advised Ms. Ludeman on May 13, 2010 that if Mr. S was seeking a leave of absence for 2010-11 she should advise me of this fact because the District did not believe that he would be eligible for the leave of absence due to the fact that Mr. S has a permanent disability as opposed to a temporary disability. . . .

It is clear from the above that the District determined that RS was permanently disabled, ineligible for a leave of absence, and unfit to return to the classroom. Thus, at the private conference on June 9, it voted to non-renew his teaching contract. This action was taken despite the letter from Therapist Katie Cook that indicates RS' prognosis to be "hopeful", a word that does not describe someone already determined to be permanently disabled.

The Employer relied entirely on Dr. Leahy's report of RS' condition on April 8, even in light of contradictory information received on June 9. Subsequently, the District obtained a copy of a LTD Supplemental Medical Report prepared by Kathleen Cook, LMFT, on June 11, 2010 wherein she indicated that the anticipated date of RS' recovery was "unknown" but that she anticipated a fundamental marked change in "12 months or more". Additionally, the Initial Assessment report prepared at Aspen Family Counseling where RS was seen initially on March 8 by Therapist Cook indicates an "anticipated length of treatment" as "6 mo. - 1 yr". This information was available to the District, and could have been reviewed by it prior to the non-renewal

action of June 9 and the denial of the leave of absence<sup>5</sup> as referenced in the July 7 letter cited above.

As indicated above, RS' treating psychiatrist left Pauquette sometime in April without providing forwarding information to RS or Ludeman. Dr. Leahy did, however, refer RS to Dr. Amy Bourne at Aspen Family Counseling, the same organization that employs Cook. Dr. Bourne testified at the hearing in this matter, referring to RS' medical file. She saw RS for the first time on May 5. Additional appointments relevant to this matter were on June 2 and June 30. Dr. Bourne agreed with Therapist Cook's assessment that in mid-June 2010 it was "not possible to identify or predict an exact point in time in which R will be able to successfully return to his work environment. However, at this time R's prognosis for the future appears to be hopeful." According to Dr. Bourne,

Recurrent depression and anxiety particularly when there is circumstances associated with it, it's generally very treatable and responsive with treatment and therapy. So the prognosis in general is definitely hopeful and quite good. It is very difficult to pinpoint time frames, like pinpoint when a person is going to respond to treatment and be completely better, simply because there is individual variations to medications. And finding the right medication regimen can take - - you know, it can take months on occasion. Sometimes you find the right combination immediately and the person progresses much faster. But if you have to make medication changes and work to find the right combination, that can take time. And it's impossible to predict.

Dr. Bourne testified that as of mid-June, 2010, it could have been two months, six months, maybe ten months before the correct medication combination could be identified and RS would progress to a point of being able to return to work. "It is impossible to tell until you start with the treatment, the medication management and give some weeks to see how the person will respond." Dr. Bourne also testified that the "12 months or more" identified by Katie Cook as the time when she expected a fundamental or marked change would not necessarily have been the time frame that she would have indicated.

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<sup>5</sup> At the private meeting of June 9, Beth Ludeman requested a leave of absence on RS' behalf. She did not respond to follow-up inquiries by the District's attorney regarding this request because the District had taken action to non-renew RS. For purposes of this decision, inasmuch as the parties have agreed that the initial question to be decided is whether RS was entitled to a continued leave of absence, there is no need to address the question of whether there was a valid request for such a leave. The record is clear that a leave was requested in November or December of 2009 and what was at issue in June 2010 is whether RS was eligible for a continued leave of absence pursuant to Article 14.02 of the collective bargaining agreement.

Although the information from Cook and Bourne does not provide conclusive evidence that RS would be able to return to the classroom during the 2010 – 2011 school year, it raises significant questions about the District's conclusion that RS suffers from a permanent disability rendering him ineligible for a continued leave of absence. At the time that the District advised the Association that it considered RS ineligible for a leave of absence, the District had received information that contradicted the form completed by Dr. Leahy which supports the conclusion that RS' disability is permanent. The District received Therapist Cook's letter at the June 9 private conference. Although the District might argue that this did not constitute "medical" certification that RS was not permanently disabled and could conceivably return to work sometime during the 2010 – 2011 school year, it did put the District on notice that there was reason to question the conclusion that RS suffered from a permanent disability. Given that fact, it was incumbent upon the District to either extend the leave of absence or to request additional medical information about RS' condition. In fact, the District could have sought the opinion of an independent medical examiner to ascertain whether there was a likelihood that RS would be able to return to the classroom at some time in the future.

The District also argues that regardless of the nature of RS' disability, the contract only allows for up to three semesters of leave and that it is "undisputed that Mr. S will not be able to return to work after his three semesters of leave is utilized." The District reaches this conclusion based on the fact that Therapist Cook indicated in June that RS might not be able to return to work for a period of 12 months. As indicated above, it is extremely difficult to determine the length of time needed to adjust medications and treat symptoms so as to allow a person suffering from severe depression to be able to function sufficiently to perform his or her job duties.

Additionally, the District contends that it was reasonable for it to rely on Dr. Leahy's certification that RS could not manage a classroom and that situation was not expected to change. In support of this argument, the District cites *Goss Co. v. INT'L ASSOC. OF MACHINISTS UNITY LODGE NO. 1553*, 43 LA 640 (Oct. 6, 1964). In that case the Grievant presented his employer with a certification of permanent disability while simultaneously advising his employer that he disagreed with the treating physician. Nevertheless, the Grievant utilized this certification to seek disability insurance and Social Security disability benefits. While ostensibly disagreeing with his physician's report, the Grievant presented no additional medical information to the Employer which put the question of the permanency of the disability into play. The instant case is very different in that RS has put the question of the nature of his disability into play because he presented information at the time of the private conference that was significantly different than Dr. Leahy's report. Given the inherent contradiction between the information in Katie Cook's report and Dr. Leahy's report, the District could not rely on the latter in deciding to deny RS a continued leave of absence.

Article 14.02 provides that a teacher “may be allowed” a medical leave of absence “for a period extending up to three (3) semesters.” This language is not mandatory. It also does not mean that a teacher, without medical necessity, must be allowed to be on a medical leave for a period of three semesters. As indicated above, however, the language does not appear to require that a teacher provide more than the initial medical certification in order to have a medical leave approved. Kathy Jurgensmier, an accounting assistant for the District who handles human relations issues testified regarding her knowledge and experience with teachers who have applied for leave under Section 14.02<sup>6</sup>. In particular, Ms. Jurgensmier testified that, upon occasion, a teacher had been denied medical leave pursuant to this contract provision; that a teacher had been placed on Section 14.02 leave by the District without the teacher having requested such leave; that she is unaware of any teacher having used leave pursuant to this section for more than three semesters at any given time; and that she was unaware of anybody being denied 14.02 leave because it was more than three semesters.

Here it is established that RS was on Family and Medical Leave from December 3, 2009<sup>7</sup> until March 27, 2010. Thereafter, he continued to receive long term disability payments and, presumably, was on Article 14.02 leave, as he had been since December 3. He was clearly unable to return to work as of March 27 and continued to be on leave until, at least, his non-renewal in June. According to the 2008 - 2009 collective bargaining agreement, the tentative school calendar for 2009 - 2010 had 88 days in the first semester, of which RS was on leave for 28 days. He was on leave for all of the second semester. He continues to be off work at this time. If he does not return to work before the end of the second semester of the 2010 - 2011 school year, he will have been on leave for more than three semesters. Notwithstanding the fact that Ms. Jurgensmier is unaware of any teacher being on leave for more than three semesters or having requested section 14.02 leave for more than three semesters, the collective bargaining agreement does provide for extension of such leaves for more than three semesters: “Upon approval of the District Administrator and for good cause shown, such leaves may be extended.”

It should be clear from the above discussion that, in the opinion of the undersigned, the District made a premature determination that RS was permanently disabled and, therefore, ineligible to continue to be on medical leave pursuant to Section 14.02. Accordingly, the grievance must be sustained. To determine the appropriate remedy, there are some practical issues to consider. It is unknown when RS will be ready to return to the classroom, and the collective bargaining agreement provides, essentially, three semesters for a teacher to recover from an illness, injury, or temporary disability. If RS is medically able to return to work within 28 days of the end of the second semester of the 2010 - 2011 school year, the District should, pursuant to the terms of Article 14, allow him to return to work, provided he meets the

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<sup>6</sup> In some contracts, this was section 15.02. Ms. Jurgensmier’s testimony covered situations under the contract section regardless of its numbering.

<sup>7</sup> He was absent from work on a number of days in November 2009. The record is unclear as to whether these days were part of his medical leave.

conditions set forth in Article 14. Recognizing, however, that the possible return of RS to the classroom in the middle of the second semester of the current school year might be disruptive to the students, as well as have a negative impact on the less senior teacher whose layoff was averted by the fact that RS was on medical leave, it would be appropriate for the District to request that RS not return to work until Fall 2011. In return for such consideration, however, it is logical that the District be willing to extend RS' medical leave until fall 2011 should RS' treating physician and therapist be of the opinion that he is not able to return to work until Fall 2011. The logical conclusion to be drawn from this discussion is that should RS be unable to return to work by Fall 2011, he would no longer be eligible for a leave of absence and he would no longer be an employee of the District.

At this point in time, RS should be considered to be on medical leave from the District, eligible for any and all benefits that are associated with that status. Although the Association and the District agreed to bifurcate the questions of RS' right to continue his leave of absence and whether there was just cause to non-renew him, it is the recommendation of the undersigned that, having found RS entitled to continue to be on leave, the non-renewal aspect of this case be held in abeyance pending a determination of RS' medical status either 28 days before the end of the second semester of the 2010 - 2011 school year or, if the parties are agreeable to the suggestion made in the paragraph above, the beginning of the 2011 - 2012 school year. Should it be determined that RS is unable to return to the classroom at that time, his leave of absence would be over and he would no longer be an employee of the District.<sup>8</sup> Should it be determined that RS is able to return to the classroom by the beginning of the 2011 - 2012 school year, the question of whether the District had just cause to non-renew him would be ripe for hearing.

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

### AWARD

Yes, the District violated the collective bargaining agreement when it did not allow RS to continue his leave of absence in June 2010.<sup>9</sup>

Dated at Madison, Wisconsin, this 21<sup>st</sup> day of December, 2010.

Susan J.M. Bauman /s/

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Susan J.M. Bauman, Arbitrator

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<sup>8</sup> Inasmuch as the District has agreed that RS' record would be cleared of any reference to the non-renewal should RS be found to not be entitled to a leave of absence, the undersigned assumes the same would be true in the event that RS is unable to return to the classroom when his leave of absence expires.

<sup>9</sup> Pursuant to the agreement of the parties to bifurcate the leave issue from the just cause issue, the undersigned shall retain jurisdiction of this matter until it has been determined that the parties will proceed with the non-renewal grievance.