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WISCONSIN EMPLOYMENT RELATIONS COMMISSION

STATE OF WISCONSIN

BEFORE THE MEDIATOR/ARBITRATOR

In The Matter of The Mediation/Arbitration Between SCHOOL DISTRICT OF BELOIT and BELOIT EDUCATION ASSOCIATION	Case XXXI No. 28012 MED/ARB-1167 Decision No. 19168-A

APPEARANCES:

Mulcahy & Wherry, by Charles C. Mulcahy, appearing on behalf of the Beloit School District.

Lysabeth N. Wilson, UniServ Director, Rock Valley United Teachers, appearing on behalf of the Beloit Education Association.

ARBITRATION HEARING BACKGROUND:

On December 8, 1981, the undersigned was notified by the Wisconsin Employment Relations Commission of appointment as mediator/arbitrator, pursuant to Section 111.70(4)(cm)6 of the Municipal Employment Relations Act in the matter of impasse between the Beloit School District, referred to herein as the District, and the Beloit Education Association, referred to herein as the Association. Pursuant to the statutory requirements, mediation proceedings were conducted between the parties on February 5, 1982. Mediation failed to resolve the impasse. The parties, by mutual agreement, submitted the relevant exhibits and written argument to the arbitrator by mail. The exhibits were exchanged by the parties on March 3, 1982, and the briefs were filed with and exchanged through the arbitrator on March 29, 1982.

THE ISSUES:

Two issues remain at impasse between the parties: personal leave and a work stoppage clause. The final offers of the parties are attached as Appendix "A" and "B".

STATUTORY CRITERIA:

Since no voluntary impasse procedure was agreed to between the parties regarding the above impasse, the undersigned, under the Municipal Employment Relations Act, is required to choose the entire final offer of one of the parties on all unresolved issues.

Section 111.70(4)(cm)7 requires the mediator/arbitrator to consider the following criteria in the decision process:

A. The lawful authority of the municipal employer.

B. Stipulations of the parties.

C. The interests and welfare of the public and the financial ability of the unit of government to meet the costs of any proposed settlement.

D. Comparison of wages, hours and conditions of employment of municipal employes involved in the arbitration proceedings with the wages, hours and conditions of employment of other employes performing similar services with other employes generally in public employment in the same community and in comparable communities and in private employment in the same community and in comparable communities.

E. The average consumer prices for goods and services, commonly known as the cost-of-living.

F. The overall compensation presently received by the municipal employes, including direct wage compensation, vacation, holidays and excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment, and all other benefits received.

G. Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings.

H. Such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment through voluntary collective bargaining, mediation, fact-finding, arbitration or otherwise between the parties, in public service or in private employment.

THE POSITION OF THE PARTIES:

Relying primarily on Arbitrator Frank Zeidler's criteria established for selection of comparables in a similar type of language issue, the District set forth a group of comparables which included similar sized school districts on a state-wide basis, teaching employees in CESA 17, other employees in the Beloit School District, other public employees in the City of Beloit, and other public employees in Rock County. While noting that it and the Association agree on the CESA 17 districts and most of the state-wide districts of similar size, the District objects to the Association's inclusion of other districts within a 35 mile radius. It contends these additional districts do not meet the criteria of either geographic proximity or similar size. It concludes these districts should thus be excluded.

Arguing the interest and welfare of the public would be better served by the District's offer, the District posits that its proposal in regard to work stoppage is reasonable. In addition to members of the Board having strong personal convictions regarding the obtaining of the additional protection of a work stoppage clause, the District states the Wisconsin law is not sufficient protection in light of the statistics which exist noting the continuance of illegal strikes by public employees in Wisconsin as well as the nation.

The District contends its work stoppage clause is also justified since the Beloit teachers have an arbitration procedure in their current agreement. Stating it has been widely held that a no strike agreement is the quid pro quo for the contractual arbitration provision, and citing court and arbitral authority for the basis of its contention, the District declares the normal balance of these mutually enforceable provisions runs the risk of being lost if the District must depend on no strike

language being provided statutorily rather than contractually. Finally, arguing comparisons should be a major factor when considering the merits of inclusion of the proposal, the District concludes the comparables support its position.

In regard to the Association's position concerning an unrestricted personal leave day, the District asserts the Association failed in its burden to show a persuasive reason for effecting change in the existing contract language. It continues the Association's offer is not supported by the comparisons and concludes consequently there is no support for a change in the status quo.

The Association contends the comparables should consist of the Big Eight Athletic Conference, the regionally comparable groups in CESA 17, nine schools within a 35 mile radius and nine state-wide school districts of comparable size. It continues the District's inclusion of the City of Beloit and Rock County employees as comparables should be given little, if any, weight since there is a wealth of information in the record regarding "employees performing similar services".

Declaring the Beloit Education Association acknowledges 111.70 Wis. Stats. and pledges to adhere to the provisions therein, the Association posits the District's call for a work stoppage clause is unnecessary. Contending its proposal is not unique, the Association states the comparables indicate why it desires to limit the no strike language within the contract. Further, it questions when other districts implemented work stoppage language and hypothesizes the language may have occurred under different circumstances than those pending in the instant matter.

The Association rejects the District's argument that the work stoppage language is a quid pro quo for binding arbitration in grievance matters. Contending the argument is outdated, it declares binding arbitration for grievances has existed within the Beloit contract for many years and the state statutes have expressly prohibited concerted work stoppages. In conclusion, the Association asserts its proposal is a continuance of the past practice in the District since no language existed previously and declares the District's proposal is an unwarranted duplication of state statutes.

The Association continues that need and the comparability groups support its position relative to personal leave. It admits the District's proposal is an improvement over the present language but identifies two major concerns regarding it. Indicating it understands the Administration would not interpret "emergency" leave to include absences caused by inclement weather and that the restrictive personal leave language does not meet the needs of the Beloit teachers, the Association contends there is need for its language. In support of its position, it states it is possible for the District's language to exclude such personal business items as house closings, funerals of close friends or fellow teachers, military appointments, attendance at graduation of children from high school, etc. and that in 1979-80 at least one individual was denied use of personal business days for observation of his major religious holidays. In addition, the Association posits the comparables show convincingly that the concept of unrestricted use or no approval necessary for personal leave are common features in teachers' contracts.

DISCUSSION:

In both instances, the parties agree upon the CESA 17 school districts as comparable districts. Further, both substantially agree to expanding the comparables to include districts of similar size state-wide. In addition, however, both also attempt to expand the comparables beyond these two sets of districts contending the other communities identified also meet criteria established for comparability. The undersigned has chosen to use the CESA 17 districts, the 11 state-wide districts proposed by the employer, and Sun Prairie as the appropriate set of comparables. Sun Prairie was added to the comparables since it along with Janesville, already included in the CESA 17 districts, and Beloit are the smaller school districts included in the Big Eight Athletic Conference. Madison was not included among the comparables, although it is in the athletic conference, since it is a substantially larger school district than any of the other districts considered comparable. Further, the undersigned is of the opinion that as a major metropolitan center, other factors affect the operational procedures of the School District of Madison which are not necessarily present in the smaller districts, While the District argues the statute directs the arbitrator to consider the comparability of other employees generally in public employment in the same community, the undersigned finds the comparables upon which both agree a substantially large enough group of districts to establish the general relationship which exists between employers and employees relevant to the issues in dispute.

Work Stoppage Clause: The District argues strenuously that a work stoppage clause should be included in the collective bargaining agreement. The Association counters that a statement pledging adherence to the provisions of 111.70 Wis. Stats. is sufficient since the statute essentially prohibits employees from striking. Primary among the District's argument was the need to protect itself from changes in the statute and to provide additional contractual protection in the event of illegal strikes. Absent any indication the legislature intends to change the statute, or evidence the Association has engaged in illegal strikes or intends to engage in illegal strikes, the undersigned finds the District's position moot and the issue not determinative of which final offer is more reasonable.

Making this determination, the undersigned did consider the argument advanced by the District wherein it contended compulsory binding arbitration is the quid pro quo for the non-strike clause. It is noted that in the private sector or in the public sector where employees, by law, are provided with the protected right to engage in concerted activities, it is not uncommon for the no strike language to exist as the quid pro quo. However, in a majority of states, Wisconsin included, as a matter of public policy, the privilege of engaging in concerted activities is not generally accorded to public sector employees. Thus, the assertion that binding arbitration is a quid pro quo for no strike language where the right to engage in concerted activities is prohibited by law is less persuasive.

In addition to the above, the comparables were reviewed and found to favor the District's position. However, since it was determined no compelling need for the language had been shown, the comparables were accorded less weight.

Personal Leave: The parties both seek a change in the status quo. The District's position more nearly approximates the existing standard, however. The District proposes retaining its position relative to leave for business or personal reasons but in addition offers one day of emergency leave. The Association, arguing that the manner in which personal leave is granted does not provide teachers with the flexibility needed in order to use a day of personal leave, seeks retaining the number of days allocated for personal leave which currently exist but also seeks elimination of the need to provide a reason and the need to secure approval before leave is taken. The Association also seeks an additional day for emergency leave purposes.

The Association, citing an arbitration which occurred in the past year because an employee was denied personal leave for observation of a religious holiday, contends there is need for removing the approval provisions of the personal leave language. The undersigned, while agreeing with the arbitrator in the grievance matter that there is merit in the claim that the practice is "unfair to those who choose not to observe Christmas and to others who, . . . choose to observe other religious holidays which are not celebrated by the Christain majority", finds the one incident in itself not sufficient to establish a compelling need for a change in language. While the Association argued that other instances might occur wherein teachers would be denied personal or business leave, there was a lack of evidence supporting its position.

In addition to failing to demonstrate the need for a change in language, the undersigned finds the comparables support the District's position. Of the 24 districts compared, almost two-thirds either require the provision of a reason, approval, or restrict leave to certain types of personal business. While not all of these districts specifically require approval,[1] clearly the majority do provide a means of evaluating whether or not there is abuse of the leave provision. Thus, absent a showing of need and failure of the comparables to support the Association's position, the undersigned is persuaded the District's position is more reasonable.

Having reviewed the evidence and arguments and after applying the statutory criteria and having concluded that the parties' position relative to the no strike language would not be the determinative issue, and having concluded that the District prevails in regard to the personal leave language,

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[1] A review of the contract clauses of the 24 comparable districts indicate that the personal leave language was not specifically clear as to whether or not approval was required in all of the districts. The undersigned determined that approval was specifically required in 8 of the 24 districts but that there is a possibility that approval exists in others as well. Despite this finding, however, the undersigned did notice that an additional 7 districts restricted the personal leave provision to certain reasons and required notice that leave would be taken. It was assumed by the undersigned that the restriction, together with the requirement for notice, essentially provided some control by the district over the ability of teachers to take personal leave for a variety of reasons.

the undersigned makes the following

AWARD

The final offer of the District, along with the stipulations of the parties which reflect prior agreements in bargaining, as well as those provisions of the predecessor collective bargaining agreement, are to be incorporated into the collective bargaining agreement as required by statute.

Dated this 28th day of April, 1982, at La Crosse, Wisconsin.

Sharon K. Imes
Mediator/Arbitrator

SKI/mls

EXHIBIT "A"

FINAL OFFER
SCHOOL DISTRICT OF BELOIT
BOARD OF EDUCATION

The Board proposes that the following amendments be incorporated into the 1981-83 Agreement between the Board of Education of the School District of the City of Beloit, Wisconsin and the Beloit Education Association.

For the Board

November 2, 1981
Date

WORK STOPPAGE PROHIBITED

Create a new Article to read as follows:

> Neither the Association nor any of its officers or teachers, will encourage, sponsor, engage in or condone any strike, sympathy strike, slowdown, concerted work stoppage, or any other intentional interruption of work.

ARTICLE IX
LEAVES POLICY

A. Paid Leaves:

1. Personal-Business Leave.

a. No change (see pages 40-41 of the 1979-81 Agreement).

b. No change.

c. No change.

(1). No change.

(2). No change.

(3). No change.

(4). No change.

d. No change.

e. No change.

Add a new section to read as follows:

5. Emergency Leave.

a. Teachers shall be allowed one (1) day per year (non-cumulative) in the event of an emergency not covered by any other leave provision of this Agreement.

b. Definition of an emergency: "an unforeseen combination of circumstances with a resulting state that calls for immediate action."

c. Notification for emergency day use shall be per current practice for sick leave.

EXHIBIT "B"

Name of Case: School District of Beloit
Case XXXI No. 28012 MED/ARB-1167

The following, or the attachment hereto, constitutes our final offer for the purposes of mediation/arbitration pursuant to Section 111.70 (4) (cm) 6. of the Municipal Employment Relations Act. A copy of such final offer has been submitted to the other party involved in this proceeding, and the undersigned has received a copy of the final offer of the other party. Each page of the attachment hereto has been initialed by me.

November 2, 1981
Date

Lyasbeth Wilson
Representative

On Behalf of: Beloit Education Association

FINAL OFFER

BELOIT EDUCATION ASSOCIATION

The Association proposes the provisions of the 1979-81 Agreement between the Board of Education of the School District of the City of Beloit, Wisconsin and the Beloit Education Association become the terms of the 1981-83 Agreement with any/all previously agreed to stipulated agreements between the parties and the following amendments, and as determined by the mediator, arbitrator to be incorporated into the successor contract.

Lysabeth Wilson
For the Association

November 2, 1981
Date

ARTICLE ___ LEAVE POLICY

A. Paid Leaves

1. Personal-Business Leave.

a. During the 1981-82 contract year, teachers shall be allowed two (2) days per year (non-cumulative) to take care of personal business. One (1) day shall be for emergency use, defined as "an unforseen combination of circumstances or the resulting state that calls for immediate action," by Webster's Seventh New Collegiate Dictionary, 1972, and one (1) day per the restrictive list in this Article.

b. Notification for emergency day use shall be per current practice for sick leave.

c. The restricted personal business day requests shall be presented to the Superintendent at least 24 hours in advance of the date the teacher intends to be absent.

d. Notification shall also be made to the building principal by the central administrative offices in advance of the absence.

e. Every effort shall be made to notify the teacher of the status of his/her leave on the date requested by the Superintendent of his/her designee.

f. The decision of the Superintendent shall be final as to whether such absence is excused.

g. Except for unusual circumstances, personal business leave is limited to the following:

(1). Judicial or Legal Obligations.

- proving a will
- Federal or State tax review
- appearance at imigration and naturalization hearings
- business and legal matters resulting from accidents or injuries
- lawsuit hearings on litigation in whic the professional staff member is directly involved
- processing the adoption of children.

(2). Graduation of sons, daughters, husband or wife from college or university.

(3). Registration for college courses when unable to register at other than school hours.

(4). Marriages in immediate family of teacher and spouse, including own children, siblings, parents and grandparents.

(5). Except in unusual circumstances or "Act of God", leave shall not be allowed prior to or immediately following a recess period.

(6). When a teacher is required to be present in court as a result of the service of a subpoena or jury duty call, the two-day limit on "Personal-Business Leave" shall not apply. Said teacher or teachers shall turn over to the Board of Education all monies received for such services.

2. Personal-Business Leave for 1982-83

a. During the 1982-83 contract year teachers shall be allowed two (2) days per year (non-cumulative) to take care of personal business. One (1) day shall be for emergency use, as defined earlier in this article by Webster's Seventh New Collegiate Dictionary, 1972. The second day shall be unrestricted as to the reasons for its usage.

b. Notification for emergency day use shall be as per practice for sick leave.

c. The unrestricted personal business day requests shall be presented to the Superintendent at least 48 hours in advance of the date the teacher intends to be absent.

d. Notification to the building principal shall be the responsibility of the central administrative offices.

THE REST OF THE ARTICLE AS IS IN THE 1979-81 MASTER CONTRACT.

WORK STOPPAGE PROHIBITED

Create a new Article to read as follows:

The Beloit Education Association acknowledges Wisconsin Statute 111.70 and pledges to adhere to the provisions therein.