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 CARMEN TORTORICI, \*  
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                   Appellant, \*  
 \*  
 v. \*  
 VERNE KNOLL, Deputy Director, \*  
 State Bureau of Personnel, \*  
 \*  
                   Respondent. \*  
 \*  
 Case No. 73-153 \*  
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 \* \* \* \* \*

PROPOSED  
 OPINION  
 AND  
 ORDER

Before:

Nature of the Case

This case is an appeal of the action of the Director of the Bureau of Personnel in refusing to credit accumulated sick-leave to employes, where the sick leave was accumulated while employes workplace was owned and operated by a private corporation and subsequently taken over and operated by the State of Wisconsin.

Findings of Fact

There are no contested facts in this case. The case was presented to the Board for decision upon a stipulated factual statement. The facts precipitating this appeal are as follows:

Prior to July 1, 1967, Appellant was employed by the Midwestern Universities Research Association (MURA) in its Physical Sciences Laboratory located in Stoughton, Wisconsin.

On or about July 1, 1967, the Board of Directors of MURA decided to dissolve the MURA corporation and distribute the assets of the corporation to the various University members of MURA. Pursuant to this decision, the Physical Science Laboratory was transferred to University of Wisconsin ownership and control.

On or about July 1, 1968, all former employes of MURA at the Physical Science Laboratory who remained employed there were made permanent employes in the classified service of the State of Wisconsin. Approximately 90% of the MURA employes at the Laboratory remained and became State employes. Their pay rates under the State system were either identical or very close to their MURA pay rates. Their duties remained the same before and after the transition from MURA employes to State employes.

Some time prior to April 9, 1973, Respondent determined, pursuant to Section 16.11(1), stats. that the employes continuous service time with the State would be adjusted to reflect the time that they were employed by MURA. (See Appellant's Exhibit 1.) Thus, it would appear that the former MURA employes had been employed by the State continuously from the start of their employment with MURA. The decision was to be effective as of January 1, 1973, and no increased benefits derived from the decision would be retroactive prior to January 1, 1973.

On May 9, 1973, Appellant and the other Laboratory employes were notified of Respondent's decision.

On August 21, 1973, a request was made on behalf of Appellant that sick leave time accumulated prior to the State takeover of the Laboratory be credited to his account, based upon the adjustment of his continuous service time noted above. Appellant had accumulated 72 3/4 sick days during his MURA employment prior to the change over to State employe status.

On August 27, 1973, Appellant was notified that the MURA accumulated sick leave would be added to his State sick leave account.

On September 21, 1973, Respondent determined that the MURA accumulated sick leave would not be added to the sick leave account of Appellant. Respondent based his decision upon a lack of statutory authority to add the MURA sick leave

account at the time of the transfer of the Laboratory from MURA to the State.

It is from this action of the Director that Appellant has appealed. The issue presented to the Board for resolution in this appeal is whether or not Respondent had legal authority to add the MURA sick leave to Appellant's State sick leave account, and if such authority existed, whether or not Respondent was obligated to exercise such authority.

#### Conclusions of Law

The Board concludes that Respondent did have legal authority to accumulate the MURA sick leave with the State sick leave.

Section 16.11(1), stats. provides in part:

". . . . When the State becomes responsible for a function previously administered by . . . a quasi public or private enterprise . . . the director (of the Bureau of Personnel) shall determine appropriate eligibility, pay, employe benefits and status . . ."

Respondent found his authority to adjust Appellant's State continuous service time to reflect the MURA employment period in Section 16.11(1). (See Appellant's Exhibit 1.)

This subsection specifically provides that the Director has authority to determine the level of benefits which will be given an employe whose job function is taken over by the State.

Since Respondent has exercised his Section 16.11(1) authority to adjust the continuous service time and to adjust such other factors related to continuous service, such as vacation, length of service pay rate, seniority, etc., it is inconsistent for Respondent to assert that Section 16.11(1) does not give him the authority to adjust the sick leave account in a similar fashion. As discussed

above, Section 16.11(1), stats. provides general authority to set levels of benefits for an employe coming into the State service as Appellant did. Thus, Respondent does have statutory authority to make the sick leave account adjustment.

The question then is whether that authority should be used in this case. In this regard, Respondent has asserted that to adjust the sick leave account would be to give Section 16.11(1), stats. retroactive effects, not intended by the legislature. The Board does not agree.

The addition of the MURA sick leave does not pose a retroactivity problem any more than the continuous service adjustment. The situation is akin to the vacation time situation, whereby Appellant, from January 1, 1973, was eligible for vacation based on his adjusted continuous service, but where he would not receive any adjustment for vacation time in years prior to 1973 based upon that continuous service adjustment. Similarly, Appellant would not receive any additional sick leave based upon the continuous service adjustment prior to 1973. Appellant would simply be allowed to carry with him the sick leave he had earned up to when he became a State employe. This is not a retroactive granting of benefits. It is an adjustment made to set the level of benefits which Appellant would have, had the State been his employer throughout, rather than MURA and the State. In this regard, it is no different than the continuous service adjustment and its effect on length of vacation and the related benefits mentioned above.

Appellant had earned the sick leave under MURA, and had the time in his account when the State assumed MURA's assets and liabilities. While not mentioned in the stipulation, it would seem evident that Appellant's earned sick leave credit conceptually was a liability which the State, through the University, assumed when it took over the Laboratory and continued its operations as usual. Appellant

will receive nothing from the State which he did not have prior to the State's taking over the Laboratory. Thus, the adjustment to Appellant's sick leave account is not a retroactive granting of benefits.

In fairness and in equity Appellant should be given credit for sick leave which he had accumulated while employed by MURA. There is no justification for placing Appellant back at the starting point of employment simply because ownership of the Laboratory changed hands. As set out above, and in the stipulation of the parties, there was no significant change in the Laboratory during or after the MURA - University of Wisconsin change over. Appellant's work was continuous. Respondent has admitted as much in adjusting the State continuous service time to include the MURA employment. Adjustment of the sick leave account to reflect sick leave earned under MURA is authorized by statute, justified by circumstance and equity, and is consistent with Respondent's adjustment of continuous service time.

Order

It is ordered that Respondent's action is rejected and this case is remanded for action in accordance with this decision.

Dated \_\_\_\_\_, 1977

STATE PERSONNEL BOARD

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Laurene DeWitt, Chairperson