

IN THE MATTER OF GRIEVANCE ARBITRATION BETWEEN

INDEPENDENT SCHOOL DISTRICT NO.)
2860, BLUE EARTH AREA SCHOOLS) BMS CASE NO. 09-PA-0919
)
"EMPLOYER")
)
And)
)
BLUE EARTH AREA EDUCATION) RICHARD R. ANDERSON
ASSOCIATION) ARBITRATOR
)
UNION) OCTOBER 31, 2009

JURISDICTION

The hearing in the above matter was conducted before Arbitrator Richard R. Anderson on August 26, 2009 in Blue Earth, Minnesota. Both parties were afforded a full and fair opportunity to present their case. Witness testimony was sworn and subject to cross-examination. Exhibits were introduced into evidence by both parties and received into the record. The hearing closed on August 26, 2009. Timely briefs were received from the parties by regular mail on October 10, 2009. On October 16, 2009 the parties requested to file Reply Briefs, which the undersigned Arbitrator then granted. Reply Briefs were timely received on October 30, 2009, at which time the record was closed and the matter was then taken under advisement.

This matter is submitted to the undersigned Arbitrator pursuant to the terms of the parties' July 1, 2007 through June 30, 2009 collective bargaining agreement, hereinafter

the Agreement, which was effective during the time period involved herein.¹ The relevant language in Article XV of the Agreement [GRIEVANCE PROCEDURE] provides for the arbitration of a grievance to resolve all grievance issues. The parties stipulated that the instant grievance is properly before the undersigned Arbitrator for final and binding decision. The parties further stipulated that this matter does not involve substantive or procedural arbitrability or any other procedural issue.

APPEARANCES

For the Employer

Joseph E. Flynn, School District Attorney
Dale Brandsoy, School Superintendent
Mary Eckhardt, School Board Member
Vickie Hanson, School Board Member

For the Union:

Jess Anna Glover, Education Minnesota Attorney
Betsy Thompson, Education Minnesota Attorney
Michael J. Katzenmeyer, Education Minnesota Field Staff
Douglas Nelson, Education Minnesota Field Staff
Mona Eustice, Grievant and 1st Grade Teacher
Jack Eustice, Grievant's Husband and High School Principal
Sharon Hoyt, RN Licensed School Nurse
Roger Schoenfelder, High School Science Teacher and Union Negotiator
Kevin Grant, Elementary Principal

THE ISSUE

The parties did not stipulate to the issue before the undersigned Arbitrator. The District defined the issue as, "*Did the Employer violate the Collective Bargaining Agreement in its response to the Grievant's request for sick leave*"? The Union defined it as, "*Did the Employer violate the Collective Bargaining Agreement when it denied sick leave requested by Grievant*"?

¹ Joint Exhibit No. 1.

BACKGROUND

Independent School District No. 2860 ISD Blue Earth Area Schools, hereinafter the District, is a public education institution with District offices located in Blue Earth, Minnesota that serves the Southern Minnesota communities of Blue Earth, Frost, Winnebago, Delavan and Elmore. Blue Earth Area Education Association affiliated with Education Minnesota, hereinafter the Union, has represented a teachers bargaining unit of approximately 100 teachers since 1971. Council 65 of the American Federation of State, County and Municipal Employees Union represents the District's maintenance, food service, teacher associates and clerical/secretarial employees.

First Grade Teacher Mona Eustice, hereinafter the Grievant, has been a District Teacher for approximately 30 years. Her husband, High School Principal Jack Eustice, has been a District Teacher almost 31 years. In early September 2008, the Grievant's husband became seriously ill.² He was diagnosed with leukemia on September 9th and was subsequently hospitalized for almost a month at the Mayo Clinic's hospital in Rochester, Minnesota. Rochester is 100 miles and approximately an hour and one half drive from Blue Earth.³ The Grievant was at her husband's side during his entire hospitalization and did not teach for approximately 20 days.

On October 9th, the Grievant submitted a leave request form for 20 days of sick leave with the reason under "*Specifics*" being "*Jack hospitalized*".⁴ Elementary School Principal Kevin Grant signed the leave request and forwarded it the same day to School Superintendent Dale Brandsoy. Superintendent Brandsoy did not approve the 20 days of sick leave. Rather, on October 23rd he changed the leave request form to eleven days

² All dates hereinafter, are in 2008 unless otherwise indicated.

³ According to Google maps.

⁴ Union Exhibit No. 2.

unpaid leave, three days personal leave (two days at full pay and a third day with a deduction for the cost of a substitute teacher) and six days paid serious illness/bereavement leave, which comes from a teacher's accumulated leave fund balance.⁵

On February 9, 2009, the Grievant gave a second leave request form to Principal Grant that was forwarded to Superintendent Brandsoy.⁶ "Self" was circled on this form. It was not on the October 9th form. Under "Specifics", the reason listed was "*I was emotionally and physically unable to teach*". Attached to the form was an explanatory memorandum to Principal Grant and Superintendent Brandsoy from the Grievant that stated,⁷

I am writing to clarify my request for sick leave. I was emotionally sick and would not have been effective in the classroom on the following dates: September 9 (p.m.), 10, 26, 29, 30, October 1, 2, 3, 6, 7, 8, 9 (a.m.).

Also attached was a "to whom it may concern" letter signed by Doctor Thomas M. Habermann, one of the Grievant's husband's physicians.⁸ The substance of the November 13, 2008 letter stated,

I had the privilege of being the attending consultant while Mr. John Eustice was hospitalized at Methodist Hospital in the fall of 2008.

Mr. Eustice became incredibly ill and had an extremely complicated course. It was imperative that his wife be at his side. At one point, his prognosis was quite guarded. Therefore, it was medically necessary for his wife to be present with him during this difficult time.

I hope this information is of assistance to you.

⁵ Id.

⁶ Union Exhibit No. 3. p. 2.

⁷ Id. p. 1.

⁸ Id., p. 3.

On Monday February 16, 2009, Superintendent Brandsoy sent the following memorandum to the Grievant denying the leave request again,

This is written in response to the leave request you submitted to Mr. Grant on Monday, February 9, 2009.

The first leave request you submitted to the business office was on October 9, 2008 requesting twenty days of sick leave due to the hospitalization of Jack. Sick leave is intended to be for self or child as defined in MN Statute 181.940.

In reviewing the contract, six days were granted in Article XI, Section 3: Serious Illness/Death Leave. This is the maximum allowed under this leave. Also, three days were granted under Article XI, Section 2: Personal Leave. The remaining eleven days were designated as other and were considered as unpaid days. Time away from school was allowed, but was unpaid.

On February 9, 2009, I received essentially the same request, but changing the reason for being gone from that of illness of your husband, to your own illness. This is presented after the determination that the first leave request was denied.

In conference Joe Flynn, BEA school attorney, the School District's original interpretation of the contract was correct. Accordingly, the original denial is affirmed.

On March 20, 2009, the Grievant filed a Level I grievance alleging that the District violated Article XI, Section 1 (leaves) and any other applicable sections of the Agreement.⁹ The Grievant stated in her grievance that,

The District violated my right to access my unused, accumulated sick leave, as I was physically, psychologically, and emotionally unable to function in the classroom at the time.

Also, the Grievant sought paid sick leave for the same time period as stated in her February 9, 2009 explanatory memorandum to Principal Grant and Superintendent Brandsoy.¹⁰

A hearing on the above entitled grievance was held on Friday, March 27, 2009.

You did not appear at the hearing, but union representatives, Donna Drescher, Paula Tietje and Lil Robinson appeared on your behalf. Principal Kevin Grant and

⁹ Joint Exhibit No. 3.

¹⁰ Id., p. 2 and 3.

myself appeared on behalf of the School District.

The grievance alleges that the School District violated the collective bargaining agreement stating as follows: "The district violated my right to access my accumulated sick leave as I was physically, psychologically and emotionally unable to function in the classroom at the time." The grievance alleges a violation of Article XI, Section 1 of the collective bargaining agreement.

The collective bargaining agreement is quite clear. Basically, it provides sick leave for the illness of the employee in Article XI, Section 1 and in Article XI, Section 3, it provides sick leave usage for up to six days for serious illness or death in the immediate family. The contract also provides in Article XI, Section 2 for two days of personal leave. The grievance requests approval for sick leave pay from September 9, 10, 26, 29, 30, and October 1, 2, 3, 6, 7, 8 and 9.

This represents the second request for sick leave for absences on such days. On October 9, 2008, you requested the same 11 days requested in the grievance, as well as 9 additional days based upon the illness of your husband. At such time, you were granted six days under Article XI, Section 3 because of the illness of your husband and three additional personal leave days. The remaining 11 days did not qualify under any provision of the collective bargaining agreement as your claim was originally submitted.

It was only after the 11 days mentioned in the grievance were denied that you switched claiming personal illness, rather than the illness of your husband.

In summary, it is evident that you received precisely the leave to which you were entitled under the collective bargaining agreement; namely three personal leave days that you had available, as well as six more days because of the serious illness of your husband. Substituting your illness for that of your husband does not change the facts surrounding the case regarding this matter, but rather, consists of an attempt to manipulate the facts to suit your claim.

For the reasons as outlined herein, please be advised that I have conferred with School District legal counsel and members of the School Board regarding interpretation of the collective bargaining agreement and your claim, and find there to be no violation of the collective bargaining agreement.

Accordingly, the grievance is denied.

The Grievant then filed for Level III under the grievance procedure on April 9, 2009.¹¹

The parties agreed to waive Level III and proceed to arbitration. The undersigned Arbitrator was notified by the Union on June 18, 2009 that I had been selected as the

¹¹ Id., p. 5 and 6.

neutral Arbitrator in this proceeding.

RELEVANT CONTRACT PROVISIONS

Teachers Agreement)

ARTICLE NO. XI — LEAVES

Salary and fringe benefits will not be paid by the School District to teachers while on leave except as specifically stated below. If allowed by the insurance carrier, the insurance coverage may be continued with the teacher paying the premium in order to have continuous coverage. Any teacher on a leave will be subject to the same provisions of the “lay-off-recall policy” as other teachers currently employed. All leave requests must be made in writing to the superintendent and submitted to the principal in advance of the leave, except in case of emergency.

Section 1. Sick Leave: *In the event of illness or physical disability, causing absence from school, the teacher should notify the principal as early as possible to allow time to make necessary substitute arrangements.*

Subd. 1. Earning. *Each teacher covered by this agreement shall receive a maximum of 12 days of sick leave annually to be used during the current year.*

Subd. 2. Accumulation. *The unused portion of such leave shall accumulate to a maximum of 120 days for each employee.*

Section 2. Personal Leave:

Subd. 1. *A full time teacher as defined by Article III shall be credited with two (2) paid days per year non-accumulative. These days shall be granted to allow teachers to perform tasks which can only be taken care of during the course of the regular business day. At the end of each school year, the teachers will be paid the equivalent of current daily substitute pay per day for each unused personal leave day.*

Subd. 2. *Requests for personal leave must be made in writing to the superintendent and submitted to the principal at least three (3) working days in advance, except in cases of emergency. (At no time shall more than 10% of the teachers per building be granted personal leave, except in the case of unusual circumstances.)*

Subd 3. *A personal leave day may be granted for the day preceding or the day following holidays or breaks and the first or last days of the school year at the discretion of the building principal and the superintendent.*

Subd. 4. *A third personal day may be granted with the teacher paying for the substitute plus \$5.00 to cover fixed costs.*

Section 3. Serious Illness/Death Leave

A teacher may be granted up to six (6) days of non-accumulative leave annually which may be used for serious illness or death in the immediate family. Three (3) of the six (6) days may be used for extended family or special friend. These days shall be deducted from accumulated sick leave. In the event of a second or any additional death in the immediate family, additional leave will be granted not to exceed five (5) full days per death. Any additional days will be taken at full deduction in pay.

Immediate family members shall be defined as spouse, parents, children and their spouses, parents-in-law, brother, sister, brother-in-law, sister-in-law, grandparents, grandparents-in-law, and grandchildren.

The length of the leave and dates of use for this leave will be made known in writing to the superintendent and submitted to the principal as soon as possible.

A one-day leave to serve as a pallbearer will be granted at the discretion of the superintendent. This shall be deducted from accrued sick leave days.

A leave of up to one day will be granted at the discretion of the superintendent to attend the funeral of a friend or relative not otherwise included in this section. This shall be deducted from accrued sick leave days.

Part-time teachers are also eligible for leave under this section on a prorated basis.

Section 6. Unpaid Leave: *A request for a leave without pay will be considered by the School Board with the final decision resting entirely with the School Board. A teacher on unpaid leave should notify the superintendent by March 1 immediately prior to the conclusion of the leave if the teacher intends to return to the School District the following year. Failure to provide such a notice to the District by March 1 will be considered a resignation from the District.*

Section 7. Sick Leave Bank: *Teachers who have the maximum accumulated sick leave days may donate up to five (5) days to a sick leave bank on August 30th of each year. The maximum number of days in the bank shall be 120 days. Teachers who have taught in I.S.D. #2860 for six years or less may draw from the sick leave bank when their accumulated sick days are exhausted. The use of the bank is limited to absences due to employee illness or injury. An individual teacher may draw a maximum of 5 days from the Bank.*

ARTICLE XV —GRIEVANCE PROCEDURE

Section 9. Decision: *The decision by the arbitrator shall be rendered within thirty days (30) after the close of the hearing. Decisions by the arbitrator in cases properly before him shall be final and binding upon the parties, subject to the limitations of arbitration decisions as provided by/in the P.E.L.R.A. The arbitrator in a grievance procedure is not to change the terms and conditions of this agreement.*

Non-Teachers Agreement

ARTICLE VIII — LEAVES OF ABSENCE

Section 1. Sick Leave:

Subd. 1. *A regular employee shall earn sick leave at the rate of one (1) day for each month of service in the employ of the school district. Annual sick leave shall accrue monthly as it is earned on a proportionate basis to the employee's work year.*

Subd. 2. *Unused sick leave days may accumulate to a maximum of 120 days. Employees with present accumulation will retain such accumulation. Accumulation of sick leave days for employees without accumulation shall commence July 1, 1994.*

Subd. 4. *Sick leave with pay shall be allowed whenever an employee's absence is found to have been due to the employee's illness and/or disability which prevented attendance at school and performances of duties on that day or days. Pursuant to MS. 181.9413, an employee who performs services for at least 12 consecutive months preceding the request, and for an average number of hours per week equal to one-half the full-time equivalent position in the employee's job classification as defined by the district's personnel policies or practices or pursuant to the provisions of this collective bargaining agreement during those 12 months, may use sick leave for absences due to an illness of the employee's actual or adoptive child for such reasonable periods as the employee's attendance may be necessary on the same terms the employee is able to use sick leave benefits for the employee's own absence.*

Subd. 5. *The school district may require an employee to furnish a medical certificate from a qualified physician as evidence of illness, indicating such absence was due to illness, in order to qualify for sick leave pay.*

Subd. 6 *Sick leave allowed shall be deducted from the accrued sick leave days earned by the employee.*

Subd. 7. *Sick leave pay shall be approved only upon submission of a signed request upon the authorized sick leave pay request form available at the office.*

Section 3. Serious Illness/Death Leave: *An eligible employee may be granted up to five (5) days for non-accumulative leave annually which may be used for serious illness or death in the immediate family. Three (3) of the five (5) days may be used for extended family or special friend. These days shall be deducted from accumulated sick leave. In the event of a second or any additional death or serious illness in the immediate family, additional leave will be granted not to exceed five (5) full days per death. Any additional days will be taken at full deduction in pay.*

Immediate family shall be defined as parents, children and their spouses, parents-in-law, brother, sister, brother-in-law, sister-in-law, grandparents and grandparents-in-law, and grandchildren.

The length of the leave and the dates of use for this leave will be made known in writing to the Superintendent as soon as possible.

Part-time employees are also eligible for bereavement leave.

A one-day leave to serve as a pall-bearer will be granted at the discretion of the Superintendent. This shall be deducted from accrued sick leave days.

A leave of up to one day will be granted at the discretion of the Superintendent to attend the funeral of a friend or relative not otherwise included by this Section. This shall be deducted from accrued sick leave days.

Minnesota Statute Section 181.9413

An employee may use personal sick leave benefits provided by the employer for absences due to an illness of or injury to the employee's child for such reasonable periods as the employee's attendance with the child may be necessary, on the same terms the employee is able to use sick leave benefits for the employee's own illness or injury.

FACTS

The Grievant first learned that her husband had leukemia on September 9th when her husband came to the school and informed her. According to the Grievant, her husband had been feeling poorly all summer and had gone to the doctor who then scheduled a blood test. The Grievant testified that she was so shook-up that she could not teach. She informed School Nurse Sharon Hoyt, who had come to her room to check on her after her husband left, that she was having difficulty teaching.¹² Elementary Principal Kevin Grant was summoned and told the Grievant to go home after he learned of her situation. According to the Grievant, Principal Grant made remarks to the effect that she should go home and that she had lots of sick leave. Principal Grant testified that he could not

¹² School Nurse Hoyt had been in the room when the Grievant's husband discussed his illness. She left and then returned to check on the Grievant.

remember saying this; however, this is something that he would have said under the circumstances.

The Grievant's husband was hospitalized for the treatment of leukemia at the Mayo Clinic hospital in Rochester from September 15th until October 6th. He also stayed at a facility for cancer patients in Rochester from October 6th through October 8th.¹³ During his hospitalization, the Grievant's husband underwent numerous testing procedures and had medical complications, some severe, from his illness. The Grievant testified that her husband developed an infection shortly after he was hospitalized that became difficult to treat, and his health began to diminish. He experienced constant episodes of sweating, vomiting, diarrhea, and fatigue. He also developed a severe rash and was in constant pain. In addition, he developed a fungus in his blood that required additional medical treatment. The Grievant kept a journal documenting her husband's condition and the numerous medical procedures he was subjected to.¹⁴

The Grievant was at her husband's bedside during this entire time period giving him supplemental medical care and acting as the liaison between her husband and the numerous doctors treating him. According to the testimony of the Grievant, it was necessary for her to be at her husband's bedside because he was gravely ill and needed more individual care than could be extended to him by the hospital.¹⁵ She further testified that she was not getting enough sleep because she was attending to her husband. She had to constantly change his night shirt and sheets because of his sweating episodes and

¹³ After the Grievant's husband was released from the hospital, he was scheduled for further testing. Rather than endure the travel between Rochester and Blue Earth they stayed at the Hope House in Rochester. The Hope House offers free, temporary housing facilities for cancer patients and families traveling to the Mayo Clinic and other cancer treatment facilities in the Rochester area.

¹⁴ Union Exhibit No. 1.

¹⁵ Among other things she cited were his numerous periods of night sweating when she would change his shirts and bed sheets. She also had to act as his advocate when dealing with his numerous doctors because her husband was too sick to understand their instructions or comprehend the results of their testing or make informed decisions.

clean up after him because of his vomiting episodes. The Grievant testified that she was afraid that he would die because he was so sick. When she did sleep, it was next to her husband on a cot so she could attend to him. The constant demand of care for her husband left her so drained that she was emotionally, physically and psychologically unable to travel to Blue Earth to teach her 20 First Grade pupils and return to the hospital to take care of her husband.

The Grievant returned to her teaching duties on the afternoon of October 9th. According to her, she decided to stay home in the morning to acclimate her husband to being home. The Grievant missed 20 days of teaching from the afternoon of September 9th through the morning of October 9th.

School Nurse Hoyt, who had 20 years of nursing experience, testified that it was her opinion that the Grievant was too emotionally upset to teach on September 9, 2008. She further testified that the Grievant's around-the-clock presence at her husband's bedside was a necessity and essential to his care. Gravely ill patients such as the Grievant's husband need someone by their side to provide supplemental health care and advocacy because the nursing care standards have declined. School Nurse Hoyt further testified that she was in daily contact by telephone with the Grievant during her absence and it was her professional opinion that the Grievant was physically, emotionally, and psychologically unable to teach during that period. The Grievant was exhausted when she talked to her. The Grievant was not getting enough sleep to be able to physically drive to Blue Earth and teach first graders all day and then return to her husband's bedside. She would repeat many things to her that she had previously told her and did not have a memory for things. School Nurse Hoyt further testified that individuals who

had visited the Grievant and her husband during his hospitalization informed her that the Grievant was physically and emotionally exhausted.

Principal Grant testified that he also spoke to the Grievant during her absence on one or more occasions and discussed her condition with School Nurse Hoyt on a weekly basis “*It would have been extremely difficult some of the time*” for the Grievant to teach according to Principal Grant’s testimony. The Grievant’s husband testified that it was essential that the Grievant be by his side during his entire hospitalization because he needed her ongoing medical assistance.

The evidence established that District employees, including teachers, fill out leave request forms after they return to work. The leave request form has only two categories that a teacher can circle—“*Self*” and “*Child*”. It also has a place for the teacher to list the “*Specifics*” of the illness.

Principal Grant and the Grievant’s husband both testified that they routinely sign off on the leave request form; however, neither had final approval authority. They would forward the leave request form to the District office for approval by Superintendent Brandsoy. Superintendent Brandsoy testified that the leave request forms would go to Fiscal Service Coordinator Alan Wilhelmi who would verify that the leave was covered by the Agreement. Sometimes Wilhelmi would approve the leave request and other times it would come to him if Wilhelmi had a question. Under those circumstances Superintendent Brandsoy stated he would do the verification and either approve or disapprove the leave request. Superintendent Brandsoy also indicated that there were times that he approved a sick leave request when there was no explanation under “*Specifics*” on the form. Finally, Superintendent Brandsoy testified that in most situations employees are self-assessing themselves when they submit the request form. If he has questions, he would want a

doctor's note for clarification. Superintendent Brandsoy did not request a doctor's note from the Grievant.

The Grievant testified that she wrote "*Jack hospitalized*" on the request for leave form because she assumed that they knew that she would not be able to teach based on what her husband was going through. She also stated that she had been in daily contact with the District and they knew she was in no condition to teach.

Evidence established that the Union proposed to modify the language contained in the Article XI Section 3 of the Agreement during the last negotiations as the Employer contends or just prior to this arbitration proceeding as the Union contends as follows:

*A teacher may be granted up to six (6) days of non-accumulative leave annually which may be used for serious illness or death in the immediate family. Three (3) of the six (6) days may be used for extended family or special friend. **In the event additional days are required, a request can be made for the amount of days needed.** These days shall be deducted from accumulated sick leave. (New language in bold.)*

School Board Member Mary Eckhardt, who negotiated the present Agreement on behalf of the District, testified that the District flatly rejected this proposal because of the financial impact granting such leave would entail, as well as the effect long term absences would have on the classroom and the education of students.

Superintendent Brandsoy testified that he has always applied Article XI Section 1 to only allow paid sick leave to the individual teacher. Sick leave for a teacher's child is also allowed pursuant to this requirement under Minnesota Statute Section 181.9413. Superintendent Brandsoy further testified that other employees have sought paid sick leave for family members and he has only approved leave consistent with Article XI Section 3.

Finally, the evidence established that during the course of Union Counsel's cross-examination of Superintendent Brandsoy the following discussion ensued,

11..Q *Was Mona sick was my question?*

12 A *She probably was to a point where she could not be in*

13 *the classroom. That I don't -- that I would have to*

14 *agree with. And then the District was allowing her*

15 *to be gone, and that's what we agreed on.*

16 Q *And if a person is not able to be in the classroom,*

17 *they would be qualified as sick?*

18 A *I would think so.*

UNION POSITION

The Union's position is that the Grievant was entitled to paid sick leave for the entire time period that she was absent from her teaching duties as a result of her husband's illness. The Union argues that: she was entitled to paid sick leave during her husband's illness because she was emotionally, physically and psychologically unable to teach during that period. In support the Union argues that:

- The Grievant's condition upon learning that her husband was diagnosed with leukemia qualified her for paid sick leave on September 9th and 10th. The Grievant testified that she was in shock and could not do something as simple as reading a story. School Nurse Hoyt and Principal Grant both testified that the unexpected news of her husband's condition adversely affected her ability to continue to teach on that day. The Grievant testified that she also could not teach on the 10th because she was an emotional wreck and could not stop crying.
- The Grievant's condition during her husband's hospitalization qualified her for paid sick leave. It took an extended hospitalization stay to get the Grievant's husband's symptoms under control and to treat his leukemia. Her husband's condition did not

stabilize for three weeks. The evidence clearly established that the constant care he needed along with her need to be present to consult with the doctors demonstrated that she needed to be with her husband during his hospitalization. This need to be with her husband was corroborated by Dr. Habermann's November 13th letter.

- The evidence established through the testimony of School Nurse Hoyt and Principal Grant that the Grievant was in no condition to travel back and forth to Blue Earth to teach after taking care of her husband most of the night. Superintendent Brandsoy conceded during cross-examination that the Grievant was sick and should not have been in a classroom.
- The way that the Grievant completed administrative paperwork does not negate the fact that the District was well aware that she was in no physical, mental or emotional condition to teach. The Grievant cited the reason for requesting paid sick leave under "*Specifics*" as "*Jack hospitalized*" on the assumption that the District knew that she was unable to teach during the days she was absent .
- After the first sick leave request was denied, the Grievant submitted a second request with a more detailed explanation and supplementary information for the eleven days that Superintendent Brandsoy had reallocated to unpaid leave because she felt that she needed to clarify her situation. She also attached the letter from Dr. Habermann regarding her need to be with her husband while he was hospitalized.
- Superintendent Brandsoy testified that in most situations where employees request sick leave, the employee's own self-assessment of the sickness suffices. Where he questions the legitimacy of the request, he typically asks for a doctor's note. He did not ask the Grievant for a doctor's note.

- Superintendent Brandsoy conceded under cross-examination when asked if the Grievant was sick that “*She probably was to a point where she could not be in the classroom. That I don’t — that I would have to agree with*” and that, if a person was not able to be in the classroom, he or she would qualify as being sick. It makes no sense that the District agreed that the Grievant was physically and emotionally unable to teach, yet continue to deny her sick leave.

The Union further argues that even if the Grievant was not eligible for paid sick leave for herself, she was eligible for paid sick leave because of her husband’s illness under the Agreement. In support, the Union states that:

- The sick leave provisions of the Agreement are clear and not limited to use for “self” or “child”. The sick leave language Article XI Section 1 is simple and clear: “*In the event of illness or physical disability, causing absence from school, the teacher should notify the principal as early as possible to allow time to make necessary substitute arrangements.*” This language does not qualify the scope of the familial relationship for which sick leave may be used. Contrary to the District’s argument at the hearing, Section 3 in the Agreement governs a different type of leave. Article XI contains eleven different types of leave that a teacher may take. Just because the Serious Illness/Death Leave provisions appear in the same Article of the contract does not mean that they modify or limit the sick leave provisions housed under a different Section of that Article.
- The leave request form has only two categories of coverage—“*Self*” and “*Child*”. The collective bargaining agreement between the District and the non-teachers clearly limits the use of sick leave to “*Self*” and “*Child*”; but that contract does not apply to teachers. There is also a reference in non-teacher agreement language to Minn. Stat.

181.9413 whereas the language in the Agreement does not. The District made a decision to use one sick leave request form for both bargaining units, therefore, the District needed to list the "*Self*" and "*Child*" limitations to reflect the sick leave limitations in the non-teacher agreement. The District cannot then unilaterally impose these restrictions on the teacher bargaining unit by the creation of a single form. Therefore, the use of the leave request form does not modify clear language in the Agreement.

- The leave request form does not reflect all of the negotiated language in the Agreement. Because this form is merely an administrative tool, it cannot be used as a substitute for the Agreement nor can it modify or create new terms and conditions of employment. The same form is used for different bargaining unit employees; but as the District stipulated at hearing, it does not reflect all of the negotiated language in the collective bargaining agreements. Teachers are not required to fill out the form until after they return to teaching. Therefore, this form cannot be interpreted to govern the conditions precedent for sick leave entitlement as the District argues.
- The Grievant's supervisor who has been a Principal for 10+ years was the individual who initially encouraged the Grievant to take sick leave. This testimony by Principal Grant could be read either of two ways: (1) Principal Grant believed that the Grievant was so incapacitated by the news of her husband's diagnosis that she herself qualified as sick, or (2) Principal Grant believed that the Grievant was entitled to use sick leave to be with her sick spouse. Either way supports the Grievant's assertion that she should have been granted sick leave for her absences. Finally, Principal Grant initially approved the Grievant's request for paid sick leave. By signing the Grievant's sick leave request form, it shows he thought she qualified.

- Finally, the District suggests that the local was unsuccessful in bargaining and then filed the grievance. This is simply false. There is no evidence of any negotiations proposals on this issue during the negotiations for the 2007-09 contract. The only proposal introduced at hearing (Dist. Ex. 1) was made by the Union on July 20, 2009, after the expiration of the 2007-09 contract and significantly after the Grievant's grievance had been filed, denied, and appealed to arbitration.

EMPLOYER POSITION

The Employer's position is that the Union has not sustained its burden of proof that the District denied the Grievant's request for paid sick leave. The District argues that it approved six days of "*serious illness*" leave pursuant to Section 3, three days of "*personal leave*" pursuant to Section 2 and 11 days of "*unpaid leave*" pursuant to Section 6 for the time that she was absent from her teaching duties due to her husband's illness. This is the only leave required by the Agreement. The District was not required to approve the Grievant's request for paid sick leave for the illness of her husband under Article XI Section 1. In support, the District states that:

- The language in Article XI Section 1 of the Agreement is clear and unmistakable that a teacher may only use accumulated sick leave for the teacher or their minor child's illness.
- The Union argues that the language in Section 1 does not specifically state that paid sick leave is limited solely to the teacher. In support of this it cites that the District extends a teacher's sick leave to a minor child. In fact, the request leave form bears this out. Therefore, she is entitled to use paid sick leave for her husband's illness. The District does not dispute the fact that teachers can use paid sick leave for a minor child's illness. This language was never negotiated into the parties' Agreement;

however, it is mandated by Minn. Stat. Section 181.9413. There is no state or federal law that mandates an employer to provide paid sick leave for the illness of any other family member. Just because the District complies with state law in administering its leave policy does not mean that the District agreed to broaden the terms of the Agreement beyond that required by law to include paid sick leave for the illness of a spouse.

- While Section 1 does not specifically address a teacher's use of sick leave to care for a spouse's illness, this is specifically addressed in Section 3. Therefore, Section 1 cannot be read out of context without Section 3. The Union's interpretation of Section 1 would render Section 3 meaningless. The Union is attempting to change the paid sick leave provisions of the Agreement through this Arbitrator rather than through collective bargaining. This is clearly prohibited by Article XV Section 9 which states, "*The arbitrator in a grievance procedure is not to change the terms and conditions of this agreement*".

The District further argues that its past practices evidence that the Grievant is not entitled to payment of further sick leave. In support, the District states that:

- Superintendent Brandsoy testified that over the years several teachers sought to use paid sick leave for the care of family members under Section 1 and for leave beyond Section 3. In each case the District limited paid leave, other than for the care of a minor child, to the six day period in Section 3. This same limitation was also applied to teachers who were grieving, such as the Union appears to be arguing in this case.
- The Union presented no evidence that any teacher was ever allowed to use accumulated sick leave to care for a family member, other than for a sick minor child,

or to address their grief or stress over such issues absent verification of the teacher's own illness.

- The Union has been well aware of the District's practices in denying accumulated sick leave for ill family members beyond that required in Section 3 and has acquiesced to this practice by its failure to challenge it.

The District also argues that the bargaining history of the parties evidences that the Grievant is not entitled to payment for sick leave beyond the maximum six days allowed in Section 3. In support, the District states that:

- If this Arbitrator determines that the sick leave provisions of the Agreement are ambiguous, the parties' bargaining history is relevant.
- School Board Member Eckhardt, who negotiated the current Agreement, testified that the Union wanted to expand the time period that teachers could receive paid sick leave for a family member under Section 3. The District flatly rejected this expansion. If this expanded time period had been adopted, the Grievant would be entitled to paid sick leave for the entire time of her husband's illness. The Union is trying to gain through arbitration what it could not do so during negotiations.

The Employer further argues that the Grievant has not demonstrated that her request for sick leave was based upon her own illness as required in Section 1. In support, the District states that:

- The Grievant's initial October 9th claim for paid sick leave was for 20 days and for her husband's illness. It was only after this claim was rejected that she claimed the paid sick leave request was for her own illness. In this new request, the Grievant only requested paid sick leave for 11 days rather than 20 days as she had previously requested. The Grievant claimed sick leave for the afternoon of September 9th and the

whole day of the 10th. She then apparently was not sick for approximately two weeks from September 15th through September 25th even though her husband's condition apparently worsened during that time period according to the Grievant. The Grievant was sick again from September 26th through the morning of October 9th. Yet, she was well enough to come to work the afternoon of October 9th and to submit a sick leave claim.

- There is virtually no precedent, on the other hand, for the proposition that a serious illness causes a radical illness in a spouse for a period of 20 days which would be an abnormal reaction notwithstanding the difficulty as people face death and illness in loved ones. It seems inconsistent that the Grievant's emotional illness came and went on certain days and improved immediately after her husband was released from the hospital. It is clear that the Grievant was attempting to manipulate the system after her initial sick leave request was denied.
- The Union introduced School Nurse Hoyt to establish that the Grievant was indeed sick during her husband's illness. No evidence was introduced to establish School Nurse Hoyt as a medical expert. Even if she did have such expertise, she only diagnosed the Grievant's illness from phone conversations and second-hand observations by others that were reported to her. This evidence was never presented by the Union during the processing of this grievance. The delay in presenting this medical support for the Grievant's claim for the first time at the hearing certainly mitigates the relative importance of School Nurse Hoyt's testimony.
- The Grievant had every opportunity to seek medical attention during her husband's illness if she was as ill as she claimed. The Grievant spent nearly three weeks in the

hospital surrounded by doctors and other health care workers yet she never sought medical treatment for her alleged illness.

- The November 13th letter from Dr. Habermann submitted with the Grievant's revised claim makes no mention of the Grievant's illness. Moreover, the letter was written after the initial denial of the Grievant's sick leave claim.
- It is clear that the Grievant's absence from work was necessitated due to her husband's illness and not due her own illness. The School District does not deny that it can be heart wrenching and stressful to deal with the serious illness of a spouse or close family member; however, such circumstances do not automatically render one medically ill.
- The Grievant has submitted no documentation or evidence from any health care provider that she suffered from any diagnosed medical condition during the time period in question that required her absence from work. Rather, her attempt to re-characterize her leave as necessitated by illness, after her initial request was denied, is merely an attempt to manipulate the facts to obtain paid leave to which she is not entitled. The District clearly is entitled to deny a request for paid sick leave when it is not accompanied by any medical documentation supporting the need for leave and is further suspect based on the precipitating facts.
- Finally, even assuming that the Grievant relied on the statements of September 9th by Principal Grant that she should go home because she had a lot of sick leave and by School Nurse Hoyt that she should not be working do not support the Grievant's conclusion that she was entitled to paid sick leave. No evidence was introduced that either of these employees told the Grievant that she could use sick leave for that

purpose. Moreover, it was established at the hearing that neither had the authority to determine if the Grievant's use of sick leave was appropriate under the Agreement.

OPINION

The parties were not in agreement on the wording of the issue before the undersigned Arbitrator. I have framed the issue as, "*Whether the District violated the terms and conditions of Article XI of the Agreement when it denied the Grievant accumulated sick leave in September and October, 2008; and if so, what is an appropriate remedy?*" It is the Union's burden to establish that the District violated the Agreement when it denied the Grievant paid accumulated sick leave for the time period beginning on the afternoon of September 9th upon learning of her husband's illness, throughout his hospital stay and ending when she returned to the classroom on the afternoon of October 9th.

The evidence established that the Grievant and her husband are employed by the District as a First Grade Teacher and High School Principal, respectively. On Tuesday September 9, 2008, the Grievant's husband learned that he was seriously ill with leukemia and informed the Grievant of his condition during the middle of her school day. The Grievant was allowed to take leave for the remaining half of that day. She was also allowed to take leave for the following day, September 10th, to take her husband to the doctor for further tests. The Grievant returned to her teaching duties on September 11th and 12th.

On Monday, September 15th, the Grievant's husband was hospitalized in Rochester until October 6th when he was released. He then spent the next three days at the Hope House in Rochester while undergoing hospital out-patient testing and treatment. The Grievant was with her husband during his entire hospital in-patient and out-patient treatment. They returned to Blue Earth on October 8th. The Grievant returned to her

teaching duties on the afternoon of October 9th, electing to spend the morning getting her husband acclimated to being home.

Upon her return to work on October 9th, the Grievant submitted a request for use of paid sick leave for the 20 days she was absent from work listing the reason “*Jack hospitalized*”. Principal Grant signed off on her request; however, Superintendent Brandsoy denied her request for paid sick leave under Article XI Section 1 [SICK LEAVE] and instead granted her six days of sick leave under Section 3 [SERIOUS ILLNESS/DEATH LEAVE].¹⁶ The Grievant was also granted three days of personal leave pursuant to Section 2 [PERSONAL LEAVE] and 11 days of unpaid leave under Section 6 [UNPAID LEAVE].

The Union, contrary to the District, contends that the Grievant is entitled to accumulated paid sick leave for her husband’s illness because Section 1 does not limit this sick leave to self and child. The District’s argument that the language in Section 1 is clear and unambiguous is most logical and legally persuasive. The clear language of Section 1 entitles a teacher to paid accumulated sick leave for their own illness. The provision is devoid of any mention of coverage for anyone’s illness other than a bargaining unit teacher. Additionally, a teacher is entitled to paid accumulated sick leave for the caring of an ill minor child; however, such benefit is not contractual, rather it inures from Minnesota Statute.

While there is no mention of paid accumulated sick leave for the illness of a teacher’s spouse or close relative in Section 1, there is specific reference to said coverage in Section 3. If the Union intended to have the illness of a teacher’s spouse or other close relative covered for this sick leave under Section 1, surely such coverage would have been embodied in the specific language in Section 1, much as it was in Section 3. The

¹⁶ Unless otherwise indicated, hereinafter all Section references pertains to Article XI.

very absence of such coverage in Section 1 negates any argument mandating contractual sick leave benefits for a teacher based solely on an illness of a spouse or close relative. Moreover, to interpret that the illness of a spouse or close relative is broadly covered under Section 1 would render meaningless the negotiated provisions of Section 3, wherein there is only narrow paid accumulated sick leave coverage for said illnesses.

Even assuming *arguendo* that the language in Section 1 is ambiguous, there is no evidence to establish the parties intended to extend coverage in Section 1 for illnesses associated with a spouse or close relative. There is also no past practice evidence to support the Union's assertions. Rather, past practice demonstrated through the uncontroverted testimony of Superintendent Brandsoy that the District repeatedly denied spousal or other close relative coverage under Section 1. Further, at some point prior to arbitration, the Union tried unsuccessfully to extend the length of the leave period in Section 3 through new language, akin to what the teachers individually enjoyed under the provisions of Section 1. The Employer maintained that this event occurred during negotiations for the current Agreement. Whether it occurred during negotiations or just prior to this arbitration proceeding, the fact remains that the Union attempted to broaden the coverage under Section 3 to be similar to the extended sick leave coverage in Section 1.

Finally, the fact that the sick leave request form mentions "*child*" coverage, whose coverage is not specifically identified in Section 1, somehow implies that spousal illnesses are also covered in Section 1 to say the very least, is stretching it. This is an administrative form that is used for both the teacher and non-teacher bargaining units and not a contractual provision. It reflects the coverage mandated by Minnesota Statute as well as a negotiated provision in the non-teacher agreement.

It is clear that paid accumulated sick leave does not cover the illness of a teacher's spouse or close relative under Section 1. Therefore, the Grievant is not entitled to accumulated paid sick leave for her husband's illness in excess of what the District granted pursuant to Section 3 and for personal leave under Section 2.

The issue whether the Grievant was ill herself during her husband's illness and was the cause for her absence from work must be now resolved. If her illness was in fact the cause of her absence, then her absence, either in whole or in part, would be covered under Section 1. The remedy would be to change unpaid sick leave and, if appropriate, paid personal leave to paid accumulated sick leave.

The Grievant alleges that she was physically, psychologically and emotionally unable to teach from September 9th through October 9th, a condition that was caused by the serious illness and hospitalization of her husband. She testified that she was too emotionally ill to teach the afternoon of September 9th, which carried over through the next day, due to the shock of learning that her husband was seriously ill with leukemia. She was not, however, too sick to teach on September 11th and 12th. She further testified that after her husband was hospitalized she was mentally and physically exhausted from taking care of her husband who needed constant supplemental personal care that the hospital was not providing and by the stress of acting as her husband's liaison with the doctors treating him.

The evidence further established that when the Grievant filled out her leave request form on October 9th for 20 days of paid sick leave, she listed the reason being "*Jack hospitalized*". The Grievant explained in her testimony that she filled out the form that way because she assumed that the District would know that she was in no condition to teach during that 20-day period because of her husband's illness.

After her initial request for 20 paid sick leave days was denied, the Grievant submitted a second leave request form on February 9, 2009 wherein she requested paid sick leave for the remaining 11 days that she was not compensated for in her initial leave request. The Grievant listed "*I was emotionally and physically unable to teach*" as the basis for her sick leave request. She accompanied this request with a handwritten memorandum with the subject being "*Sick Leave*" that stated, "*I am writing to clarify my request for sick leave. I was emotionally sick and would not have been effective in the classroom on the following dates: September 9 (p.m.), 10, 26, 29, 30, October 1, 2, 3, 6, 7, 8, 9 (a.m.).*"

She further supplemented the leave request with a letter from one of her husband's doctors that stated, "*Mr. Eustice became incredibly ill and had an extremely complicated course. It was imperative that his wife be at his side. At one point, his prognosis was quite guarded. Therefore, it was medically necessary for his wife to be present with him during this difficult time.*"

It is not contractually required that a teacher submit medical evidence to substantiate a request for sick leave. Superintendent Brandsoy testified that if he has a question whether a teacher was sick or not, he will ask for medical verification. He did not ask the Grievant for medical verification after her initial leave request because the request was for sick leave for the Grievant's husband's illness. He also did not ask for medical verification following the second leave request because it was his judgment that both requests involved sick leave for the illness of the Grievant's husband, something he addressed when he granted her the six days pursuant to Section 3 and the three personal days pursuant to Section 2.

The District argues that the Grievant has not demonstrated that her request for leave was based upon her own medical illness. The only medical evidence presented by the

Union that supported the Grievant's claim that she was physically and emotionally unable to teach was the evidence furnished through School Nurse Hoyt's testimony. At the hearing, Hoyt stated that it was her opinion, based upon conversations with the Grievant and feedback from individuals who visited the couple in the hospital, that the Grievant was mentally and physically exhausted from the ordeal of her husband's illness and could not teach. The District alleges School Nurse Hoyt's assessment of the Grievant's alleged illness is not medical verification especially when her evaluation was the result of telephone conversations with the Grievant and reported second-hand remarks from individuals who visited the couple in the hospital. The Employer further alleges that the District first learned about School Nurse Hoyt's assessment of the Grievant's condition during her husband's illness at the hearing. This mitigates the relative importance of her testimony.

The evidence disclosed that the Grievant presented no medical evidence that she was sick prior to her sick leave claim being ultimately rejected. The letter from Dr. Habermann authored over a month after her initial sick leave request had been denied and submitted in support of her second leave request almost three months after it had been written provides no factual basis that the Grievant was indeed sick during her husband's illness. In fact, the letter substantiates that the evidence that Grievant had to miss work because she needed to take care of her husband.

Further, School Nurse Hoyt's testimony offered as medical evidence that the Grievant was sick is lacking for the reasons stated by the District. Even assuming that School Nurse Hoyt may have the medical expertise to evaluate the Grievant's physical and mental competence to teach, it would be extremely difficult for her to make a credible medical diagnosis based upon phone conversations and second hand reports. Further, I

find it troublesome that this evidence was withheld from the District for almost one year. Had it been presented during the Grievant's second leave request or during grievance processing, arbitration may not have been necessary.

Based upon all the evidence it appears that the District never knowingly denied the Grievant's sick leave claim based upon her own illness until the day of the hearing. Prior to the hearing she never proffered any evidence that she was in fact sick. It is understandable then that the District had to take a hard line in denying her sick leave. In doing so it was preserving its position that Section 1 did not cover illnesses of a teacher's spouse or other close relative. To do otherwise would have posed serious long-term financial consequences for the District.

To preserve its position on Section 1 coverage, Superintendent Brandsoy changed the Grievant's initial sick leave request and granted her sick leave pursuant to Section 2 and 3 rather than Section 1. Superintendent Brandsoy could have approved the Grievant's explanation for sick leave based on her medical explanation in her second request as he had mainly done in the past when other sick leave requests were submitted, but chose not to do so. Rather, it appears that he summarily rejected her explanation because he felt that she was still claiming sick leave because of her husband's illness and not her own.

After the initial sick leave rejection, the Grievant had the burden to demonstrate that her absence from her teaching duties was because of her illness rather than her husband's, something she has failed to do. It is clear that the Grievant was shocked when she first learned of her husband's serious illness and had a hard time concentrating on her teaching duties. The Grievant still may have been in a "state of shock" the next day, however, she was well enough to accompany her husband on his 100 mile round trip to Mankato, Minnesota to visit his doctor on the 10th. She was also well enough to teach

on the 11th and 12th. She was also well enough to travel the 100 miles to Rochester on September 15th and spend the whole day with her husband while he underwent tests and was ultimately hospitalized. The Grievant was also well enough to attend to her husband during the entire time of his hospitalization. If she was in fact sick, she was in a health care environment surrounded by doctors and could have easily sought medical treatment, but did not do so.

The Grievant also kept a detailed written accounting of her husband's condition during his hospitalization period, yet there is not one reference to her own alleged illness in this journal. The Grievant also was well enough to spend three days with her husband at the Hope House in Rochester while he underwent outpatient treatment, and spend the morning of October 9th acclimating her husband to being home after returning home the day before.

Throughout this entire time period the Grievant is saying that she was too sick to teach school, yet well enough to attend to her husband's illness. It is obvious that she could not teach and take care of her husband at the same time. She made the conscious decision to put the welfare of her husband first, which is what any spouse would do under the same circumstances. In making this admirable decision, she in essence gave up her right to be paid for the additional 11 days by the District by doing so.

There is no question that the Grievant went through a heart-wrenching experience. Her plight is the type of adversity that the parties' recognized when they negotiated Section 3, which allows a limited period of emergency sick leave for the Grievant's lost work time due to the illness of a spouse or grief associated with the death of a spouse. I sympathize with the Grievant's plight; however, I cannot do what the Agreement will not allow me to do and that is to grant her sick leave for her husband's illness. The bottom

line is that the Grievant was absent from her teaching duties in order to care for her ill husband. There is no credible medical evidence to support that she was in fact too sick to teach. Yet the Union is asking me to make a medical judgment that the Grievant was unable to teach during her husband's illness because of her own illness, something I am not qualified to do.

Finally, the evidence established that the Grievant was initially told on September 9th to go home by Principal Grant who used words to the effect that she had a lot of sick leave. The Union maintains that this was evidence that the Grievant was sick and also evidence that the Grievant was authorized to use sick leave. The evidence also established that Principal Grant does not have the authority to grant or approve sick leave. Principal Grant's alleged statement in and of itself neither constitutes a waiver of the provisions of Section 1 nor authorizes paid sick leave for that afternoon or any time thereafter. It could be argued that the sick leave that Principal Grant referred to may have been the paid sick leave encompassed by Section 3. Also, the comments by Superintendent Brandsoy made during his cross-examination about whether he felt the Grievant was sick and would be entitled to sick leave do not establish that the Grievant was in fact sick herself during her husband's illness.

In conclusion, the Union has failed to establish that Section 1 of the Agreement applies to an absence due to the illness of the Grievant's or any teacher's spouse. The Union has also failed to present credible evidence that the Grievant was ill herself during the course of her absence from work while attending to her husband's illness. In view of the foregoing, I find that the Union has failed to establish its burden of proof that the District violated the terms and conditions of Article XI of the Agreement when it denied the

Grievant accumulated sick leave in September and October, 2008. Accordingly, I will dismiss the grievance in its entirety.

AWARD

IT IS HEREBY ORDERED that the grievance be and hereby is dismissed in its entirety.

Dated: October 31, 2009

Richard R. Anderson, Arbitrator