

OPINION AND AWARD

AMERICAN ARBITRATION UNION, ADMINISTRATOR

PUBLIC SCHOOLS

May 7, 1984

and

Case No. 54

UNION

Subject: Award of Sick Bank Days -- Alleged Employer
Interference

Statement of the Grievances: "The Board has given
'Sick Bank Days' without the approval of the Someplace
UNION."

"Constant meddling
into the internal affairs of the Someplace UNION
especially in regard to the use of 'Sick Bank
Days'."

Contract Provisions Involved: Articles X, XXVI of the
1982-1985 Agreement; Memorandum of Understanding No
Reprisal, dated February 23, 1983.

Grievance Data:

_____ Date _____

Grievances Filed:	September 12, 1983
Employer Response:	September 23, 1983
Union Appeal:	September 22, 1983
Employer Answer:	October 3, 1983
Demand for Arbitration:	November 1, 1983
Case Heard:	March 15, 1984
Briefs Filed:	April 23, 1984

BACKGROUND

These grievances from the Union protest, first, the Employer's award of sick bank days to Teacher B. Top. The Union contends the Board lacks authority to make such a grant under the Agreement. Second, the Union asserts that the Employer, in making the disputed grant, has violated the Memorandum of Understanding No Reprisal.

The facts which underlie this dispute are not at issue, for the most part. It had its origin with a request by B. Top "for 18 days from sick bank", made to the "Sick Leave Committee" on March 3, 1983. According to Union Exhibit 2, which summarizes the chronology of events, the Union denied her request in a letter signed by its President, G. Apples, on March 18, 1983. (Neither Top's letter nor Apples' response was introduced as evidence in the instant hearing.) Top promptly grieved denial of her request, stating:

"On March 9, 1983 Mr. Terry Pears received a denial letter from Mr. George Apples of my request for Sick Bank Days. I believe the denial is a direct reprisal for my failure to participate in the illegal work stoppage (strike) that took place in December of 1982."

In her grievance, Top refers to her belief that the denial of sick bank days was in reprisal for her having crossed the picket line during a teacher strike in December 1982. Her testimony was that she and two others had refused to join the work stoppage. She further stated that following the strike, she had felt herself frozen out of all social contact with her fellow teachers.

In any event, the Employer attempted to determine the Union's grounds for denial. T. Pears, Superintendent, wrote Apples to that effect, on March 9. Top's Supervisor, S. Rope, informed Top by letter dated March 18, 1983, of a meeting she had had with two Union representatives, Apples and Carr, regarding the matter. Pertinent portions of Rope's letter read:

"...Mr. Apples indicated he did not have to give an explanation as to why your use

of sick bank days was denied. Therefore, I must assume you are correct in your grievance and it is in fact a direct reprisal for failure to participate in the work stoppage (illegal strike) that took place in December of 1982, and is therefore a contract violation.

"Since the administration does not have the authority of administrating the teachers' sick bank, I recommend you continue your grievance through the proper procedure.

"In addition, you may want to consider pursuing legal proceedings against the Union, both local, regional, and State."

Pears met with Top on March 21, 1983 and recorded the meeting in a letter to Top, dated March 22, 1983. He wrote her that the meeting had been an attempt to resolve the grievance on the denial of sick bank days. He further stated in his letter that he concurred with Rope's view that "the Administration of Someplace School does not have the authority to administer the sick bank." Pears urged her to appeal "the non-retribution portion of the contract [Memorandum of Understanding, No Reprisal] to Board level", and he also urged her to grieve the matter within the Union's procedures.

It will be helpful to an understanding of the future events, to introduce, at this point, the specific contract language regarding sick bank days. According to the record, the language was first established in 1978, and **sick bank** days became available for the first time in 1980. In the following quotation from X-J, paragraph 7 was adopted, at the Employer's request, in the 1982 Agreement. Otherwise, the language remains unchanged from 1978.

"J. Teachers shall have a 'sick bank' which has the following provisions:

- "(1) A teacher shall designate three (3) of his/her accumulated sick days to the bank each year until the bank reaches one hundred ten (110) days.
- "(2) No individual is allowed more than a total of forty (40) days from the bank while an employee of Someplace School.
- "(3) A teacher must use his/her accumulated sick days before he may use days from the bank.
- "(4) Bank days must be recommended by a committee of three (3) teachers appointed by the local Union president.
- "(5) Sick bank days will be replenished when the amount of days drops by the amount of staff. (I.e., 27 staff members-days drop to 83-everyone designates one day.)
- "(6) Once a teacher has used sick bank days, that teacher will be required to replace the days used from the sick bank before the teacher can accumulate sick leave days. For example: If a teacher uses 10 sick bank days, then that teacher shall repay those 10 days before being entitled to accumulate sick leave.
- "(7) The teacher must exhaust other available funds of money or insurance before drawing on the sick bank or agree to repay should subsequent insurance coverage become known."
(Underlining added)

Section (4) establishes a committee of three teachers to be appointed by, in this case, Apples. Its recommendation is required for issuance of "Bank days". The actual administration of sick bank matters appears to be performed by the Employer. It is the Section (4) Committee which passed on Top's request.

An additional provision in the current Agreement which is relevant to the instant case is the Memorandum of Understanding No Reprisal, dated February 23, 1983. It reads:

"1. All teachers and other bargaining unit members will not be threatened, disciplined, reprimanded, demoted or punished directly or indirectly by the Board, Administration or its representatives due in any way to their participation in collective bargaining activities, legal or illegal prior to ratification of the Master Agreement.

"Such teachers and other bargaining unit members shall be immediately reinstated and restored to their regular and extra-duty assignments.

"Any alleged violation by the Board or the Administration shall be grievable under the Grievance Procedure in the Master Agreement, including binding arbitration.

"2. The teachers and their bargaining representative agree to discharge and/or dismiss any action filed by the teachers in conjunction with the labor negotiations. Any and all unfair labor practice charges shall hereby be deemed dismissed and are waived by the teachers and their Union.

"3. All teachers, bargaining unit members, or other employees of the Someplace School District, shall not be threatened or in any way disciplined or

reprimanded by the Union for any activities which they were involved in, including but not limited to, crossing the teachers' picket line."

According to the Union's summary of events in this case ("B. Top Grievance Outline, Union Exhibit No. 2), Top wrote to Apples on March 22, telling him that she "continues to grieve not receiving days from the sick bank". It appears Top regarded the "letter" as a grievance directed against the Sick Bank Committee or the Union. She failed to get a response from the local Union, and a few days later, on March 26, she forwarded her grievance to the Regional level, addressing her transmittal letter to S. Cat, UNION Director. The statement of her grievance reads:

"On March 9, 1983, Mr. Terry Pears received a denial letter from Mr. George Apples of my request for sick bank days. I believe the denial is a direct reprisal for my failure to participate in the illegal work stoppage (strike) that took place in December of 1982."

Again according to the Grievance Outline, the UNION held a meeting in late March, at which Top's claim was discussed. It was written on the Outline that "UNION member stated Top had no grounds to grieve. She had insurance and considered this their answer to her."

At this time, the Board of Education for this School District held its meeting and discussed Top's grievance. The Union expressed its view at the meeting that Top had not requested a specific number of days and that she had not appealed to the committee administering the sick bank.* Pears informed the Union representative that Top, at a meeting with the Union, had narrowed her claim to eight and one-half days, the difference between her short-term insurance and her salary. Pears also disputed the contention that she had not asked the committee. He said she had been given different reasons for the

*There was initially some question about the number of bank days to which Top would have been entitled. That number, it is now not disputed, is eight and one-half days.

denial. It was also stated at this meeting that the Board had made several requests of the UNION for reasons for the denial and had not received an answer.

Cat responded to Top's "appeal to the regional level" on April 5. Her letter states, in part:

...I am not certain what procedure you are following as I am not aware of a regional level in the grievance procedure that is in the Master Agreement."

Cat then went on to discuss the status of Top's request for sick bank days. She summarized her position by stating:

"1) Your request for sick leave is premature. Application to use a sick leave should be applied for when the need arises. At the time I spoke to you via the telephone you informed me that you had 17 sick days accumulated and would be using them.

"2) The nuts & bolts of the application of Section (7) p. 18 have not been clarified.

* * *

"c) The application of Section 7 must be complied with. To my knowledge this has not been done.

"d) I have no knowledge that all requests for sick leave have been granted in the past or if applications in the previous cases and your case are similar.

"Therefore, I have requested a meeting for April 8, 1983 at your school. I have talked to Mr. Pears and he was to inform all parties involved as to time and place. At this time, I do not feel that you have a grievance or that the facts support your allegations that the Union is discriminating against you. I also am confused as to what you base your conclusions on that the School Board and Administration

have no power to administer the sick bank policy. [At this time, Cat did not have the letter from the Employer, quoted at pages 1-2 of this Opinion in which Rope made her statement regarding the lack of authority]. These are issues I am hopeful we can clarify at the April 8, 1983 meeting. If you have additional information at that time it will certainly be considered."

According to Cat, the April 8 meeting was "not successful" Shortly afterward, Pears wrote again to Apples asking for the reasons for denial of Top's request for sick bank days. His letter states:

"I am writing for the second time in regards to the denial of Mrs. B. Top's request for use of sick bank days.

"I am again requesting the rationale for the denial and the minutes of the meeting (sick bank committee). I consider this as a reasonable request to you in an attempt to resolve this continued concern as to the possible contract violation.

"Inasmuch as I am charged with administering the contract and this portion has proved questionable, the above requested information will assist the Board of Education and myself in determining if in fact there is a contract violation.

"I would respectfully remind you that you have missed the first date for the expected information on April 8, 1983 at 3:00 p.m.

"I am requesting the above information by April 12, 1983 at 3:00 p.m."

The Union, through its Director Cat, responded, protesting Pears' inquiry as "...bordering on...being improper as this is not an employee/employer situation." Cat then wrote:

"The contract specifically states that the decision [regarding sick bank days] shall be made by that committee of three teachers and it doesn't state that the committee must give reasons for approval or denial to the Superintendent.

"The request in the memo is inappropriate based on the contractual language of the sick bank and the union is opposed to setting a precedent of this nature when it has not been requested in the past. Furthermore, the committee, not the President, makes the recommendation."

Top, acting, she said, on April 8 instructions from Cat submitted another application for sick bank days, on April 15. The request was denied in late April. She submitted a third request on May 26, which was also denied. Top sought reasons from the local UNION and also asked for information regarding an internal grievance procedure from the State UNION.

The upshot of all these requests, denials, intervention by the Superintendent, appeals to higher levels, was that at the start of the 1983-1984 school year, Top had not received positive action on her requested sick bank days from the Union's committee. The Superintendent and the Board had not been informed as to the reasons for Top's denial. Further, the State UNION had informed Top that the UNION "does not have an internal grievance procedure *per se*", and the UNION further advised her that her "pursuit of this matter through [her] grievance procedure is the proper way to handle this matter".

The Board of Education, at its September 12, 1983 meeting, granted Top's request for eight and one-half days from the sick bank. Pears wrote Top about the action, stating:

"The Board of Education took the position that to deny you the leave would be a contract violation. Secondly, **it is** the Board's responsibility to properly interpret and manage the contract."

The Union has grieved the Board's action, and it is that grievance which is before this Arbitrator.

DISCUSSION AND FINDINGS

The issue in this case is whether the Employer's decision to award eight and one-half sick bank days to S. Top was a violation of the Agreement.

Sick bank benefits became operative in 1980. Superintendent Pears testified that at that time, the Board President had expressed some concern about policing its administration and he was assured 'there would be no problem'. (Pears did not identify from whom such assurance came.) He concedes that Top's case represents the first "problem".

The testimony from Pears is that in the past the Employer has not intervened in administration of the sick bank applications. Requests for use of bank days have gone to the Committee, and the Committee's approval comes to the Board, which then has approved the Committee's recommendation. The clear inference is that the Board's action was a formality, that **is**, done without scrutiny of the individual case. Hence, Top's application for bank days presents a first-time dispute.

X-J-(4) states:

"Bank days must be recommended by a committee of three (3) teachers appointed by the local Union President."

X-J-(4) is very explicit. The recommendation of the Committee is required before days from the sick bank may be used. The Board and its agent, the Bookkeeping Office, which controls records and means of payment, may not release days from the sick bank without the Committee's approval. In Top's situation the Committee did not recommend in her favor.

Pursuant to the collective bargaining Agreement, there simply is no authority in the contract for the Employer's action, which was in reality a usurpation of a duty entrusted to the Committee alone. The Employer effectively ousted the Committee by assuming its jurisdiction to recommend approval of Top's request.

The Employer contends that it has an obligation to administer the collective bargaining contract in a fair and just manner. It justifies the Board's action on the basis of its conclusion that the sick bank Committee's conduct penalized Top for her refusal to honor the earlier work stoppage. The difficulty with the Employer's position is that, as noted above, the Agreement expressly grants the recommendation of sick bank days to a Union committee. It makes no provision whatsoever for the Board to intrude on that process. The Agreement, rather, makes the Committee the sole determiner of entitlement to sick bank days.

The Employer also has submitted an Arbitration case involving the Howell Public School in support of its position. However, the contract language in that case is readily distinguishable, the most important point being that the sick leave bank committee in that system is made up of representatives of both the Employer and the Union.

As to the single substantive question before me, namely, whether the Employer could unilaterally authorize use of sick bank days, overriding the Committee's refusal to recommend such use, the Agreement plainly prohibits such action. The Employer must understand that it may not in a future like situation, absent a contractual amendment, grant sick bank days without the Committee's recommendation.

In view of the finding that the Employer's action violates the sick bank provisions, it is not necessary to consider the Union's alternate argument, that the Employer's action in this case constituted a settlement of a grievance in violation of Article XXIII-C.

The remedy. The Employer must understand that its action in awarding Top eight and one-half days from the sick bank was a violation of the Agreement. The remaining question is whether, as the Union seeks, the eight and one-half days must be restored to the bank.

Under the very limited circumstances of this particular case I will not grant the Union's requested relief. The basis for my refusal is the Union's failure to demonstrate that its action with respect to Top was grounded on a reasonable and fair construction of the provisions of the sick bank.

Comment on the nature of the sick bank and the role of the Union committee may be helpful in understanding my view of this case. According to X-J-(1), the bank is intended to contain at least 110 days. The Committee passes upon requests, and in so doing, performs much the same function as though it were holding a trust. That **is**, the three-person committee may properly be regarded as a trustee managing the sick bank for the benefit of the bargaining unit. When the Committee approves or disapproves an application, its actions must be fair and even-handed. It may not either grant or deny for spurious reasons. While there may be no requirement that the employer be given reasons, it is fundamental that the Committee's accountability will be seriously damaged if it refuses to supply reasons to the affected teacher and to demonstrate thereby that each teacher is being dealt with under like standards. Objective requirements for entitlement must be established, and whether or not an applicant meets the standards should be of easy proof.

Viewed against these guidelines, it appears the Committee has not met its obligations. At various times throughout the history of Top's claim, Top received different explanations for the Committee's unfavorable action. At one point, she was told she must first use certain insurance benefits, that her claim was premature. Later, when such insurance benefits were taken into account, and her claim was cut from the initial request to eight and one-half days, there is evidence she was told she hadn't amended her claim. Such a contention, relying on a wooden technicality, is unacceptable. The Committee could well, at that stage, simply have granted the correct number of days rather than demand a formalistic amendment. At still another time, it appears Top was informed that she was due to be on lay-off the following school year, the implication being that the denial was based on her possible inability to repay the bank for the days which might be given to her. At the arbitration hearing, the Union presented no additional reasons, nor any final reason for the Committee's action. It was agreed that if she had been deemed entitled, and but for the Committee's denial the correct number of days would be eight and one-half.

The collective bargaining Agreement implicitly gives each teacher a right to a certain number of sick bank days. There is also implied a duty to administer the sick bank to the benefit of all persons in the bargaining unit, to be fair and impartial, to make decisions on the basis of objective standards

known to all affected persons. If I were to award the Union its requested remedy, thus revoking the grant of eight and one-half sick bank days to Top, I would be participating with the Committee in an action which denies Top a contractual right, and would be taking such action without being shown any acceptable reasons in support. I must refuse to be part of such a plan.

Accordingly, the Union's grievance will be granted to the extent that I sustain its claim that the Employer's action in removing eight and one-half days from the sick bank is a violation of the Agreement. It clearly **is**. For reasons stated, no other relief is appropriate.

AWARD

The Employer's action in approving the issuance of eight and one-half sick bank days was a violation of the Agreement. No relief is appropriate under the special circumstances of this case.


[REDACTED]
Arbitrator