COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF LABOR RELATIONS

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In the Matter of the Arbitration Between: *

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SPENCER-EAST BROOKFIELD REGIONAL SCHOOL DISTRICT *

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-and- * ARB-14-3845

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SPENCER-EAST BROOKFIELD TEACHERS ASSOCIATION *

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Arbitrator:

Timothy Hatfield, Esq.

Appearances:

Kimberly A. Rozak, Esq. - Representing Spencer-East Brookfield Regional School District

James Shaw, Esq. - Representing Spencer-East Brookfield Teachers Association

The parties received a full opportunity to present testimony, exhibits and arguments, and to examine and cross-examine witnesses at a hearing. I have considered the issues, and, having studied and weighed the evidence presented, conclude as follows:

AWARD

The Employer did not violate the Collective Bargaining Agreement by denying paid sick leave to Anne Mulrain while she was on leave for purposes of adopting a child for the period February 24, 2014 through April 17, 2014 and therefore the grievance is denied.

Timothy Hatfield, Esq.
Arbitrator
September 4, 2015

INTRODUCTION

On July 14, 2014, Spencer-East Brookfield Teachers Association (Union) filed a unilateral petition for Arbitration. Under the provisions of M.G.L. Chapter 23, Section 9P, the Department of Labor Relations (Department) appointed Timothy Hatfield Esq. to act as a single neutral arbitrator with the full power of the Department.[1] The undersigned Arbitrator conducted a hearing at the Spencer-East Brookfield Regional School District's Administrative Offices on May 15, 2015.

The parties filed briefs on June 19, 2015.

THE ISSUE

Did the employer violate the Collective Bargaining Agreement by denying paid sick leave to Anne Mulrain while she was on leave for purposes of adopting a child for the period February 24, 2014 through April 17, 2014? If so, what shall be the remedy?

RELEVANT CONTRACT LANGUAGE

The parties' Collective Bargaining Agreement (Agreement/CBA) contains the following pertinent provisions:

ARTICLE XII – SICK LEAVE PLAN

1. Sick leave will be accumulated at the rate of one and one-half (1½) days per month to a maximum of fifteen (15) days per year.

[1] Pursuant to Chapter 145 of the Acts of 2007, the Department of Labor Relations "shall have all of the legal powers, authorities, responsibilities, duties, rights, and obligations previously conferred on the ... the board of conciliation and arbitration ... including without limitation those set forth in chapter 23C, chapter 150, chapter 150A, and chapter 150E of the General Laws."

The maximum number of days that can be accumulated under the terms of this contract period will be one hundred-eighty (180). After a professional status teacher uses all of his/her sick leave, the pay of the substitute will be deducted from his or her pay for each successive sick day up to a period of one (1) year (no more than one hundred-eighty (180) days). Any procedure ordered by a doctor may be taken as a sick day provided the procedure could not be scheduled outside of school hours.

2. There will be a deletion of one (1) day from the accumulation for each sick day. Each year a teacher/nurse begins with the accumulation adjusted for sick days.

3. A doctor's certificate could be required for personal illness of five (5) or more consecutive days or eighty (80%) percent of the school days in any period more than two (2) weeks but less than two (2) months.

4. Upon retirement a teacher/nurse shall receive thirty-two ($32.00) dollars for each day of accumulated sick leave over seventy-five (75) days not to exceed two thousand five hundred sixty ($2,560.00) dollars. A minimum of ten (10) years of consecutive service in the Spencer-East Brookfield Regional School District (previous employment time in Spencer or East Brookfield will be applied) is required for eligibility.

5. Prior to October 1 of each school year, each teacher/nurse shall be given upon request, a written statement showing the number of days of accumulated sick leave to his/her credit as of the beginning of the current school year.

6. Teachers may use up to a maximum of five (5) sick days per year to attend to the illness of an immediate family member.

ARTICLE XIII – PERSONAL DAYS (In Part)

Maternity Leave

1. Childbearing Leave

a. A teacher/nurse who becomes pregnant shall notify the Superintendent of Schools in writing no later than three (3) months before the leave is to commence, but not less than thirty (30) days, except in cases of emergency, prior to her anticipated date of departure.

b. The pregnant member may continue in her assigned position as long as her physical condition and ability to perform her assigned duties allow. The Superintendent may require such medical evidence of the member's ability to continue employment.

c. Under Section 1.a, a member who desires to return as soon as possible after termination of pregnancy will be allowed up to eight (8) weeks' leave and will be guaranteed the same or equivalent position held at the time the leave commenced. The eight (8) week period shall be eight (8) calendar weeks in its entirety; the eight (8) weeks shall not begin prior to eight (8) weeks before the predicted date of birth. In the event birth takes place during a vacation when the member is not on leave, the eight (8) week period will commence from the date of termination of pregnancy.

The member who is pregnant and is physically unable to work due to disability connected to pregnancy, may use her accumulated sick leave to cover those days when she is disabled and unable to work. Said time may be confirmed by her physician.

Said disability leave of absence shall in no event exceed a period of eight (8) weeks and shall in no event exceed the member's accumulated sick leave. Said disability leave shall be deducted from the teacher's sick leave. For those eligible under the Federal Family and Medical Leave Act, the length of leave may be up to twelve (12) weeks.

d. The parties agree that these procedures will be interpreted in order to assure compliance with Federal and State (Massachusetts) laws governing maternity leave.

2. Childrearing Leave

a. Following the birth of a child, a full time member who has completed a full school year and who has not selected the eight (8) week option of the Childbearing Leave, shall be entitled to apply for and receive childrearing leave without pay in accordance with the provisions of this Section. A member who has selected and used the eight (8) week Childbearing option may request an additional childrearing leave to be granted at the discretion of the Superintendent. For purposes of this Section, the school year will be divided into two (2) semesters, one of which will be ninety (90) days and the other will be ninety-one (91) days....

b. Childrearing leave is available to fathers on the same terms as set forth above for mothers.

A member who exercises the above will be required to take at least one (1) semester's leave of absence, and not a lesser period than one (1) full semester, as it is the intention of this clause that no teacher shall return to her teaching duties during the middle of any semester.

Under extraordinary circumstances the School Committee may approve a request for an extension of leave time.

c. An adoptive parent shall also be eligible for the benefits under this Section.

FACTS

The Spencer-East Brookfield Regional School District (Employer/School Committee) and the Union are parties to a successor collective bargaining agreement that was in effect at all relevant times to this arbitration.

Anne Mulrain (Mulrain) is a 1st grade teacher at the Lake Street Elementary School in Spencer, MA and has worked in the District for fourteen years. In February 2013, Mulrain decided to adopt a child and enrolled in the necessary adoption training program through Children's Friend in Worcester, a partnering agency with the State's Department of Children & Families (DCF).

On August 18, 2013, Mulrain sent a letter to the Superintendent of Schools, Dr. Edward Malvey (Dr. Malvey or Superintendent) explaining that she was now licensed to adopt a child through DCF and that there was a strong possibility that a child would be placed with her during the current school year (2013-2014). She requested eight weeks of paid childbearing leave and four additional weeks of FMLA leave. She also explained in the letter that a child could be placed with her with very little notice and that she would have to take leave immediately to take care of the child.

Dr. Malvey arranged for a meeting October 21st, 2013 to discuss the letter. At that meeting, he explained that she was not eligible for childbearing leave since she was adopting a child. Dr. Malvey clarified that under the contract, paid, childbearing leave was only for mothers who gave birth and had a doctor's note confirming a medical inability to work.

Mulrain had a subsequent meeting with Dr. Malvey, the Union Vice President, and another Union representative in late October or early November 2013. Dr. Malvey reiterated that to use sick time, birth mothers get a medical note declaring inability to work due to birthing/post-partum and stated that it would look "suspect" if Mulrain produced a doctor's note after a child was placed with her given this conversation. He also clarified that the School Committee, and not the Superintendent, denies or approves use of paid sick time.

Mulrain met with her Union representative and decided she would still argue for paid leave before the School Committee. The next School Committee meeting was on November 15th. At the meeting, Mulrain requested paid leave for her impending adoption. She stated that she had accumulated 179 sick days while working in the district and that she deserved to receive the same benefits as birth mothers. The Chair of the School Committee, John Howard, denied her request.

On February 19th, 2014, Mulrain's social worker asked if she would be interested in the immediate placement of an 18 month old girl (V.M.). Mulrain

notified the Employer that a child had been placed with her, and she began her 8 weeks of unpaid leave starting on February 24th, 2014.[2]

Over the next several weeks, Mulrain was overwhelmed by the adjustment of caring for V.M. She experienced sleep deprivation, anxiety, mental and physical exhaustion, was not eating properly, and had nightmares about losing V.M. Mulrain made an appointment with her primary care physician. Her physician told her that what she was experiencing was normal for a first time mother, and that she needed time to adjust. The Doctor wrote a note on Mulrain's behalf recommending that she take eight weeks leave from work for the medical condition she was experiencing from fostering and adopting a child. The letter stated:

> This letter is to inform you that as Ms. Mulrain's PCP, I have recommended that she take a leave of absence from work for 8 weeks commencing on February 24, 2014 for medical reasons related to the fostering and adoption of a child.

Dr. Malvey requested a meeting with Mulrain in response to her Doctor's note. He explained that the School Committee was "reviewing her request" but she would stay on unpaid leave.

The Union filed a Level Four grievance on March 31, 2014 alleging a violation of the sick leave article of the CBA. On April 15th, the School Committee met again and discussed Mulrain's unpaid leave grievance. The School Committee did not invite Mulrain to the meeting and she did not attend it. After the meeting, no one from the School Committee asked her why she was not in

[2] The period between February 20 through February 23 was February school vacation and was paid.

attendance. The School Committee denied Mulrain's grievance and notified her of the decision by letter from Dr. Malvey on April 22, 2014. The letter explained the denial was "based upon the reason that her request for use of sick days is not permitted under the collective bargaining agreement for leaves related to adoption."

In June of 2014, Dr. Malvey and Mark James (James), the Union President, discussed whether a second, more detailed physician's note might persuade the School Committee. James conveyed this information to Mulrain, who obtained a second note from her physician. The second note detailed Mulrain's exhaustion and adjustment reaction as symptoms of her new situation. The Doctor once again recommended eight weeks off for sick leave. The note stated:

> This letter is to inform you that as Ms. Mulrain's PCP, I have recommended that she take a leave of absence from work for 8 weeks on February 24, 2014 through April 21, 2014 for medical reasons related to the fostering and adoption of a child.
>
> Ms. Mulrain was given custody of this child on a very short notice and needed time to form an emotional attachment to this child. She experienced all of the symptoms I would expect from a new mother including exhaustion and adjustment reaction. As with any new mother, I recommended a medical leave so that she could take the time she needed to overcome the stressors associated with her new role.

Mulrain testified at hearing that the note was given to several Union members and eventually delivered to Dr. Malvey. Mulrain also testified that she received an email denying her request without giving the reasons for denying it.

The Union made an information request concerning the use of sick leave by other bargaining unit members. The District provided the "sick leave documentation submitted to the School District" from various unit members.

Mulrain returned to work following April school vacation. She was absent a total of eight weeks on unpaid childrearing leave.

POSITIONS OF THE PARTIES

THE UNION

Mulrain had a documented need for sick leave.

This case is not about the difference between childbearing and childrearing leave as laid out in Article XIII of the CBA.[3] Rather, this case is about the Employer's denial of sick leave under Article XII. At the time of her request, Mulrain had accrued 179.5 sick days. Mulrain obtained a doctor's note detailing why she needed the sick leave and therefore, she should have been granted the time. Her physician's note stated that she needed eight weeks of sick leave which would have been easily covered by Mulrain's accrual. Mulrain complied with protocol dictated by Art. XII.3 of the CBA by providing the Employer with a doctor's note. There is no evidence and the Employer did not provide any reasons that would suggest her need for sick time was not legitimate. Even if the Employer suspected that her need for sick leave was not genuine, it never requested that Mulrain get a second opinion.

[3] The Union acknowledged prior to and during the hearing that Mulrain was not entitled to paid leave pursuant to either childrearing or childbearing leave.

Mulrain requested to use her accrued sick leave and provided a doctor's certificate showing a valid need for sick leave. Therefore, the Employer's denial violated the plain language of the CBA's sick leave provision.

The Distinction between childbearing and childrearing leave is irrelevant.

Nowhere in the CBA does it state that adoptive parents are exempt from sick leave where there is a medical reason for using it. Mulrain experienced medical symptoms subsequent to adopting a child, and her physician confirmed these medical problems twice in writing. Therefore, she should have received sick leave. Further, the CBA must be read in conjunction with state law which, under the Mass. Maternity Leave Act[4], states that "such maternity leave shall not affect the employee's right to receive vacation time, sick leave, bonuses..."

The District provided scant evidence of the reason for its decision.

The Employer claimed during the hearing that it was concerned about the method by which Mulrain obtained a doctor's note. However, it provided no evidence that this was the basis for the School Committee's denial. The Employer also stated that it had wanted to question Mulrain about her medical condition at the April 15, 2014 School Committee meeting. However, the School Committee never asked Mulrain to attend the meeting or questioned why she was unable to attend. There was no evidence offered by the Employer at the hearing to show that it actually wanted Mulrain at the meeting.

The Employer suggested that the School Committee had a legitimate reason to question the authenticity of the doctor's notes, but the Employer did not

[4] G.L. c. 149, §105D.

present any evidence to confirm this assertion. The letter from Dr. Malvey explaining why the School Committee denied Mulrain's grievance was "based upon the reason that her request for use of sick days is not permitted under the collective bargaining agreement for leaves related to adoption." This evidence proves that the School Committee based its decision on the flawed reasoning of childbearing vs. childrearing leave rather than sick leave.

There was no reason to doubt that Mulrain had a legitimate medical reason to use sick leave.

The Employer had no reason to doubt the legitimacy of Mulrain's request for sick leave. Mulrain had never abused her sick leave in the past fourteen years of employment, and there is no evidence to suggest that she did not experience the medial symptoms stated in her doctor's certificate. Mulrain never claimed that she would be unable to work for medical reasons prior to her adoption. Rather, she experienced those symptoms after V.M. arrived, and it was only then that she requested sick leave. Prior to her adoption, Mulrain had expressed her hope that the Employer would grant her the same rights as those granted to biological parents, but her hope does not preclude her from receiving sick leave pay after her adoption.

Therefore, the Arbitrator should sustain its grievance and find that the Employer violated the CBA when it failed to provide sick leave to Mulrain. Mulrain should be paid the sick leave she was denied and also be offered an additional four weeks of unpaid leave during the 2015-2016 school year because the

School Committee's erroneous action deprived Mulrain of the opportunity to request four weeks of FMLA leave.

THE EMPLOYER

The Union failed to show a violation of the sick leave article of the CBA.

The sick leave article in the CBA does not explain how a request is processed or what documentation must be provided to the School Committee to authorize sick leave. The Union claims that because Mulrain provided a doctor's note, she should automatically be entitled to sick leave. However, the Union failed to provide any evidence to show that every time a bargaining unit member requests sick leave and accompanies the request with a note, that they are automatically guaranteed paid sick leave. Furthermore, there is no language in the contract that explains how a request is decided by the School Committee and therefore, the Employer did not violate Article XII of the CBA.

The School Committee's decision to deny paid sick leave was reasonable given the circumstances in this case. The Employer knew long before Mulrain adopted a child that she would be requesting use of paid sick leave once she was placed with a child. Six months prior to adopting a child, she asked Dr. Malvey if she would be allowed childbearing leave which could qualify her for paid sick leave. Dr. Malvey denied this request. He stated that a subsequent medical note indicating that she needed eight weeks paid sick leave would be "suspect."

The doctor's note that Mulrain did produce after her adoption specified those symptoms of any first time parent, which are not grounds for paid sick

leave. Nowhere in the CBA does it state that physical symptoms associated with parenthood qualify an employee for sick leave. Mulrain also did not advocate for her case when she failed to attend the School Committee meeting on April 15, 2014. The School Committee, therefore, had no means to inquire about the doctor's note or Mulrain's medical condition.

Furthermore, the sick leave article does not state that foster or adoptive parents are entitled to use sick leave for their period of childrearing leave. Therefore there was no violation of the CBA.

Childrearing leave is unpaid under the CBA.

Although the Union classifies this case as a sick leave issue, the matter actually pertains to the childrearing article of the CBA. Dr. Malvey approved Mulrain for childrearing leave, which is unpaid under the CBA. The childrearing leave article clearly states that this leave is unpaid and available to adoptive parents and therefore, there was no violation.

There is no practice of granting adoptive parents sick leave.

The Union's submission of evidence on other bargaining unit members submitting medical notes does not show whether or not the bargaining unit member received paid sick leave. The most this evidence can do is prove the bargaining unit member's absence. Likewise the Union's contention that Mulrain should be treated the same as a birth mother is unsubstantiated by the CBA or by any evidence provided by the Union. There was no evidence presented that past adoptive parents were granted paid sick leave or that there was a past practice allowing adoptive parents to be treated the same as birth parents.

Mulrain's request for leave is not covered by the CBA.

Although she was granted eight weeks of unpaid childrearing leave, she is technically a "pre-adoptive"[5] parent and therefore, does not have adoptive parental rights as covered under the CBA.

The second doctor's note does not change the outcome.

The second doctor's note does not entitle Mulrain to paid sick leave even though it is more specific. The second note states that Mulrain needed to "bond" with her child, but this is not a medical condition and does not merit paid sick leave. The note goes on to say she is experiencing symptoms of a "new mother" which again is not covered under paid sick leave.

OPINION

The issue before me is:

Did the employer violate the Collective Bargaining Agreement by denying paid sick leave to Anne Mulrain while she was on leave for purposes of adopting a child for the period of February 24, 2014 through April 17, 2014? If so, what shall be the remedy?

For all the reasons stated below, the employer did not violate the Collective Bargaining Agreement when it denied Mulrain paid sick leave while she was on leave for purposes of adopting a child for the period of February 24, 2014 through April 17, 2014. The grievance is denied.

[5] At hearing, Mulrain explained that she holds "pre-adoptive" status of V.M. until the trial set for 2016 to terminate parental rights is held. Only then can Mulrain start the legal adoption proceedings and change her status.

There is no dispute that Mulrain was not eligible for childbearing leave under the CBA. She was granted childrearing leave by the School Committee, which is unpaid. While the Union argues that this is purely a sick leave case, I am unconvinced by the evidence offered, and find that the sick leave request was an attempt to get paid leave while Mulrain took time to be with her new child.

Mulrain produced an initial doctor's note after she was told that she would not receive paid leave as dictated under the childbearing provision in the CBA. The Superintendent explained to Mulrain the reasons why birth mothers were granted sick leave and why a doctor's note is necessary to receive paid leave. There is no dispute that Mulrain had enough time to cover the period of sick leave she was requesting. However, because the first doctor's note sought payment for 8 weeks of sick leave, the same amount of time that the contract allows for childbearing leave, it appears that Mulrain was continuing to seek paid leave for childrearing purposes.

Furthermore, the June 2014 conversation between Mulrain and the Superintendent and the immediate procurement from Mulrain of a second detailed sick note casts more doubt on Mulrain's claimed entitlement to sick leave. The 8 week period of time referenced in the doctor's note for sick leave is the exact amount of time that women receive for childbearing leave. Mulrain again requested eight weeks leave, the exact amount of childbearing leave that is granted when accompanied with a physician's note, which further shows a correlation between the sick leave and the childrearing/childbearing leave benefits. Therefore, this is not a strictly sick leave case.

Given the timeline and sequence of events in this case, the request for sick leave as documented by her physician was designed to get paid leave for the period of time she was ineligible for pay under the childrearing provision. Mulrain provided a doctor certificate, but only after she attempted to get paid maternity leave through other means. Furthermore, her doctor's note described her symptoms as that of first time "motherhood" and again requested the exact number of weeks that childbearing mothers receive after childbirth. There was also no suggestion from her doctor that she would need a follow-up appointment or any other medical treatment to address any health related concerns. These facts give credibility to the School Committee's decision to question and ultimately deny her sick leave request.

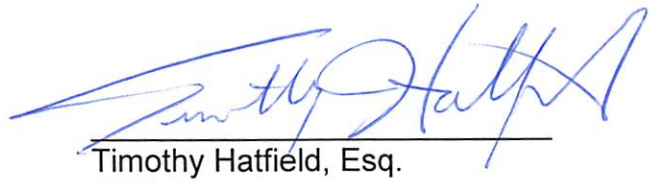
Additionally, the Union failed to show how the School Committee makes a determination to allow sick leave. The Union asserts that a "doctor's certificate" is all that is necessary to obtain sick leave and submitted into evidence a series of sick notes provided by other employees. However, the Union did not provide evidence as to whether any of these sick notes were sufficient on their own to convince the School Committee to grant paid sick leave. It is not clear from the evidence provided by the Union that any of these sick notes were accepted and convinced the School Committee to ultimately grant paid sick leave. Nowhere in the CBA does it state how the School Committee awards sick leave or, conversely, when it is reasonable for it to deny the request. Likewise, the CBA does not state that the School Committee is required to allow a request for sick leave, with or without a sick note. Consequently, I do not find the School

Committee's decision to deny sick leave to Mulrain violated the contract's sick leave provisions.

However, I am not persuaded by the Employer's argument that foster or adoptive parents are never entitled to use sick leave when they are currently on childrearing leave. I also agree with the Union that Mulrain had no history of abusing sick leave and that she did experience emotional stressors of a first time mother. However, the fact that: 1) Mulrain first petitioned the School Committee for paid childbearing leave and was denied; 2) she then met with the Superintendent to inquire about what is required for paid leave; and 3) she subsequently procured a doctor's note requesting exactly eight weeks (the same amount of time that is granted for childbearing leave) to adjust and bond with her child all support the School Committee's decision to deny her sick leave despite her doctor's certificate. Given these circumstances and for all the reasons stated above, the grievance is denied.

AWARD

The Employer did not violate the Collective Bargaining Agreement by denying paid sick leave to Anne Mulrain while she was on leave for purposes of adopting a child for the period February 24, 2014 through April 17, 2014 and therefore the grievance is denied.



Timothy Hatfield, Esq.
Arbitrator
September 4, 2015