

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 \*  
\*  
-and- \*  
\*  
SPENCER-EAST BROOKFIELD TEACHERS \*  
ASSOCIATION \*  
\*

ARB-16-5199

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Arbitrator:

Timothy Hatfield, Esq.

Appearances:

Kimberly A. Rozak, Esq. - Representing Spencer-East Brookfield  
Regional School District  
  
Jonathan M. Conti, 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 School District violated Article XIII of the Collective Bargaining Agreement when the Superintendent did not approve Robin Milaszewski's request to take personal days on March 14, March 15, and March 16, 2016.



Timothy Hatfield, Esq.  
Arbitrator  
January 13, 2017

### **INTRODUCTION**

On April 19, 2016, 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. The undersigned Arbitrator conducted a hearing at the Spencer-East Brookfield Regional School District's Administrative Offices on July 20, 2016.

The parties filed briefs on September 12, 2016.

### **THE ISSUE**

Did the School District violate Article XIII of the Collective Bargaining Agreement when the Superintendent did not approve Robin Milaszewski's request to take three consecutive personal days on March 14, March 15, and March 16, 2016? If so, what shall be the remedy?

### **RELEVANT CONTRACT LANGUAGE**

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

#### **ARTICLE IA – SCHOOL DISTRICT RESPONSIBILITIES (In Part)**

Except as expressly provided otherwise in this Agreement, the School District will not be limited in any way in the exercise of the functions of management and retains and reserves the right to exercise, without bargaining with the Association, all the powers, authority and prerogatives of management, including, but not limited to, the following:

1. To direct and conduct the educational affairs of the School District and its schools;

2. To direct and control all the operations and services of the District and its schools; ...

#### ARTICLE XIII – PERSONAL DAYS (In Part)

All members of the bargaining unit shall be entitled to three (3) personal days with pay in accordance with the following:

1. Reasons for personal leave shall be:
  - a. Religious reasons
  - b. Personal business
  - c. Household/family reason
  - d. Medical reason
2. Personal days are intended for events which cannot be taken care of during non-school time.
3. Requests must be given to the Superintendent's Office at least twenty-four (24) hours in advance, except in emergency. In the event of an emergency, written requests shall be made no later than the second day following the return. All requests must be approved by the Superintendent or his/her designee.
4. The parties agree that personal days are not intended to extend a vacation or holiday period, however, this does not preclude use of personal days in accordance with 1 a-d above. In cases where a staff member is on vacation and return is delayed due to unforeseen circumstances beyond the control of the teacher, a personal day may be used. Documentation of the circumstances may be required.
5. The administration shall be entitled to determine approval/disapproval of each request based on contractual provisions. This shall include questions to ascertain information in the following manner:
  - a. Is the association member to receive non-school compensation during personal day time?
  - b. Is the personal day an extension of a holiday/vacation purpose?

6. The administration shall continue to use the current Personal Day Request Form to convey information from level to level upon which approval/disapproval is based.
7. Individuals are not required to write reasons on the Personal Day Request Form for approval, and may be advised by the SEBTA not to do so. However, each person shall maintain their individual rights in this regard.

....

### FACTS

The Spencer-East Brookfield Regional School District (Employer/School Committee/District) and the Union are parties to a successor collective bargaining agreement that was in effect at all relevant times to this arbitration. The grievant, Robin Milaszewski (Milaszewski), was employed by the District as a school psychologist.

During the 2014-2015 school year, Milaszewski submitted multiple Time Off Request Forms for separate personal days. Each request was approved based on the information provided on the Time Off Request Form. No further information was required.

On January 11, 2016, former teacher, Jane Higgins (Higgins) filled out a Time Off Request Form, requesting March 3<sup>rd</sup>, 4<sup>th</sup>, and 7<sup>th</sup> off as personal days. On the form Higgins checked the box beside "Personal" and a second box beside "Household/Family". Higgins submitted the form to her direct supervisor Diana Ford, who approved the request and sent it to Superintendent N. Tracy Crowe (Superintendent Crowe), who also approved the request.

On February 3, 2016, Milaszewski filled out a Time Off Request Form, requesting March 14<sup>th</sup>, 15<sup>th</sup>, and 16<sup>th</sup> off as personal days. On the form,

Milaszewski checked the box beside "Personal" and a second box beside "Household/Family". Milaszewski submitted the form to her direct supervisor Carla Chioda (Chioda). Chioda inquired whether Milaszewski had used any personal days during the current school year, and when Milaszewski responded that she had not, Chioda approved the request and sent it to Superintendent Crowe. Superintendent Crowe denied the request without comment or inquiry about the nature of the request.

Upon learning of the denial from Chioda, Milaszewski contacted Union President Mark James (James), who suggested Milaszewski resubmit the form and include a response to the questions posed in Article XIII, Section 5. On February 12<sup>th</sup>, Milaszewski filed a second Time Off Request Form and included the language of Article XIII, Section 5 and hand wrote "no" beside the two questions posed. Chioda denied the second request, and in a subsequent conversation, suggested to Milaszewski that if she provided the specific reason for the request, it might be approved. Milaszewski, declined to provide the specific reason beyond answering the two questions posed in Article XIII, Section 5.

On March 1, 2016, the Union filed a grievance on Milaszewski's behalf, and on March 8, 2016, a Step II hearing was held with Chioda. Chioda's response in relevant part stated:

Pursuant to Article XIII of the Spencer-East Brookfield Teachers' Association Contract §5 "The administration shall be entitled to determine approval/disapproval of each request based on contractual provisions. This shall include questions to ascertain information in the following manner:

a. Is the association member to receive non-school compensation during personal day time?

b. Is the personal day an extension of a holiday/vacation purpose? In an effort to respect Ms. Milaszewski's request, Ms. Milaszewski was offered an opportunity to provide additional information to allow [the] Administration to ascertain whether the consecutive school days were to perform activities that would result in non-school compensation or that would extend a holiday/vacation. Ms. Milaszewski responded that they were not, but declined to provide any additional information to allow Administration to confirm this assertion.

Given the current information provided Director Chioda is not able to confirm that the request for personal days are not for prohibited reasons and cannot approve the request.

The Union forwarded the grievance to the next level, and after a hearing, Superintendent Crowe responded, in relevant part, in the following manner:

I have reviewed the grievance, the CBA, and the information that the Association presented to me at the Level 3 grievance meeting today ...

Personal days are "intended for events which cannot be taken care of during non-school time." The CBA requires that all requests for personal leave be approved by the Superintendent.

Accordingly, the grievance is denied in its entirety. ...

After the School Committee declined to hold a grievance hearing on the issue, due to lack of jurisdiction, the Union filed for Arbitration.

### **POSITIONS OF THE PARTIES**

#### **THE UNION**

Article XIII entitles employees to three personal days per school year, subject to certain restrictions. The use of a personal day must fall into one of four categories:

1. Religious reasons
2. Personal business
3. Household/family
4. Medical

Section 4 of Article XIII provides that personal days are not intended to extend a vacation or holiday period, while Section 5 states that the Administration shall be entitled to determine approval/disapproval of each request based on contractual provisions that shall include questions to ascertain information in the following manner:

- a. Is the Association member to receive non-school compensation during personal day time?
- b. Is the personal day an extension of a holiday/vacation purpose?

Section 6 then provides that the Administration shall use the same Personal Day Request form to convey information from level to level upon which approval/disapproval is based. Finally, Section 7 concludes that an employee is not required to write reasons on the Personal Day Request Form for approval.

In requesting to use three personal days on March 14–16, 2016, Milaszewski complied with each of the requirements of Article XIII. She completed the Personal Day Request form by checking off the household/family box and submitted the request to her direct supervisor Chioda. Chioda could have asked Milaszewski whether she would have been receiving outside compensation during the leave period, or whether the period would extend a vacation or a holiday period. Instead, she simply asked Milaszewski if she had used any personal days during the school year, and when Milaszewski replied

that she had not, Chioda approved the request and sent it to Superintendent Crowe.

Superintendent Crowe rejected Milaszewski's request on its face without ever requesting any additional information. She denied the request without reason or comment, under the theory that she had unfettered authority to deny or approve personal leave requests and/or that a specific reason for the leave had to be revealed on the request form, which directly contravenes the language of Article XIII, Section 7. Milaszewski resubmitted her request on February 12, 2016, but this time provided direct answers to the two questions set forth in Article XIII, Section 5. She confirmed that she would not be receiving non-school compensation during the leave, and that she would not be extending a vacation or a holiday. Chioda denied the renewed request telling Milaszewski that if she revealed the specific reason for the leave, it would likely be granted by Superintendent Crowe. Milaszewski declined to give the specific details other than saying it was a private family matter and again confirmed that she was not receiving compensation or extending a vacation or a holiday. Because Superintendent Crowe had no valid reason for denying the leave request, her decision to do so was arbitrary and capricious and a violation of Article XIII.

#### The District Was Not Entitled to Require Additional Information

The District stressed at the arbitration hearing that Article XIII, Section 2 states that personal leave is intended for events which cannot be taken care of during non-school time, and therefore, the Superintendent was within her rights to demand a specific reason for the leave. This argument must fail as Section 5



sets forth the only areas of inquiry about which the District can inquire. Specifically, will the employee be paid from another source while on leave, and whether the leave will extend a holiday or vacation. Additionally, the District misinterprets the language of Section 5. The Administration's sole means for determining whether to approve the request includes asking two specific questions regarding non-school compensation and the holiday/vacation issue. Had the parties intended for the Superintendent to be able to inquire about whether the matter could be scheduled during non-work time, they would have included it as one of the listed questions permitted in Section 5.

Rather, Section 5 can only be interpreted to mean that the District's determination process may include asking the employees the two specific questions listed therein. If Section 5 did include an inquiry to determine whether the reason for the leave could be scheduled during non-work time, every personal day request would require a subjective determination as to whether the matter could have been at a different time. Neither party would have been interested in the District having to make such subjective determinations every time an employee requested to use personal leave. As a result, they listed two questions that could objectively be answered by either yes or no:

- a. Is the Association member to receive non-school compensation during personal day time?
- b. Is the personal day an extension of a holiday/vacation purpose?

Thus, the Superintendent was not authorized to require the specific reason for the leave in order to determine if the work could have been done on non-school time.

Even assuming *arguendo*, that this was a permitted inquiry, neither Superintendent Crowe nor Chioda ever asked Milaszewski whether she could reschedule the matter to non-school time, further evidence that the denial was never about whether the reason for the leave could be handled during non-school time. Furthermore, Chioda's grievance response made no mention of Section 2 or the District's alleged need to determine whether the leave could have been done during non-school time. In her denial letter, Chioda stated:

Ms. Milaszewski was offered an opportunity to provide additional information to allow [the] Administration to ascertain whether the consecutive school days were to perform activities that would result in non-school compensation or that would extend a holiday/vacation. Ms. Milaszewski responded they were not, but declined to provide any additional information to allow Administration to confirm this assertion. Given the current information provided Director Chioda is not able to confirm that the request for personal days are not for prohibited reasons and cannot approve the request.

Chioda makes no reference to being concerned about whether the matter could be handled during non-school time, and, indeed, affirms that the only relevant questions were whether Milaszewski was going to be paid for the time and if she was extending a vacation or holiday. It was not until Superintendent Crowe's third-step grievance response that, for the first time, it was claimed that the Superintendent needed to know whether Milaszewski would be engaging in an activity during her personal leave that could be done on non-school time.

The parties' past practice has been to grant personal day requests based on the categories checked on the Time Off Request Form. Milaszewski testified that she had been granted personal day requests during the 2014-2015 school year and had never previously been required to divulge the specific reason for the leave request. One of the two requests fell into the category of personal business, while the other was for household/family. Both requests were granted without requiring additional information. Association President Mark James also testified that he was not aware of any employee having been denied personal day requests.

#### The Collective Bargaining Agreement Does Not Require a Compelling Reason

For the first time at the arbitration hearing, Superintendent Crowe claimed that the reason why she denied Milaszewski's request was because she was seeking personal leave for three consecutive days, and that such a request requires a compelling reason to be approved. This is now the third different reason cited by the District as to why the leave request was denied.

The fact that Superintendent Crowe literally made up the compelling reason argument in preparation for the arbitration hearing is demonstrated by the fact that Chioda admitted that, at the time she initially approved the request, she was unaware of the so-called compelling reason requirement. Even after Superintendent Crowe overruled her and denied the request, Chioda never conveyed to Milaszewski or the Association that the request had been denied on account of their inability to determine if there was a compelling reason for the leave.

Critically, neither Article XIII nor any past practice provides for such a heightened compelling reason standard. Indeed, the District just recently granted a January 2016 request by another employee for three consecutive personal days. The employee checked off that the leave was for household/family and added no other information. While Superintendent Crowe claimed that she granted the request because the principal told her that the leave was for a compelling reason, this claim is difficult to believe, especially since Superintendent Crowe claimed that she never asked the principal what the compelling reason was. Yet, in Milaszewski's case, she overruled Chioda's approval and denied the request without explanation and without ever raising the compelling reason requirement. Finally, it is telling that Superintendent Crowe did not reference the need for a compelling reason in her grievance denial letter.

#### Conclusion

Considering that Superintendent Crowe denied Milaszewski's request without providing a reason and then later concocted inconsistent, ever-changing, after-the-fact explanations for her denial, it is clear that the decision to deny the leave request was nothing more than an attempt to unilaterally gain unfettered authority to approve or deny personal leave based upon her own subjective determination of the worthiness of the reason for leave. However, Article XIII does not grant her this authority. Superintendent Crowe's denial was therefore based upon arbitrary reasons not grounded in either the collective bargaining agreement or in any past practice of the parties. Thus, for all the foregoing reasons, the Arbitrator should find that the District violated Article XIII by denying

the grievant's request for personal leave, and order the District to make her whole.

### **THE EMPLOYER**

The Union's grievance alleges that the School District violated the collective bargaining agreement when Milaszewski was denied her personal leave request for March 14<sup>th</sup>, 15<sup>th</sup>, and 16<sup>th</sup>. The Union, however, cannot prove that the denial was a violation of the collective bargaining agreement.

Article XIII provides that personal days are to be used for events that cannot be taken care of during non-school time and that all requests for personal days must be approved by the Superintendent or his/her designee. The Union contends that simply checking a box on the personal day request form satisfies both of these requirements. The Union's claim is erroneous because the form does not require a bargaining unit member to describe what type of event for which personal leave is being requested. The form on its own cannot confirm that the event for which leave is requested can only be taken care of during non-school time. Moreover, under the Union's theory, a teacher need only check a box on the request form and the personal day is automatically approved. If this were the case, there would be no need for an approval signature. Yet, the form itself requires the Superintendent to approve the request. This point alone demonstrates that the Union's case is flawed.

In the instant case, Milaszewski submitted a request to use three consecutive personal days and the Superintendent denied the request. While a teacher is not required to write a specific reason on the form, there is no

provision in the collective bargaining agreement that prevents a teacher from verbally informing his/her supervisor or the Superintendent of the reason the leave is needed. In fact, the collective bargaining agreement in Article XIII, Section 7 contemplates that an employee may wish to offer additional information to clarify his or her request. Therefore, if a unit member wishes to demonstrate initially that three consecutive days are needed, it would make sense to offer an explanation for the absence on the form itself. Although the grievant testified that her prior requests for personal time did not require her to submit any additional information, those requests were for half days or single days off, not three consecutive days off. Comparing three consecutive days off to a single or half day is not a fair or meaningful comparison.

The Union's attempt at showing that there is no contractual basis for the Superintendent's requirement that three consecutive personal days be supported by some extenuating or compelling reason also fails. The fact that the collective bargaining agreement states that personal days are intended for events which cannot be taken care of during non-school time, necessarily means that the Superintendent is entitled to confirm that all requested time off is in fact for an event that cannot be taken care of during non-school time. The Superintendent has the right to know whether the issue requiring the days off is indeed so significant and compelling that it cannot be addressed in another way.

The Right to Direct the Educational Affairs, Operation and Services of the District

Article IA of the collective bargaining agreement authorizes the School District, without further bargaining with the Union, to direct and control all

operations and services of the School District and its schools. If, as the Union claims, employees need only to check a box on the time off request form to be approved for personal leave, then the District could not prevent any number of teachers from taking the same consecutive three days off. Under the Union's theory, the entire bargaining unit could take the same days off, and the Superintendent would have no recourse to prevent them from doing so. This result is at odds with the District's management rights because it would require the District to give up its right to manage the educational affairs and services of the District. It would also lead to absurd results not intended by the collective bargaining agreement.

#### No Past Practice

The Union urges the arbitrator to find that there is a practice of allowing three consecutive personal days without any information except the contents of the completed form. The Union did not prove such a practice existed. In fact, the undisputed evidence showed that teachers previously were asked for justifications and/or reasons when they requested three consecutive days off. Although the Union introduced one time off request to prove its position that only a form is necessary for personal leave approval, the Union's evidence falls short because Superintendent Crowe testified that the teacher in question verbally explained the circumstances to her supervisor. This is a prime example of the Superintendent's practice of confirming that time off is consistent with the contract's requirements.

Superintendent's Decision Not Arbitrary

The Superintendent denied the request because three days in a row negatively impacts student services. The Superintendent's concern for the delivery of educational services can in no way be found to be arbitrary. A teacher must have a compelling reason to be allowed to take three days in succession.

Further Questions

The Union's case focused on the fact that Milaszewski had answered "no" to the two questions listed in Article XIII Section 5. To argue that these are the only questions the District may ask to determine whether to approve or deny a unit member's request for personal leave is nonsensical. Section 5 clearly states that the questions, which may be asked when an employee requests personal leave, include those questions listed in the contract. Nowhere does the contract state that those are the sole questions that may be asked regarding the need for personal leave.

Conclusion

For all the reasons stated above, the School District respectfully requests that the grievance be denied and the arbitrator find no contract violation occurred.

**OPINION**

The issue before me is:

Did the School District violate Article XIII the Collective Bargaining Agreement when the Superintendent did not approve Robin Milaszewski's



request to take three consecutive personal days on March 14, March 15, and March 16, 2016? If so, what shall be the remedy?

For all the reasons stated below, the School District violated Article XIII of the Collective Bargaining Agreement when the Superintendent did not approve Robin Milaszewski's request to take personal days on March 14, March 15, and March 16, 2016. The School District is ordered to make Milaszewski whole for the three days of lost pay.

Article XIII of the parties' Collective Bargaining Agreement specifically details what the rights and obligations of each party are surrounding the use of and the approval of personal days. The plain language of the article outlines in subsection 1 the four reasons that personal leave may be taken: a) religious reasons, b) personal business, c) household/family reason, and d) medical reasons. Subsections 2-4 are further restrictions on the use of personal days. Subsection 2 states that personal days are intended for events which cannot be taken care of during non-school time. Subsection 3 details the procedure to be followed for requesting the use of personal time. Subsection 4 details that personal days are not to be used to extend vacation or holiday periods.

Subsection 5 is at the center of the current dispute. Subsection 5 states:

The administration shall be entitled to determine approval/disapproval of each request based on contractual provisions. This shall include questions to ascertain information in the following manner:

- a. Is the Association member to receive non-school compensation during personal day time?
- b. Is the personal day an extension of a holiday/vacation purpose?

The Union argues that the two questions posed in this subsection are the only appropriate questions that can be asked by the administration upon receipt of a request to use personal time. This is fundamentally incorrect based on the plain reading of the entire subsection. The first line of the subsection clearly and unequivocally states that “the administration shall be entitled to determine approval/disapproval of each request based on contractual provisions.” One of these contractual provisions is subsection 2, which states that “personal days are intended for events which cannot be taken care of during non-school time.” As such, the administration is well within its rights to inquire if the reason for the requested time off can be taken care of during non-school time.

In the present case, however, Superintendent Crowe failed to inquire about the reason for the requested time off and unilaterally denied it. While Superintendent Crowe eventually cited this subsection as the rationale for her decision, that explanation did not occur until the Step 3 grievance answer.<sup>1</sup> At the time of her denial, Superintendent Crowe was unaware of the reason for the requested personal time and chose to deny the request without inquiry or comment. Under the terms of Article XIII, subsection 2, Superintendent Crowe was entitled to ascertain if the reasons for Milaszewski’s requested time off could be accomplished during non-school time. However, she failed to do so, and her

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<sup>1</sup> At the arbitration hearing, Superintendent Crowe further modified her explanation for the denial of Milaszewski’s request for personal leave, when she stated that a request for three consecutive days for personal leave needed a compelling reason for approval. This compelling reason rationale espoused for the first time at the arbitration hearing is unsupported by the collective bargaining agreement.

subsequent explanation that subsection 2 was the reason for her denial does not rehabilitate her initial arbitrary denial.

The Employer argues that the Superintendent, under Article XIII, subsection 3, has the right of final approval for all requests for personal leave. It argues specifically that the Superintendent must protect the delivery of educational services as outlined in Article IA. To the extent that Article IA is a contractual provision, and thus, falls under the purview of the first line in Article XIII, subsection 5, I agree that the protection of the delivery of educational services, when supported by the requisite facts, is also a legitimate consideration for approval/disapproval of personal leave requests. Here, again however, the Superintendent failed to list this or any other valid contractually based reason for her denial.

For all the reasons stated above, I find that Superintendent Crowe's denial of Milaszewski's request to use personal leave on March 14, March 15, and March 16, 2016 was arbitrary and in violation of Article XIII.

#### **REMEDY**

The School District is ordered to forthwith make Robin Milaszewski whole for all lost wages and benefits, by repaying her for the three days' pay previously deducted from her.

**AWARD**

The School District violated Article XIII of the Collective Bargaining Agreement when the Superintendent did not approve Robin Milaszewski's request to take personal days on March 14, March 15, and March 16, 2016.



Timothy Hatfield, Esq.  
Arbitrator  
January 13, 2017