

LETTER OPINION
96-L-132

July 26, 1996

Honorable George Keiser
State Representative
2959 Domino Dr
Bismarck, ND 58501

Dear Representative Keiser:

Thank you for your letter asking whether a school district negotiated teacher contract which granted the statutorily required 10 days of annual sick leave and provided "personal leave" to teachers if it was deducted from sick leave, is consistent with state law.

You attach a copy of a portion of the negotiated teacher contract which provides, in part, under the heading of "Leaves":

I. Sick Leave

- A. Ten (10) days for nine (9) and ten (10) month contracts.
- B. Eleven (11) days for eleven (11) month contracts.
- C. Twelve (12) days for twelve (12) month contracts.
- D. Part-time teachers will receive sick leave days commensurate to the percentage of their contracts.
- E. Unused sick leave days will be cumulative to one hundred ninety (190) days. Staff members who have accumulated in excess of one hundred ninety (190) days by July 1, 1991, shall retain those days until used, but without further accumulation beyond one hundred ninety (190) days.

IV. Personal Leave

The District will grant two (2) personal leave days per year with a maximum accumulation of five (5) days. Certificated staff who have fifteen (15) years of teaching in the Bismarck Public School System will earn three (3) days of personal leave per year with a maximum accumulation of five (5) days. Part-time certificated staff will receive personal leave days commensurate to the percentage of their contracts with a maximum accumulation of their percentage times (x) five (5) days. Two (2) personal leave days may be granted by the building principal. A request to use three (3) or more consecutive personal leave days may be approved or disapproved by the Superintendent or designee. Personal leave days shall be deducted from sick leave. Except in cases judged to be an emergency by the principal, superintendent, or designee, the following applies:

- A. The request for use of personal leave days must be received at least twenty-four (24) hours prior to the date requested.
- B. Personal leave days cannot be used the first five (5) days of school or during the last five (5) days of the school year.

N.D.C.C. § 15-47-35 provides:

The employment contract of any teacher, as defined in section 15-47-26, shall provide for at least ten days' permissible absence annually due to sickness, without loss in pay for the period; and shall further provide for any unused portion of such annually permissible absence to be cumulative from year to year, with a minimum accumulation of thirty days.

N.D.C.C. § 15-38.1-01 provides that state policy is to promote the improvement of personnel management and relations between school boards of public school districts and their certificated employees by providing a uniform basis for recognizing the right of public school certificated employees to join organizations and be represented by such organization in their professional and employment relationships with the public school districts. In furtherance of that policy, school boards and representative organizations have the duty to meet at reasonable times and to negotiate in good faith with respect to "terms and conditions of employment and employer-employee relations."

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The parties to that negotiation "must execute a written contract incorporating any agreement reached if requested by either party." However, these negotiation obligations "do not compel either party to agree to a proposal or to make a concession." N.D.C.C. § 15-38.1-12.

The term "personal leave" appears in N.D.C.C. §§ 15-27.3-13, 15-39.1-04, 15-39.1-08, and 54-52-01. Although the first three of those sections relate to teachers, either with respect to negotiated agreements by newly reorganized school districts or membership in the teachers' fund for retirement, none of the sections nor any other provision of North Dakota law actually defines "personal leave." In the absence of a statutory definition, referral must be made to the ordinarily understood meaning of the term which would be leave from work taken for personal reasons. N.D.C.C. § 1-02-02. Even in the absence of a statutory definition of the term, the North Dakota Supreme Court has held that N.D.C.C. § 15-38.1-12(1) and required negotiation on terms and conditions of employment means that "sick leave, personal leave, and professional leave are within the ambit of 'salary' and 'hours' and are mandatory negotiable items under" that section. Belfield Education Ass'n v. Belfield Public School District No. 13, 496 N.W.2d 12, 15 (N.D. 1993).

The Belfield Education Association case also determined that negotiating in good faith pursuant to N.D.C.C. § 15-38.1-12 did not require that the parties actually agree on the items that were the subject of negotiation. It appears from the circumstances you cite that the school district and the teachers association did include in their negotiated agreement the 10 days of annual sick leave required by statute. In fact, the agreement provided up to 12 annual sick leave days for teachers employed under 12-month contracts, and a 190-day accumulation of sick leave.

Even though not required by law to do so, the parties to the teacher contract you cite did agree to provide personal leave days of two or three days annually, accumulated to five days, which personal leave days were to be deducted from sick leave. This was a negotiated contract benefit agreed to by both parties and their representative organization, the use of which is discretionary on the part of the teacher. N.D.C.C. § 15-47-35 authorizes absence due to sickness without loss in pay, and the effect of the contract in question is to provide a contracted benefit to teachers to take time off for personal reasons when not actually sick even though the school district is not mandated by law to grant such leave. This provision, therefore, grants to the teachers in question the right to use their accumulated sick leave for sickness reasons or to use it for personal reasons.

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In the case of teacher contracts, teachers and school boards are encouraged to negotiate in good faith and arrive at an acceptable bargain under N.D.C.C. ch. 15-38.1. The sick leave provision in N.D.C.C. § 15-47-35 may legitimately be the subject of good faith negotiations and formalized written agreements between teachers and public school districts.

It is my opinion that a negotiated teacher contract under N.D.C.C. ch. 15-38.1 which provides for the grant of the minimum sick leave provided for by N.D.C.C. § 15-47-35 and which authorizes the use of a portion of that authorized sick leave for personal leave purposes and deducts those personal leave days from the sick leave balance is consistent with state law which requires good faith negotiation to arrive at formal teacher contracts.

Sincerely,

Heidi Heitkamp
ATTORNEY GENERAL

rel/pg

cc: Dr. Wayne G. Sanstead, Superintendent of Public Instruction