BEFORE THE STATE OF MONTANA
SUPERINTENDENT OF PUBLIC INSTRUCTION
****

MARY ANN KNUDSEN, Appellant, -vs.- VALLEY COUNTY SCHOOL DISTRICT #1-1A, Respondent.	OSPI 40-83 DECISION AND ORDER

****

This is an appeal from the findings of facts, conclusions of law and order rendered by the Valley County Superintendent of Schools. The appeal is taken by Mary Ann Knudsen, Appellant, a tenured teacher in Valley County School District #1-1A, Respondent, Glasgow, Montana. Appellant appealed the Respondent trustee's decision denying her claim for paid sick leave during the winter of 1982. The hearing was held on December 10, 1982. The Valley County Attorney was also present as the County Superintendent's legal advisor. Both parties were represented by counsel in the matter. The Valley County Superintendent of Schools rendered findings of facts, conclusions of law and an order affirming the decision of the Respondent Board of Trustees. Appellant filed a Notice of Appeal to this State Superintendent on March 11, 1983.

Appellant presents several issues for review by this State Superintendent as discussed in the Notice of Appeal.

1. Whether the County Superintendent's decision was made upon unlawful procedure because she refused to provide a copy of the transcript to Appellant or her counsel.
2. Whether the County Superintendent's decision was clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record.
3. Whether the County Superintendent's statement in finding number two that no copy of the 1981-82 agreement was available to be admitted as an exhibit was both untrue and irrelevant.

4. The County Superintendent found that the School Board had granted the Appellant an extended leave in February (Finding number six). Appellant contends she was never notified in writing that she had been granted an extended leave. Appellant was paid her full salary every month, so she assumed she had been granted paid sick leave. Appellant argues that findings number seven and eight do not accurately set forth the contents of letters which are marked as exhibits in the case.

5. Appellant contends that finding number nine which states that Appellant was advised that the evidence submitted was insufficient is erroneous. Appellant contends that she was not timely so notified. Had Appellant been told immediately that the Board was not satisfied with her letters, she could have provided additional substantiation. Appellant contends she asked for sick leave on February 3, 1982, including a letter from a Doctor Leonard Klassen. Appellant contends that it was not until March 11, 1982, that the administration asked for additional information. Appellant contends she sent two letters on March 6, 1982, and that it was not until late April that the administration told her that the trustees were still not satisfied.

6. Appellant argues that the County Superintendent ignored the testimony of Appellant and her supporting witnesses all of whom testified as to her personal, physical and emotional condition during the winter and spring of 1982.

7. The Appellant contends the County Superintendent has ignored the testimony of Appellant's personal physician, Dr. Leonard Klassen, that she was in no condition to teach youngsters. Appellant contends that the decision was arbitrary and capricious or characterized by abuse of discretion.

This State Superintendent finds issues numbers 4, 5, and 7 to be dispositive of this case and will address the same.

Appellant is a tenured teacher employed by Respondent School District. Appellant teaches first grade in the Irle School and has been employed by the School District for twenty years.

During the academic year 1981-82, there existed a collective bargaining agreement between Glasgow School District #1 and 1A of Valley County and the Glasgow Education Association. Said contract was binding as to the relationship between the parties in this matter. The contract provided for the following leaves relevant to this matter:

(a) Sick Leave: 15.3

> Ten days annually at full salary will be provided each teacher for personal, physical or mental illness or disability. The District will provide a substitute (when needed).
>
> 15.4
>
> Ten days of sick leave will be available for use from starting date of first contract.
>
> 15.6
>
> Unused days of leave accumulate to **100** days.
>
> 15.7
>
> Doctors report -- absences beyond three days may require a doctor's verification.

15.8

> A record of the accumulation and use of sick leave is available in the clerk's office. (Emphasis supplied)

Appellant requested and obtained a variety of leaves, due to her husband's critical illness. Her husband's condition was designated cancer, and he was repeatedly under observation and' treatment of cancer by Montana hospitals and Johns Hopkins Hospital, Baltimore, Maryland. Respondent believed that Appellant was requesting leave in order to be with her husband. Appellant contends she was aware of the provision and requested sick leave because she was physically and emotionally unable to teach her class of first graders, meeting the leave requirements of the collective bargaining agreement. She contends that she came within the collective bargaining agreement provisions for taking sick leave.

During the winter of 1982, Appellant requested paid sick leave. The district provided no immediate written response to her request and continued to pay her a regular monthly salary. When she received her final paycheck for the 1981-82 year in late May 1982, Appellant discovered Respondent had deducted $4,563.00 for 36.5 days at $125.00 per day. Respondent claimed that the days were unpaid extended leave, not paid sick leave. Appellant contends that this was the first formal written knowledge she had received that her request for sick leave had been denied. She appealed to Respondent Trustees who denied her claim for paid sick leave. Appellant later appealed to the County Superintendent of Schools.

During the academic year 1981-82, Appellant was absent 60.5 days of the 180 teacher instruction days. All of said absences, as found by the County Superintendent, corresponded to those times when the Appellant's husband was out of town for medical treatment or was under medical treatment which was for the full year of 1981-82.

The County Superintendent found that Appellant requested emergency leave and personal leave to cover the 8½ days of absence in January of 1982. Appellant was granted the 2-day remainder of her emergency leave, and her personal leave which was 3 days; the remaining 3½ days were granted to her as an extended leave. The County Superintendent found that such granting of leave was proper.

The County Superintendent found that on February 3, 1982, Appellant requested sick leave to take her husband to Johns Hopkins Research Center for reevaluation of the cancer diagnosis and possible treatment. Appellant contends that she requested sick leave for her own personal illness because she was physically and emotionally unable to teach her class of first graders. Such request was accompanied by a letter from Dr. Leonard Klassen, MD. The County Superintendent's finding indicated that the request for the February 3, 1982 leave was for her husband's benefit. Joint Exhibit #2, Dr. Klassen's letter of February 3, 1982, submitted without objection of either party stated, "it will be to her benefit to be with him to prevent severe emotional distress on her part." The County Superintendent did not give weight to the remainder of the letter in terms of school board request for doctor verification for her request of sick leave.

Testimony is unclear as to what occurred next. Appellant contends that the Board of Trustees and the District Superintendent allowed Appellant to assume she had properly complied with the School Board's request. On March 11, 1982, the District Superintendent once again asked Appellant for additional documentation as is provided for in Joint Exhibit #3. Appellant provided that additional documentation once again and sent a letter from a Dr. Eva Zinreich at Johns Hopkins Hospital on March 16, 1982. The letter indicated "if she does not participate in Mr. Knudsen's treatment and care here in Baltimore, she would most certainly be preoccupied at home, and she would be unable to carry on her occupation to the best of her

ability.'' On March 16, 1982 the Appellant also submitted a letter from a clinical social worker from Johns Hopkins University.

The County Superintendent made finding #9, that Appellant was advised that the evidence submitted was insufficient; however the County Superintendent failed to specify what date the Respondent Board of Trustees came to that conclusion. The Board requested that additional evidence be presented to support her personal illness or disability.

Appellant requested additional evidence from her family physican, Dr. Leonard Klassen. Following a medical examination, Dr. Klassen wrote a letter on April 27, 1982, admitted into evidence as Joint Exhibit #4 without objection. Dr. Klassen's recommendation was that she not teach until some obvious improvement in her condition was noted. The School Board on April 28, 1982, granted Appellant's request for sick leave for the remainder of the school year.

In May 1982, Appellant requested that the 36½ days of extended leave which was given without pay be treated as sick leave and that she be reimbursed for those 36½ days. Her salary was $23,375.00. The total amount of the request was $4,562.50. Respondent Board refused to grant this request because of inadequate medical verification of personal illness or disability as required by the collective bargaining agreement prior to the April 28, 1982 letter. Such inadequate medical verification included the second letter from Dr. Leonard Klassen.

The County Superintendent found that Appellant did in fact teach during the time period from January 22 through the end of year, in that she taught for 26 days between February 1 and May 18. Appellant taught February 1 through 11th; February 22 through 26; March 1, 2, 3 and 8. Appellant again returned to the classroom April 19 through 28. April 27 was the date of examination by Dr. Klassen.

The County Superintendent found that insufficient factual evidence was presented to show that she was suffering from personal, physical and mental illness or disability as required by the collective bargaining agreement. The County Superintendent further found that insufficient medical verification was present to show a personal illness or disability on the part of the Appellant for a period of time prior to April 21, 1982 and that the School Board properly granted extended leave for the 36½ days in question.

This State Superintendent has adopted the Standards of Review as set forth in Section 10.6.125, Administrative Rules of Montana. That Standard of Review provides:

> 10.6.125 APPELLATE PROCEDURE - STANDARD OF REVIEW
>
> (1) The state superintendent of public instruction may use the standard of review as set forth below and shall be confined to the record unless otherwise decided.
>
> (2) In cases of alleged irregularities in procedure before the county superintendent not shown on the record, proof thereof may be taken by the state superintendent.
>
> (3) Upon request, the state superintendent shall hear oral arguments and receive written briefs.
>
> (4) The state superintendent may not substitute his judgment for that of the county superintendent as to the weight of the evidence on questions of fact. The state superintendent may affirm the decision of the county superintendent or remand the case for further proceedings or refuse to accept the appeal on the grounds that the state superintendent fails to retain proper jurisdiction on the matter. The state superintendent may reverse or modify the decision if substantial rights of the Appellant have been prejudiced because the findings of fact, conclusions of law and order are:
>
> (a) in violation of constitutional or statutory provisions;
>
> (b) in excess of the statutory authority of the agency;
>
> (c) made upon unlawful procedure;
>
> (d) affected by other error of law;
>
> (e) clearly erroneous in view of the reliable, probative and substantial evidence on the whole record;
>
> (f) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

(g) because findings of fact upon issues essential to the decision were not made although requested.

Appellant contends that the evidence in the record clearly establishes the fact that Mary Ann Knudsen was ill, that she obtained proper verification of the illness from her family physician, and satisfied the collective bargaining agreement.

This State Superintendent has narrowed the issue on appeal to the evidence to determine if Appellant was physically and emotionally unable to teach, thereby fulfilling the requirements of the definition of the collective bargaining agreement and whether in fact the County Superintendent erred in making a finding that such verification was not sufficient or timely made within the confines of the above Standards of Review.

Appellant contends that the agreement states that an absence of more than three days "may" require a doctor's verification. Appellant contends that it is the Respondent's obligation to inform Appellant if it was not satisified with her medical verification. Appellant further contends that because she was not told until she received her final paycheck after her recovery that she had not been granted sick leave, she had to depend upon the testimony of her friends as well as that of her own physican, Dr. Leonard Klassen, at the hearing.

This State Superintendent has said that he will not substitute his judgment upon the weight of the evidence as the record clearly indicates that there was probative, substantial evidence of findings otherwise. See Pryor Public School District #2 & 3, Pryor, Montana v. Bruce R. Younguist, OSPI #42-83, Kisling v. School District No. 2A(C), Phillips County, OSPI #14-81, and School District #9, Lewis & Clark County v. Mr. and Mrs. William Weidbusch, OSPI 38-83.

From a complete reading of the transcripts and the exhibits provided, this State Superintendent was struck immediately with the historical nature and the testimony

provided by witnesses of both parties as to the nature of this case. The testimony revealed that Appellant was very close to her husband. The testimony was confirmed that she had successfully taught for twenty years at that school district. The record indicates that Appellant suffered sleepless nights, walked the floors, was troubled, was very agitated and full of anxiety. The physical symptoms listed on the **130** pages of the transcripts reveal that the Appellant was suffering from a very emotional, stressful situation. The shock and the nature of the family's stress filled the pages of the record.

This State Superintendent disagrees with Respondent's argument that the State Superintendent is not bound by judicial review procedure and Section 2-4-704 MCA, to uphold or reverse the hearing officer's decision on the facts if there is sufficient credible evidence on the record to support the hearings officer. This State Superintendent has adopted the Standards of Review as set forth in the Administrative Rules. The State Superintendent is confined to the record; but if he finds reliable, credible evidence in the record which clearly does not support the County Superintendent's specific findings, and prejudices the rights of Respondent, he is obligated to reverse the same. This is the case. Should **I** find probative, substantial evidence to support Appellant's claim that she was physically and emotionally unable to teach and she was entitled to her back pay, **I** am obligated to reverse the County Superintendent's decision.

This State Superintendent was impressed by the testimony of the family physician, Dr. Leonard Klassen. Dr. Klassen has been the Appellant's general family doctor for some 15 years as evidenced by the record. His testimony indicated that he keeps notes on physical examinations but not on all telephone calls prior to April, 1982. He indicated he had frequent opportunities to observe Appellant when he was treating Appellant's husband during the fall of 1981 and the winter of '82 prior to the trip to Bal-

timore. Dr. Klassen observed her appearance and behavior when she would stop at the clinic to pick up prescriptions for her husband. Testimony revealed and Appellant herself testified that she was on the phone to the doctor all the time from November 1981 on. Specific and exact testimony of the doctor revealed that Appellant showed definite signs of stress and depression and was under a great deal of tension. The physician stated:

> I think there were times when she definitely showed a good deal of stress, signs of depression, complained of such things as chronic headaches, sleep disturbances. These to me would all indicate that her ability to do a good job of teaching would be markedly impaired. If it were my child that was her student, I think I would object to her being the teacher.

The following exhange took place during Dr. Klassen's cross examination by Respondent's counsel, James Rector:

Rector:	Did Mary Ann come to you then later in June or July and ask you to write another letter to the school board in regard to this matter?
Dr. Klassen:	I believe so.
Rector:	Did you write a letter of *** July 12th? I hand you what's been marked as Joint Exhibit No. 7.
Dr. Klassen:	Yes, I did write that letter.
Rector:	On the second page of that letter is it not true that the letter states that "Mary Ann Knudsen was under stress from January 22, 1982; she was under severe stress and was emotionally disabled to the degree that she could not perform her teaching duties properly while her husband was away from home and in a life-threatening situation?''
Dr. Klassen:	Yes.
Rector:	What does "emotionally disabled" mean?

Dr. Klassen: Emotionally disabled indicates that the person has difficulty making normal decisions, functioning in a calm, normal manner, being irritable, dealing with the day-to-day problems in a manner that we all would accept as being part of normal mental function.

Rector: Is there anything in your files or do you recollect anything that specifically would point to her showing symptoms of disorientation during this time period or loss of memory?

Dr. Klassen: Well, she would have sleep deprivation which certainly can cause disorientation and abnormal mental functioning.

Rector: Okay. Was there anything that you observed that would point to loss of memory or suicidal, acute emotional responses?

Dr. Klassen: Her physical appearance indicated depression at the time when I saw her.

Rector: Was there any observation that would lead you to believe that she was acting hysterical or she was moody or -

Dr. Klassen: I would say that she was probably moody or depressed. I don't think that she was hysterical.

Rector: Did you personally observe any of these things in her?

Dr. Klassen: Yes.

Rector: When did you do that?

Dr. Klassen: At the times that-at the time of the physical examination in April; also when she came over to pick up medication for her husband.

(Tr. 37, 38)

Dr. Klassen further stated, on cross examination, that depression and anxiety are disabilities (Tr. 33). His final opinion was that it was questionable whether Mrs.

Knudsen could do a good job of teaching under the circumstances during the period at issue. (Tr. 36).

Respondent questions the evidence submitted by Appellant of a mental or emotional disability for the period of time from January 22 to April 27. The letter in question, dated July 12, 1982, was Joint Exhibit #7. Dr. Klassen's letter indicates that she was suffering from severe stress and emotional disability, to the point where she could not perform her teaching functions. Respondent argues that a clinical psychologist testimony indicated he would not have made that particular diagnosis.

Although the hearing officer is the person in a position to judge as to the weight of the evidence on questions of fact, See Pryor Public School District #2 & 3, Pryor, Montana, v. Bruce R. Younguist, OSPI #42-83, this State Superintendent cannot overlook what appears in the record to meet the requirements of the collective bargaining agreement. The evidence clearly indicates that Appellant was operating under a severe degree of stress from January 22 forward. The School Board conceded repeatedly and recognized that Appellant was certainly operating under a degree of stress. Her appearance and the adverse circumstances surrounding this case pointed to that fact. Dr. Klassen had an opportunity to examine Appellant once again on April 27. He was the person best able to judge whether or not the degree of stress was disabling. He indicated that Appellant should be on sick leave and made a determination that the degree of disability had come to the point where she was, in fact, disabled and entitled to benefits. At no time was Appellant, from the record, aware of the fact that she needed additional medical verification.

The Board of Trustees had taken dramatic measures in the way of handling Appellant's extended leave. The Board reserved her tenure status, allowed her health insurance benefits to continue with the district, and held her job open for Appellant so that she might return after her

disability. The Board should be complimented for such action.

Respondent does not argue that stress can be an illness or a disability and conceded to this. What Respondent argued is that disability is a factual determination as to whether or not the stress was at a sufficient degree to cause her to be disabled to a sufficient degree to allow her to be compensated for time taken off during her husband's medical treatment. The record indicates that Respondent delayed in informing Appellant that the particular letters of medical verification were not sufficient for the school district. It was not until a month later that the district informed Appellant that such medical verification was not sufficient. She was working under the assumption that the medical verification she had supplied was sufficient.

The collective bargaining agreement indicates that the school district "may" require a doctor's verification if the absence is more than three days. The affirmative duty is on the part of the school district to inform Appellant if it is not satisfied with the medical verification provided; this was not done in this case.

Respondent presented the testimony of Laurence Stineford, a psychologist who testified on behalf of the school district. He indicated that the patient (described as a hypothetical question) would have been prescribed an anti-anxiety medication. This State Superintendent was unimpressed by the fact that this particular psychologist had not examined Appellant at any time. Dr. Klassen, on the other hand, was the family physican. Dr. Klassen saw Appellant on numerous occasions while he was treating her seriously ill spouse. He would talk to Appellant on the phone and see her pick up prescriptions. Dr. Klassen had greater experience and knowledge on which to make a diagnosis than was provided the psychologist in a hypothetical question. The doctor's testimony was clear; his findings supported the fact that Appellant was suffering a dis-

ability within the terms of the collective bargaining agreement and his testimony indicated the disability was present during the term of this controversy.

This State Superintendent has had an opportunity on several prior occasions to speak to leave requests and decisions of board trustees with regard to personal 'leave. In Attie Blevins v. Daniels County School District No. 1, OSPI #20-82, a teacher requested personal leave for a specific number of days. The collective bargaining agreement indicated that the leave dates must have prior approval from the district superintendent. Mrs. Blevins disregarded that particular request and went for two additional days. The School Board was required to fill her position with a substitute teacher. In that case the policy was very precise. The teacher was given a definite decision and the definite decision was affirmed by the district superintendent. Despite clear policy and a firm decision of the district superintendent, the teacher chose to violate that policy. There were no emergency reasons given prior to the date of that absence. In Blevins this State Superintendent found there was a clear policy and a clear intentional, willful violation by the teacher. The State Superintendent affirmed the decision of Board to suspend and discipline that particular teacher.

In a second case, Dawn Hanson v. Scobey School District #1, OSPI #21-82, the teacher requested personal leave to visit her daughter in Spain. There were no emergency purposes. The requested leave fell immediately before and after Christmas vacation. The collective agreement indicated that general leave status shall be granted at the sole discretion of the school board of trustees. The school board unanimously approved the district superintendent's decision of disapproving a request for general leave for the teacher. The teacher indicated that regardless of what the school district had intended she would take her leave anyway. The district superintendent wrote the teacher a letter warning her of the consequences of

such decision. The teacher, in direct contravention of the specific and explicit order of the school board and fully aware of the consequences of her actions, took a total of 12 additional unexcused absences. The reason given for absence was a trip to Spain. The superintendent listed specific reasons why the school board of trustees' decision to dismiss Appellant for violating adopted board policies. The teacher left regardless of the fair and full warning of the consequences. The school board fully considered the intentional violations, the consequences of the efficiency and operation of the school districts, and the merits of dismissing this particular teacher. In that case I stated:

> Local school boards must maintain control on the administration of the school district's business. They are elected by popular vote or chosen by reason of their standing in the community, sound judgment, and their interest in the educational development of our young generation. They know and understand the parties and know best the circumstances involved in their school district.

In that particular case a willful, intentional violation of clear board policy was in order. The teacher acknowledged her awareness and chose to violate the board policy. No emergency reasons or special extenuating circumstances as the one presented in this matter were raised.

Appellant Knudsen testified that "her world fell apart''with her husband's illness. They had been together for three decades, during which time she relied on him to make all decisions. She said she was not in a physical and emotional condition to teach. The numerous witnesses who appeared on behalf of Appellant supported the statements of Appellant and provided this reviewing officer an in-depth understanding of the problem.

Appellant was not notified in a timely manner. Had she been told immediately that the board was not satisfied with her letters, she could have provided additional

verification. Appellant asked for sick leave on February 3, 1982. She included a letter from Dr. Klassen. It was not until March of 1982 that the school district asked for additional information. At that time she was located at Johns Hopkins Hospital. Appellant sent two letters on March **16,** 1982. It was not until late April that the school district told her the trustees were still not satisfied. Because of the situation and special extenuating circumstance of the illness of her husband, it should have been made very clear to Appellant early on that the medical verification she had supplied was not sufficient.

The County Superintendent's decision denying Appellant paid sick leave during 1981-82 because she was physically and emotionally unable to teach is reversed. The findings are clearly erroneous in view of the reliable, probative and substantial evidence on the whole record.

DATED this 4th day of October, 1983.