

TO: Juneau School District Board of Education
FROM: Board Members Holst, Kelly, and Stepetin Sr.
DATE: September 14, 2021
SUBJECT: Grievance 2021-01: Recommendation by the Grievance Panel

This is the second time that Grievance 2021-01 has come before a panel of the Juneau School District (District) Board of Education (Board) in accordance with Article 23, Section 2, Step 4 of the negotiated collective bargaining agreement (CBA) between the Board and Juneau Education Association (JEA), of which the grievant is a beneficiary. The first Step 4 hearing resulted in a decision by the Board to remand the grievance back to the District Superintendent for proper consideration in accordance with Article 23, Section 2, Step 3 of the CBA.

For the reasons explained below, the panel recommends the Board allow the grievant to cash-out his personal leave.

I. PROCEDURAL HISTORY

The procedural history of this grievance is largely set forth in the Board's decision of July 28, 2021, following the first Step 4 hearing on this matter. Therefore, the additional procedural history cited below is brief.

Following the Board's July 28th decision, the grievant referred his grievance back to Superintendent Dr. Weiss for a Step 3 meeting. Following this meeting, the Superintendent provided a written decision denying the grievance in accordance with Article 23, Section 2, Step 3 of the CBA.

On August 20, 2021, the same day the Superintendent denied his grievance, the grievant emailed the Board President requesting to proceed to a Step 4 hearing for a second time. The Step 3 decision was not initially provided as required by the CBA, but was submitted upon request of the Board President. Following receipt of the Step 3 decision, the Board President appointed a hearing panel and a Step 4 grievance hearing was held on September 2, 2021. The panel provided an opportunity for the grievant and District to state their positions and answer the panel's questions. Both parties agreed that the issue before the panel was the same as the prior Step 4 hearing.

Aside from the Superintendent's written decision denying the grievance following the Step 3 meeting, the parties did not submit any new documentation in support of their respective positions; however, the record consisted of all information previously provided to the Board prior to its July 28th decision and was considered in reaching the findings and conclusion below.

II. FINDINGS

The only issue before the panel is the interpretation of Article 18, Section 2 of the CBA, concerning personal leave. This section reads in relevant part as follows:

Each certificated employee will be entitled to four (4) days of paid personal leave annually, and will be allowed to carry a maximum of ten (10) days each year. At the end of the school year, if more than ten (10) days remain unused, the District will pay the teacher \$150 per day for any unused days over the allowable ten (10) days. Teachers can cash out unused leave at any time during the school year at a rate of \$150 per day, prorated.

In the Board's July 28th decision, the Board recommended the parties fully examine the intent of this section and determine if it applied to employees not continuing their employment with the District after the school year ended. The Board provided that it read this section to apply to situations involving the carrying-over of personal leave between school years and that it was silent regarding situations where the employee retires, resigns, or is otherwise terminated after the school year ends.

In her Step 3 response, the Superintendent agrees that Article 18, Section 2 is silent regarding retiring employees, and points to the negotiation notes to demonstrate there was no mention of differentiating resignations or retirements from the personal leave requirements. The Superintendent interprets this silence to demonstrate clear intent that retiring or resigning employees must affirmatively cash-out their personal leave prior to the end of the school year or forfeit their negotiated benefit. As explained below, the panel does not agree with this interpretation.

When determining the meaning of a contract term, the panel first must determine if the wording is ambiguous. Disagreement on how to interpret the CBA does not create ambiguity; rather, ambiguity exists when the disputed provision is reasonably subject to differing interpretation after viewing the CBA as a whole. If the CBA is clear and unambiguous, the panel must recommend the Board construe the CBA solely according to its terms. However, if ambiguous, the Board may consider all relevant evidence surrounding the disputed term with the goal to give effect to the reasonable expectations of the parties.

The CBA focuses on matters pertaining to wages, hours, and conditions of employment for current District employees. It is, for the most part, silent regarding employee retirement, which is primarily a function of the State of Alaska and not the CBA. The District acknowledges this when accepting retirement notices from employees, as it did when it accepted the grievant's letter of retirement on March 23, 2021. The District appropriately directs retiring employees to the Alaska Department of Retirement & Benefits, not to the CBA. The panel therefore finds that the CBA's omission on how to handle personal leave balances for retiring or resigning employees creates ambiguity whether to include such employees in the cash-out deadline.

Reviewing the disputed term of the CBA similarly does not demonstrate clear intent to require forfeiture of personal leave if not affirmatively requested by a retiring or resigning employee within a reasonable timeframe. The first sentence of Article 18, Section 2 reads as follows: "Each certificated employee will be entitled to four (4) days of paid personal leave annually, and will be allowed to carry a maximum of ten (10) days each year." This sentence speaks of annual

accrual, and the amount of personal leave an employee may “carry” each year. This sentence supports the interpretation that this section applies to the carrying-over of leave for continuing employees, and not to situations involving retirement or resignation.

The second sentence of Article 18, Section 2 provides that an employee cannot have more than ten days of accrued personal leave during any given school year. If an employee has in excess of ten days, the CBA provides that “the District will pay the teacher \$150 per day for any unused days over the allowable ten (10) days.” There is no requirement that the employee affirmatively request the cash-out or forfeit the negotiated benefit. The CBA makes cash-out automatic.

Finally, the last sentence of Article 18, Section 2 allows an employee to cash-out personal leave during the school year, but does not provide any guidance about what can or cannot occur during the few weeks between school years. The panel finds this silence creates ambiguity, not clear intent.

Finding that the disputed term is ambiguous, the panel must determine the reasonable expectation of the parties to the CBA. The parties to the agreement are the Board, on behalf of the District, and JEA. The panel finds the reasonable expectation of both parties was to provide a negotiated benefit that encouraged teachers to remain in the classroom (by allowing cash-out rather than use of personal leave). Conversely, the panel does not find the Board or JEA membership similarly expected the negotiated benefit to be subject to forfeiture.

Turning to the grievant’s specific situation, the grievant requested to cash-out his personal leave on June 4th, while he was teaching summer school. The District denied the request, providing that cash-out could only occur during the school year. According to the District during the Step 4 hearing, if the grievant had made his request two weeks prior during the school year, the grievant would have been entitled to cash-out his earned personal leave without question. If the grievant elected to continue his contract and not retire, he would have been entitled to cash-out his personal leave a few weeks later. If the grievant had more than ten days of personal leave prior to the end of the school year, the personal leave exceeding the ten days would have been subject to automatic cash-out. However, because the grievant retired and requested cash-out of his remaining personal leave after the school year ended, the District determined he had forfeited this negotiated benefit.

The panel does not find that the Board intended this result when it negotiated Article 18, Section 2. The panel finds the reasonable expectation of the parties was that this provision applied to the carry-over of personal leave for continuing employees of the District. The panel does not find that the term was intended to cover situations involving retiring employees who request the cash out in a reasonable timeframe upon giving notice of retirement; nor does the panel find that the Board intended that an employee may completely forfeit the negotiated benefit upon retirement if they neglect to affirmatively request it prior to the end of the school year.

III. CONCLUSION

For the reasons explained above, the panel recommends the Board read the CBA in harmony with the grievant’s request and allow him to receive his personal leave cash-out.

In reaching this recommendation, the panel acknowledges that the grievant failed to follow the requirements of the CBA in bringing this grievance, and that the grievant should have resolved all issues related to his retirement prior to the end of the school year. The panel also fully agrees with the District that disputes should be resolved based on the clear language of the CBA and not on principal. However, despite the grievant's missteps, the panel must still recommend that the Board find that Article 18, Section 2 of the CBA pertains to the carrying-over of personal leave for ongoing District employees and was not intended to apply to employees who retired.