

TESTIMONY FOR THE HEARING

Before the

UNITED STATES SENATE

Committee on Governmental Affairs

Subcommittee on Federal Services, Post Office, and Civil Service

March 18, 1988

Sick Leave Banks, Leave Sharing, and S. 2140

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INTRODUCTION

Mr. Chairman, members of the committee, fellow presenters, and guests, good afternoon.

I appreciate being with you today and having an opportunity to testify. My name is Miriam Cameron, and I am the director of the Department of Employee Assistance Services for the Montgomery County Public Schools. I would like to note, however, that I am speaking today as an individual and as an employee assistance professional, not as an official representative of the public schools.

Today's hearing gives me the opportunity to thank members of Congress, the Federal Government, and the National Institute on Alcohol Abuse and Alcoholism and the Eugene and Agnes E. Meyer Foundation for pilot project grant funds and seed grant monies that were essential to the implementation of the Employee Assistance Program in the Montgomery County Public Schools.

Our MCPS Employee Assistance Program (EAP) was begun in 1975. To our knowledge it was the first such program in public education in the country. My testimony today on sick leave banks is based on 14 years of experience in employee assistance and my own personal use of bank grants in the last 17 years.

I will comment today primarily on sick leave banks rather than leave sharing. I have had little experience with the latter, and I have some philosophical concerns about the direct voluntary leave transfer program as proposed by Senator Dominici in S. 1595. I will address these concerns in later testimony.

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My experience in working with the sick leave banks goes back to 1975 when the first clients were referred for assistance. The enormous value of the sick leave bank for the mentally ill, physically abused, and drug/alcohol addicted clients was immediately apparent. On reflection, I realize that the entire structure of the department and the services we can offer clients are integrally related to the negotiated sick leave package and the sick leave banks.

DEMOGRAPHICS

Montgomery County Public Schools (MCPS), Rockville, Maryland, is a school district covering 500 square miles just north of Washington, D.C. It serves 96,500 students and has 164 schools and 13,500 employees. For the 1987 tax year, the Division of Payroll mailed 18,072 IRS W-2 Forms. This figure is a more accurate reflection of the employee population in that it includes temporary, part-time, and full-time employees.

BASIC SICK LEAVE

Sick leave in MCPS is allocated to all employees at the rate of one duty day per month. A "duty day" is defined by the position held; for example, four, six, or eight hours can all equal "one duty day." The following are general characteristics:

Twelve days sick leave per year is the maximum.

Sick leave is advanced at the beginning of each fiscal or work year.

There is no ceiling on the number of sick leave days that can be accumulated.

Additional sick leave beyond the 12-day-per-year allocation is acquired in the following manner:

Annual leave in excess of 20 days at the end of the fiscal year (June 30) is rolled over to the sick leave balance.

Unused personal leave, allocated at the rate of three days per year, is rolled over to the sick leave balance at the end of the fiscal year.

In effect, then, there is no use-it-or-lose-it policy, as with some agencies, unless one considers the fact that at the point of retirement, sick leave is worth substantially less than annual leave.

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Unused sick leave at time of retirement is worth one-fourth of its dollar value. In addition, unused sick leave may be applied to retirement for months of service, but only as an add-on, not as a means of qualifying for retirement.

Employees who exhaust their sick leave may draw on either of two alternatives. One is extended sick leave; the other is a sick leave bank. Each is limited to use by the employee for personal illness. Neither is available for illness in the immediate family.

EXTENSION OF SICK LEAVE

Extended sick leave preceded the development of the sick leave banks. It is a grant at three-quarters pay, donated by the Board of Education, on the request of the employee, with approval of the Department of Personnel Services and with proper medical certification. The following features are notable:

Extended sick leave is available to all employees.

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Employees are not liable for extended sick leave grants.

For those employees who are members of a sick leave bank and who have exhausted their accumulated sick leave, additional sick leave would normally be covered by the bank, at full salary.

However, for those employees who do not join a sick leave bank, who may be ineligible to join, or who have not satisfied the required waiting period for bank grants, the three-quarters pay sick leave option is a significant benefit. It is only available, however, as a last resort type of help when medical problems are long term. Illness excluded for coverage by the restrictive rules of a bank may be covered under this option.

Grants for extension of leave are limited to 30 duty days per grant. By convention, not more than two such grants are approved, for a maximum of 60 duty days per medical emergency. Additionally, the total number of days granted may depend on the years of service with MCPS and the record of one's work performance, as well as the urgency of the need.

SICK LEAVE BANKS

There are four sick leave banks in MCPS. Three are under the primary jurisdiction of the three bargaining units, and one has recently been made available by the Board for those employees who by virtue of their positions are ineligible to be members of any of the bargaining units. There are more similarities than differences; however, a few of the differences are notable.

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Statement of Intent

The purpose of the banks is to provide sick leave to the contributors after their accumulated sick leave has been exhausted and, more specifically, to provide such leave from the bank in cases of catastrophic illness.

Common Characteristics

The following characteristics are common:

Membership is voluntary.

Membership is restricted to persons who are or could be members of that bank's negotiating unit.

Membership is **not** contingent on being a member of the negotiating unit.

Only sick leave (not annual or personal leave) may be donated to the bank.

Assessments are determined by the bank and made annually.

One day of sick leave per year is the normal assessment.

Leave is granted for personal illness of the bank member.

Leave for illness in family is excluded.

Workman's Compensation cases are excluded.

Leave grants cannot exceed 30 duty days per request.

A physician's statement is required.

Requests for leave beyond 30 duty days may require a "second opinion" by a physician of the bank's choosing and at the member's expense.

A committee of three, one of whom must be a member of the Department of Personnel Services, administers each bank and determines eligibility.

Determination of eligibility is normally made within 12 working days of the receipt of a request.

The MCPS Division of Payroll maintains records of all employee contributions and withdrawals and the status of the bank.

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Significant Differences

Montgomery County Council of Supporting Services Employees (MCCSSE) (1972)

This bank services all supporting staff. It was the second to be established, and it is the most restrictive in its benefits, as seen in the following:

Employees must have permanent status to join; normally this takes six months.

Members may not use the bank during their first six months of membership. (When added to the above, new employees cannot draw on the bank for their first year of employment.)

The waiting period is two consecutive compensable days after all sick leave is exhausted. (Personal or annual leave may be used during this period, if available.)

In practice, the following restrictions also apply:

An employee must be or have been hospitalized to be eligible for a grant. (Alcohol/drug rehabilitation centers qualify as "hospitals.")

Emergency room treatment without hospitalization may qualify a member for a grant not to exceed 20 days.

A maximum of no more than 90 days will be granted annually.

Montgomery County Education Association (MCEA) (1971)

This is the largest and oldest MCPS sick leave bank. Established in 1971, it serves all the professional staff with the exception of administrators and those who are excluded from any bargaining unit. Historically it has been very liberal with its leave grants. Restrictions are minimal as noted in the following:

There is a waiting period of five consecutive compensable days after all sick leave has been used. (Personal or annual leave may be used if available. Most members of this bank are ten-month employees and have no annual leave.)

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There are maximums of 240 days, unless there is an earlier decision that the member will never return to work. There is additional leave up to 120 days if a member has exhausted the above and returned to active duty for one year. There is a lifetime maximum of 360 days.

Montgomery County Association of Administrative and Supervisory Personnel (MCAASP) (1985)

Excluded Employees (EE) (1986)

These two banks are almost identical. Their combined eligible membership is less than 650 employees. For that reason the Board of Education gave an initial one-time-only start-up grant of 250 days sick leave to the MCAASP bank and 161 days to the EE bank.

Restrictions are minimal:

An applicant must have exhausted all sick and personal leave.

No maximums are identified.

SHARED LEAVE

Shared leave is rarely approved for MCPS employees.

In one recent situation, approval was granted for donations for a new employee whose colleagues offered contributions of sick, annual, or personal leave days. However, this was based on a humanitarian appeal directly to the superintendent and is not common practice.

With the availability of extension of sick leave at three-fourths (3/4) pay and the four sick leave banks at full pay, shared leave requests are unusual and routinely disapproved in MCPS.

Shared leave through voluntary leave transfers to an identified individual is deemed undesirable for the following reasons:

It destroys the philosophy of "saving for a rainy day," a concept encouraged by sick leave banks.

It can be discriminating, abused, and biased.

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It can create undue emotional hardships and conflicts for both the donors and recipients.

It violates personal privacy: the needy, the poor, the proud, the shy, the seriously ill, and the stigmatized (the mentally and emotionally ill, persons with AIDS, addicts, alcoholics, victims of abuse, and others) may be reluctant to share their problems or their shame and to ask for help.

If shared leave coexists with sick leave banks, it could reduce bank membership, making the latter more costly.

It is expensive and complex to administer.

Personal Comments

Given the range of options available to MCPS employees, I believe shared leave should not be an option, except for those unique circumstances where no other leave or combination of leaves would apply. Until our policies change, leave for illness in the family would be the primary example.

Given the AIDS epidemic, and the average time of 18 months from diagnosis to death, shared leave should not be excluded from consideration. However, given the privacy concerns and other issues above, I believe shared leave should only be a second line defense with voluntary sick leave banks as the primary source of self-insurance coverage for extreme or prolonged medical emergencies.

USES AND ABUSES OF SICK LEAVE BANKS

Although abuse of sick leave banks is uncommon, it can occur.

The examples that follow are typical of abused bank grants known to me. All names are fictitious, and details are composite and generic rather than specific to any one case. The identified abuses, if any, are a matter of conjecture and subject to reexamination.

ANDREW: Professional; Diagnosis: AIDS

Andrew had begun working in a new position when, following a bad cold and a bout of pneumonia, he learned that he had pneumocystis carinii, a diagnosis for AIDS. He requested that he be allowed to return to his former position because he knew the work and felt that he would be more comfortable there. Although physically

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and mentally able to work, Andrew was placed on sick leave for an extended period of time. He was not permitted to return to work in any capacity until appropriate policy decisions had been made.

When the decisions were made, Andrew was deemed eligible to return to work. Unfortunately, many of his most productive months were lost during this period of sick leave. His illness progressed. He spent several months in his new assignment and several weeks in the hospital before he died.

Use and Abuse

Andrew was not only the victim of a tragic disease but also one who bore the brunt of lack of knowledge about the implications of his disease in the work site, lack of organizational policy, the political realities of the time, and organizational fears of public reaction. One could argue that denying him the right to work when he was medically able to work was an abuse of his rights, and an abuse of the use of sick leave and the sick leave bank. However, an equally cogent issue, is the one we are discussing today. Could Andrew have managed as well as he did without the sick leave bank? Could he have managed at all?

What this case does illustrate, though, as we move more and more into the "Age of AIDS," is the critical need for organizational policy and the urgent need for alternative support systems for persons with AIDS. Andrew was fortunate in that he only sustained a modest loss of income during his terminal illness.

However, as the number of AIDS persons increases (and concomitantly, the number of persons with family members with AIDS), the need for sick leave banks or shared leave plans increases. Yet, at the same time, the drain on the sick leave banks could be enormous.

ROSELLA: Supporting Services; Diagnosis: Alcoholism

Rosella was referred to Employee Assistance for poor work performance and problems with her supervisors and peers. After several conferences, she was referred to an alcoholism treatment facility for rehabilitation. Rosella attended the aftercare program for a brief period and was spotty in her attendance at Alcoholics Anonymous. Within several months, she relapsed and was referred again to the EAP. A second period of rehabilitation was no more successful than the first.

Employee assistance staff supported stronger disciplinary action and would have supported termination. However, EAP was directed to continue working with Rosella. A third period of in-patient treatment followed. In addition, EAP wrote a tight therapeutic

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contract requiring her compliance with the terms and making her continued employment contingent on adherence to the contract and satisfactory work performance. Personnel supported the contract. Nevertheless, Rosella relapsed again.

Dismissal proceedings were begun. Rosella filed a grievance. Her union contended that the therapeutic contract was not valid and that the breach of that contract could not be grounds for dismissal. Despite her continued poor work performance, Rosella won the grievance on a technicality. Eventually, however, she was fired.

Use and Abuse

Rosella used almost 90 days of sick leave bank time for her three periods of rehabilitation. Insurance costs were in the range of \$18,000 to \$20,000. No substitutes were provided during her absences, thereby increasing the work load for her peers. In my opinion, the third treatment period was unwarranted and an unnecessary expense for the sick leave bank and MCPS.

BETSY: Professional; Diagnosis: Schizophrenia

Betsy was an extremely talented, attractive, articulate young woman. Her job performance was described as "erratic." Attempts to evaluate her effectively were fraught with problems because of her unpredictability. She was referred to the EAP by Personnel, with the recommendation that a psychiatric evaluation was in order.

After a particularly stormy session on the job, Betsy dashed to Personnel and precipitously resigned. EAP staff requested a hold on the resignation and recommended long-term sick leave and disability retirement instead. The rationale was that Betsy was a very ill woman who would need medical insurance coverage for the rest of her life. Such coverage was available under disability retirement.

Betsy was covered by the sick leave bank for seven months until she was eligible for disability retirement. She was only 35 when she retired.

Use and Abuse

Schizophrenia is a catastrophic illness. Betsy's condition has deteriorated substantially over the years. At one point she was diagnosed as being both homicidal and suicidal. The sick leave bank grant gave her the needed time to be eligible for disability

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retirement, a small pension, and access to group rates for health insurance. Had this not been the case, she could well be numbered among the homeless.

HANNAH: Supporting Services; Diagnosis: High Blood Pressure, Obesity, and Stress, plus Illness in the Family: Cancer and Alzheimer's Disease

Hannah is a veteran employee whose job involved the safety of children. The primary cause of her high blood pressure and inordinate stress level was her husband's illness. His erratic behavior, intermittent tendency to violence, and memory lapses made her fearful of him and concerned for his well-being. She tended to compensate for her high levels of anxiety by overeating.

Hannah felt it was unsafe to leave her husband home alone. Paid sick leave for illness in the family was not available for any extended period of time. Hannah was not a member of a sick leave bank; but had she been, sick leave for illness in the family would have been denied.

With the knowledge and approval of Personnel, EAP staff recommended that Hannah get a doctor's certificate for her own medical problems and apply for an extension of sick leave at three-fourths pay through the Board of Education. The leave was approved, and Hannah was able to stay home with her husband and make arrangements for his care. Although finances were tight, there was a significant reduction in her own stress level. She even took pride in losing some weight. The safety of the children under her care was assured. Hannah believed that this leave "saved her life." She returned to work after her husband was admitted to a nursing care facility.

Use and Abuse

Although the primary problem in this case was illness in the family, the effect of that illness on the employee was sufficient to warrant the action taken. More significantly, though, this case serves to illustrate the fact that illness in the family can be as critical as personal illness. Whereas MCPS employees do not have significant coverage in this area, all of the federal proposals, to their credit, acknowledge that need.

JOAN: Professional; Diagnosis: Unknown

Joan is a very talented, somewhat temperamental teacher. For the most part, her work record has been good to excellent. Her relationship with her supervisors has been mixed. Joan claims

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that she loves teaching. The glitch is that "her way is the only way," a factor that puts her at odds periodically with her principal. Joan claims that she is being harrassed.

According to her principal, Joan seems to be subject to mood swings. Discrepancies in reporting have been noted by EAP staff. Inappropriate classroom behavior, tardiness, and outbursts against other staff have been reported by the principal. Joan feels the situation has reached the point that she can no longer tolerate being in the school. The principal agrees that she should leave. The question is, where does she go?

Joan also has some medical problems that have been exacerbated by the work situation. On the advice of the EAP staff, Joan met with her physician and applied for a sick leave bank grant which was approved. At the present time, Joan is on leave doing volunteer work in a related field. This activity will not compound her medical problems. It may, in fact, enhance her opportunities for the future.

Use and Abuse

Joan's medical problem is occupationally and emotionally related. However, the trigger point for her going on leave was the difficulty she was having with her principal. Leave at this point of a crisis is not uncommon for teachers seen by the EAP.

Whether the problems could have been resolved on site is unknown. Joan claims she loves teaching; yet, she is considering leaving the field. While on sick leave she will be exploring other options.

Personal Comments

Although Joan is doing volunteer work, others on sick leave have been known to have jobs or go to graduate school. There's a fine ethical line here, particularly if there's a diagnosis of depression. It would be medically inadvisable for a depressed person to stay at home all day and get more depressed. Graduate school or a supplemental job could be quite therapeutic. And for some employees, it has been.

However, in my opinion, the potential for "double dipping" could and should be eliminated by recognizing the need for alternative outlets and requiring that income earned while on fully paid sick leave, or three-fourths pay extended leave, be returned to MCPS. Adjustments in the amount returned would need to allow for the tax consequences of the additional earnings.

Joan's case is very typical of clients seen by the EAP. At this time, MCPS has no leave that would cover the teachers, school-based secretaries, and other ten-month employees who are so

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stressed out that they need to get away for a period of time. Unlike twelve-month employees, they have no annual leave and no escape hatch. Some would willingly settle for a brief leave option without pay. Lacking that as a choice can lead to additional drain on the sick leave bank for stress-related problems.

THE POSITIVES

As a presenter, I was asked to identify abuses, if any, of sick leave bank grants. I would be remiss were I to say there have been none. However, "abuse" is a judgement call; and the primary responsibility for protecting against abuse rests with each of the banks. Perhaps it is significant to note that the bank rules have changed over the years. The procedures currently employed are remarkably similar to those proposed by Senator Pryor in S. 2140. In the aggregate, **abuse of bank leave is miniscule.**

This program has been an enormous benefit to employees in times of crisis. I can attest to that not only from my own use of the MCEA bank when I was eligible to be a member of that unit but also from our experience working with literally thousands of people who have come through the Department of Employee Assistance.

If one has never known the security of being a member of such a program, then its absence may not be missed. Six years ago, though, the MCEA membership voted to exclude all members who were administrators. Although I had been a member for many years and, in fact, joined because I was so appreciative of a sick leave bank grant, I, along with about 450 others, was voted out--out of MCEA **and** out of the sick leave bank.

For the next three years, our group had no coverage. For me, disability income insurance was not a viable option. Newly single after a 28-year marriage, I could not afford the individual policies available. Further, I doubted that I would medically qualify. During that period there was a disconcerting "what if something happened" cloud that dissipated the moment I joined the new MCAASP bank.

I share this because in MCPS we have become accustomed to knowing that no matter what happens, we are covered. In my position, for example, the banks are essential to working effectively with employees with the whole gamut of human problems. And in a limited number of cases, when ordinary disability retirement seems in order, employees can usually remain on bank grants, if they have exhausted their leave, until disability retirement is approved by the state. Normally this take about three months.

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Disability retirement for most clients is an emotional setback, regardless of how genuine the need. Without exception, it spells the end of a career. Being on paid leave helps not only financially, also emotionally. There's a dignity about the process. Dignity is the bottom line.

ADMINISTRATION OF THE BANKS

Since each bank (with the exception of Excluded Employees) is part of the negotiated agreement, the decisions regarding approval of requests and allocation of leave are administratively handled by each unit.

The MCPS Division of Payroll maintains records of all bank members' contributions and cancellations and reports such status upon the request of the bank committees. The data is impressive in terms of the number of days used, the number of employees who drew from the bank, and the surprisingly low estimated costs in staff time for MCPS. The FY 1987 costs in the chart that follows probably exceed actual costs, given the fact that the MCEA sick leave bank has a very small number of employees who are on the 12-month salary scale. (Please see the chart at the end of this document.)

S. 2140 Federal Employees Leave Bank Act

Senator Pryor's bill is remarkably similar to the sick leave banks in MCPS. It is notable in the fact that leave for illness in the family is included as well as personal medical emergencies. With the increasing numbers of employed females, single heads of households, and midcareer employees with aging parents, that is, the so-called "sandwich generation," a program such as this could set a national standard.

Incorporation of the concept that "an employee may state a concern and desire to aid a specified proposed leave recipient in the application..." (Sec. 6335.(a)(2) appears to cover some of the positive emotional benefits for the donors of leave under the current Office of Personnel Management Program. However, it is also the one item that appears to be directly tied to the Prohibition of Coercion section, Sec. 6339. To some extent, it also negates the privacy issues and could complicate the decision-making process of the Leave Bank Board.

The latter is well illustrated by Senator Pryor's preliminary remarks in the March 4, 1988, Congressional Record, where he states, "Judging from the great number of nominations OPM received and the extreme difficulty they had in choosing three cases out of the 242 qualified nominations, it is evident that a Federal leave transfer program is needed."

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Senator Pryor's bill also eliminates three major flaws, from my perspective, in Senator Dominici's bill, S. 1595:

The latter is discriminatory against those employees who work in units "to which an organization of Government employees has been accorded exclusive recognition," with respect to negotiated contracts. Although perhaps not intended, on the surface this appears to be an attempt at union busting. Especially given the powers to OPM under Sec. 6339 (b)(1) wherein "upon written request by the head of an agency, the Office of Personnel Management may exclude that agency...if the Office determines that inclusion...is causing substantial disruption to agency function."

One might well ask the questions: Would any of the three recipients of shared leave grants have been any less deserving had they been in an excluded agency with a negotiated contract? Are agency heads and OPM excluded from the prohibition of coercion section, or just individual employees and unions?

By contrast, S. 2140 includes on the Leave Bank Board at least one member who represents a labor organization or employee group. The corollary to this in MCPS, where the banks are under the jurisdiction of the negotiating groups, is the inclusion on each bank of a representative from the Department of Personnel Services.

Secondly, S. 1595 appears to be limited to voluntary leave transfers on a case-by-case basis. Given the fact that the need is so apparent, based on the initial 242 applications, the potential for excessive largess exists. With all due respect to the employees of DOT and the recipient of their kindness, no employee with 35 years of service, no matter how deserving, needs nor can use an additional 18 years of Federal leave time. The inherent inequity built into this plan will cause morale problems across the system.

Administration of such a program over time will become inordinately complex. Further, it would seem to run counter to the Government's own policies pertaining to excessive paperwork, to say nothing of equal opportunity. Humanitarian programs and cost effective management do not need to be in conflict. It would be interesting to know, however, whether the Government has calculated the person-hours and costs that would be or will be incurred in returning the unused portion of the donated leave. It is not inconceivable that the costs will exceed that of an outright grant, had such an option been available.

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Senator Pryor's introductory remarks on S. 2140 noted that "a leave bank system will minimize concerns about employee coercion and possible violations of gifts to superiors. It will also ease administrative burdens and overcome the most serious problem involved in a direct employee donation program, dealing with the restoration of unused leave. Furthermore, it affords the leave recipient some degree of privacy. All of which in my views weighs heavily in favor of the leave bank concept."

I agree.

This testimony was prepared on the request of Senator Pryor's staff. I hope that you will find this contribution useful to your committee's deliberations. I am pleased to share this information and to be with you today. Thank you for giving me the opportunity to testify. If I can be of any further assistance, please feel free to call on me or the staff of MCPS.

MCPS SICK LEAVE BANKS DATA FY 1987

RAW DATA	MCCSSE	MCEA	MCAASP	EE*	
				Prof.	Support
Number Eligible	5,972	6,941	409	41	133
Number Enrolled	3,516	5,610	286	23	30
Number Who Used Bank in FY 1987	104	187	3	0	0
Days/Hours Used in FY 1987	19,540 hours	4,938 days	35 days	0	0
Number of Person-hours for Payroll Administration	4 hrs/wk	6 hrs/wk	3 hrs/yr	2 hrs/yr	2 hrs/yr
ANNUAL SUMMARY DATA FY 1987					
Percent Enrollment	58.9	80.8	69.9	56.1	22.6
Percent Utilization by Membership	3.0	2.7	1.0	0	0
Percent Utilization of Annual Contribution	69.5	88.0	12.2	0	0
Cost of Administration at \$12.00/hour	\$2,946	\$3,744	\$36	\$24	\$24

Total Costs: \$6,774. FY 1987 MCPS Budget: \$476,127,288.

*Excluded Employees - These employees are excluded from joining the sick leave banks administered by the unions due to the confidential nature of their jobs. However, those employees who were already members of those sick leave banks before the ruling went into effect were allowed the option of remaining or changing, and many of them chose to remain in their original banks.