BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between	
BROWN COUNTY SOCIAL SERVICES PROFESSIONAL EMPLOYEES ASSOCIATION	Case 469 No. 46974 MA-7117
and	
BROWN COUNTY	

Appearances:

Frederick J. Mohr, Attorney at Law, 414 East Walnut Street, Suite 261, P.O. Box 1015, Green Bay, WI 54305, appearing on behalf of Brown County Social Services Professional Employees Association.

John C. Jacques, Assistant Brown County Corporation Counsel, Brown County Courthouse, P.O. Box 23600, Green Bay, WI 54305-3600, appearing on behalf of Brown County.

ARBITRATION AWARD

Brown County Social Services Professional Employees Association (hereinafter Association) and Brown County (hereinafter County) have been parties to a collective bargaining agreement at all times relevant to this matter. Said agreement provides for arbitration of unresolved grievances by an arbitrator appointed by the Wisconsin Employment Relations Commission (hereinafter Commission) from its staff. On February 7, 1992, the Association filed a request with the Commission to initiate grievance arbitration in this matter. The County concurred in said request and on March 25, 1992, the Commission appointed James W. Engmann, a member of the Commission's staff, as the impartial arbitrator in this matter. A hearing was held on May 4, 1992, in Green Bay, Wisconsin, at which time the parties were afforded the opportunity to present evidence and to make arguments as they wished. The hearing was not transcribed. The parties filed briefs which were exchanged on June 19, 1992, and they waived the filing of reply briefs. Full consideration has been given to the evidence and arguments of the parties in reaching this decision.

STATEMENT OF FACTS

Debra Mason (hereinafter Grievant) is a half-time social worker for the County. In 1976 she married her husband. At that time, her husband had a seven year old son from a previous marriage. The Grievant did not adopt her husband's son; thus, he was her step son. The Grievant's step son lived with the Grievant and her husband during the summer when he was young. He also lived with them during the summer of 1991. In the fall of 1991, the Grievant's step son, now 21 years old, returned to his third year in college. In December 1991, the

Grievant's step son died. She requested funeral leave. The request was denied. The Grievant grieved the denial of funeral leave, which grievance was processed through the grievance procedure and is properly before this arbitrator.

PERTINENT CONTRACT LANGUAGE

ARTICLE 19. FUNERAL LEAVE

> Whenever a death occurs to a member of the immediate family of an employee, the County shall compensate the employee for any time lost from work during the next three (3) succeeding calendar days (Sundays and paid holidays excluded) following said death. Should such death occur during an employee's vacation, he shall receive the additional time off with pay at a time to be mutually agreed upon. Compensation shall be at the regular hourly rate os said employee for a normal work day.
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> . . .
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> "Immediate family" is defined as wife, husband, father, mother, guardian, sister, brother, child of employee, grandchildren, grandparents, father-in-law, and mother-in-law or step parents. Employees will be entitled to compensation for one day to attend the funeral of the spouse's grandparents or of a son-in-law or daughter-in-law, brother-in-law or sister-in-law, aunt or uncle of the employee or spouse.

ISSUE

The parties stipulated to framing the Issue as follows:

> Did the County violate Article 19 by refusing funeral leave for the death of the Grievant's step child?

If the Issue is answered in the affirmative, the parties stipulated that the remedy is as follows:

> The Grievant will be credited with a day and one-half of vacation.

POSITION OF THE PARTIES

The Association argues that the intention of the funeral leave clause is to allow more time off for a closer familial relationship; that common sense alone indicates that the term "child of employee" was intended to include step children; that an interpretation of this language which would include a step child within the definition of "child of employee" is consistent with the Wisconsin Medical Leave Act, Sec. 103.10(1)(a), Stats., which defines "child" as "a natural, adopted or foster child, a step child or a legal ward;" that in Article 18 Disability Leave, immediate family is defined "as those of the employee's family, living within the employee's immediate domicile and parents of the employee;" that under the Medical Leave Act, a step child of the Grievant who was ill would be considered a child under Wisconsin law and the

Disability Leave Article would apply; that, on the other hand, the County argues that this same child for whom the Grievant could care for if ill is excluded from the definition of immediate family upon the child's death; that such a result is absurd; that the County's restrictive definition of immediate family under funeral leave is absurd; that certainly a step child who lives with the Grievant during the summer months is much closer than a father-in-law or mother-in-law with whom the Grievant would not live; that a step child is consistent in relationship to a step parent for which the Grievant would have been entitled to three (3) days of funeral leave; that the County's interpretation allows no funeral leave for a step child; that, nonetheless, the County acknowledges a one (1) day funeral leave for relationships as far away as the Grievant's husband's uncle or aunt; that the intent of the funeral leave is to allow three (3) days off for the closest family relationships and one (1) day off for more distant relationships; that an absurd result can only be avoided by including step child within the definition of "child of employee;" that because the language in the present funeral leave clause leaves an ambiguity as to whether step child is included in the definition of child, the interpreter of this contract must give the ambiguity the more reasonable meaning and construct the contract so as to provide a reasonable, fair and just result over one which would be unusual or extraordinary, citing Carey v. Rathman, 55 Wis. 2d 732, 737-8 (1972); and that, therefore, the Association's interpretation should be adopted.

The County argues that the contractual definition of "immediate family" does not include a step child; that the phrase "child of employee" as used in Article 19 does not include the child of the employee's spouse; that the term "child" does not include a step child in the ordinary usage of the term "child;" that the term "step child" is defined to be "the child of one's wife or husband by a former marriage;" that it is clear that a child is not synonymous with "step child" in this factual context; that had the parties intended to include a step child, the term "step child" would have been stated in the contract with the others specified; that the arbitrator does not have to look outside the express language of Article 19 to resolve the issue; that the phrase "child of employee" is clear and unambiguous; that the Association is requesting the arbitrator to add the word "step child" to the stated definition of "immediate family;" that Article 8 provides that the arbitrator had no authority to "change, alter or modify any of the terms or provisions of this agreement;" and that the grievance should be denied since the express language of Article 19 does not apply to a step child and, therefore, no violation of Article 19 has occurred. The County also argues that the Association submitted no evidence of the parties' intent to include "step child" as a member of "immediate family"; that only where a contract does not define who is included in the "immediate family" does ambiguity as to the parties' intent generally occur; that the agreement clearly defines the term "immediate family" which does not include "step child;" that the Association did not submit any evidence of past practice or bargaining history behind Article 19; that it was the Association's burden to produce past practice or bargaining history to expand the meaning of the term "child" to include step child; that had the parties intended to include step children, they would have expressed that intention in writing; and that the negotiators of Article 19 must have known and understood that, absent proof of any mutual understanding to the contrary, a child is not a step child in ordinary usage. Finally, the County argues that it clearly intended "immediate family" to include only those persons listed; that the use of the phrase "child of employee" in Article 19 supports that position; that benefits granted are not normally expanded from the entitlement provided by the express terms of the contract; and that, in this case, the arbitrator should not so expand the paid funeral leave benefit.

DISCUSSION

The question for the arbitrator boils down to whether the term "child of employee" includes a step child.

The Association asserts that the arbitrator should look to the definition of "immediate family" contained in Article 18 Disability Leave of the agreement and the definition of "child" contained in the Wisconsin Medical Leave Act for guidance is determining the meaning of "child of employee" contained in Article 19 Funeral Leave. If Article 18 and said Act were related to funeral leave and if the agreement, specifically Article 19 Funeral Leave, was lacking a definition as to who is included in the funeral leave, this arbitrator might review said Article and Act for guidance in this situation. But such is not the case.

The parties were very specific in Article 19 Funeral Leave in stating for whom the employe would receive funeral leave. Said leave is applied to "immediate family" which the parties defined as:

> . . . wife, husband, father, mother, guardian, sister, brother, child of employee, grandchildren, grandparents, father-in-law, and mother-in-law or step parents. Employees will be entitled to compensation for one day to attend the funeral of the spouse's grandparents or of a son-in-law or daughter-in-law, brother-in-law or sister-in-law, aunt or uncle of the employee or spouse.

For the reasons stated below, it is clear to this arbitrator that the term "child of employee" does not include the relationship of step child.

In the agreement, the parties specified which relatives are covered under Article 19 Funeral Leave, as well as whether the relative's relationship is to the employe or to the employe's spouse. For example, the parties distinguished between the employe's parents and the parents of the employe's spouse. Thus, the language specifies that it covers not only "father" and "mother," the employe's parents, but the "father-in-law" and "mother-in-law," the spouse's parents, as well.

The parties also distinguished between types of siblings. The language specifies that funeral leave covers "sister" or "brother," as well as "brother-in-law" or "sister-in-law." Thus, it is clear that the employe's brothers and sisters are covered, as are those who are brothers and sisters by marriage: that is, spouses of the employe's brothers and sisters and brothers and sisters of the employe's spouse.

The parties made the distinction between the employe's and the spouse's family with other relatives as well. The language specifies "grandparents" as well as "spouse's grandparents," again distinguishing between the person related to the employe and to the employe's spouse. In terms of aunts and uncles, the language covers the "aunt or uncle of the employee or spouse," again specifying that the relative named is the relative of both the employe and the employe's spouse.

From this, it is clear that the terms "father," "mother," "brother," "sister," "grandparent," "aunt" and "uncle", standing alone, are specific to the employe and do not include those relatives of the spouse. The parties were clear that if they wanted to include the relative of the spouse, they said so specifically by using terms such as "in-law," "spouse's..." or "...of the spouse."

The same is true of children. Just as the parties distinguished between "father" and "father-in-law," for example, they also distinguished between "child of employee" and "son-in-law" and "daughter-in-law." Thus, the parties made it clear that the term "child of employe" did not include the child's spouse, that is, the "son-in-law" and "daughter-in-law," just as the term "father" did not include "father-in-law." If the term "child of employe" did include the child's spouse, the agreement would not specify that a "son-in-law" or a "daughter-in-law" is included.

The case at hand, however, covers a "step child." The parties were aware of and recognized "step" relationships in drafting Article 19 Funeral Leave. Not only is funeral leave granted for mother and father and mother-in-law and father-in-law, it is also granted for "step parents;" that is, step mother and step father. Just as the parties recognized a difference between the employe's parents and the spouse's parents, the parties recognized a difference between the employe's parents and the employe's step parents; if they did not, the agreement would not have to specify "step parents." In other words, the term mother and father, as used in this clause, does not include a step mother or a step father.

Yet the Association argues that the term "child of employe" includes step child, stating that a step child is consistent in relationship to a step parent for which the Grievant would have been entitled to three (3) days of funeral leave. This argument actually cuts the other way for such an interpretation is inconsistent with the precision with which the parties drafted this language. The parties specified that this language covered the relationship of mother and father as well as the relationship of step mother and step father, and they said specifically that three days of funeral leave would be granted upon the death of a step parent. No such specificity appears in this Article in reference to step children.

Indeed, whenever the parties wanted to grant funeral leave for a relative of the spouse, they so stated, specifying the relationship of the relative to the spouse. Based upon this, it is difficult to believe that the term "child of employe" includes the relationship of step child since the step child is the child of the employe's spouse. If the generic name includes a step relationship, the parties would not have specified that funeral leave was available both for the death of parents "or step parents." Everything in Article 19 shows that the parties were very specific and there is no reason to believe that the parties abandoned said specificity when it came to the step child relationship.

The Association also argues that common sense alone indicates that the term "child of employee" was intended to include step children. Such an argument might have been more persuasive if the term used had been "child;" however, the language does not say "child" but specifies "child of employe." What do the words "of employe" mean? The phrase "of employe" must mean something or why would the parties, who have been very specific in drafting this language, have included it? The term "child of employe" is more specific than the term "child". The term "child" might include a step child but the term "child of employe" does not. A step child is certainly a child, but the step child is not a child of the employe; the step child is the child of the employe's spouse.

Therefore, it is clear that the parties were very specific in delineating relationships which are covered by this language; that they made distinctions specifically as to whether the relationship is to the employe or to the employe's spouse; that they delineated, for example, that the employe's own parents (father and mother), the employe's spouse's parents (father-in-law and mother-in-law), and the employe's parent's spouse (step parents) are included

in funeral leave; that they did specify that the child of the employe is covered; but that the parties did not specify that the child of the spouse (the step child) is covered by this language.

Finally, the Association argues that the intention of funeral leave is to allow more time off for a closer familial relationship and that a stepchild who lives with the Grievant during the summer months is much closer that a father-in-law or mother-in-law with whom the Grievant would not live. While this may be true, the fact is that the language does not allow for it. Why the language does not allow for it is not contained in the record. Why the parties negotiated funeral leave for step parents and not step children in unknown to this arbitrator since no evidence was presented on this point.

The Association asserts that it is absurd that under the definition of "immediate family" in Article 18 Disability Leave or under the definition of "child" in the Wisconsin Medical Leave Act, the Grievant may have received time off to care for the step child if the child was sick, but that under Article 19 Funeral Leave she is excluded from the definition of "immediate family" upon the child's death and cannot attend the child's funeral. If it is absurd, it is of the Association's own making. It was the Association which agreed to different definitions of "immediate family" in Articles 18 and 19; if the same definition

was to apply to both, why did the parties specify different definition? And under the definition of "immediate family" in Article 19 Funeral Leave, the relationship of step child is not included.

For these reasons, based upon the foregoing facts and discussion, the Arbitrator issues the following

AWARD

1. The County did not violate Article 19 by refusing funeral leave for the death of the Grievant's step child.

2. The grievance is denied and dismissed.

Dated at Madison, Wisconsin, this 17th day of September, 1992.

By _____
James W. Engmann, Arbitrator

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