

BEFORE THE ARBITRATOR

In the Matter of the Arbitration
of a Dispute Between

MARATHON COUNTY OFFICE AND
TECHNICAL EMPLOYEES UNION, AFSCME
LOCAL 2492-E, AFL-CIO

and

MARATHON COUNTY (COURTHOUSE)

Case 234
No. 52561
MA-9023

(Pflieger Funeral Leave Grievance)

Appearances:

Mr. Phil Salamone, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO,
appearing on behalf of the Union.

Ruder, Ware & Michler, S.C., Attorneys at Law, by Mr. Jeffrey T. Jones, appearing on
behalf of the County.

ARBITRATION AWARD

Pursuant to a request by Marathon County Office and Technical Employees Union, AFSCME Local 2492-E, AFL-CIO, herein the Union, and the subsequent concurrence by Marathon County, herein the County, the undersigned was appointed arbitrator by the Wisconsin Employment Relations Commission on July 14, 1995 pursuant to the procedure contained in the grievance-arbitration provisions of the parties' collective bargaining agreement, to hear and decide a dispute as specified below. A hearing was conducted by the undersigned on September 7, 1995, at Wausau, Wisconsin. The hearing was not transcribed. The parties completed their briefing schedule on December 22, 1995.

After considering the entire record, I issue the following decision and Award.

ISSUES:

The parties were unable to stipulate to the issues. The County frames the issues as follows:

Whether the County violated Article 16, paragraph B of the labor agreement by denying the grievant a paid day of funeral leave on January 5, 1995?

If so, what is the appropriate remedy?

The Union agrees with the County's framing of the issues except that it would substitute the words "collective bargaining agreement" for the specific contract provision ("Article 16, paragraph B") included in the County's statement of the issues noted above.

Based on the entire record, the Arbitrator adopts the County's statement of the issues.

FACTUAL BACKGROUND:

On January 5, 1995, John Pflieger, hereinafter the grievant, attended his uncle's funeral in Wausau, Wisconsin. The funeral began at 10:30 a.m., and was completed prior to 4:00 p.m.

The grievant was scheduled to begin work at 4:00 p.m. on January 5, 1995.

The grievant requested a full day of funeral leave for January 5, 1995, which was denied by his immediate supervisor, Ken Mesenberg because the "10:30 funeral did not interfere with his work schedule". Mesenberg did, however, approve the grievant's subsequent request to use a vacation day to visit with family and relatives from Florida.

The grievant contacted Brad Karger, County Personnel Director, on the same day to appeal the denial of funeral leave and to restate his request for a full day of funeral leave. Karger responded that an hour or two of funeral leave would be granted if the family gathering extended beyond the commencement of the grievant's normal work time. The grievant subsequently indicated to Karger that he wished the entire day off as funeral leave to permit him to visit with a cousin from Florida whom he had not seen in a long time. Karger advised him that he was not entitled to funeral leave to visit with his cousin.

The Union offered testimony and evidence regarding a past practice where employees who worked beyond 5:00 p.m. were given funeral leave even though the funeral did not take place during their work hours. The Union cited eleven (11) employees who fell into this category from January 1, 1994 through April 26, 1995. Of the eleven (11) employees, two took three days of funeral leave for a death in the immediate family. Of the remaining nine (9) employees, some employees worked in Dispatch and Corrections in the Sheriff's department while others worked in the Maintenance department like the grievant. They worked various shifts including 3:00 p.m. to 11:00 p.m., 10:20 p.m. to 6:20 a.m., and 11:00 p.m. to 7:00 a.m. It is not known at what time the funerals took place that these employees received funeral leave for, whether travel time was involved, whether there were family gatherings connected with the funerals or, for some, which member of the employee's extended family died, necessitating the funeral leave.

PERTINENT CONTRACTUAL PROVISIONS:

Article 16 - Funeral Leave

- A. Immediate Family: In the event of a death in the immediate family of a regular full-time employee, the employee may request funeral leave from the department head and upon

such request be granted up to but not to exceed three (3) working days with pay for the purpose of arranging for and attending the funeral. Immediate family, for purposes of this section, shall mean the employee's spouse, children, step-child, parents, step-parents, brother, sister, mother-in-law, or father-in-law.

- B. Other: In the event of a death of a member of extended family of a regular full-time employee, the employee may request funeral leave from the department head and upon request be granted funeral leave of up to one (1) working day for attending the funeral. Extended family means the regular full-time employee's aunt, uncle, niece, nephew, brother-in-law, sister-in-law, grandparents, grandchild, or any person who has resided with the employee immediately preceding the person's death.

PARTIES' POSITIONS:

The Union basically argues that "attending" a funeral involves more than just the funeral itself and includes family gatherings afterwards as well as attending to personal needs as part of the grieving process. The Union maintains that the grievant should have been granted one day of funeral leave for these purposes even though the funeral in question was completed prior to the start of the grievant's shift. The Union adds that in the past the County has granted funeral leave to employees where the funeral did not take place during an employee's work shift. For a remedy, the Union requests that the Arbitrator sustain the grievance, and order the County to make the grievant whole for all losses incurred.

The County, on the other hand, initially argues in its brief that the language of Article 16, paragraph B is clear; and provides for one day of funeral leave only "for attending the funeral". The County points out that it is undisputed the grievant attended his uncle's funeral prior to the start of his work shift on the date in question. The County adds that it customarily allows employees funeral leave to attend family gatherings after the funeral but the grievant made no such request herein. The County rejects the Union's reliance on past practice as not applicable to the instant dispute, contrary to the aforesaid clear contract language, and nullified by the agreement's "zipper" clause, Article 30. In addition, the County argues that the Union's interpretation of Article 16, paragraph B would create an absurd result if accepted because "the Union would have the Arbitrator interpret Article 16(B) to mean whenever a family member encompassed by the language of Article 16(B) should die, the employee is entitled to one day of paid funeral leave regardless of the reason that the employee desires the paid day off". (Emphasis supplied)

In its reply brief, the County first argues that the Union has misstated the evidence in the case in that "There is absolutely no evidence in the record that there was a 'gathering' after the funeral for the Grievant's uncle, at which friends and relatives of the deceased 'collected in order to grieve further and socialize'. In fact, the evidence demonstrates to the contrary".

The County next argues that the Union's other arguments are without merit. In this regard, the County opines that the grievant was not entitled to funeral leave under the dictionary definition of the term relied upon by the Union since he "did not desire funeral leave to attend an observance held for his uncle before burial. . . . Rather, he desired funeral leave to socialize with his cousin from Florida". In addition, the County notes "The fact that the Labor Agreement does not prohibit employes from using funeral leave for this purpose, hardly grants employes the right to do so". The County adds that when interpreting funeral leave provisions, arbitrators have traditionally read such provisions narrowly. Here, the County points out, the contract states that employes are entitled to funeral leave for purposes of attending the funeral, and nothing else. (Emphasis supplied) Finally, the County contends that employes who work on the second and third shift are not excluded from funeral leave pursuant to the aforesaid contract provision as claimed by the Union.

Based on all of the above, the County argues that the Union has not sustained its burden of proof that there was a contract violation and requests that the grievance be denied and the matter be dismissed.

DISCUSSION:

At issue is whether the County violated Article 16, paragraph B by denying the grievant a paid day of funeral leave on January 5, 1995. The Union argues the County violated the agreement while the County takes the opposite position. For the reasons discussed below, the Arbitrator finds that there was no contract violation.

The Union first argues that in the absence of clear contract language defining what constitutes a "funeral" the Arbitrator should find that the parties intended the universally accepted meaning of the term. This means, according to the Union, more than attending the funeral itself, it includes family gatherings afterwards as well as taking care of personal needs as part of the grieving process. In particular, the Union cites the definition of "funeral" found in Websters Ninth New Collegiate Dictionary, p. 498 (1986):

The observances held for a dead person usually before burial or cremation

for the belief "that this definition could easily apply to a gathering of friends and relatives of the deceased who continue to grieve subsequent to the formal wake or funeral ceremony". However, the problem with this approach is that Article 16, paragraph B clearly provides for one day of funeral leave only "for attending the funeral". It is undisputed that the grievant attended his uncle's funeral prior to the start of his shift on the date in question. Nor is the above dictionary definition applicable to the instant dispute since the grievant did not request time off to attend an "observance" for his uncle after the funeral -- rather he asked for time off only to socialize with a relative he hadn't seen for a while. There is no persuasive evidence in the record that this request to visit with a cousin was part of a family gathering connected to the grieving process. Finally, the above dictionary language does not say anything about time off to attend to personal needs as

argued by the Union. Nor does the parties' practice support such an interpretation.

The Union next argues that the County's interpretation of the disputed contract language would exclude second and third shift employees from the aforesaid funeral benefit and the parties could not have intended such a result when they agreed to the language of Article 16, paragraph B. The Union maintains that it is the Arbitrator's role to, if possible, ascertain and give effect to the mutual intent of the parties who bargained the contract, and that the Arbitrator should avoid an interpretation that would exclude certain employees from the funeral leave benefit. However, the disputed contract language on its face does not exclude second and third shift employees. Nor does the parties' practice support such a result. Finally, Brad Karger testified unrefuted for the County that if an employee needed time off to "attend" a funeral after his shift started, attendance in this case meaning the family observance afterwards i.e. the "continuance of the funeral", he/she would be granted funeral leave to attend such an event. Therefore, the Arbitrator rejects this claim of the Union as well.

The Union further argues that the past practice of the parties supports its position. However, while the testimony at hearing establishes that represented employees who work night shifts have not been deprived of the opportunity to utilize funeral leave in cases where the formal ceremony occurred on the same day, but outside of their scheduled work time, there has been no showing that the County has granted funeral leave to bargaining unit employees simply to socialize or visit with relatives outside of the grieving process. In addition, the Union did not provide any relevant details regarding the granting of said funeral leaves. Therefore, the examples relied upon by the Union in support of its position are inapplicable to the instant dispute.

Based on all of the foregoing, and absent any persuasive evidence to the contrary, the Arbitrator finds that the answer to the issue as framed by the County is NO, the County did not violate Article 16, paragraph B of the labor agreement by denying the grievant a paid day of funeral leave on January 5, 1995, and it is my

AWARD

The grievance filed in the instant matter on January 16, 1995 by John R. Pflieger is hereby denied, and the matter is dismissed.

Dated at Madison, Wisconsin this 7th day of March, 1996.

By _____
Dennis P. McGilligan, Arbitrator

