

BEFORE THE ARBITRATOR

In the Matter of the Arbitration
of a Dispute Between

CITY OF MANITOWOC WASTEWATER
TREATMENT PLANT EMPLOYEES LOCAL 731,
AFSCME, AFL-CIO

and

CITY OF MANITOWOC (WASTEWATER
TREATMENT PLANT)

Case 122
No. 53142
MA-9250

Appearances:

Mr. Gerald D. Uglund, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, appearing on behalf of the Union.

Mr. Patrick L. Willis, City Attorney, appearing on behalf of the City.

ARBITRATION AWARD

The Employer and Union above are parties to a 1992-94 collective bargaining agreement which provides for final and binding arbitration of certain disputes. The parties requested that the Wisconsin Employment Relations Commission appoint an arbitrator to resolve the grievance of Ray Mellberg, concerning funeral leave.

The undersigned was appointed and held a hearing on November 28, 1995 in Manitowoc, Wisconsin, at which time the parties were given full opportunity to present their evidence and arguments. No transcript was made, both parties filed briefs, and the record was closed on February 27, 1996.

Issues:

The parties stipulated to the following:

Did the Employer violate the collective bargaining agreement by not treating Raymond Mellberg's attendance at his sister-in-law's funeral during his vacation as funeral leave?

The parties stipulated that in the event the Union prevails on the issue above, the remedy is restoration of one day's vacation to the grievant's account.

Relevant Contractual Provisions:

ARTICLE XV

FUNERAL LEAVE

Employees shall be permitted to attend the funeral of a parent, spouse, or child up to a maximum of three (3) days without loss of pay. Employees shall also be permitted to attend the funeral of a brother, sister, father-in-law, mother-in-law, or step-child for one (1) day without loss of pay. If more time is required to attend the funeral of one of these relatives, the employee may be granted an additional one (1) or two (2) days as required, with the prior consent of the employee's department head.

Discussion:

The facts are not in dispute. Grievant Raymond Mellberg was on vacation when his sister-in-law died. The grievant attended the funeral, but did not notify the Wastewater Treatment Plant's management of the funeral until he returned to work. Upon his return, the grievant requested that one day of his vacation be converted to funeral leave. Management did not immediately deny the request or agree to it, but upon review by the City Attorney, the request was denied.

The grievant was the sole witness, and testified that he had received funeral leave on one other occasion, when his brother had died and the funeral had been scheduled for a day he was expected to work. He had been given funeral leave for that occasion upon request. The grievant testified that he did not know of any instance in which another employee had gone to a funeral on a scheduled off day. There is no dispute that while the grievant received the same pay for the pay period in question as normally, the difference appears in his vacation account. It is also undisputed that the City did not ask for any verification of the funeral leave request, and that the plant's need for advance notice was not at issue since the grievant was already absent.

The Union's Position:

The Union contends that the language of the Agreement is clear. Employees are permitted to attend the funeral of a sister-in-law "for one day without of loss of pay". The Union argues that the grievant caused no harm to the Employer by notifying the Employer upon his return to work, because since he was already on vacation, there was no need to alter the schedule. The Union further notes that verification of the funeral leave was not raised as an issue by City. The Union argues that in effect, the grievant was denied the value of one day's vacation by the City's refusal to convert that day into funeral leave, and notes that the grievant testified that this

amounted to eight hours' pay at \$13.87 an hour. The Union requests that the grievance be sustained and the City ordered to make the grievant whole for the eight hours of vacation lost.

The Employer's Position:

The City contends that the grievant admitted that he received his full vacation pay for the time he was gone. The City contends from this that the grievant did not suffer any "loss of pay" for attending the funeral. The City argues that there can be no doubt that the grievant was "both permitted to attend the funeral" and that this was "without loss of pay". The City argues that the fact that this occurred during his vacation is similar to a situation in which a funeral occurs on an employe's scheduled off-day. The City argues that the contract does not require separate funeral leave payment in either event. The City further argues that there is no evidence that any employe has ever substituted a type of leave for another type of leave after the fact, and that there is nothing in the collective bargaining agreement to authorize such a privilege. The City requests that the grievance be denied.

Discussion:

There is certainly a sense in which the grievant could be said to have lost something as compared with a situation in which the funeral in question arose on a scheduled work day. Numerous arbitrators, however, have addressed similar factual situations, and have generally found that a loss in this sense does not rise to the level which would make a funeral leave clause such as this agreement's an ambiguous one. For example, the standard desk reference How Arbitration Works 1/ notes (at page 759) that "where the language used is 'pay for time lost' or 'paid leave of absence' while attending the funeral of a family member, arbitrators generally have denied such pay when the employe was already on vacation or otherwise not scheduled to work." The numerous cited cases note exceptions only where the contract language is less specific than the cited language (which is similar to that present here) or where there is a conflicting practice. In this instance, there is no conflicting practice, and I am drawn to the conclusion that the general expectations of parties from many years of consistent interpretation by arbitrators should not be lightly challenged. Since it is literally true that the grievant did not suffer a loss of pay, and since this appears to be the general interpretation arrived at under many similar contracts, I conclude that the Union's alternative interpretation is less persuasive than the Employer's. In reaching this conclusion I am also influenced by the lack of any evidence that any employe of the City has been granted funeral leave for any other occasion on which he or she was not scheduled to work.

For the foregoing reasons, and based on the record as a whole, it is my decision and

1/ Elkouri & Elkouri, 4th Edition, 1985.

AWARD

1. That the City did not violate the collective bargaining agreement by denying the grievant's request to convert a day of vacation to a day of funeral leave.
2. That the grievance is denied.

Dated at Madison, Wisconsin this 29th day of May, 1996.

By _____
Christopher Honeyman, Arbitrator