

BEFORE THE ARBITRATOR

In the Matter of the Arbitration
of a Dispute Between

PARA-PROFESSIONAL EMPLOYEES
ASSOCIATION OF THE BROWN COUNTY
DEPARTMENT OF SOCIAL SERVICES

and

BROWN COUNTY, WISCONSIN

Case 593
No. 53564
MA-9390

Appearances:

Mr. Frederick J. Mohr, Attorney at Law, 414 East Walnut Street, Suite 261, P. O. Box 1015, Green Bay, Wisconsin 54305, for Para-Professional Employees Association of the Brown County Department of Social Services, referred to below as the Association.

Mr. John C. Jacques, Assistant Corporation Counsel, Brown County, 305 East Walnut Street, P. O. Box 23600, Green Bay, Wisconsin 54305-3600, for Brown County, Wisconsin, referred to below as the County or as the Employer.

ARBITRATION AWARD

The Association and the Employer are parties to a collective bargaining agreement which was in effect at all times relevant to this proceeding and which provides for the final and binding arbitration of certain disputes. The Association requested, and the Employer agreed, that the Wisconsin Employment Relations Commission appoint an Arbitrator to resolve a dispute reflected in a grievance filed on behalf of Chris Belanger, referred to below as the Grievant. The Commission appointed Richard B. McLaughlin, a member of its staff. Hearing on the matter was held on March 21, 1996, in Green Bay, Wisconsin. The hearing was transcribed, and the parties filed briefs by May 1, 1996.

ISSUES

The parties stipulated the following issues for decision:

Did the County violate Article 21 by denying the Grievant's request for funeral leave for the death of her husband's step-mother?

If so, what is the appropriate remedy?

RELEVANT CONTRACT PROVISIONS

ARTICLE 21. 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 the employee's knowledge of said death. Should a funeral be delayed for any reason, the employee may substitute one (1) normally scheduled work day from within those three (3) succeeding days to allow the attendance of the employee at the immediate family's funeral (as an explanation, the members should be aware that the individual can only substitute a work day, not a Saturday). If an employee receives said knowledge prior to the start of that employee's work day, that day shall be deemed to be the first day of funeral leave. If, however, the employee receives knowledge after the start of that employee's work day, then the immediately succeeding day shall be deemed to be the first day of funeral leave. Should such death occur during an employee's vacation, he/she shall receive the additional time off with pay at a time to be mutually agreed upon. Compensation shall be at the regular hourly rate of said employee for a normal workday.

"Immediate family" is defined as wife, husband, father, mother, guardian, sister, brother, child or stepchild 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.

BACKGROUND

The grievance, filed on November 20, 1995, states the following under the heading "REASON FOR GRIEVANCE:"

Funeral leave was requested for November 15, 1995, as a result of the death of (the Grievant's) husband's stepmother. Under our funeral leave provision, "immediate family" is defined, among other

things, as mother-in-law.

The grievance states the following as the "SPECIFIC ADJUSTMENT REQUESTED:"

Three (3) days' pay at nine (9) hours per day.

In the cover letter accompanying the grievance, the Association's legal counsel noted:

I am filing a grievance on behalf of (the Grievant) as a result of the denial of her funeral leave request. In that regard, I am including a copy of the definition of "mother" found in Webster's Random House Unabridged Dictionary. Please note that this definition would include a stepmother. Also note that there is no definition in any legal or other dictionary for the term "stepmother-in-law." Regarding the in-law status, the proper term to use is "mother-in-law" even though the relationship between the spouse may be one of stepmother . . .

Debra Keckeisen, the County's Interim Human Resources Director, summarized the processing of the grievance in a memo to the Association's Legal Counsel dated December 21, 1995, and stated the following as the County's position on the grievance:

The County takes the position that this is not an allowable funeral leave request, since step mother-in-law is not specifically covered in Article 21., Funeral Leave in the Collective Bargaining Agreement . . .

This grievance is denied.

At the arbitration hearing, only the Grievant testified, and the facts are undisputed.

The Grievant's husband's step-mother died on Monday, November 13, 1995. The Grievant and her husband had, at that time, been married roughly twenty-eight years. The Grievant's husband's step-mother had been his step-mother for roughly thirty-eight years.

At the time of the death, the Grievant was working on a flex-time schedule. She worked thirty-seven and one-half hours per week between 7:00 a.m. and 5:00 p.m. On Monday, Tuesday and Thursday, she would work nine and one-half hours per day, and on Wednesday she would work nine hours per day. She learned of the death Monday evening. On the following day, she worked 3.75 hours and, after informing her supervisor of the situation, left work to assist in making the funeral arrangements. On Thursday, the day of the burial, her supervisor phoned her to advise her that she would not receive funeral leave. The Grievant then substituted comp time for the denied funeral leave.

The Grievant made a claim for 24.25 hours of funeral leave. This reflected 5.25 hours of leave for Tuesday, and 9.5 hours of leave for Wednesday and Thursday. The parties stipulated, at the arbitration hearing, that "for purposes of interpreting the funeral leave language of the contract, a day is 7.5 hours of time credited versus whatever the actual day may have been scheduled to be under the flexee (sic) time program." 1/

Further facts will be set forth in the DISCUSSION section below.

THE ASSOCIATION'S POSITION

The Association notes that the "facts related to this matter are not in dispute," and that the "issue for resolution is simply one of contract interpretation." Because the contract does not define "mother-in-law," the Association urges that recourse to the dictionary is appropriate. The Random House Unabridged Dictionary, Second Edition, (New York, 1993), does not, the Association notes, define "step-mother-in-law," but does include, within the definition of "mother" the following: "a mother-in-law, stepmother, or adoptive mother." Since "stepmother" is included in the definition of "mother," the Association concludes that "(a) mother-in-law, *ipso facto*, would therefore include the relationship subject in this dispute."

The evidence underscores this conclusion, according to the Association. The Grievant was called upon to make the funeral arrangements for the deceased, who was the Grievant's husband's step-mother for thirty-eight years.

Anticipating County arguments, the Association urges that the singular reference to "mother-in-law" cannot persuasively be read to deny the entitlement it urges here. That the agreement refers to "sister, brother, child and stepchild" in the singular undercuts, the Association asserts, the County's position. The Association then contends that since the "contract specifically includes stepchildren and stepparents" it must follow that "'(s)tep' relationships are included within

1/ Transcript at 16-17.

the definition of 'immediate family' in the contract." Because it is "only grammatically correct to refer to a "step-mother-in-law" as a "mother-in-law," the Association concludes that the contract must be read broadly, to include step relationships within the term "mother-in-law." Arbitral precedent, the Association asserts, further underscores this broad reading of the funeral leave provision.

The Association concludes that "the Grievant should have been granted the funeral leave she requested."

THE COUNTY'S POSITION

The County contends that it "denied the grievance because of the contractual language set forth in the collective bargaining agreement at Article 21." That provision, the County argues, defines "immediate family" to include "mother-in-law" or "step parents." The County emphasizes that this definition does not mention an employee's husband's step-mother. The County contends the following conclusion necessarily follows from this:

If the parties had intended that an employee's husband's stepmother were to be included as "immediate family," that could easily have been listed. The definition of "immediate family" relates to relationships to the employee, and not the spouse of an employee.

The exceptions listed at Article 21 extend only to an aunt or uncle of an employee's spouse.

The County then contends that Brown County, MA-7117 (Engmann, 9/92) should control the result here. The County notes that this decision dealt "with a similar issue relative to a labor agreement with the same contract language."

Contending that "(t)here is no recognized relationship for a 'stepmother-in-law' within this contract or for any other legal purposes," the County "requests that the grievance be denied."

DISCUSSION

The issue is stipulated and questions whether the Grievant's husband's step-mother can be considered her "mother-in-law" under Article 21. Although the Association's policy and grammar-based arguments linking the relationship at issue to Article 21 have considerable persuasive force, its interpretation cannot be accepted.

The bargaining parties define contractual terms. General considerations of policy or grammar become meaningful only to supply definitions not established by the parties. In this case,

Article 21 defines "Immediate family" and does so in a fashion not reconcilable to the Association's otherwise persuasive arguments.

The contract will not support the Association's assertion that the reference to "mother-in-law" is sufficiently broad to include the Grievant's husband's step-mother. The Association contends that "mother" has a dictionary meaning including "mother-in-law" or "step-mother." From this, the Association asserts that "mother-in-law" must be read to include "step-mother-in-law." The contract will not, however, support this reading.

The contract does not mirror the cited dictionary inclusion of "mother," "mother-in-law," and "step-mother." Rather, the first sentence of the second paragraph of Article 21 separately lists "mother," "mother-in-law" and "step parents." This usage is also applied to paternal relationships. The separate statement of "mother" and "mother-in-law" makes it impossible to conclude that the bargaining parties intended to use the term "mother" to broadly encompass a series of relationships. Rather, the separate statement of these relationships indicates the bargaining parties sought to specifically identify each relationship covered by Article 21.

The reference to "step parents" cannot persuasively be read to bring the relationship questioned here into the relationships covered by Article 21. The first sentence lists relationships personal to the employe, not to the employe's spouse. Spousal relationships are covered by the second sentence. More significantly, the Association's reading of the terms "mother" and "mother-in-law" renders the reference to "step parents" meaningless. If the Association's policy or grammar-based arguments are accepted, the parties had no reason to specify "step parents." If, however, the County's view is accepted, the reference to "step parents" supplemented the specific list of covered relationships.

In sum, the language of Article 21 establishes a specific list of covered relationships. To employ the Association's policy or grammar-based interpretation of "mother" renders the references to "mother-in-law" and "step parents" meaningless. That otherwise persuasive interpretation cannot, therefore, be accepted. The language of Article 21 establishes that the parties intended to create a specific list of covered relationships and did not anticipate the use of broad definitions to connote a series of relationships.

Before closing, it is appropriate to tailor this conclusion more specifically to the parties' arguments. The conclusion stated above is consistent with the rationale of the Engmann award. It should be noted that the Engmann award is not binding authority here. That award addressed a different bargaining unit and slightly different language. This cannot, however, obscure that the units involved before Engmann and here are within the same employing unit, that the same advocates argued the grievance posed to Engmann, or that the governing language is virtually identical. These facts are not without significance, and give the Engmann award persuasive force in this case. At a minimum, the Engmann award highlighted that the specific references of Article 21 would not be read broadly absent some evidence that the parties so intended. It can be noted

that the language at issue here separately states coverage for "child" and for "stepchild." This precludes the result reached by Engmann, who interpreted a reference to "child of employe." It does not, however, undercut the significance of Engmann's restrictive reading of the listed references. There is no evidence that the parties sought to broaden those references in response to his award. Even if it is assumed this unit bargained to avoid the specific result Engmann awarded in the Professional Employees unit, the bargained result is narrow and specific. The Association's attempt to make the references of Article 21 broad has no support in the Engmann award or its aftermath.

The Association's contention that granting the grievance would effect, on sympathetic facts, the broad purposes of funeral leave has considerable persuasive force. The Grievant suffered her husband's loss in a meaningful sense. She was looked to for assistance in making the funeral arrangements. That she learned of the denial of funeral leave on the day of a burial she helped to arrange poses a less than sympathetic background for the benefit denial posed here.

These general considerations cannot, however, be considered determinative. The issue posed is not whether she is to be denied paid leave for the funeral, but what form of paid leave she can, within the meaning of the contract, take. As noted above, the bargaining parties' intent, not general considerations of equity, governs this determination. The specificity of both paragraphs of Article 21 is striking. Whatever is said of the moral or personal sense of the list agreed to by the parties, its specificity is undeniable. The breadth of coverage sought by the Association in this grievance is without meaningful support in the language of Article 21. That language is what must be enforced in arbitration.

AWARD

The County did not violate Article 21 by denying the Grievant's request for funeral leave for the death of her husband's step-mother.

The grievance is, therefore, denied.

Dated at Madison, Wisconsin, this 18th day of June, 1996.

By Richard B. McLaughlin /s/
Richard B. McLaughlin, Arbitrator