

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

Case 118
No. 52918
MA-9154

Appearances:

Mr. Gerald D. Ugland, Staff Representative, Wisconsin Council 40, AFSCME,
AFL-CIO, appearing for the Union.

Mr. Patrick L. Willis, City Attorney, appearing for the City.

ARBITRATION AWARD

City of Manitowoc Wastewater Treatment Plant Employees, Local 731, AFSCME, AFL-CIO, herein the Union, requested the Wisconsin Employment Relations Commission to designate a member of its staff as an arbitrator to hear and to decide a dispute between the parties. The City of Manitowoc, herein the Employer, concurred with said request and the undersigned was designated as the arbitrator. Hearing was held in Manitowoc, Wisconsin, on June 18, 1996. A stenographic transcript was not made of the hearing. The parties completed the filing of post-hearing briefs on July 15, 1996.

ISSUES:

The parties stipulated to the following issues:

Did the Employer violate the collective bargaining agreement by denying the use of sick leave to Leo Kanugh on April 26, 1995? If so, what is the appropriate remedy?

BACKGROUND:

The grievant, Leo Kanugh, works at the Employer's wastewater treatment plant. At approximately 6:00 a.m. on April 26, 1995, Kanugh called the wastewater treatment plant to

report that he would be on sick leave on that date. His scheduled shift was from 7:00 a.m. to 3:00 p.m.

The general background of the situation prompting Kanugh to call in sick on April 26 is as follows. Kanugh's wife had a daughter, who was about eighteen years old, from her previous marriage. Late in the evening on April 25, the daughter visited Kanugh and his wife. The daughter was extremely disturbed and was seeking refuge because she had been physically abused by an unnamed source. They talked with the daughter until about midnight. Kanugh and his wife continued to discuss the situation until morning. Kanugh's wife had been physically abused by her previous husband and was very upset over the daughter's situation. Kanugh did not think he could leave her alone and go to work on April 26. At approximately 8:00 a.m. on the same date, Kanugh contacted the Lakeshore Mental Health Clinic to arrange for a counseling session with Dick Seifert. Seifert is a Clinical Therapist who had counseled Kanugh and his family on prior occasions. Seifert was not available on April 26. Kanugh then contacted his minister who met with Kanugh and Kanugh's wife from about 8:30 a.m. until a little after noon. When Kanugh returned to his home, he had a message to call Ron Clish, the Plant Superintendent. Kanugh telephoned Clish who said that Kanugh needed verification of where he had been and whom he had seen. Kanugh went and obtained a note from his minister verifying the meeting and stating that they had discussed some serious questions at length. Kanugh gave the note to Clish on April 27. Kanugh's next paycheck did include pay for April 26. However, about a week later, Clish told Kanugh that his use of paid sick leave on April 26 was denied, so he took vacation for said date.

Seifert testified that he believed the situation on April 26 both created a need for Kanugh's wife to have counseling and necessitated Kanugh to be with his wife.

Clish testified that, approximately two years previously, he had spoken to Kanugh about his frequent use of sick leave. When Kanugh said that he had been using sick leave for family counseling, Clish told him that since he was not married, the use of sick leave for family counseling was not appropriate.

When employees call the plant to report the use of sick leave, generally the employees do not state the specific purpose of the sick leave. One employee, Gary Free, testified that, about four to six years ago, he had used sick leave to attend counseling sessions involving his son. Free believes management was aware that he was using sick leave for those counseling sessions which occurred during his scheduled hours of work. Chester Tadych, the Administrative Assistant to Clish, testified that he did not recall ever being told by an employee that sick leave was being taken to attend a counseling session.

POSITION OF THE UNION:

Kanugh's wife was in emotional distress and needed counseling. Kanugh's use of sick leave to be with her was appropriate. Kanugh and another employee both testified that they previously had used sick leave for counseling with the Employer's knowledge. The Employer never gave the employees any notification that counseling no longer would be an appropriate use of

sick leave, despite the fact that it had been acceptable before.

There is no evidence of any wrong doing by Kanugh. The Employer is being unreasonable. The grievance should be sustained. Kanugh should have one day of vacation restored and should have one day deducted from his paid sick leave account.

POSITION OF THE EMPLOYER:

Kanugh's desire to be absent from work on April 26 is understandable. The question is not whether Kanugh had a legitimate reason for wanting the time off, but rather, whether that time off qualifies for sick leave under Section 2 (f).

The contract language at issue here is very specific and permits an employe to use sick leave for someone else's illness or injury in a very specific and limited circumstance. The note from Kanugh's minister only said that Kanugh had a long serious talk with his pastor about some unspecified topics. The note doesn't suggest that anyone suffered from any illness or injury, let alone Kanugh or a member of his immediate family living in his residence. Neither Kanugh nor his wife received any actual medical treatment on April 26. The primary patient on April 26 was the daughter of Kanugh's wife, who was not living with them. Viewed in the light most favorable to Kanugh, it could be argued that Kanugh's wife was suffering from some illness as a result of her daughter's situation. It is not clear, however, that Kanugh's presence was required at home because of his wife's condition, which is the contractual requirement. Even if there had been one or two instances where employes were allowed to use sick leave without meeting the at-home requirement, such isolated examples fail to demonstrate that the parties have a mutually acceptable practice of ignoring the at-home requirement.

The parties have agreed, through the negotiating process, on the limits for the use of sick leave. The fact that Kanugh had a legitimate reason to take time off to support his wife in her counseling treatment is not a reason to desecrate the clear contractual language by approving the use of sick leave. Changes in the contract should be made at the bargaining table and not through the grievance procedure. The grievance should be denied.

RELEVANT CONTRACTUAL PROVISIONS:

ARTICLE X

VACATION, SICK LEAVE, HOLIDAYS, AND
LEAVE OF ABSENCE

...

Section 2. Sick Leave.

. . .

(f) Use of Sick Leave. An employee may use sick leave with pay for absence necessitated by personal illness or injury incurred off of the job or if the employee's presence is required at home in the event of illness or injury of members of his family living in the employee's residence.

. . .

DISCUSSION:

The Employer asserts that the contract language at issue is very specific and permits an employee to use sick leave for someone else's illness or injury only in situations where a family member is sufficiently incapacitated such that the employee is required to stay at home to care for that family member. The Employer also questions whether the condition of Kanugh's wife constituted an illness under the contractual language. If the language was as clear as the Employer contends, then the language would not be open to more than one interpretation and would not need the Employer's clarification as set forth above. The American Heritage Dictionary of the English Language (New College Edition, 1981) gives the following definition of illness: "a. Sickness of body or mind. b. A sickness." Such a definition does not define sickness, nor does it exclude emotional conditions. Thus, the language is not clear on its face. Kanugh testified that his wife was so upset over her daughter's situation that he did not feel he dared to leave her alone. Seifert's testimony supported Kanugh's reason for being concerned. In light of the circumstances existing on April 25 and 26, the undersigned is persuaded that the emotional condition of Kanugh's wife met the contractual requirement of an illness.

The Employer further argues that even if the emotional condition of Kanugh's wife is considered to be an illness, it is not clear that Kanugh's presence was required at home, since the meeting with their minister was away from their home. Such an assertion ignores Kanugh's testimony at the hearing that his wife was so upset he did not think he dared to leave his wife home alone. Kanugh also testified that, after the counseling session, he was advised by Clish he needed verification of where he had been and whom he had seen. Kanugh went back to his minister and obtained a note verifying the session, which note was given to Clish on the following day. Upon returning home at approximately 1:15 p.m., after getting the note, Kanugh and his wife felt they needed to talk about some matters right away. Since Kanugh's scheduled shift for that date ended at 3:00 p.m., Kanugh did not think it made much sense to go to work at that point. It is clear that Kanugh believed that his presence was required both at home and at the counseling session because

of his wife's emotional state of mind. Based on the background of the situation on April 26, the undersigned concludes that there was a reasonable basis for Kanugh to stay home on April 26 and to request sick pay for his absence from work on that date. Therefore, the contractual requirement of "if the employee's presence is required" was satisfied.

The City's brief appears to argue that Article X, Section 2 (f) has been administered so that sick leave is denied if an employe, who stays home with a sick family member, leaves the home during the employe's scheduled work hours. However, the existence of such a practice of administration was not supported by any examples of the denial of sick leave if an employe left home either to take a member of the employe's family to the hospital or to a physician's office, or, to pick a prescription or run some other errand related to the family member's medical condition. Absent such proof, the undersigned is not persuaded that the contractual phrase "if the employee's presence is required at home" should be interpreted to mean an employe cannot take sick leave to accompany a family member to an appointment away from the home when the appointment is necessitated by the illness of the family member.

The Employer further contends that the Union failed to prove the existence of a practice by the Employer of allowing employes to use sick leave for the purpose of attending counseling sessions. Although both Kanugh and another employe, Gary Free, testified that they had used sick leave for the purpose of attending counseling sessions involving members of their family on previous occasions, the record is unclear as to whether the Employer knew of such use. Even if the Employer had known of such use, such isolated occurrences would fail to be very convincing that a past practice existed. Conversely, the Employer failed to present evidence of any prior instances where it had denied sick leave to an employe who was attending a counseling session involving a family member. The only offered example of a denial was an occasion about two years ago when Clish advised Kanugh that it was not appropriate to use sick leave to attend family counseling sessions since he was not married at that time. Said single example is insufficient to establish that the Employer has a policy, which policy has been made known to the employes, of not allowing employes to use sick leave to attend counseling sessions involving family members living in the employe's residence. Neither can it be concluded that, based on said incident, Kanugh should have been aware that after he got married he still would be unable to use sick leave to attend family counseling sessions.

Based on the foregoing, the undersigned enters the following

AWARD

That the Employer did violate the collective bargaining agreement by denying the use of paid sick leave to Leo Kanugh on April 26, 1995; and, that the Employer should credit Kanugh with one day of paid vacation and should deduct one day from Kanugh's paid sick leave account.

Dated at Madison, Wisconsin, this 16th day of January, 1997.

By Douglas V. Knudson /s/

Douglas V. Knudson, Arbitrator