

BEFORE THE ARBITRATOR

In the Matter of the Arbitration
of a Dispute Between

OSHKOSH FIREFIGHTERS, LOCAL 316

and

THE CITY OF OSHKOSH

Case 274
No. 54962
MA-9841

Appearances:

Mr. John C. Gee, Representative, 432 West Eighteenth Avenue, Oshkosh, Wisconsin 54901, appeared on behalf of the Union.

Mr. Warren Kraft, Attorney at Law, 215 Church Avenue, Oshkosh, Wisconsin 54901, appeared on behalf of the City.

ARBITRATION AWARD

On March 11, 1997, the Wisconsin Employment Relations Commission received a request from the Oshkosh Firefighters, Local 316, IAFF, to appoint an arbitrator to hear and decide a dispute pending between the Union and the City of Oshkosh. Following jurisdictional concurrence, the Commission appointed William C. Houlihan, a member of its staff, to hear and decide the matter. An evidentiary hearing was conducted on June 4, 1997, in Oshkosh, Wisconsin. At the conclusion of the evidentiary hearing, both parties requested, and the undersigned issued, a bench decision. This Award confirms that decision.

This Award addresses the right of a bargaining unit member to use funeral leave to attend the funeral of the grandparent of that employee's spouse.

BACKGROUND AND FACTS

David Gee is employed by the City of Oshkosh as a firefighter, and is a member of the bargaining unit. On February 13, 1997, the grandfather of Mr. Gee's wife passed away. On February 14, 1997, firefighter Gee requested the use of funeral leave to attend his wife's grandfather's funeral. His request was denied. That denial was grieved, and ultimately led to this proceeding.

The funeral leave provision, which governs this matter, was negotiated into the parties' 1970 collective bargaining agreement. It appears that the clause was not used as a basis for attending the funeral of the grandparent of an employee's spouse prior to approximately November of 1996.

On November 20, 1996, firefighter Chuck Hable approached Battalion Commander Joe Frank and requested funeral leave to attend his wife's grandfather's funeral. Hable asked Frank if he qualified for funeral leave. Frank, following consultation with a colleague, indicated that Hable was entitled to use funeral leave for that purpose. Hable subsequently filed for the leave, and left for the funeral. When Assistant Fire Chief Vincent Straus found out that Hable had been granted funeral leave to attend his wife's grandfather's funeral, he contacted the City's Director of Administrative Services, Norbert Svatos, and inquired as to the propriety of such use. Svatos advised Straus that the use was inappropriate, and Straus made a futile effort to attempt to contact Hable. The City initially revoked the approval of Hable's leave, and subsequently granted Hable the leave believing that he had relied upon the prior permission granted.

The City subsequently made clear to the Union its belief that the language did not cover this particular use of the leave. The Union subsequently made clear to the City that it believed the language did encompass such a leave.

Norbert Svatos testified that he administers eight separate collective bargaining agreements covering the employes of the City of Oshkosh. He further indicated that all of those contracts have essentially the same language with respect to the relatives covered by the funeral leave provision. Svatos testified that in the period of his tenure, beginning July 1, 1970, with the exception of the Hable incident, no employe had ever been granted leave to attend the funeral of a spouse's grandparents.

ISSUE

The parties were unable to stipulate to an issue. I believe the issue to be:

"Does Article XI, Funeral Leave, cover a grandparent of an employe's spouse?"

RELEVANT PROVISIONS OF THE COLLECTIVE BARGAINING AGREEMENT

ARTICLE XI

. . .

Funeral Leave

In the case of death in the immediate family of a regular employee (parents, children, wife, father-in-law, mother-in-law, brother, sister, brother-in-law, sister-in-law, step-child, step-parents, grandchildren, grandparents or guardian) the employee will be paid for the scheduled time lost from the day of death up to and including

the day of the funeral, but not to exceed three (3) scheduled work days for 40 hour employees (two days for other employees) at his regular straight time, hourly rate. No funeral leave will be paid to any employee while on sick leave or any leave of absence. In the event the employee is called off from duty because of death of an above relative, that duty day shall not be counted as part of this provision.

. . .

POSITIONS OF THE PARTIES

At the conclusion of the hearing, the parties made oral argument. Each party submitted numerous arguments in support of its position. Those arguments were each considered and addressed in the text of the bench decision. What follows is an abbreviated form of that decision.

AWARD

On its face, the contract refers to "grandparent". Read literally, and with the common use of terms, I would apply that term to include blood relatives of the employe(s). (Webster's Third New International Unabridged Dictionary). The language goes on to refer to the family of the employe. However, "family" is defined by the clause. I believe it noteworthy that in-laws and step-relatives are specifically mentioned. There is no such reference to "grandparent in-laws" or "spousal grandparents".

Curtis Wolff testified as a witness called by the Union. Mr. Wolff was the chief negotiator who negotiated this clause into the parties' 1970 collective bargaining agreement. Mr. Wolff testified that the language was intended to cover the grandparents of both the employe and the employe's spouse. Kurt Brandt testified on behalf of the Union, and corroborated Mr. Wolff's testimony.

Joe Frank testified, and indicated that he had used funeral leave to attend upon the funeral of his half-brother, half-brother-in-law, and half-sister. He further testified that the written request he made was for the funeral of a brother or sister. Frank's use of those terms was consistent with his view as to his relationship with those siblings. Frank testified that many departmental employes, including those in command positions, had actual notice of his familial circumstances and relationships. Frank went on to testify that it was his reading of the language that the grandparents of an employe's spouse were covered. His reading caused him to grant Hable's request as an appropriate use.

I concluded that there was no meaningful interpretive practice, or history. I found Mr. Wolff's testimony credible. However, there was no evidence that his understanding of the

use of the clause, as applicable to spousal grandparents, was shared by the Employer. I acknowledge that Mr. Frank's use of leave for his half-siblings constituted a non-literal application of the Article. It was undoubtedly known to departmental management. However, there is no indication that his use was known to higher management. I regard his use as being applicable to a different class of employees. I believe it is entirely possible to read this Article to be inclusive of a half-brother, who is still a brother, and not inclusive of a grandparent-in-law. This Award does not purport to address that matter, or to so construe this agreement.

I believe that Frank's grant of Hable's leave supports the Union's claim. However, that decision was subsequently reversed. The parties exchanged letters which indicated in explicit terms what their respective positions were. I believe the parties came into this proceeding with their eyes open as to one another's position.

There was a lengthy period where no one appears to have applied for this benefit. I believe the passage of such a lengthy period of time supports the Employer's claim that it was never intended for the purpose giving rise to this grievance. I also believe that the Employer's common administration of this clause across eight bargaining units supports the Employer's claim. However, I do not find that dispositive in that this union is not bound by the Employer's interpretation of language vis-a-vis other bargaining units.

In summary, I believe the collateral evidence was inconclusive. What is left are the words of the Agreement. Those words constitute the best evidence of the parties' intent. Read literally, I do not believe the funeral leave provision extends to the grandparents of an employe's spouse.

AWARD

The grievance is denied.

Dated at Madison, Wisconsin, this 23rd day of June, 1997.

By William C. Houlihan /s/
William C. Houlihan, Arbitrator