

BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between

**MONROE COUNTY HIGHWAY EMPLOYEES
LOCAL UNION NO. 2470**

and

MONROE COUNTY

Case 144
No. 57332
MA-10597

(Grievance of Kurt Schendel)

Appearances:

Mr. Daniel R. Pfeifer, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, on behalf of the Union.

Mr. Ken Kittleson, Personnel Director, on behalf of Monroe County.

ARBITRATION AWARD

The above-captioned parties, herein "Union" and "County", are signatories to a collective bargaining agreement providing for final and binding arbitration. Pursuant thereto, hearing was held in Sparta, Wisconsin, on May 27, 1999. The hearing was not transcribed and the parties thereafter filed briefs that were received by June 28, 1999. Based upon the entire record and the arguments of the parties, I issue the following Award.

ISSUE

The parties have jointly agreed to the following issue:

Did the County violate the contract by denying grievant Kurt Schendel paid sick leave to give care and attendance to a member of his immediate household and, if so, what is the appropriate remedy?

BACKGROUND

This case turns on whether the County violated Article 8, Section 4, of the contract when it refused to grant eight (8) hours of combined sick leave to grievant Kurt Schendel after he took Bonnie Backus - his then-live-in companion and now his wife - to a doctor in LaCrosse, Wisconsin, on August 25, 1998, and August 31, 1998, because she does not drive (unless otherwise stated, all dates herein refer to 1998.) By refusing to grant the sick leave requested, the County required Schendel to use eight (8) hours of his vacation time to care for Backus, who also is a County employe. On the August 25, 1998, and August 31, 1998, days in question, her address on file with the County was different than Schendel's. Nevertheless, and as I related at the hearing, I credit Schendel's uncontradicted testimony that she was a member of his household in August, 1998.

The Union asserted in the grievance procedure that sick leave should have been granted because Schendel's companion was a member of his immediate household, thereby qualifying him for sick leave pursuant to Article 8, Section 4, of the contract which states:

...

Section 4. Sick leave will be granted when an employee is required to give care and attendance to a member of his/her immediate family (spouse, child or other member of the employee's immediate household) up to a maximum of sixteen (16) hours per year. The hours, if needed, shall be taken from the annual accrual of sick leave of the employee.

...

The County denied the grievance on the ground that Schendel was not entitled to sick leave because the term "immediate family" in Article 8, Section 4, only refers to legal relatives and because it in the past has only granted sick leave to take care of an employe's legal relatives.

In this connection, County Personnel Director Ken Kittleson testified that in Article 8, Section 4, mirrors the County's long-standing Personnel Policy; that the County, pursuant to said policy has never granted sick leave to take care of someone who is not a legal relative; and that another County bargaining unit represented by the Teamster's union has agreed to the County's interpretation.

Highway Commissioner Jack Dittmer testified that the County Highway Department has never granted the sick leave sought here. However, he added on cross-examination that he is unaware of any instance of where employes have ever sought sick leave to care for someone who is not a legal relative.

POSITIONS OF THE PARTIES

The Union claims that the County violated Article 8 of the contract when it refused to grant Grievant Schendel's request for sick leave because the contract clearly and unambiguously provides for this benefit; because the County in past negotiations was unable to obtain contract language supporting its interpretation here; and because no past practice supports the County's claim. The Union therefore asks that Schendel be credited with "one (1) day of vacation and deduct one (1) day of sick leave."

The County contends that Article 8 limits sick leave to the legal members of an employe's "immediate family"; that past practice supports its position; and that said practice is consistent with its personnel policies. The County therefore claims that "Under the Union's interpretation, three single highway employees could rent a house together and if one called in sick, the other two could also take off using sick leave."

DISCUSSION

Article 8, Section 4, is not a model of clarity. That is why the Union can plausibly argue that the term "immediate family" includes "other members of the employe's immediate household." Here, since Schendel's then live-in companion was a member of his "immediate household", his grievance would have to be sustained if this interpretation is adopted. On the other hand, it is just as plausible that the term "immediate household" refers back to the term "immediate family" because it is an example of that term and that, as a result, no sick leave can be granted unless members of the "immediate household" are also part of an employe's immediate family. Given these plausible constructions, I conclude that the contract is ambiguous on its face and that it thus is proper to consider parol evidence such as past practice and bargaining history.

As for past practice, there is no record evidence that any employe was ever granted or denied time off to care for someone in an employe's "immediate household" who was not also a legal relative.

As to bargaining history, the County in 1997 and 1999 proposed language in contract negotiations that expressly mirrored the interpretation it advances here by inserting the term "relative who is a" before the word "member" (Joint Exhibits 2 and 3) so that Article 8, Section 4, would read:

“Sick leave will be granted when an employe is required to give care and attendance to a relative who is a member of his/her immediate family. . .”

While the County claims that its prior bargaining proposals only represented a “clarification of long-standing practice”, it is clear that the Union never agreed to those proposals.

Nevertheless, there is no proof that: (1), the Union in prior negotiations ever proposed that sick leave be granted to take care of someone who is in an employe’s “immediate household” and who is not a legal relative; and, (2), the County never agreed to any such a proposal. Hence, this benefit was never expressly bargained or obtained at the bargaining table when this language first came into the contract in 1993.

In this connection, Kittleson testified without contradiction that the County’s policy before 1993 was to limit the grant of sick leave to care for an employe’s legal relative. This practice was either known or should have been known to bargaining unit members when this benefit was first negotiated in 1993. That being so, it was incumbent upon the Union to obtain clear contract language granting this benefit. That, it did not do.

Hence, I conclude that Article 8, Section 4, does not allow an employe to use sick leave to care for someone who is not a member of his/her “immediate family” as that term is identified in the contract.

Based on the above, it therefore is my

AWARD

1. That the County did not violate the contract by denying grievant Kurt Schendel paid sick leave to give care and attendance to a member of his immediate household.
2. That the grievance is therefore denied.

Dated at Madison, Wisconsin this 19th day of July, 1999.

Amedeo Greco /s/

Amedeo Greco, Arbitrator

AAG/gjc
5900

