

BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between

LABORERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 140

and

SPARTA MANUFACTURING COMPANY, INC.

Case 42
No. 58554
A-5826

(William Schaefer, et al Grievance)

Appearances:

Mr. Kevin Lee, Business Manager, Laborers' International Union, Local 140, appearing on behalf of the Union.

Mr. Jeffrey Kilpin, Plant Superintendent, Sparta Manufacturing Company, Inc., appearing on behalf of the Company.

ARBITRATION AWARD

The Laborers' International Union of North America, Local 140 (herein the Union) and Sparta Manufacturing Company, Inc. (herein the Company) are parties to a collective bargaining agreement covering the period March 1, 1998, to February 28, 2001, and providing for binding arbitration of certain disputes between the parties. On February 15, 2000, the Union filed a request with the Wisconsin Employment Relations Commission (WERC) to initiate grievance arbitration over a denial of funeral pay allegedly due to William Schaefer, Steven Stone and David Brown (herein the Grievants) and requested the appointment of a member of the WERC staff to arbitrate the issue. The undersigned was designated to hear the dispute and a hearing was conducted on May 17, 2000. The proceedings were not transcribed and the parties did not file briefs.

ISSUE

The parties stipulated to the following statement of the issue:

Did the Company violate Article IX, Section 9, of the contract when it denied the Grievants funeral pay for the death of their step-mother and step-mother-in-law?

If so, what is the appropriate remedy?

PERTINENT CONTRACT PROVISION

. . .

Section 9. Funeral Leave

In case of necessary absence of an employee to attend or to make arrangements for a funeral of a member of his immediate family (spouse, son, daughter, sister, brother, mother, father, mother-in-law, or father-in-law) such employee will be paid for actual working time lost including the day of the funeral but not to exceed three (3) days, at his regular hourly rate and not to exceed the three (3) days, however, if requested by the employee additional time will be granted without pay. No funeral leave will be paid for Saturday, Sunday or for any days on which holiday pay is paid.

. . .

BACKGROUND

The Grievants are all employees of Sparta Manufacturing Company., Inc, and members of the bargaining unit. In January, 2000, the Grievants requested funeral leave subsequent to the death of Lucille Schaefer, who was the step-mother of William Schaefer and his two sisters, who are also the wives of Steven Stone and David Brown. The request was denied. A grievance was filed on behalf of all three Grievants, alleging that the Company has, in the past, granted paid funeral leave for the deaths of step-parents and step-children, establishing a precedent for the interpretation of the funeral leave provision. The grievance was denied and the matter proceeded to arbitration. Additional facts will be referenced, as necessary, in the discussion.

POSITIONS OF THE PARTIES

The Union

Lucille Schaefer was married to the father of William Schaefer and his sisters for 21 years. During this time, the two sisters married Steven Stone and David Brown. Thus, she

was Schaefer's step-mother for many years and was, in fact, the mother-in-law of Stone and Brown. The collective bargaining agreement provides for up to three days funeral leave for the death of a mother-in-law. The Union further contends that the Company has an established past practice of granting funeral leave for the death of step-relations. For this reason, the Company is in violation of the collective bargaining agreement and the Grievants are entitled to be paid for three days of funeral leave each.

The Company

Article IX, Section 9, of the collective bargaining agreement determines who qualifies as immediate family for the purposes of funeral leave. Step-relations do not constitute immediate family under that provision. Further, the decedent was not the mother-in-law of Stone and Brown, but was their step-mother-in-law, because she was the step-mother of their wives. Therefore, they are also precluded from funeral leave. There have been occasions where funeral leave has been given for the deaths of step-relatives, but these instances were mistakes where the true nature of the relationship was not discovered until after the fact. There is no established past practice of granting funeral leave for the deaths of step-relations.

DISCUSSION

The contract language specifies that an employe may receive up to three days of paid leave for the death of a member of the immediate family, defined as a spouse, son, daughter, sister, brother, mother, father, mother-in-law or father-in-law. The contract makes no reference to step-parents, step-children, step-siblings or half relations. The Union argues, however, that the definition should be broadened to include the decedent, who was the step-mother of one Grievant and the step-mother-in-law of the other two Grievants.

One argument advanced for doing so is that the generic terms 'mother,' 'father,' 'sister,' 'brother' and so forth may encompass step relations and relations of the half blood. Such a view is not without precedent. Some arbitrators, emphasizing the closeness of the relationship, have extended the language of similar funeral leave provisions to step and half relations [Cf; FOREMOST DAIRIES, INC., 43 LA 616 (GREENWALD, 1964)]. This is not, however, a universally held view and other arbitrators have held that such clauses should be strictly construed. [Cf; BROWN COUNTY, CASE 593, NO. 53564, MA-9390 (MCLAUGHLIN, 1996)]. Typically, the rules of contract construction would favor the latter view because arbitrators will usually give words their ordinary and accepted meanings, unless there is evidence that the parties intended otherwise.

In this case, the evidence suggests to the contrary. At the hearing, Charles Vian, an employe of Sparta Manufacturing, testified that he was aware of at least three instances where the Company had given paid funeral leaves to employes for the deaths of step-relations. He also testified, however, that he was aware of instances where employes have not received

funeral leave for the deaths of step-relations. Additionally, Jeff Kilpin, the Company's Plant Superintendent, testified that on the occasions where funeral leave was given, the Company did not discover the true nature of the relationship until after the fact. Given this background, it is probable that the parties did not specifically intend the language of the provision to cover step-relations, otherwise one would have expected each denial of the benefit to result in a grievance, which is not the case. I do not find, therefore, that the language of the contract covers step-relations.

The Union also argues that there is an established past practice of allowing paid funeral leave for step-relations, based upon the instances cited by Vian, thus binding the Company to provide the benefit to the Grievants. For a variety of reasons, I am not persuaded by this argument. In the first place, past practice usually becomes relevant only where the contract is silent or the underlying contract language is ambiguous, which is not the case here. Where past practice has been used to modify clear language, it is usually where, through consistent application, it reflects a clear intention by the parties to modify the language of the contract. Such is not the case here.

Further, to qualify as a binding past practice, certain criteria must exist. Specifically, the practice must be (1) unequivocal; (2) clearly enunciated and acted upon; (3) readily ascertainable over a reasonable period of time as a fixed, and established practice accepted by the parties. [Cf.; CITY OF CUMBERLAND, Case 18 No. 55310 MA-9976 (Meier, 4/23/98)]. In this case, the criteria for establishing a binding past practice have not been met.

The record reveals that in the past certain employees have received paid leave for the funerals of step-relatives. The Company contends that this has only occurred rarely, and then only due to mistake, because the fact of the step-relationship only became known later. Whether or not this is the case, however, it is undisputed that other employees have not received paid leave after the deaths of step-relatives and that until now the denial has gone unchallenged. Clearly, therefore, this practice, if practice it is, is not unequivocal, because it has not been applied uniformly, nor apparently have employees objected in the past when the benefit has not been extended. It appears that the benefit may have been extended inadvertently or arbitrarily, but it has not been extended consistently. Under the circumstances presented here, the criteria set forth in CITY OF CUMBERLAND have not been met. For that reason, I cannot find that there is an established past practice of granting paid funeral leave to employees in the event of the deaths of step-relations.

I turn, finally to the Union's contention that the deceased was not the step-mother-in-law of the Grievants Stone and Brown, but was, in fact, their mother-in-law, which is a covered relationship under the contract language. This argument is based upon the fact that the deceased was married to the father of the Grievants' wives at the time of their respective marriages and, thus, is the only mother-in-law they have, or could have, ever known. While this argument has appeal, however, I cannot reach the same conclusion. Were the wives of Stone and Brown employees of the Company and Grievants in this matter, as step-daughters of

the deceased they would not be entitled to funeral leave under the same reasoning applied to Schaefer. It would not be logical to construe the contract language to then extend a benefit to those even further removed in degree of relationship.

Further, "in-law" status is, by definition, conferred by marriage and has, by custom, the effect of extending one spouse's family relationships to the other spouse, but has not the effect of law. One does not, by marriage alone, become a legal heir, nor automatically succeed to any of the appurtenances of family status. Thus, where contracts provide paid leave for the deaths of in-laws, it is the deceased's relationship to the employe's spouse, not to the employe, which is the determining factor. For this same reason, an employe would not under the language used here, be entitled to funeral leave for the death of the natural mother of his ex-wife. While the deceased would at one time have been the employe's mother-in-law, the divorce would have the effect of sundering that relationship as well. Marriage, therefore, cannot confer greater rights or closer familial status on the Grievants here than that possessed by their spouses.

Based upon the foregoing and the record as a whole, the undersigned enters the following

AWARD

The Company did not violate the language of the contract or past practice in denying funeral leave to the Grievants. The grievance is, therefore, denied.

Dated at Eau Claire, Wisconsin, this 31st day of August, 2000.

John R. Emery /s/

John R. Emery, Arbitrator