

BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between

PRICE COUNTY

and

PRICE COUNTY PROFESSIONAL DEPUTIES ASSOCIATION, LOCAL 116

Case 87

No. 63662

MA-12661

Appearances:

Patrick J. Coraggio, Labor Consultant, Labor Association of Wisconsin, N116 W16033 Main Street, Germantown, Wisconsin 53022, appearing on behalf of Price County Professional Deputies Association, Local 116.

Lori Blair-Hill, Human Resources Coordinator, Price County Human Resources, 126 Cherry Street, Phillips, Wisconsin 54555 appearing on behalf of Price County.

ARBITRATION AWARD

Price County, hereafter County or Employer, and Price County Professional Deputies Association, Local 116, hereafter Association, are parties to a collective bargaining agreement covering the period January 1, 2002 through December 31, 2004 that provides for the final and binding arbitration of grievances. The Association, with the concurrence of the County, requested the Wisconsin Employment Relations Commission to appoint a Commissioner or member of the Commission staff to hear and decide the instant grievance. Commissioner Susan J.M. Bauman was so appointed on May 23, 2004. A hearing was held on September 9, 2004, in Phillips, Wisconsin. The hearing was not transcribed and the parties made post-hearing oral arguments. The record was then closed and the parties requested an expedited decision.

ISSUE

The parties did not agree on the Issue. The Association frames the issue as follows:

Did the County violate the expressed and implied terms of the collective bargaining agreement when it denied the grievant's request for 3 days of Funeral Leave for the death of her grandfather in January 2004? If so, what is the correct remedy?

The Employer frames the issue as:

Did the Employer violate the terms and conditions of the collective bargaining agreement when it denied the grievant's request for 3 days of Funeral Leave for the death of her grandfather in January 2004? If so, what is the appropriate remedy?

The parties agreed that the Arbitrator should determine the issue to be decided. The undersigned adopts the Employer's statement of the issue.

RELEVANT CONTRACT PROVISIONS

Although there are a significant number of contract provisions relevant to the determination of this grievance, the contract provision to be interpreted by the Arbitrator is **Article 17 – FUNERAL LEAVE:**

Employees shall be allowed three (3) days funeral leave in the event of the death in the immediate family (spouse, children, mother, father, mother-in-law, father-in-law, sister, brother, or the grandparents of the employee or spouse). One (1) day shall be allowed in the event of death of a brother-in-law or sister-in-law. This leave shall not be part of sick leave.

DISCUSSION

Prior to January 6, 2003, all members of the Association, be they assigned as Law Enforcement Officer-Dispatch, Law Enforcement Officer-Road, or Jail Officer, worked 8 hour shifts. In bargaining a successor to the January 1, 1999 through December 31, 2001 collective bargaining agreement between the parties, the Association proposed that all of its members work 12 hour shifts. Over the course of six bargaining sessions, including one with a mediator, agreement was reached that the Jail Officers would work 12 hour shifts, but the other bargaining unit members would continue to work 8 hour shifts. After the County had agreed to this change, it proposed changes in various other articles of the labor agreement to clarify the impact of this change on other terms and conditions of employment, including benefits such as sick leave, holidays and vacation. The County made no proposal to change the language of Article 17 relating to funeral leave. To the best recollection of Joe Lillie, Association President and member of the Association bargaining team, neither party raised the issue of funeral leave during negotiations.

In January 2004, Grievant Julianna Knaack became aware that her grandfather had stopped eating and that his death was imminent. She contacted Dan Greenwood, the Jail Administrator, about eligibility for funeral leave. He told her that she was entitled to three days. She also reviewed her copy of the collective bargaining agreement and spoke to the Association President, Joe Lillie. All three sources of information confirmed that she was entitled to three days of funeral leave.

Ms. Knaack's grandfather passed away and she was absent from work on January 16, 17, and 18, all days on which she had been scheduled to work the second shift, 6 p.m. to 6 a.m. On January 21, 2004, Ms. Knaack filed her time sheet and requested 24 hours pay as funeral leave for January 16 and January 17. Ms. Knaack was paid for 24 hours for these two days but when she submitted her next time sheet and requested an additional 12 hours pay for January 18, she was contacted by the secretary in the Sheriff's Department and advised that she was only entitled to a total of 24 hours paid funeral leave and that she would not be paid for the 12 hours on January 18.

The information was conveyed to Ms. Knaack as the result of a review of the time sheets by payroll and a discussion with the Human Resources Coordinator, Lori Blair-Hill. When confronted with the initial request for 24 hours of funeral time for the first two days the Grievant was off work as indicated on the time sheet for payroll 2, a payroll employee asked Ms. Blair-Hill how to proceed. After reviewing the current collective bargaining agreement, comparing it with the predecessor agreement, noting the changes that had been made to the agreement to reflect the 12 hour shifts now worked by Jail Officers, Ms. Blair-Hill determined that she could pay 24 hours for the leave, based on the calculation of 3 days at 8 hours per day equals 24 hours pay. When the time sheet for pay period 3 was received, with a request for an additional 12 hours of paid funeral leave, Ms. Blair-Hill determined that Ms. Knaack had received three days pay and should not be paid an additional 12 hours.

It is Ms. Blair-Hill's contention that the fact that the Funeral Leave section of the collective bargaining agreement was not changed was an oversight on the part of the negotiations process. The instant grievance was filed, denied by the Sheriff, and then appealed to the Personnel Committee. The members of the Personnel Committee who heard the grievance had been members of the County's bargaining team. They upheld Ms. Blair-Hill's interpretation of the agreement. Presumably they agreed that it was merely an oversight on the part of the County to not propose language to modify the Funeral Leave section of the agreement when it was proposing changes to the other benefit sections to reflect the change to 12 hour shifts.

It is quite possible that no change was proposed to the Funeral Leave section as a result of an oversight. However, oversights must be corrected at the bargaining table. It is undisputed that the County proposed the new language added to Article 14, Paragraph A

related to Holidays: “Holiday pay is to be eight (8) hours per holiday regardless of the employee’s work schedule.” The absence of comparable language in the funeral leave section either means that there was no intent to reduce the number of days (work days) that an employee could be absent for a funeral without loss of pay, or that the county did not realize that there was a potential conflict that needed to be resolved. Either way, the limitation to eight (8) hours pay for each of three days of paid funeral leave cannot be read into the language of the existing agreement.

The County’s ability to extend the concept of 8 hours for a day of funeral leave, as it specifies in the Holiday section, on the basis that the language was omitted by oversight contradicts the provisions of Article 24 of the parties’ collective bargaining agreement:

This Agreement constitutes the entire agreement between the parties and no verbal statements shall supersede any of its provisions. Any amendment or agreement supplemental hereto shall not be binding upon either party unless executed in writing by the parties hereto.

Additionally, the County is asking the arbitrator to read into Article 17 words that the parties did not negotiate. For the undersigned to do so would violate Article 7, Paragraph C, Section 6 of the Agreement:

Decision of the Arbitrator: The decision of the arbitrator shall be limited to the subject matter of the grievance and shall be restricted solely to interpretation of the contract in the area where the alleged breach occurred. The arbitrator shall not modify, add to or delete from the express terms of the Agreement.

The language of Article 17 did not change as a result of negotiations for the 2002-2004 Agreement. Prior thereto, an employee was entitled to three days off work with full pay for funeral leave in the event of a death in the employee’s immediate family. The same is true now, even though the length of the work day may have been extended. Ms. Knaack was entitled to three days off work, with pay; she was entitled to pay for three twelve hour shifts.

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

AWARD

The grievance is sustained. Grievant Julianna Knaack is to be made whole for the 12 hours of wages and benefits she lost as a result of the County's violation of the collective bargaining agreement.

Dated at Madison, Wisconsin, this 16th day of September, 2004.

Susan J.M. Bauman /s/

Susan J.M. Bauman, Arbitrator