

BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between

SCHOOL DISTRICT OF ONALASKA

and

**ONALASKA SCHOOL DISTRICT SECRETARIES AND SPECIALISTS,
LOCAL 136, WCCME, AFSCME, AFL-CIO**

Case 32
No. 65030
MA-13091

Appearances:

Daniel Pfeifer, Staff Representative, 18990 Ibsen Rd., Sparta, Wisconsin, appearing on behalf of Onalaska School District Secretaries and Specialists, Local 136, WCCME, AFSCME, AFL-CIO.

Larry Dalton, Business Manager, School District of Onalaska, 1821 E. Main Street, Onalaska, Wisconsin, appearing on behalf of School District of Onalaska.

ARBITRATION AWARD

The School District of Onalaska, hereinafter District or Employer, and Onalaska School District Secretaries and Specialists, Local 136, WCCME, AFSCME, AFL-CIO, hereinafter Union, are parties to a collective bargaining agreement covering the period July 1, 2004 through June 30, 2006 that provides for the final and binding arbitration of grievances. The Union, with the concurrence of the District, requested the Wisconsin Employment Relations Commission to appoint a Commissioner or member of the Commission staff to hear and decide the instant grievance. Susan J.M. Bauman was so appointed.¹ The parties waived hearing and stipulated to the facts and issue in this matter. The record was closed on January 9, 2006, upon receipt of all post-hearing written argument.

Having considered the evidence, the arguments of the parties, the relevant contract language, and the record as a whole, the Undersigned makes the following Award.

¹ Although the undersigned served as the mediator for the contract over which the instant dispute arose, the parties have specifically agreed to my arbitrating the dispute.

ISSUES

The parties stipulated to the following issues:

Did the Onalaska School District violate the collective bargaining agreement between the parties by the manner in which it enforced Article 20, Section C? If so, what is the appropriate remedy?

STIPULATED FACTS

1. The initial collective bargaining agreement between the parties was effective from July 1, 2001 to June 30, 2004.
2. The Bereavement Leave language, for the 2001-2004 agreement, reads as follows:
 1. Bereavement leave shall be granted not to exceed five (5) days per year.
 2. Leave without loss of pay and without charges to sick leave will be granted in the event of a funeral in the employees' immediate family or member of the household.
 3. In order to receive bereavement leave, employee must report her/his relationship to the deceased on the Absence Report Form.
3. The parties began negotiations for a successor agreement on May 25, 2004.
4. The Union proposed to change the Bereavement Leave to:

B. BEREAVEMENT LEAVE

~~1. Bereavement Leave shall be granted not to exceed five (5) days per year.~~ **Five (5) bereavement days shall be granted each year.**

2. Leave without loss of pay and without charges to sick leave will be granted in the event of a funeral in the employees' immediate family or member of the household.

3. Sick time may be used for bereavement for people other than immediate family members.

Renumber the current #3 to #4.

5. The District proposed to change the Leave language to:

A. Twelve (12) leave days per year will be granted to each fifty-two (52) week secretary/specialist. Full time employees contracted 190 to 225 days per year will receive ten (10) leave days per year, to be used for personal illness, family illness, bereavement or emergency.

1. These leave days shall be accumulated to a total of 110 days. All days under this article shall be deducted from the annual allocation of 12 or 10 days, before any deduction is made to the accumulation.

2. Reporting, recording, and granting of these leaves must follow appropriate administrative procedures as outlined by Board policy.

3. Emergency days, which are available to the employee after the probationary period, shall be defined as unforeseen situations that require immediate attention within the school day as it relates to the employee's family, home, transportation or weather conditions.

4. Bereavement leave is available to employees after the probationary period.

5. Part time secretary/specialist/interpreters shall receive a proration of the leave benefits.

6. First-year employees shall earn a leave day at the rate of one per working month. First year employees may borrow ahead for the entire year's projected amount. However, in the event the employee would use the leave prior to earning it and subsequently terminate employment, the employee shall be liable to the District for each leave day used but not yet earned.

7. An employee who, because of illness or disability, uses all of his/her leave time, shall automatically be placed on a leave of absence for illness without pay for up to one (1) year beyond the date of the expiration of accumulated leave time. This leave may be extended upon written application for up to one additional year if circumstances warrant. Employees who are unable to return to work after the expiration of leave may be terminated from their employment. However, extenuating circumstances will be considered.

6. The parties could not reach agreement and an Informal Investigation was conducted, by this arbitrator, on November 9, 2004. At the Informal Investigation, the Union proposed, and the School District accepted, the 2004-2005 language:

C. BEREAVEMENT LEAVE

1. Bereavement leave shall be granted not to exceed five (5) days per year.
2. Leave without loss of pay and without charges to sick leave will be granted in the event of a funeral in the employees' immediate family or member of the household.
3. Sick leave may be used for bereavement for people other than immediate family members.
4. In order to receive bereavement leave, employee must report her/his relationship to the deceased on Absence Report Form.

Said language was incorporated into the successor collective bargaining agreement.

7. Employee Diane Alseth requested to use a sick leave day for bereavement pursuant to Article 20, Section C, Subsection 3. The day was in regard to the death of her daughter's mother-in-law who was not a member of the immediate family as defined in Article 20, Section C, Subsection 2. The day was granted; however, Ms. Alseth was informed that said day would be deducted from the five (5) days per year as set forth in Article 20, Section C, Subsection 1.
8. The Union filed a grievance alleging that the District violated the agreement between the parties by deducting the aforementioned day from the five (5) days per year as set forth in Article 20, Section C, Subsection 1. The grievance states as follows:

(Circumstances of Facts) (Briefly, what happened) My daughter's mother-in-law passed away and I used a sick day to go to the funeral as stated in Article 20-Section C-Subsection 3. As per conversation with Larry Dalton I was informed that I would be deducted a day from my sick leave and also a day from my 5 bereavement days that are for immediate family.

(The contention-what did management do wrong?) (Article or Section of contract which was violated if any)

Article 20-Section C

Any other article which may be applicable.

We have had 5 days for bereavement for immediate family in our contract. We negotiated to use our sick days for other than immediate family. The administration is taking a day from both sick leave and bereavement leave for my one occurrence which is deducting me twice for one day.

(The Request for Settlement or corrective action desired)

Sick leave used for bereavement other than immediate family should not also be deducted from 5 days of bereavement for immediate family.

Article 20 Section C

9. The grievance was denied at all steps of the grievance procedure and the Union filed for grievance arbitration on August 5, 2005. The parties agreed to waive the grievance arbitration hearing and, instead, submit a stipulation of facts and briefs. There are no procedural issues before the arbitrator.

POSITIONS OF THE PARTIES

The Union points out that the application of the contractual section central to this dispute, Article 20, Section C3, is a new provision that did not exist in the prior agreement and was agreed to in mediation without the benefit of bilateral discussion between the parties. Accordingly, there is no past practice and little bargaining history to provide guidance to the interpretation of the language in question.

The predecessor collective bargaining agreement contained language providing for five (5) days per year for bereavement leave, without loss of pay, for the death of an immediate family member or member of the employee's household. The language at issue was added to address bereavement leave in the event of the death of a person other than immediate family or household member. The new language clearly allows for such leave, with deduction of the leave from accumulated sick leave.

The Grievant requested, and was granted, bereavement leave for the death of her daughter's mother-in-law. The time off was deducted from both the five (5) days allotted for bereavement leave and from accumulated sick leave. The Union contends that the days should not be deducted from both bereavement leave and accumulated sick leave. In addition, the Union contends that there is no limitation, other than the amount of accumulated sick leave, on the number of days that can be utilized under Article 20, Section C3.

The Union points out that the language of C1² is "bereavement leave" which is distinguished from the language of C3, bereavement, and argues that the "objective" approach should be utilized to interpret the language. The Union contends that the Employer's interpretation is not reasonable as the employees are charged twice for bereavement of persons other than immediate family. This application of C3 could result in a person having no bereavement leave (none of the allotted five (5) days) in the event of the death of an immediate family or household member.

² All references are to Article 20.

Finally, the Union states that the plain language of C3 contains no limitation of five (5) days per year, meaning that an employee's use of sick leave for the death of a non-immediate family or household member is only limited by the amount of sick leave that employee has accumulated.

The Union requests that the grievance be sustained; that bereavement leave used under C3 not be deducted from the five (5) days allotted under C1; and that there is no limit on the amount of sick leave that can be used under C3. The Union also seeks a "make whole" remedy for the Grievant.

The Employer takes two different approaches to the disagreement. It contends that the bereavement issue was addressed in bargaining, contract language was modified, and it is a matter of interpreting the language, with due consideration for the particulars of the parties' discussions during bargaining. Alternatively, the Employer argues that the bereavement issue was not really resolved because the parties left the negotiation with different understandings of the agreement.

As to interpreting the ratified contract language, the District reviews its intentions in presenting a proposal to modify the language from the prior contract, as well as the proposal made by the Union. The Employer notes that the language in the ratified agreement is not the same as either the Union's or the District's proposal. Given that, the Employer argues that the article must be read as follows:

The language of this article is constructed such that subparagraph 1 (*Bereavement leave shall be granted not to exceed five (5) days per year.*) has "controlled" the other subparagraphs. Subparagraph 2 (*Leave without loss of pay and without charges to sick leave will be granted in the event of a funeral in the employee's immediate family or member of the household.*) is controlled by sub. 1 in that only five days per year may be granted for the specified situations. Likewise the final subparagraph (*In order to receive bereavement leave, employee must report her/his relationship to the deceased on Absence Report Form.*) gives the employee a method of application for the days controlled by sub. 1. In adding the new subparagraph, it is either controlled by sub. 1 like the other paragraphs, or it is independent of sub. 1. The District's position is that the new subparagraph 3 is controlled by sub. 1, just like the other subparagraphs are. This gives the article structural consistency.

The Employer's alternative argument is that the issue was never resolved in bargaining and proceeds to discuss the fact that the contract settlement with this unit was one of the more costly settlements in recent district bargaining history. Based on this fact, comparisons with benefits granted by neighboring districts, and the additional cost of interpreting the language in question in the manner advocated by the Union, the Employer contends that its interpretation is

the most reasonable. Accordingly, the Employer asks for a finding that the District did not violate the collective bargaining agreement in charging the Grievant's day off against both the five (5) days available for bereavement leave for immediate family and household members and accumulated sick leave. The District also seeks a ruling that employees are entitled to no more than five (5) days bereavement leave per year, regardless of whether they are for immediate family members or others, with the only difference being that there is no loss of pay if the death is that of an immediate family member and that there is a deduction from sick leave in the event that the leave is for the death of any other individual.

DISCUSSION

The parties agreed to a modification of Article 20, Section 3, of their collective bargaining agreement, effective July 1, 2004. The modification was agreed to in mediation, without the benefit of across-the-table discussion between the parties as to the intent or meaning of the language in question. Each party had proposed a change to Article 20, but the change incorporated into the agreement differs from both initial proposals. The issue to be decided is not what did the parties intend, or what did they think the language meant, but what is the meaning of the language as adopted. The grievance arbitration process is not a continuation of the bargaining or mediation process. Accordingly, the information provided by the Employer regarding benefits provided by neighboring districts will not be considered in reaching a conclusion.

As a general rule of contract construction, if the contract language is clear and unambiguous, an arbitrator will not look at extrinsic evidence such as past practice or bargaining history. In this case, the language is brand new, so no past practice exists. The bargaining history is almost as non-existent. Both sides proposed contract language changes. The Union sought to change the words "Bereavement Leave shall be granted not to exceed five (5) days per year" to "Five (5) bereavement days shall be granted each year." The Employer did not agree to this. The Union also sought to add as subsection 3, "Sick leave may be used for bereavement for people other than immediate family members." The District, in mediation, agreed to this additional language.

The Employer sought to convert the distinctions among personal illness, family illness, bereavement and emergency leave into one "leave" that was available, under defined circumstances, to employees to utilize for any of these purposes. This proposal was not adopted by the parties, with the result that the distinction between sick leave and bereavement leave remains.

The language of the predecessor agreement, in Article 20, Section C, subsection 1, provided for up to five (5) days of bereavement leave. There is no definition of bereavement leave. Subsection 2 of Article 20, Section C, provided that leave, without loss of pay and without charges to sick leave, would be granted in the event of a funeral in the employees'

immediate family, defined in Article 20, Section B, Subsection 1, or member of household. Subsection 3 of Article 20, Section C of the predecessor agreement, provides the mechanism for an employee to receive bereavement leave. Read together, the three subsections of Section C provide that an employee may be absent, without loss of pay or charge to sick leave, for up to five (5) days per year in the event of the funeral of an immediate family or household member, as long as the reporting requirements are met.

The current agreement, at Article 20 Section C, is identical to its predecessor in all respects except for the addition of a new Subsection 3 and a renumbering of the old Subsection 3 to become Subsection 4. The newly included language states that “Sick time may be used for bereavement for people other than immediate family members.” This statement, by itself, clearly stands for the proposition that employees who desire to attend funerals of persons other than immediate family members may take the time off, with that time deducted from their accumulated sick leave,³ not the five (5) days of bereavement leave.

As the District argues, the fact that Subsection 3 is located in Section C requires that it be read in the context of that Section, as well as in the context of Article 20 and the entire agreement. Thus, it is the position of the Employer that should an employee take a day to attend the funeral of a person other than an immediate family member, s/he would have a deduction both from the five (5) bereavement leave days available under Subsection 1 and from sick leave, as stated in Subsection 3.

Although the District’s argument has some merit, I do not find it to be persuasive. Subsection 1 (and the heading of Section C) references Bereavement Leave. Subsection 1 provides up to five (5) days per year for bereavement leave. When coupled with Subsection 2 in the predecessor contract, it is clear that bereavement leave is leave without loss of pay and without charge to sick leave in the event of a funeral in the employee’s immediate family or member of the household. The new Subsection 3 does not reference “bereavement leave.” Rather, it refers to “bereavement for people other than immediate family”, specifically references “sick time,” a benefit described in Section A of Article 20 that accumulates up to one hundred ten (110) days and is earned at the rate of one (1) day per month worked.

Bereavement is not defined in the collective bargaining agreement. Generally, the term is used to mean that a person has been deprived of something, usually as a result of death. I interpret the phrase “bereavement for people other than immediate family” to mean the death of a person not in the immediate family about whom an individual is grieving.⁴ The language

³ This language could also be read to mean that employees cannot utilize sick leave for funerals of immediate family members. That is, if an employee has already utilized her/his five (5) bereavement leave days for immediate family or household members in a year, that employee would not be allowed to use sick leave should additional bereavement leave be needed, and presumably the employee would have to take leave without pay. Because that is not the issue before me at this time, I make no attempt to determine the proper application of the language.

⁴ Interestingly, bereavement leave is specifically available for the funeral of an employee’s immediate family member or member of household, rather than the death of such a person. Subsection 3 refers only to bereavement and does not specify attendance at the funeral of the individual.

of the agreement permits the unlimited use of sick leave, without reference to the five (5) days of bereavement leave, for bereavement of persons other than immediate family members.

Further, the use of sick leave for bereavement of other than a family member is not bereavement leave, as that is specifically available only for the event of the funeral of an immediate family member or member of the household, and is available with pay, without deduction from sick leave. Accordingly, the grievant, Diane Alseth, should only have been deducted one day of sick leave when she attended the funeral of her daughter's mother-in-law. She should not have had a day deducted from the five (5) days of bereavement leave, as they are not available for the purpose that Ms. Alseth took the day off.

Prior to the negotiation of the current collective bargaining agreement, employees had two separate and distinct types of leave: 1) sick leave that accumulated to 110 days and was available for various purposes not including attendance at funerals or bereavement of anyone and 2) bereavement leave of five (5) days per calendar year that were available for use, without deduction from sick leave, to attend the funeral of a member of the immediate family or household member. Employees, such as the Grievant, had no days available, with pay, for bereavement or funerals of non-immediate family or household members. In the course of negotiating the current contract, the Union proposed, and the Employer ultimately accepted, language that permitted the use of sick leave for bereavement for people other than immediate family members. This contractual change did not alter the number of days available for sick leave or for bereavement leave. It merely added another permitted use of sick leave.

The Employer's deduction of one day of sick leave and one day of bereavement leave when Ms. Alseth attended the funeral of her daughter's mother-in-law, blurred the clear distinctions between sick leave and bereavement leave. In some respects, interpreting the contract in this manner creates one pool of days for all purposes, including sickness, bereavement of family and non-family members, emergency days, etc. This was the Employer's proposal in bargaining, but it was not accepted and did not become part of the fully executed agreement between the parties. Accordingly, it must be rejected.

The Employer argues that because Subsection 3 is a subsection of Section C, the sick leave used for bereavement of a non-family member must count against the five (5) days of bereavement leave. While there is no question that the language could have been more precisely drafted and that the new language might have been placed elsewhere in Article 20, it is logical that the language be placed in Section C. The intent was clearly to provide a mechanism for an employee to be paid while grieving the death of a non-family member. The time off constitutes bereavement leave in the generic sense, but it is time that is to be charged to an employee's sick leave, not to his or her bereavement leave.

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

AWARD

The grievance is sustained. The grievant should not have had one (1) day deducted from her available five (5) days bereavement leave. If the applicable year has not ended, that day shall be restored.

The Employer shall not deduct from the allocated five (5) bereavement leave days when an employee is absent for bereavement for a person who is not a member of the immediate family or household. Said days shall be deducted from sick leave. Further, the number of days available under Article 20, Section C, Subsection 3 is limited by the number of sick days available to the particular employee, not by the five (5) days of bereavement leave available under Article 20, Section C, Subsection 1.

Dated at Madison, Wisconsin, this 14th day of February, 2006.

Susan J. M. Bauman /s/

Susan J. M. Bauman, Arbitrator