

BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between

MILWAUKEE COUNTY

and

MILWAUKEE DEPUTY SHERIFFS' ASSOCIATION

Case 715
No. 69601
MA-14669

Appearances:

Roy L. Williams, Principal Assistant Corporation Counsel, Office of the Corporation Counsel, 901 North 9th Street, Room 303, Courthouse, Milwaukee, Wisconsin 53233, appearing on behalf of Milwaukee County.

Graham P. Wiemer, Attorney, MacGillis Wiemer, LLC, 2360 N. 124th Street, Suite 200, Wauwatosa, WI 53226, appearing on behalf of Milwaukee Deputy Sheriffs' Association.

ARBITRATION AWARD

Milwaukee County (County) and Milwaukee Deputy Sheriffs' Association (Association) are parties to a collective bargaining agreement covering contract years 2007-2008. (Contract). The Contract provides for final and binding arbitration of grievances arising under the Contract. On February 18, 2010, the Association filed a Request to Initiate Grievance Arbitration with the Wisconsin Employment Relations Commission (Commission) regarding the County's decision to deny Grievant's request to use an excused day off for his wedding day. The Association requested that the Commission designate a Commissioner or member of its staff to serve as arbitrator. The undersigned was designated. Hearing was held on the grievance on August 16, 2010 in Milwaukee, Wisconsin. The hearing was not recorded or transcribed. The Parties then submitted post-hearing written arguments in support of their positions, the last of which was received on October 15, 2010, closing the record in the matter.

Now, having considered the record as a whole, I make and issue the following award.

ISSUE

At the hearing, the Parties stipulated to the following issue to be decided:

Did the County violate Section 3.15 of the Contract or Milwaukee County General Ordinance 17.18 when it denied Deputy Schmit an excused day off for his wedding? If so, what will be the remedy?

RELEVANT CONTRACT AND COUNTY ORDINANCE PROVISIONS

3.15 PERSONAL HOURS – HOLIDAYS

(1) All regular full time employees shall receive twenty-four (24) hours leave per year known as “personal hours” in addition to earned leave by reason of vacation, accrued holidays, and compensatory time.

(2) [...]

Such hours may be taken at any time during the calendar year in which they are accrued. Supervisory personnel shall make every reasonable effort to allow employees to make use of personal hours as the employee sees fit, it being understood that the purpose of such leave is to permit the employee to be absent from duty for reasons which are not justification for absence under other existing rules relating to leave with pay.

...

3.16 SICK LEAVE

(1) Employees shall earn a leave of absence with pay because of illness or other special causes at the following rates, subject to the provision of s. 17.18, C.G.O....

...

(2) In addition to other causes set forth in s. 17.18(4), C.G.O., sick leave may be taken for the purpose of enabling employees to receive non-emergency medical attention during duty hours.

...

17.18. Leave of absence with pay on account of illness or other special causes.

(1) All officers and employes ... may be given leave of absence with pay for illness or other special causes Such leaves of absence with pay shall be granted solely on account of sickness, bodily injury, or other causes of absence which are considered as sufficient and legitimate excuses for the employe's failure to be present and in attendance on his duties...

...

(4) Paid leave in accordance with the following formula shall be granted to employes when the employe's presence is required, and if the employe has sufficient accrued sick leave from which such leave shall be deducted:

	<i>Critical Illness</i>	<i>Death</i>	<i>Wedding</i>
<i>Immediate family of employe</i>			
Husband, wife, child, brother, sister, parents, or foster parents, stepmother, stepfather, stepbrother, stepsister	3 days	3 days, plus travel	1 day

...

BACKGROUND

The collective bargaining agreement (Contract) between Milwaukee County and Milwaukee Deputy Sheriffs' Association provides a variety of paid time off benefits to employees of the Milwaukee County Sheriff's Office. As relevant to this matter, the Contract provides personal time and sick time to employees. Full time employees receive 24 hours of personal time per year to be used at the employees' discretion. Employees also accrue sick time to be used under a limited set of conditions. Because employees can use personal time with essentially no questions asked, they generally prefer to utilize other time off categories first and reserve personal time for absences that otherwise would not be excused.

Part 3.16 of the Contract provides that employees may use sick leave to take paid leave for their own illness as well as for "other special causes." The "other special causes" that permit employees to use sick time for non-illness related absences are provided for in Milwaukee County Ordinance Section 17.18(4). The "special cause" that is relevant to this grievance is the allowance for use of one sick day to attend the wedding of an employee's immediate family member, including "husband" or "wife." Because sick time can be used in circumstances other than the employee's own illness, it is sometimes referred to as excused time. The apparent purpose of allowing excused days is to afford employees an opportunity to avoid expending personal days for absences related to major events in employees' personal lives.

Terry Schmit, the Grievant in this matter, requested permission to use eight hours of his sick time as excused time under Section 17.18(4) to attend his own wedding. His request was denied by the County, and he subsequently used eight hours of his personal time allotment instead. Grievant then filed a grievance over the denial of the request to use excused time for his wedding which was denied at the earlier stages of the grievance procedure, resulting in this arbitration proceeding.

DISCUSSION

I conclude that the County violated the Contract when it denied Grievant's request to use an excused day to attend his own wedding because I find that "husband" and "wife" as used in Section 17.18(4) includes the employee's future husband or wife. To decide otherwise would render a portion of Section 17.18(4) meaningless and produce nonsensical results.

As the County notes, the Contract itself does not resolve the issue. Part 3.16 of the Contract incorporates Section 17.18(4) of the Milwaukee County Ordinances to give meaning to the Contract's general language regarding "other special causes" that allow employees to use excused time from their sick leave accruals for various events. Section 17.18(4) in turn provides one day of excused time when the employee's attendance is required at the wedding of an immediate family member. Immediate family members are defined as "[h]usband, wife, child, brother, sister, parents, or foster parents, stepmother, stepfather, stepbrother, stepsister."

The question involved in this grievance is what meaning, if any, can be given for the provision of one excused day for the wedding of the employee's wife or husband. The County argues that, because the employee does not have a husband or wife at the time they request an excused day, that there is no provision for an employee to use an excused day for the wedding of their future wife or husband, i.e., the employee's own wedding. This interpretation renders that portion of Section 17.18(4) that provides one day of excused time for the wedding of the employee's husband or wife meaningless.

One goal of contract interpretation is to give effect to all clauses and words in a provision. See ELKOURI & ELKOURI, *HOW ARBITRATION WORKS*, 6TH EDITION AT PAGES 463-464. There is a reasonable interpretation of the provision that gives meaning to the wedding benefit for husband and wife and is consistent with the apparent purpose of Section 17.18(4). I find that terms husband and wife, as used in Section 17.18(4), incorporates the employee's future husband and wife.

Another goal of contract interpretation is to avoid harsh, absurd, or nonsensical results. See Elkouri & Elkouri at page 470-472. I find it nonsensical for Section 17.18(4) to provide an enhanced time off benefit to attend the wedding of family members but not the employee's own wedding. As stated above, the apparent purpose of Section 17.18(4) is to allow employees to use sick time for major events. There are not many life events more important than one's own wedding. Certainly, an employee's attendance at his or her own wedding is more significant than the attending the wedding of other family members. Therefore, it makes no sense for the County to provide excused time for employees to attend family member's weddings, but not make a similar provision for employees to attend their own wedding.

AWARD

For the foregoing reasons, I conclude that the County violated the Contract when it denied Grievant's request to use an excused day off with pay to attend his own wedding. The grievance is sustained and, as remedy for the violation, the County shall credit the Grievant with eight hours of personal time and deduct eight hours from Grievant's accrued sick time.

Dated at Madison, Wisconsin, this 10th day of February, 2011.

Matthew Greer /s/

Matthew Greer, Arbitrator