

BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between

LINCOLN COUNTY

and

PINECREST NURSING HOME EMPLOYEES UNION,
LOCAL 342, AFSCME, AFL-CIO

Case 271
No. 70898
MA-15078

(Roggenbuck Funeral Leave Grievance)

Appearances:

Attorney Dean Dietrich, Ruder Ware, 500 First Street, Suite 8000, P.O. Box 8050, Wausau, Wisconsin, 54402-8050, appearing on behalf of Lincoln County.

Mr. John Spiegelhoff, Staff Representative, AFSCME, Wisconsin Council 40, 8033 Excelsior Drive, Suite B, Madison, Wisconsin, 53717-2900, appearing on behalf of the Pinecrest Nursing Home Employees Union, Local 342, AFSCME, AFL-CIO.

INTRODUCTION

Lincoln County ("County") and the Pinecrest Nursing Home Employees Union, Local 342, AFSCME, AFL-CIO ("Union") are parties to a collective bargaining agreement ("Agreement") that provides for final and binding arbitration of disputes arising thereunder. On August 11, 2011, the Union filed a request with the Wisconsin Employment Relations Commission to initiate arbitration concerning a funeral leave dispute. The filing requested that the Commission supply a list of Wisconsin Employment Relations Commission commissioners and staff members from which an arbitrator might be selected, and from that list, the undersigned was selected. A hearing was held on December 14, 2011, in Merrill, Wisconsin, at which time the parties were afforded full opportunity to present such testimony, exhibits, and arguments as were relevant. At the parties' discretion, no transcript of the proceeding was made. Subsequently, the County and the Union each submitted initial and reply briefs; the last of which was received on February 17, 2012. On that date, the record in this matter was closed.

ISSUE

The parties have entered into a stipulation allowing the arbitrator to frame the statement of the issue in the award. The County has proposed the following statement of the issue:

Whether the nursing home violated Article IX – Funeral Leave of the labor agreement when it refused to provide a day off with pay on May 21, 2011 for the Grievant to attend the internment ceremony for a deceased family member? If so, what is the appropriate remedy?

The Union has proposed the following:

Did the employer violate the collective bargaining agreement when it denied the Grievant funeral leave? If so, what is the appropriate remedy?

Having considered the proposals of the parties, the following is the statement of the issue adopted for hearing:

Did the County violate Article IX of the Agreement, when it refused to provide a day off with pay on May 21, 2011, for the grievant to attend the internment ceremony for a deceased family member? If so, what is the appropriate remedy?

RELEVANT CONTRACT PROVISIONS

Article IX – Funeral Leave

9.1: A leave of absence of not more than three (3) days, with pay, shall be granted for the purpose of an employee to attend the funeral of their father, mother, spouse, child, stepchild, stepfather, stepmother, brother or sister, father-in-law, mother-in-law, grandparents, brother-in-law, sister-in-law, son-in-law, daughter-in-law, or grandchildren.

9.2: Eligible days of pay shall be consecutive scheduled work days, and this Article does not apply if the employee is otherwise off work for any reason, including, but not limited to vacation, layoff, or leave of absence. Full-time employees shall receive eight (8) hours pay for each day of funeral leave. Part-time employees shall receive prorated funeral days off in accordance with Article IV, Section 2 of this Agreement.

If an employee attends a funeral of any of the above mentioned relatives the day before or the day after a holiday, the employee shall receive the holiday pay. An employee may be granted up to a three (3) day leave of absence without pay for attendance at an out-of-town funeral or for additional time off in the event of death of father, mother, spouse, or child; such leave shall be granted at the discretion of the Employer.

BACKGROUND

Pinecrest is a nursing home owned by the County. At all times relevant the Grievant, Amanda Roggenbuck (“Roggenbuck”) has been employed as a certified nursing assistant at Pinecrest. On January 7, 2011, Roggenbuck’s grandfather died. A funeral was held on January 11, 2011. Roggenbuck attended the funeral service. She did not have to take leave from work to do so, because she had not been previously scheduled to work that day.

The cremated remains of Roggenbuck’s grandfather were not buried in January of 2011. Because the ground was frozen and out of concern for Roggenbuck’s surviving, elderly grandmother, the family chose to delay the outdoor burial until the weather was not cold and icy. Ultimately, the remains were interred at a burial ceremony that occurred on May 21, 2011. In early May of 2011, Roggenbuck requested funeral leave under Article IX of the Agreement to be able to attend the burial ceremony. Pinecrest denied the request, taking the position that the requested leave did not meet the criteria set forth in Article IX. Roggenbuck was left with the options of taking leave without pay or trading shifts with another Pinecrest employee, and she exercised the latter.

The Union grieved the denial of Roggenbuck’s requested leave, which grievance led to the present proceeding. The parties have stipulated that this matter is properly before the arbitrator.

DISCUSSION

The basic question here is whether Roggenbuck’s request for funeral leave to attend the May, 2011 burial of the remains of her grandfather, whose funeral had occurred five months earlier, should have been granted under Article IX of the Agreement. For the reasons set forth, I find that the Union has met its burden to establish that the leave request should have been granted and that the County’s denial constituted a violation of the Agreement.

Article IX allows for funeral leave “for the purpose of an employee to attend the funeral” of family members identified in that provision. As a preliminary matter, I disagree with the County’s basic assertion that the term “funeral” as it is used here is a clear and unambiguous term. Pinecrest’s administrator testified that he has to make a careful assessment each time a funeral leave request is made to determine whether the event properly fits within the parameters of the leave provision. That testimony alone, not to mention the analysis and arguments presented here by the parties, suggests that this is not perfectly clear term representing a perfectly clear concept.

For guidance as to what the term “funeral” means to the parties, the Union introduced Carla Kloss (“Kloss”), another Pinecrest certified nursing assistant, as a witness at hearing. Kloss took leave under Article IX of the Agreement in July and August of 2011, in conjunction with the death of her mother-in-law. On Thursday, July 28, 2011, Kloss had been scheduled to

work and took approved funeral leave under Article IX to make funeral arrangements; on Thursday, August 4, 2011, Kloss had been scheduled to work and took approved funeral leave to attend her mother-in-law's wake; and on Friday, August 5, 2011, Kloss had been scheduled to work and took approved funeral leave to attend her mother-in-law's funeral and burial. While the single instance of funeral leave involving Kloss certainly is not sufficient to establish a past practice, it is helpful see an example of how the parties interpreted and applied Article IX in another instance. It is also convenient that the other instance occurred within three months of the denial of Roggenbuck's request. The fact that Kloss was granted funeral leave time on one day to make arrangements and on another day to attend a wake establishes that the parties have not interpreted "funeral" to strictly mean a funeral ceremony.

The County relies on arbitration cases to establish that the term "funeral" in funeral leave provisions is generally interpreted to include time for making arrangements and attending a funeral, but not the burial for which Roggenbuck sought leave. On a basic level, I disagree that the cases support this point. While the cases do indicate that making arrangements and attending a funeral ceremony are events generally covered by funeral provisions, they do not conclude that attendance at a burial ceremony is excluded from such provisions. Rather, these cases have concluded that a funeral leave policy does not encompass attending to matters in connection to the administration of a deceased's estate, *WARNER & SWASEY CO.*, 47 LA 438 (Teple, 1966), or time for visiting relatives or attending family gatherings, *ID.*; *MARATHON COUNTY (COURTHOUSE)*, MA-9023 (McGilligan, 1996). While the County repeatedly describes the Roggenbuck event as a "family gathering", the record establishes that it was a burial. Certainly, as with most burials, family members were gathered to attend, but that does not make Roggenbuck's request tantamount to a request for time to visit.

It is apparent that the County's basic reason for denying Roggenbuck's leave request was because the burial occurred so long after the funeral. The County takes the position that the five-month delay created a disconnect between the funeral ceremony and the interment ceremony such that the provision in the Agreement pertaining to funeral leave no longer applied. From the County's view there must be some connection in time to an actual funeral ceremony for an event to be covered by funeral leave.

Article IX clearly states that funeral leave days must be taken consecutively. Requiring leave days to be taken consecutively, however, is not the same as requiring that any funeral arrangement eligible for leave under Article IX must be arranged such that the events occur on consecutive or temporally proximate days. It is also not the same as requiring that any covered event must happen close in time to and actual funeral ceremony, which the County seems to believe. The provision simply does not support those interpretations. Roggenbuck's situation where she requested one day of leave is a perfect example of an instance in which funeral events clearly did not occur on consecutive days, but the employee's requested leave of one day would not have violated the consecutive-day requirement in Article IX.

The main purpose of the provision seems to be to allow employees to be present for funeral activities. Roggenbuck's belief that a burial ceremony fell within the realm of standard funeral activities is not radical by any means. In a northern climate delaying a burial until the ground thaws is also not that unusual. The fact that some months passed before the burial occurred does not persuade me that the burial became a non-standard funeral activity, that it became any less important for Roggenbuck to attend, or that the associated leave became any more burdensome for the employer.

The County points out that it has discretion under Article IX to determine whether a request legitimately meets the leave requirements, and it argues that it was merely exercising this discretion. Indeed, the funeral leave provision gives "up to" three days for such leave. This language appears to give the County the ability to evaluate the activities for which an employee is requesting leave and to make an assessment as to how much leave is appropriate. As noted, Pinecrests's administrator testified at hearing that he makes such an assessment with every funeral leave request, and the Union has not asserted that his doing so is generally inappropriate. Even under those circumstances, however, the discretion reserved to the County is not unfettered. The provision provides for the benefit of funeral leave, and the focus of this case is whether the County improperly concluded that the Roggenbuck request did not count as an event that qualified for use of the benefit. I do not read the discretion reserved to the County by Article IX to prevent me from answering that question.

The County also argues that a sustained grievance in this case will lead to an absurd result. It asserts that such a conclusion will create a situation in which the language of Article IX will "encompass almost all ceremonies even tangentially related to the passing of an employee's relative". I disagree. First, as discussed, a burial is a fairly standard funeral activity, so finding that Roggenbuck should have been able to attend one does not create an expansion of Article IX to include an unusual kind of event. That is a different case. This award merely accepts the principle that standard funeral activities can occur under novel timeframes.

Having considered the foregoing record as a whole, the undersigned makes the following

AWARD

The grievance is granted. The grievant shall be reimbursed for any losses incurred as a result of having been denied one of funeral leave pay. The undersigned will retain jurisdiction for a period of sixty days to assist with any dispute regarding the remedial aspect of this award.

Dated at Madison, Wisconsin, this 16th day of May, 2012.

Danielle L. Carne /s/

Danielle L. Carne, Arbitrator