

BEFORE THE ARBITRATOR

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In the Matter of the Arbitration of a Dispute Between

**KAUKAUNA CITY EMPLOYEES'  
LOCAL 130, AFSCME, AFL-CIO**

and

**CITY OF KAUKAUNA**

Case 123  
No. 71592  
MA-15173

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Appearances:

**Ms. Mary Scoon**, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, W5670 Macky Drive, Appleton, Wisconsin 54915, on behalf of the Union.

Davis & Kuelthau, S.C., by **Attorney James R. Macy**, 219 Washington Avenue, P.O. Box 1278, Oshkosh, Wisconsin 54903-1278, on behalf of the Employer.

ARBITRATION AWARD

Kaukauna City Employees' Local 130, AFSCME, AFL-CIO (herein the Union) and the City of Kaukauna (herein the City) are parties to a collective bargaining relationship. At all times pertinent hereto, the parties were operating under a collective bargaining agreement covering the period from March 24, 2011 to December 31, 2013. On April 17, 2012, the Union filed a request with the Wisconsin Employment Relations Commission (WERC) to initiate grievance arbitration over the refusal of the City to grant bargaining unit member Brandon Sanderfoot paid funeral leave to attend the interment of the remains of his father-in-law on October 25, 2011. The undersigned was appointed to hear the dispute pursuant to a joint request from the parties and a hearing was conducted on August 2, 2012. The proceedings were transcribed. The parties filed initial briefs by September 10, 2012 and reply briefs by September 25, 2012, whereupon the record was closed.

ISSUES

The parties did not stipulate to a statement of the issues. The Union would frame the issues, as follows:

Did the Employer violate Article VII of the Collective Bargaining Agreement when it denied funeral leave pay for the interment of a deceased family member?

If so, what is the appropriate remedy?

The City would frame the issues, as follows:

Did the City violate Article VII, Paragraph D, of the Collective Bargaining Agreement when it denied the Grievant a third day of funeral leave for October 25, 2011, after granting two previous days off in April 2011 for the same funeral?

If so, what is the appropriate remedy?

The Arbitrator adopts the issues as framed by the City.

### **PERTINENT CONTRACT LANGUAGE**

#### **ARTICLE VII** **AUTHORIZED ABSENCE**

##### **D. Funeral Leave**

Section 1. In case of emergency absence due to the death of a member of his/her immediate family (spouse, daughter, son, mother, father, sister, brother, father-in-law, mother-in-law, and stepchild) an employee shall be paid for actual time lost up to and including the day after the funeral, but not to exceed three (3) days at his/her regular straight time hourly rate, and not to exceed eight (8) hours per day. An employee shall receive one (1) day of paid funeral leave for actual time lost due to the death of the employee's grandfather, grandmother, brother-in-law, sister-in-law, stepbrother, or stepsister, but only for the day of the funeral.

Actual time lost on any given day means that the employee's absence would otherwise cause him to lose his pay for that day. It does not include weekends when an employee is normally off duty, nor does it include holidays for which an employee receives holiday pay. If an employee is on vacation at the time when he would otherwise qualify for funeral leave, he may use funeral leave in the place of vacation time. However, if an employee is taking vacation right at the end of the vacation year and would otherwise qualify for funeral leave, he will not be entitled to take both. Under no circumstances will an employee be entitled to use funeral leave to be paid twice for the same day off.

## **BACKGROUND**

At the time of the events resulting in this grievance, Brandon Sanderfoot was employed by the City of Kaukauna Street Department and was a member of the bargaining unit represented by Local 130. On Wednesday, April 20, 2011, Sanderfoot's father-in-law passed away after a long illness. Under Article VII, Section D. of the parties' collective bargaining agreement, a bargaining unit member is eligible for up to three days of paid funeral leave for the death of an immediate family member and a father-in-law is considered a member of the immediate family under the provision. At the time, Sanderfoot asked for, and was granted, paid funeral leave for Thursday, April 21 and Monday, April 25, pursuant to the provisions of Article VII, Section D.<sup>1</sup> The family of the decedent made a decision to inter his remains at a later date so Sanderfoot decided not to ask for the third day of funeral leave allowed under the contract, but to use it at a later time to attend the interment. Sanderfoot did not, however, inform the City of his intentions.

Sanderfoot's family ultimately scheduled the interment for October 25, 2011. At that time, Sanderfoot requested a third day of funeral leave to attend the interment from his supervisor, Pat Vanden Heuvel. Vanden Heuvel, in turn, referred him to Denise Vanderloop, the City Human Resources Director who, in conjunction with other City management staff, denied the request. Sanderfoot ultimately used a vacation day to attend the interment.

On November 14, 2011, the Union filed a grievance on Sanderfoot's behalf, maintaining that the denial of the third funeral leave day violated Article VII, Section D of the contract. The City denied the grievance and the matter was processed to arbitration. The parties agree that the matter is properly before the arbitrator and there are no objections to arbitrability. Additional facts will be referenced, as necessary, in the **DISCUSSION** section of the award.

## **POSITIONS OF THE PARTIES**

### **The Union**

The Union argues that addressing the death of an individual usually involves one or more of a series of events or activities for the family of the deceased, including making funeral and burial arrangements, a visitation or wake where friends and family gather, the funeral service itself and a burial or interment of the deceased's remains. The City's position, that funeral leave days must all take place in close proximity to the date of death, dismisses the probability that some of these events might not take place immediately after death, but are nevertheless an important element of the process. The contract language supports the Union's position by including up to three days of leave, which clearly implies more activities than just a funeral service. In fact, the provision for three days of leave was intended to address just this situation, that is, an interment that occurs on a date somewhat after the funeral.

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<sup>1</sup> Friday, April 22, 2011 was Good Friday and, therefore, Sanderfoot received that day off as a paid holiday.

Authorities support the proposition that where the intent of the parties can be determined, contract language should be interpreted accordingly. Here, it is clear that the parties intended funeral leave to be available for all activities surrounding the death of an immediate family member, including interment, and there are no restrictions within the language that would prevent leave from being used even months after the death. It is interesting to note that for deaths of other relations not considered immediate family, employees are only permitted one day of leave, and only for the funeral, as distinguished from this provision which grants three days and places no restriction on the timing of use.

The City contends that the Union should be required to bargain for changes in the language in order to use funeral leave in this way. This is not necessary because the provision for two additional days of leave beyond the funeral itself contemplates situations where the funeral and interment may not occur at the same time, such as where a death occurs in the winter, but interment cannot take place until spring when the ground thaws. There is no history of a request such as this having been made in the past, so there is no anecdotal evidence that this language has been interpreted to preclude it. Also, the City's argument that this policy has been applied throughout its bargaining units has no merit. The contract language for the other bargaining units is different from that in place here and has no applicability.

### The Employer

The City asserts that the contract language is clear and unambiguous and supports the City's denial of the additional day of funeral leave. The Grievant initially asked for two days of leave due to his father-in-law's death, which the City granted in good faith. When he asked for an additional day in October there was no emergency, the family just decided that was the appropriate time for the interment. Further, there was no funeral service. The contract language is clear that funeral leave is granted on an emergency basis and includes up to three days of time off up to the day after the funeral. The Grievant was technically not entitled to any time off because the death was anticipated and was, therefore, not an emergency. The burial of the ashes six months later was certainly not an emergency. Also, per the decedent's instructions there was no funeral. This being the case, one cannot consider the burial to be a funeral event, thus the Grievant was not entitled to any funeral leave and was not harmed when a request for an additional day six months after the death was denied. Finally, the language is not a guarantee of three days off, but merely an amount of time up to three days, but in no event beyond the day after the funeral. Here, there is no support in the contract for the Grievant's claim.

Assuming, *arguendo*, that the language is found to be ambiguous, bargaining history, past practice and the resolution of a past grievance all support the City's position. The current language was added in 1987-88. At that time the parties added the language covering the day after the funeral based on concerns of the Union that if a funeral occurred out of town it might be difficult to return to work the next day. The parties did not alter the limit of the leave to three days or the stipulation that the situation must be an emergency. Clearly, the parties know how to bargain over funeral leave and if the Union wants to expand this benefit it should do

so through negotiations, not arbitration. Further, this is not the first grievance of funeral leave involving this Grievant. In 2009, Sanderfoot wanted a day off to attend the funeral of his brother's sister-in-law, but this relationship did not qualify for funeral leave under the contract. He then asked for, and was granted, the use of sick time for the purpose. The Union grieved the concession, arguing that the granting of sick time to attend a funeral was inappropriate and that the City should not deviate from the contract language. The City agreed and the permission was withdrawn. Now the Union seeks to have the City grant funeral leave in a situation where there was no funeral and that the period of leave be extended well beyond the time period within which the death occurred. The Union's position in 2009 was the correct one and supports the position of the City here. Finally, the City's records reflect that the application of the language here was consistent with how funeral leave has been treated in the past. There is no evidence of the City ever granting a request to use funeral leave six months after the death of a family member. The Union admits that under their interpretation of the language any employee could effectively "bank" a funeral leave day to be used later. Theoretically, this would permit multiple employees to bank a funeral day during the same year, which could coincidentally all be used for a funeral event scheduled for the first day of deer hunting, or some other preferred time. Clearly this is a ridiculous proposition and should not be supported. The grievance should be denied.

### Union Reply

The Union asserts that the interment is part and parcel of the funeral leave provision. The City argues that an employee is not eligible for funeral leave if the death was anticipated or not an "emergency." It also asserts that the interment is just a family gathering, separate from other funeral proceedings, so that apparently only the funeral service itself is eligible for paid leave. Further, the City's use of the word "emergency" would render the remainder of the provision meaningless. It is boilerplate law that an arbitrator should interpret contract language to give effect to its terms and not in a way that renders a provision meaningless. The making of arrangements, wake, funeral service and interment are all integral parts of the funeral process, whether or not the death was anticipated. The fact that the interment does not take place immediately after death does not make it less important or automatically disqualify it from funeral leave. Lincoln County, MA-15078 (Carne, 2012)

The previous grievance cited by the City is not relevant to this case. In that case the Union grieved the Employer's permitting the employee to use sick leave to attend a funeral. The contract does not permit use of sick leave for this purpose. The Union sought to have the contract language properly applied in order to avoid preferential treatment among employees. Here, the Union is not seeking an expansion of the contract language, but merely for the Grievant to receive what is provided.

The City has also not shown any evidence of past consistent application of this provision. There is, however, no evidence that any other employee has asked for funeral leave months after the death of a family member, or that the City has consistently applied the language to deny such use. The fact that no one has made a request does not mean there is a

bar to doing so, only that there has not been occasion until now to address this particular circumstance. It is also offensive to suggest, as the City does, that a ruling in favor of the Union will lead to employees banking funeral leave to use for deer hunting.

### City Reply

The City notes that the Union acknowledges that “funeral” is a term of art, separate from “interment” and, therefore, the Grievant was not eligible for leave in this case. The provision in question provides for up to three days of paid leave up to and including the day after the funeral. The Union identifies four distinct events involved with a death: 1) making arrangements, 2) the wake, 3) the funeral service and 4) the interment, indicating that a funeral is separate and distinct from an interment. In a contract, titles have meaning. Here, the provision is entitled “Funeral Leave,” meaning that to qualify for leave there would need to be a funeral. Here, there was no funeral at the decedent’s specific request. Further, had there been a funeral, leave would only have been available up to the day after the event. Had there been a funeral, therefore, paid leave for an interment occurring six months later would not be permissible under the contract language. The Union maintains that the parties clearly intended to adopt a provision that covered all funeral activities, the language itself indicates otherwise. To qualify for funeral leave, the leave must be completed the day after the funeral, regardless of when the interment occurs. The parties could have provided that leave eligibility extends through the interment, but did not. The Union should not gain through arbitration what should be bargained for.

The Union would have the arbitrator ignore the funeral leave language in other contracts with the City’s other bargaining units because they are not identical and may have different meanings. City HR Director Denise Vanderloop specifically testified, however, that the City has been consistent in how it applies funeral leave language across all units. This testimony was supported by that of Public Works Director John Sundelius, who stated that in his recall an employee has never received a third day of funeral leave at a date in the future, as requested here. While the language in all the contracts may not be the same, the application has been consistent and historically leave days occurring well past the death of a family member are not granted.

### DISCUSSION

The Union asserts the right under Article VII, Section D of the contract for a bargaining unit member to take up to three days of leave for the death of an immediate family member and furthermore asserts that these leave days may be used for any activities or events normally associated with the death of a loved one, such as the wake, the funeral or the interment, even if these events do not take place on consecutive days, but perhaps occur up to several months apart. In the instant case, the Grievant’s father-in-law died and at his request he was granted two days of paid leave. Several months later the family planned an interment of the decedent’s ashes and the Grievant then sought a third day of funeral leave, which was denied.

The City contends that the language is clear that funeral leave is only available under emergency circumstances, which did not exist here because the death was anticipated after a long illness, so the Grievant should not have received any leave at all. The City further maintains that the language is clear that funeral leave is only available up to and including the day after the funeral. Since there was no funeral, but the interment occurred six months after the death, again the Grievant was not entitled to the additional day of leave. For the reasons set forth below, I believe that the City's argument is the stronger and that the grievance must be denied.

To begin with, I turn to the relevant contract language. Article VII, Section D of the contract provides, in pertinent part:

In case of emergency absence due to the death of a member of his/her immediate family (spouse, daughter, son, mother, father, sister, brother, father-in-law, mother-in-law, and stepchild) an employee shall be paid for actual time lost up to and including the day after the funeral, but not to exceed three (3) days at his/her regular straight time hourly rate, and not to exceed eight (8) hours per day. An employee shall receive one (1) day of paid funeral leave for actual time lost due to the death of the employee's grandfather, grandmother, brother-in-law, sister-in-law, stepbrother, or stepsister, but only for the day of the funeral.

It is clear that this provision exists to provide paid leave for employees in circumstances where family members have died, with more leave being provided in cases where the decedent is considered to be a member of the immediate family. I note the addition of the word "emergency" in the first sentence, implying something more urgent than a planned absence. The City contends that since in this case the decedent had been terminally ill there was no emergency since his death was expected and, therefore, the Grievant was technically not entitled to any leave. I do not attach such a restrictive meaning to the term. In my view, even where the death of a loved one is anticipated it cannot usually be predicted with any certainty, such that an employee should be expected to use accrued vacation for any death other than one that occurs completely without warning.

On the other hand, it is a recognized principle of contract interpretation that all words of a contract should, where possible, be given meaning so that none are deemed superfluous. In this context, then, I find that the word does have significance where the Grievant knew several months in advance that there would be an interment and was able to plan for it. While the Grievant's absence at the time of his father-in-law's death could be properly regarded as an "emergency," entitling him to the two days paid leave he received at the time, it is clear that his decision to attend the interment six months later did not constitute an emergency as that term is used here.

I note also that under the contract language the period available for funeral leave is not indefinite in scope. Rather, it is available "up to and including the day after the funeral." The

record further reveals that this last phrase including the day after the funeral was bargained into the contract later after a concern was raised that it would be difficult for employees to return to work the day after a funeral if it occurred a great distance away, thus an additional day was included. In the Union's view, this language is inapplicable here, inasmuch as there was no formal funeral ceremony at the decedent's specific request. It is not possible, therefore, to calculate when the period available for leave ended because the benchmark event, the funeral, did not take place. The suggestion is, apparently, that if there is no funeral there is no contractual limitation on when leave may be taken to acknowledge the death of an immediate family member, or how far apart the leave days may be spaced. I do not agree. It is clear from the bargaining history that the day after a funeral was included to address a specific concern involving the need of employees to return to work from a distance after participating in the activities attendant to the passing of a loved one. These activities are usually designed to meet the emotional needs and spiritual beliefs of the family and for that reason cannot be pigeonholed into a specifically defined program of activities, whether or not they include a formal service. Instead, the term "funeral" is used to incorporate all such activities and observances that occur when people gather to commemorate the death of a family member. Viewed in this way, the contract permits up to three days to participate in such observances and to return to work. There is no suggestion in the language that employees can "bank a day," to use the City's term, to be used for an additional observance at a later time.

The Union, however, cites Lincoln County, MA-17078 (Carne, 5/16/12) in support of the proposition that interment is an important element of the funeral process and should be eligible for paid leave under the contract, even where the interment occurs long after the funeral service. In Lincoln County, the Grievant was a County employee whose grandfather died in January 2011. Under the contract, the Grievant was eligible for up to three days of paid leave to attend the funeral, but she did not take leave for the funeral because it occurred on a day she was not scheduled to work. Because the death occurred during the winter when the ground was frozen, interment could not be done until several months later. At that time, the Grievant requested leave to attend the interment, which was denied. In upholding the grievance, Arbitrator Carne found that the distance in time between the funeral and the burial did not disqualify the Grievant from eligibility for leave to attend the latter event because the burial was a recognized "funeral activity." The fact that the Grievant did not use leave for the funeral, itself, meant that the contract requirement that leave days be taken consecutively was not violated and the contract did not require that eligible funeral activities be proximate in time to each other.

This case is distinguishable from Lincoln County on its facts. In the first place, unlike the contract in Lincoln County, the language here only provides for leave up to and including the day after the funeral. As I have noted above, though there was no funeral service *per se*, the Grievant's family did take time to gather at the time of the decedent's death, for which he requested and received two funeral leave days. In my view, once an employee is granted funeral leave for the death of a family member, under this language the clock begins to run and the employee is only entitled to three days to participate in funeral activities, in whatever form they may take. I also note the presence here of the word "emergency," which was not in the



Lincoln County provision. Again, I have already noted that it is too restrictive to say that this language means leave is only available in cases of sudden, unexpected death, but where the interment is planned for and held six months after the fact, it seems a bit of a stretch to say that it qualifies as an emergency.

For the reasons set forth above, therefore, and based on the record as a whole, I hereby issue the following

**AWARD**

The City did not violate Article VII, Paragraph D, of the Collective Bargaining Agreement when it denied the Grievant a third day of funeral leave for October 25, 2011, after granting two previous days off in April 2011 for the same funeral. The grievance is dismissed.

Dated at Fond du Lac, Wisconsin, this 16th day of January, 2013.

John R. Emery /s/

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John R. Emery, Arbitrator