

ARBITRATION DECISION NO.:

322

UNION:

OCSEA, Local 11, AFSCME, AFL-CIO

EMPLOYER:

Office of Collective Bargaining

DATE OF ARBITRATION:

January 23, 1991

DATE OF DECISION:

February 12, 1991

GRIEVANTS:

Marilyn K. Hale

Donna Wright

Doug Fouch

Jackie Sealy (withdrawn)

OCB GRIEVANCE Nos.:

1) 30-10-(90-06-22)-0190-01-09

2) 07-00-(88-12-29)-0025-01-14

3) 60-00-(90-02-27)-0060-01-09

4) 11-05-(89-11-22)-0052-01-09

ARBITRATOR:

John E. Drotning

FOR THE UNION:

Linda Fiely, Esq.

FOR THE EMPLOYER:

Michael Duco

KEY WORDS:

Bereavement Leave

Qualifying Family Members

ARTICLES:

Article 30 - Administrative

Leave With Pay

§ 30.03 - Bereavement

Leave

FACTS:

This was an arbitration in which the Union challenged the State's interpretation of the bereavement leave article of the contract. Each grievant was denied bereavement leave for an individual whom they considered to be a qualifying family member. The first grievant requested leave when her step-father passed away. She

had a close relationship with him and her genetic father had passed away when she was four years old. The second grievant also requested leave when her step-father passed away. She had lived with her step-father for three and one half years. The relationship with her step-father was closer than that with her genetic father. The third grievant requested leave when the son of a woman with whom he had once resided passed away. The grievant treated the boy as his own son and maintained the relationship after he stopped residing with the boy's mother. The last grievant's step-mother passed away and she was also denied bereavement leave. All the above grievants were denied bereavement leave because the relationship with the individuals who had passed away allegedly did not qualify under section 30.03 of the contract for paid leave.

UNION'S POSITION:

One grievant did not appear for the arbitration and the grievance was withdrawn. The other three grievants involved in this arbitration are entitled to bereavement leave. Two grievants requested leave when their respective step-fathers passed away and the third, when a boy whom he treated as a son passed away. All the deceased for whom bereavement leave was requested fall under persons covered by reasonable interpretation of section 30.03. They were all considered to be members of the grievants, immediate families. The contract allows leave for someone who "stands in the place of a parent." The 1989-91 contract allows leave for step-children, therefore, the last grievant is also entitled to leave.

EMPLOYER'S POSITION:

The grievants covered by this arbitration are not entitled to bereavement leave. The union attempted to expand the scope of section 30.03 in negotiations. The employer resisted but agreed to expand section 30.03 only for step-children. The language of section 30.03 allows leave for parents "or other person who stands in place of a parent." Use of or indicates that other persons qualify only if there is no parent. The grievant who requested leave for the son of a woman with whom he resided is not covered by the step-son provision of the contract. The boy has a father and there is no provision in the contract for children of significant others. Therefore, no grievant covered by this arbitration is entitled to bereavement leave pursuant to section 33.03 of the contract.

ARBITRATOR'S OPINION:

The union argues that section 30.03 applies when another person assumes the status of a parent even if there is a "real parent existing. The employer, however, argues that another person can "stand in the place of a parent" only if there is no parent at all, i.e. no mother or father. The correct interpretation should be that another may stand in the place of a parent if that parent is not in existence. A step-father is included in section 30.03 if the employee's father is not in existence. Therefore, the grievant whose father had passed away earlier was entitled to bereavement leave upon the death of her step-father. The other grievant is not in a similar situation. Her father is still living and her step-father is no longer married to her mother although they are residing together. Her step-father, therefore, did not stand in the place of her father and she was not entitled to bereavement leave.

The third grievant requested bereavement leave upon the death of a boy whom he had treated as his own son. He had resided with the boy's mother some time ago but had since moved out. However, the boy's father was still living even though he may not have seen his son often. The boy also had a step-father. There is no language to indicate that section 30.03 was to be extended to one who stands in the place of a stepchild. Legal step-children were included and the quality of the relationship cannot extend the meaning of that section. Therefore, this grievant was not entitled to bereavement leave when his former significant other's son passed away.

The last grievant requested bereavement leave when her stepmother passed away. Both parties agreed that the grievance was withdrawn.

AWARD:

The grievance covering the grievant whose father had passed away and, therefore, had no other father is sustained. The grievances covering the grievant whose father was still living and the grievant who requested

leave for a boy whom he treated as a son are denied. The last grievance was withdrawn and, therefore, not considered.

TEXT OF THE OPINION:

IN THE MATTER OF ARBITRATION

BETWEEN

**OFFICE OF COLLECTIVE
BARGAINING, STATE OF OHIO**

AND

**OHIO CIVIL SERVICE
EMPLOYEES ASSOCIATION
LOCAL 11, AFSCME**

ARBITRATION AWARD

HEARING DATE:

January 23, 1991

GRIEVANCE:

Section 30.03

ARBITRATOR:

John E. Drotning

I. HEARING

The undersigned Arbitrator conducted a Hearing on January 23, 1991 in the offices of the Ohio Civil Service Employees Association, 1680 Watermark Drive, Columbus, Ohio. Appearing for the Union were: Linda Fiely, Esq., John Feldmeyer, Marilyn Hale, Donna Wright, and Doug Fouch. Appearing for the Employer were: Michael Duco, Rachel Livengood, Vicki Treciak, and Gene Brundige.

The parties were given full opportunity to examine and cross examine witnesses and to submit written documents and evidence supporting their positions. No post hearing briefs were filed and the case was closed on January 23, 1991. The discussion and award are based solely on the record described above.

II. ISSUE

The parties jointly asked:

Did the Employer violate Section 30.03 of the Collective Bargaining Agreement when it denied the grievant's bereavement leave? If so, what should the remedy be?

III. STIPULATIONS

The parties jointly submitted the exhibits marked Joint Exhibits #1 through #9.

The parties also stipulated a number of facts as follows:

1. The cases are properly before the Arbitrator

2. Doug Fouch was granted sick leave to accompany Jamie Ohler to the doctor when he was residing with Jamie and his mother.
3. Mr. Fouch moved from the residence at least by December of 1988.
4. On November 5, 1989, Jamie Ohler died.
5. The Union withdrew Ms. Sealy's claim and Management agreed. Therefore, there is no need to consider Joint # 6.

IV. TESTIMONY, EVIDENCE, AND ARGUMENT

A. UNION

1. TESTIMONY AND EVIDENCE

Ms. Marilyn K. Hale testified that she was an administrative assistant in the State Fire Marshall's office and that she grieved bereavement leave for the days of November 30, December 1, and December 2. She said that she asked for bereavement leave when her stepfather died and her office said okay. The request, said Hale, went to her supervisor and eventually she was told, after attending the funeral, that she would not be entitled to bereavement leave.

Hale said that she had a father who died when she was four years old and then she had no father until 1976 when her stepfather married her mother. Hale said that her step-father was like a parent.

Hale testified that her step-father came to her house and she visited him at his house and she said, "How much of a father could I have?"

Hale said she never used bereavement leave prior to this.

Hale also said her step-father helped her with her daughter's education and that she went to him for answers to questions.

Ms. Donna Wright, who worked for the Ohio Student Loan Commission, testified that, she wanted bereavement leave when her stepfather died and it was not approved.

Wright said she filled out a leave form and then she checked with the Union and she learned that her step-father was included so she changed her request for vacation time for her stepfather's funeral to bereavement leave.

Wright said that eventually the administration held that step-fathers were not covered by the Contract.

Wright testified that she lived with her step-father for three and one-half years and she had more contact with him than with her real father.

On redirect, Wright, said that she lived with her mother and her step-father, even when they did not re-marry. Wright said her stepfather and mother were married, divorced, and never remarried.

Mr. Doug Fouch, an employment service counselor in Athens, Ohio, testified that Jamie Ohler died on November 5, 1989. Fouch said that he acted as a father to Ohler from 1985 on.

Fouch said that in 1985, Ohler's mother and he had a residence and he took on the task of being a father to Ohler who had cancer. Fouch said that he first got to know Jamie Ohler when the boy was twelve and by the time he was fifteen, he had been diagnosed as having cancer.

Fouch said that he used to take Jamie with him when he delivered mail and he used to talk to him about how to deal with his mother.

Fouch said that his own two children were not with him so, Jamie Ohler became his surrogate son. He said he got much closer to Jamie when he learned that, the boy had cancer. He said that he used to take him to Rainbow Babies Hospital and he would use his sick leave in order to go with Jamie.

Fouch said that he asked for bereavement leave and he said that if that were denied, he needed some kind of leave to attend the funeral of Jamie. He said eventually he got leave without pay, but then got it covered by vacation leave.

Jamie Ohler, said Fouch, had an older brother and a sixteen year sister.

Fouch said that Jamie's biological father lived in Cleveland and he asserted that Jamie Ohler's real father did not give much support to his son.

Fouch said he was in the VFW and was invited as a parent of Jamie Ohler to help work out some costs for the child.

When Jamie Ohler died, said Fouch, the local newspaper article noted that he was a "special friend". He said that Jamie Ohler's mother viewed him as Jamie Ohler's father.

Fouch said he helped Jamie repair a car and install a hand accelerator when Jamie Ohler lost a leg and had to use a prosthesis.

Fouch said that he took Jamie Ohler to Florida along with his two boys and the Foundation supported the cost of that trip and that he was viewed as Jamie's father.

Fouch said that he moved out of Jamie Ohler's mother's house and into his own house.

Fouch said that they had pursued bereavement leave because, in his view, he was the parent.

The only Union cross-examination of a Management witness was to ask Gene Brundige whether anything was written in the Collective Bargaining Agreement and he replied, No.

2. ARGUMENT

The Union asserts that the parties must interpret Article 30.03. It notes that four of these cases are grouped together. It points out that, Hale's step-father died, and her real father died when she was about three years old and her mother then married her stepfather. Hale, argues the Union, is entitled to bereavement pay for her stepfather who stood in place of a real-father.

Wright's step-father died and stood in place of her father and she had a strong relationship with her step-father.

Mr. Fouch lived with Jamie Ohler's mother and developed a relationship with the child and supported him. He had, argues the Union, a parent-child relationship and, therefore, equity him to receive bereavement, pay.

The Union points out that Fouch received sick leave when he visited the child for radiation therapy at Rainbow Babies and accompanied Jamie Ohler's mother and the boy to Florida.

The Union argues that Fouch was viewed as a parent by the community. Moreover, the Employer allowed sick leave and then denied the bereavement leave.

The Union notes that Fouch did move out of Jamie Ohler's mother's house, but his relationship with the child stayed consistent.

The Union also argues that Ms. Sealy's mother-in-law died and therefore, Sealy should get bereavement leave.

The Union argues that in all cases, the deceased were viewed as members of the employee's family.

B. EMPLOYER

1. TESTIMONY AND EVIDENCE

Mr. Gene Brundige testified that he had formerly been the Director of the Office of Collective Bargaining and was currently a member of the SERB Board. Brundige noted that he served as chief spokesperson for the 1989-91 Contract as well as the 1986-89 Collective Bargaining Agreement.

Brundige testified that the Union wanted to extend the scope of bereavement leave and Management resisted and only added stepchild to the language in the 1986-89 Contract.

Brundige also testified that the 1986-89 Contract (see Joint Exhibit #1) talked about funeral leave and he noted that the Union wanted bereavement leave.

Brundige went on to say that Article 30.03 of the Contract limited employees' bereavement leave, but obviously, employees could use other forms of leave if they attended a funeral.

The Management cross examined Union witnesses. Ms. Hale was not cross examined.

Donna Wright, on cross, testified that on the second time around, her mother did not re-marry her step-father.

Doug Fouch, on cross, testified that he was not legally married to Jamie Ohler's mother. He testified that

Jamie had a step-father and a real father.

2. ARGUMENT

Section 30.03 of the 1989-1991 Contract is clear, asserts the Employer.

The Employer notes that three cases fall under the 1989-91 Contract identified as Joint Exhibit #2 and one falls under the 1986-89 Contract (see Joint Exhibit #1). The significant changes were over the fact that the definition of significant other was clarified and the parties included the step-child as part of the Contract.

The Employer goes on to say that the Union in the second round of negotiations tried to include a host of other individuals, but failed since the State held fast to the limited definition of the initial contract with the exceptions of the two changes above.

Marilyn Hale, notes the Employer, was denied bereavement leave on 12/19/88 after the death of her step-father. The Employer notes that the Union will argue that the step-father falls under the phrase:

... or other person who stands in place of a parent.

The Employer argues that the word "or" is important because it indicates that the parties agreed that some times employees would have someone who stands in the place of a parent, assuming that there is no parent; namely mother or father. In short, the Employer asserts that an employee cannot have both a father and a stepfather for purposes of utilizing bereavement leave. Moreover, the former bargaining history indicates that the Union recognized that it did not achieve the inclusion of step-fathers, although it tried and the State successfully resisted the Union's position.

Doug Fouch, notes the Employer, was denied bereavement leave on 11/13/89 as a result of the death of a former significant other's child. The Union will argue, notes the Employer, that Fouch was given sick leave to go to chemotherapy with Jamie Ohler while he (Fouch) was living with the mother and child.

The Employer asserts that the language of the second Agreement (Joint Exhibit #2) is clear and it talks about step-child or child but it does not speak about the child of a significant other. Moreover, simply because the agency gave sick leave to Fouch in order for him to take care of Jamie Ohler is not the basis to rule in his favor and so grant bereavement leave.

The Employer goes on to say that when it granted sick leave, Fouch was living with the mother and child, but it also points out that Fouch had been living outside the household of the mother and child for over one year at the time he was denied bereavement leave. In this case, the Employer allows Fouch to leave sick leave that he earned.

The Employer points out that in the newspaper obituary noted that Barry Bolin was Jamie's step-father and that Fouch was a special friend. There is no provision for a special friend written in to Section 30.03 of the Contract.

In Donna Wright's case, the Employer points out her request for bereavement leave was for the death of her step-father, but it argues that the Union tried to include step-father in the Contract and failed.

With respect to Ms. Sealey, the parties agreed that her case would be withdrawn.

The Employer goes on to say that while its position may seem cold and callous, that is not true because employees accrue a host of leave benefits such as sick leave, vacation, and personal leave as well as being credited with bereavement leave. The

Employer is not saying that employees should not take time off when someone close to them dies, but it limits the State's expense by enumerating who the deceased had to be before an employee qualifies for bereavement leave under Section 30.03.

None of the above situations is covered by Section 30.03 and therefore, the Employer asks that all grievances be denied.

V. DISCUSSION AND AWARD

Section 30.03, Bereavement Leave, (see Joint Exhibit #2) says:

"Three (3) days of bereavement, leave with pay at regular rate will be granted to an employee upon the

death of a member of his/her immediate family interpreted for the purposes of this Article to include: spouse or significant other ("significant other" as used in this Agreement, is defined to mean one who stands in place of a spouse and who resides with the employee), child, step-child, grandchild, parent, grandparent, brother, sister, mother-in-law, father-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law or legal guardian or other person who stands in the place of a parent. The Employer may grant vacation, sick leave or personal leave to extend the bereavement leave. The leave and the extension may be subject to verification."

The above language of Joint Exhibit #2, the 1989-91 Contract, is not significantly different than the language in the prior 1986-89 Contract (see Joint Exhibit #1).

There are four grievants in this case, but there is an agreement that Jackie Sealy did not appear and her issue is withdrawn and, therefore, Joint Exhibit #6 is not necessary (see Stipulations). Thus, we have the questions with respect to Marilyn Hale, Donna Wright, and Doug Fouch.

The cases of Hale and Wright concern bereavement leave for the deaths of their step-fathers. The testimony indicates that Marilyn Hale's real father died when she was just about four years old and she had no father until around 1976 when her mother married her step-father. Donna Wright testified that she lived with her step-father for three and one-half years and had more contact with him than with her real father and she said her stepfather meant more to her than her real father.

The Employer witness testified that during negotiations for the 1989-91 Contract the Union tried to include step-parent in the list of immediate family members in Article 30.03 but that this addition was not agreed to by the Employer. The only addition to the 1989-91 Contract was step-child and the other change clarified the definition of "significant other". Thus, if the step-father of an employee dies, the employee is not automatically entitled to use bereavement leave but as the Employer notes, he/she can use other leaves such as personal days, accrued sick leave and vacation.

However, Article 30.03 also includes the phrase, "legal guardian or other person who stands in the place of a parent" and the Union claims that the step-fathers of Hale and Wright were included as a "person who stands in the place of a parent". The Employer argument implies that this phrase takes on significance only when there are no parents. The assumption that the "other person who stands in the place of a parent" exists only in cases where there is or was neither a mother and father is very narrow and does not fit the language of "place of a parent". For the Employer's interpretation to hold, the language would read "place of parents".

Thus, the fundamental question is whether in the above cases, the step-fathers actually "stood in place of a parent"; that is, father.

Marilyn Hale indicated that her real father died when she was three or four years old and she had no father until 1976 when her mother married again. The testimony is that her step-father was a parent to her and that he came to her Mom's house and she went to his house and, in fact, he acted as a father.

It is clear from Marilyn Hale's testimony that she viewed her step-father as a surrogate father and the fact that her real father had died and her mother had married her step-father certainly allows the conclusion that her step-father stood in place of a parent and, in fact, acted as a parent and, therefore, her grievance is sustained and she shall be awarded bereavement leave.

In Donna Wright's case, while she asserts that she lived with her step-father and had more contact with him than with her real father, it is clear her real father existed. On cross examination, she indicated that her mother had married her step-father but, at one point in time, there had been a divorce and while her mother and step-father subsequently lived together again, her mother never remarried the man Wright considered her step-father. Now, in that sense, it is difficult to conclude that Donna Wright's claim for bereavement leave is appropriate given that her step-father was not married to her mother and that her real father is apparently still living. Thus, one cannot conclude that her step-father was covered by "other person who stands in the place of a parent". Therefore, Donna Wright's claim is not sustained.

Doug Fouch was denied bereavement leave upon the death of Jamie Ohler, the son of Fouch's former "significant other". Fouch testified that he took care of Jamie Ohler, although he was not married to Jamie Ohler's mother. Apparently Fouch lived with Jamie Ohler's mother, but they were not married and he lived

with her between 1985 and 1988 or maybe 1989.

In this case, it is also clear that Jamie Ohler's biological father lived in Cleveland and while Fouch testified that the real father did not visit with his son very often, that testimony may or may not be true because it is impossible to make such a conclusion in the absence of the testimony of the biological father.

The testimony of Fouch is insightful and it is clear that he tried in many ways to help Jamie Ohler, a young boy who eventually died of cancer at the age of fifteen. Moreover, Fouch took Ohler to Florida along with his own two boys. However gracious and wonderful Fouch was to Jamie Ohler, it is also true that he was not legally married to Ohler's mother and, in fact, Jamie Ohler had a step-father and a real father and both were alive.

There just is not anything in the Contract which would support Fouch's claim. The Contract provides bereavement leave for persons who are "significant others" who stand in the place of a spouse and for persons who "stand in the place of a parent", but there is nothing to suggest that an employee is entitled to bereavement leave for a deceased who "stands in the place of a son or daughter" without being a legal step-child.

In conclusion, because of the large number of employees involved and the extended familial relationships in today's society, Article 30.03 must be interpreted precisely and literally. It is impossible to base bereavement leave considerations on the quality of a particular personal relationship but these decisions must rest primarily on legal and narrow definitions of the relationship between the employee and the deceased.

Therefore, since Marilyn Hale's biological father died when she was little and her step-father had taken the place of a parent, she is entitled to bereavement leave. Donna Wright's biological father apparently was alive at the time her mother married her step-father and since her mother and step-father were subsequently divorced and had not remarried, it is not possible to conclude that the step-father took the place of a parent. There is just no contractual language to cover the situation of employee Fouch who was a special friend to the deceased son of a person who for a period of time was Fouch's "significant other".

John E. Drotning
Arbitrator

Cuyahoga County, Ohio
February 12, 1991