

**IN THE MATTER OF ARBITRATION  
BETWEEN**

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**AFSCME Minnesota Council 65  
Local 2889**

**Union,**

**and**

**Mille Lacs County**

**Employer.**

**OPINION AND AWARD  
(Funeral Leave)**

**BMS Case No. 10-PA-0810**

**November 10, 2010**

**A. Ray McCoy  
Arbitrator**

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**Appearances**

For the Union

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For the Employer

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## **Jurisdiction**

The arbitrator has jurisdiction to resolve this matter pursuant to the labor agreement between Mille Lacs County Board of Commissioners and American Federation of State, County and Municipal Employees, AFL-CIO, Local Union # 2889 Effective January 1, 2008 through December 31, 2010. (Hereinafter “Agreement”) Article XXIII, Section E of the Agreement states:

“The arbitrator shall have no right to amend, modify, nullify, ignore, add to or subtract from the provisions of this Agreement. He/she shall consider and decide only the specific issue submitted to him/her by the Employer and the Union, and shall have no authority to make a decision on any other issue not so submitted to him/her. The arbitrator shall be without power to make decisions contrary to or inconsistent with or modifying or varying in any way the application of laws rules or regulations having the force and effect of the law. The arbitrator shall submit his/her decision in writing within thirty (30) days following close of the hearing or submission of briefs by the parties, whichever is later, unless the parties agree to an extension. The decision shall be based solely upon the arbitrator’s interpretation or application of the express terms of this Agreement and on the facts of the grievance presented. The decision of the arbitrator shall be final.”  
(Agreement at p. 20)

The Union filed the grievance on November 10, 2009. The Parties processed the grievance through all relevant steps outlined in the Agreement and notified the arbitrator of his selection by letter dated June 18, 2010. The Parties selected August 13, 2010 for the hearing of this matter. The hearing took place on that date at the Mille Lacs County Historic Courthouse, 635 Second Street Southeast, Milaca, Minnesota. The Parties agreed that the matter was properly before the arbitrator. The Parties had a full and fair opportunity to present their cases including the introduction of documents and the examination of witnesses. After presentation of their respective cases, the Parties elected to submit letter briefs in lieu of closing arguments. The Parties agreed that briefs would be exchanged via email to the arbitrator on August 27, 2010.

The Employer submitted its brief to the arbitrator as agreed. The Union submitted its brief by regular mail to the Employer postmarked August 27, 2010. Due to mistaken mailing address, the Union’s post-hearing brief did not reach the arbitrator until September 3, 2010. The record was closed on that date.

**Issue**

The Union submitted the following issue: “Did the Employer violate the collective bargaining agreement when the grievant, Jessica Andrich, was denied Funeral Leave? If so, what remedy shall apply.”

The Employer stated the issue as follows: “Did the Employer violate Article X, Section A, Funeral Leave, of the Labor Agreement when it denied funeral leave for Grievant Jessica Andrich for the death of her great-grandmother?”

**Relevant Contractual Provisions**

**ARTICLE IX**

**SICK LEAVE**

**Section C.** Sick leave benefits may be used under the following circumstances:

**Subd. 1** Absences necessitated by inability to perform the duties of the employees position by reason of illness or injury, by necessity for dental care, by exposure to contagious disease under circumstances in which the health of the employees with whom associated or members of the public necessarily dealt with would be endangered by attendance on duty, or by illness in the employee’s immediate family, for such period as shall be necessary. For this section, the term “immediate family” shall be limited to spouse, children/step-children, grandchildren/step-grandchildren, parent/step-parent, of either the employee or legal spouse. Use of sick leave benefits for illness in the immediate family which exceeds three (3) consecutive days may be subject to verification at the request of the Family Services Director.

**ARTICLE X**

**FUNERAL LEAVE**

**Section A.** Full-time or permanent part-time employees on a pro-rated basis, will be allowed to use up to a maximum of 16 hours, per incident, for the death in the employee’s immediate family, one day (8 hours) of which shall be the day of the funeral. The funeral leave days shall be considered as funeral leave days with pay. For this section, the term “immediate family” shall be construed as legal spouse, children or step-children, parents or step-parents, grandparents, brother or step-brother, sister or step-sister, and grandchildren or step-grandchildren of the employee and will also include only the brother, sister, parent or grandparent of

the employee's legal spouse. The maximum amount allowed under this section for funeral leave will be forty hours per calendar year.

Section B. Sick leave of up to three additional days (24 hours) may be allowed at the request of the employee for funeral leave for immediate family. For this section, the term "immediate family" shall be limited to legal spouse, children/step-children, brother/step-brother, sister/step-sister, grandparent, grandchildren/step-grandchildren, parent/step-parent, of either the employee or legal spouse. (Agreement at p. 9)

### **Background**

In late October 2009, the Grievant, Jessica Andrich, requested Funeral Leave following the death of her great-grandmother. The Employer denied the request. Ms. Andrich used vacation pay and attended her great-grandmother's funeral. Following her return to work she inquired again as to why the Employer denied her funeral leave request. The Employer explained that it read the Funeral Leave article of the Agreement to include grandparents but not great-grandparents. On November 10, 2009, the Union filed a grievance on behalf of Ms. Andrich arguing that the Employer should have granted the funeral leave request but did not explain why its reading of the relevant contractual language should be regarded as the proper interpretation. The Employer denied the grievance saying simply that Article X did not include great-grandparents. The Union then filed the grievance at Step 3 and said "The Union feels the broad construction of the term grandparents does include great-grandparents." (Union Ex. 2) Again, the Employer denied the grievance.

The Parties last bargained for changes to the definition of "immediate family" in 2007 during negotiations that led to the current Agreement that governs the resolution of this matter. During negotiations, neither side attempted to clarify the definition of the term "grandparents." The Parties did, however, agree to expand the number of relatives included in the definition of "immediate family" as a result of their negotiations. Specifically, the Parties agreed to add step relations to the list of immediately family members for whom an employee could take funeral leave.

## **Positions of the Parties**

### **Union's Position**

1. The Employer's denial of eight hours of funeral leave for the Grievant to attend her great-grandmother's funeral violated Article X, Funeral Leave, of the collective bargaining agreement.
2. A great-grandmother is included as a member of the employee's immediate family and therefore funeral leave should have been paid.
3. Until recently, the Union and the Employer have had a long mutual understanding of a broad interpretation of family members eligible for paid funeral leave.
4. The basis for this mutual understanding is the funeral leave list of eligible family members. The list includes "grandparents."
5. A great-grandparent is a direct blood relative and an immediate family member. The close relationship between the Grievant and her great-grandmother is precisely the type of family relationship that the Employer and Union intended to include and did include in funeral leave eligibility for many years.
6. The new County Coordinator representing the Employer during pre-contract and during contract negotiations made clear that the Employer would embrace a more restrictive interpretation of the eligible list of relatives considered "immediate family."
7. The Union was compelled to seek contractual clarification of the use of funeral leave for step relatives. At no time during these negotiations did the Employer propose or suggest that further limitations would be forthcoming.
8. In fact, the Employer clearly communicated to Union leadership that it was only "non-blood" relatives whom they intended to restrict. As a result, the Union did not seek any further clarification on the current list of eligible family members and left the bargaining believing that other than step relatives, the previous long-held contract interpretation would continue for all other members particularly

“blood relatives.”

9. The coordinator agreed that a half brother is a brother even though a “half-brother” is not specifically included on the list of eligible family members. This view is entirely consistent with the Union’s broad interpretation of “grandparents.”
10. The Grievant should be granted eight hours of paid funeral leave and made whole in all respects.

### Employer’s Position

1. The language of the funeral leave provision is clear and unambiguous.
2. The provision includes a list of “immediate family” members for whom employees are entitled to funeral leave.
3. The clear language cannot be given a broad or liberal interpretation in order to provide funeral leave for other relatives not listed in the Agreement.
4. The past practice of the Parties is consistent with the clear language of the contract.
5. The Arbitrator must decide whether the Employer violated Article X, Section A of the Funeral Leave of the labor agreement when it denied leave for Grievant Andrich for the death of her great-grandmother.
6. The Parties bargaining history supports the denial of the grievance.
7. During negotiations for the current 2008-2010 labor agreement, the Parties exchanged proposals to modify the funeral leave provision.
8. The Union sought to add a number of relatives in the definition of “immediate family.” The Union never proposed to include great-grandmother.
9. In this arbitration, the Union is seeking to gain a benefit it never sought in negotiations and which is not provided in the contract.
10. In its initial proposal during negotiations, the Union proposed “not to exclude “Step” relationships from the definition of immediate family in Article IX, Sick

Leave, Section C, Subdivision 1. In that article, “immediate family relates solely to an employees use of sick leave for illness in the employees immediate family. A separate sentence in Article IX, Sick Leave, Section C, Subdivision 1, addresses use of sick leave in cases of death. The Union did not propose to modify that sentence. Also, the Union did not seek to alter the definition of “immediate family” in the funeral leave article during prior negotiations.

11. The Union’s testimony that it believed step relatives were already included in this list of eligible family members is contradicted by its own document. The Union reported to its members that it achieved gains as a result of contract negotiations. One of those gains was the inclusion of step relatives in the funeral leave article. There would be no reason to list is as a gain if the benefit already existed.
12. The Union also bargained for the addition of step relatives to the definition of immediate family. In its proposal of November 15, and December 5, 2007, the Union proposed to specifically include step relatives in both the Sick Leave article and the Funeral Leave article.
13. The Parties agreed to expand the definition of “immediate family” to include step-children, step-parents, step-brother, step-sister and step-grandchildren.
14. The Funeral Leave provision specifically identifies twelve (12) relatives of the employee and four (4) relatives of the employees spouse in the definition of “immediate family.” Great-grandparents are not included in the list.
15. The inclusion of specific relatives is the exclusion of all other relatives.
16. When parties list specific items without any more general or inclusive term, they tend to exclude unlisted items even though they are similar to those listed.
17. The Parties agreed upon a detailed list of 12 specific relatives of the employee in the Funeral Leave article. All relatives not so included are excluded.
18. The Parties did not intend to include all blood relatives. If all blood relatives are to be included there would need to be clear contract language to that effect. The list of immediate family members excluded blood relatives such as uncles, aunts, nieces, nephews and cousins. These blood relatives are excluded as are great-

grandparents.

19. The language of the Funeral Leave article is clear and unambiguous.
20. A grandparent is the parent of one's father or mother. A great-grandparent is not the same as a grandparent. A great grandparent is more remote in a family relationship by a single generation than a grandparent.
21. The contract language does not support the Union's argument for a broad interpretation. "Immediate family" is not defined by how close the employee is to the relative.
22. Past practice does not support the Union's claim. The funeral leave provision in the Parties' first contract agreed upon in the 1970's remained the same until the changes agreed upon for the 2008-2010 contract. Not a single employee in the bargaining unit since it was first approved has been granted funeral leave for a great-grandparent.
23. The arbitrator is precluded from adding to the agreement by granting funeral leave for a great-grandparent.
24. The Funeral Leave article does not provide funeral leave for great-grandparents. Based on the clear and unambiguous contract language and the exclusion of great-grandparents from the funeral leave provision together with the parties long-standing practice of not providing funeral leave for great-grandparents, the arbitrator will exceed the scope of his authority to sustain the grievance.

### **OPINION AND AWARD**

It is not uncommon that Agreements reached as a result of collective bargaining leave many terms undefined or subject to different interpretations. It is simply impossible to anticipate where each and every disagreement might be hidden. Disagreement can be hidden within commonly used words and phrases. This is true, in this case. Decades ago, the Parties bargained for a benefit that allows bargaining unit members to receive paid time off following the death of a member of their immediate family. The Parties agreed to define "immediate family" for the purpose of determining when employees were entitled to funeral leave as including the

employees legal spouse, children, parents, grandparents, brother, sister, and grandchildren. Based on the evidence presented at the hearing, the Parties never questioned the definition of the term “grandparents” as used in the funeral leave article until now. The local union president testified that in the 23 years she has been employed by the County, she is unaware of a single request for leave to attend the funeral of a great-grandparent.

The most recent negotiations between the Parties does sheds some light on this issue although indirectly. The Parties’ 2007 collective bargaining resulted, in part, in an agreement to expand the definition of “immediate family.” As a result of the 2007 negotiations, the Parties’ now include step relations in the definition of “immediate family.” Step-children, step-parents, step-brother, step-sister, and step-grandchildren are included in the definition of “immediate family” for purposes of determining eligibility for the funeral leave benefit.

Indirectly, therefore, the negotiations demonstrate that the Parties understood that the funeral leave language would be strictly construed to mean only the death of specifically listed relatives would trigger the funeral leave benefit. The Union certainly understood that point and proposed the expansion of the definition by including step relations. The Union and Employer paid no attention to the term “grandparents” during the 2007 negotiations.

It was, therefore, the instant grievance that alerted the Parties to their disagreement over the definition of the term “grandparents.” The Union argued that the Parties have always given the phrase “immediate family” a broad interpretation. The Union did not provide evidence in support of its position. Regardless of whether the Parties had broadly interpreted the phrase “immediate family,” the Union said it understood that the Employer intended to embrace a more restrictive use of the phrase going forward. However, the Union claims it was misled during negotiations because the Employer said it was only interested in restricting bargaining unit members from receiving the benefit when the death was that of a “non-blood” relative. The Union made this argument for the first time in its post-hearing brief. As such it is merely an assertion. There was no proof provided that the Employer ever expressed the position that the Union asks the arbitrator to adopt as true.

In any event, to the extent that there was a past practice as described by the Union, the Employer made clear its intent to repudiate that practice. There being no evidence to support the

notion that the Parties intended to interpret the term “grandparents” broadly, the arbitrator must resort to the commonly used tools of contract interpretation.

For example, the Employer argued for the application of the rule “*expression unius est exclusion alterius* (the expression of one thing is the exclusion of another.) The Parties agreed to a list of relatives as a method of defining the term “immediate family.” It seems clear that the Parties intended to exclude all others. For example, uncles, aunts, cousins, nieces and nephews are excluded from the list of immediate family members. The Union’s position that a broad interpretation of the funeral leave language should apply begs the question of why the Parties would draft such specific limiting language if their intent was to include other relatives not specifically identified in the funeral leave article.

The arbitrator finds support for the notion that the Parties intended the language of Article 10 to exclude some relatives whether or not blood relatives. First, that support is found in the manner in which the Parties negotiated and agreed to specifically include step-relations. Doing so was acknowledgement that the funeral leave article was limited to those relatives specifically identified. Had the broad interpretation urged by the Union been the true intent of the Parties such specific focus on step-brothers or step-sisters would have been unnecessary. They are after all still brothers and sisters and brothers and sisters are included in the definition of immediate family. The Union did indeed inform its members that one of the gains of the 2007 bargaining was that it achieved agreement to add step relationships of the employee to the funeral leave article. In addition, it announced as a gain the agreement to expand the use of sick leave for employee’s whose spouse loses a step-parent or step-sibling.

Their intent can also be seen in the manner in which the Parties limited an employee’s ability to access the paid leave when the deceased was a relative of the employee’s spouse. The plain language of Article 10, Section A makes clear that the loss must be that of the employee’s legal spouse ( as opposed to an ex-spouse with whom the employee might still be very close) and is further limited to the loss of the legal spouse’s brother, sister, parent or grandparent. Words and phrases such as “*shall be construed as legal spouse...*” or “*will also include only*” or “*shall be limited to legal spouse...*” indicate an intention to include some and exclude others.

The Parties intended to more strictly limit access to funeral leave when the deceased was

a member of the employee's legal spouse's family. Article 10, Section B defines immediate family as "limited to legal spouse, children/step-children, brother/step-brother, sister/step-sister, grandparent, grandchildren/step-grandchildren, parent/step-parent, *of either the employee or legal spouse.*" (Emphasis added) Here, the Parties agreed to grant more flexible use of sick time as funeral leave even when the deceased was of the employee's legal spouse's immediate family. But, the Parties agreed to a more restrictive definition of "immediate family" in Section A of the funeral leave article and that cuts against the Union's position.

Had a broad interpretation designed to allow funeral leave for all blood relatives of the employee or employee's spouse been intended, there would be no need to identify some blood relatives and not others or to identify any specific family relationship. The Parties could simply have said the leave flows from the loss of a close relative.

In Article IX, Sick Leave, the Parties agreed to exclude brothers/stepbrothers and sisters/step-sisters from the definition of immediate family. The exclusion of both blood relations and step relations in the sick leave article provides further support for the notion that the Parties intended limiting language rather than a broad interpretation of what is pretty clear and unambiguous language. The pattern is clear. The way the Parties defined "immediate family" in the sick leave article provides further support for the notion that the Parties intended to adhere to specific but different definitions of the term "immediate family" depending on whether they were focusing on sick leave, funeral leave, a death in the employee's family or a death in the family of the employee's legal spouse. In each instance, the Parties indicated a desire to define the term "immediate family" more or less broadly meaning they intended to include some and exclude others.

The plain meaning and common usage of the term "grandparents" is a reference to the mother and/or father of ones parents. To adopt an all inclusive definition of grandparents unnecessarily confuses what is a relatively clear cut definition. The Union stressed that a broad interpretation of the term grandparents should apply because testimony revealed that the Employer believed that funeral leave would be granted if the employee lost a half-brother. The Union stressed that a half-brother is a brother yet the Agreement does not mention the term half-brother. While it is true that the Agreement does not mention half-brothers, it does mention

brothers and step-brothers. The context provided helps us understand that any brother, half or step, is included. However, the same is not true for “grandparents” since a broad interpretation of that term could imply great-great grandparents even. The most reasonable reading of the term “grandparents” is one that does not lead to an absurd result. The arbitrator is convinced that to apply a broad interpretation to the term “grandparents” would in fact lead to an absurd result that no generational boundaries applied. More importantly, it would contradict a clear pattern of language designed to limit the funeral and sick leave benefits. Considering the contract as a whole, the arbitrator finds no support to define grandparents as other than the parents of the employee’s mother and/or father.

The arbitrator believes that the collective bargaining process offers the best means for the Union to seek the broad interpretation that it argued for here. The arbitrator respects the Parties’ ability to modify the definition of the term “grandparents” through collective bargaining, if they determine it necessary to do so. While the Employer expressed a desire to read the Funeral Leave article in a restrictive fashion, the Union was able to successfully make the case for the inclusion of step relations. The arbitrator cannot impose a definition that broadens the scope of coverage under Article X without violating the scope of jurisdiction granted by the Parties.

In this case, the record is simply devoid of any evidence in support of the interpretation urged by the Union. The local Union president testified that she simply “assumed” great-grandparents were included. This record does not support either a broad interpretation or the notion that the Parties understood the term grandparents to include great-grandparents. Therefore, the arbitrator must deny the grievance and leave the Parties’ to pursue desired changes, if any, during future collective bargaining sessions.

**Award**

Based on the foregoing and the record as a whole, the Grievance is denied.

Respectfully submitted,

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A Ray McCoy  
Arbitrator

Date: November 10, 2010