

**Decision and Award in the Matter of Arbitration between:**

**Ohio Department of Public Safety,  
Division of the State Highway Patrol**

**And**

**Ohio State Troopers Association**

**Grievance #:** 15-03-20130906-0071-04-01

**Grievant:** Trooper Stacey L. Arnold

**Arbitrator:** Jack Buettner

**Date Briefs Received:** March 10, 2017

**Date Decision Issued:** April 2, 2017

**Representing the Employer:**

S/Lt. Cassie Brewster  
Ohio State Highway Patrol  
1970 W. Broad St.  
Columbus, OH 43223

**Representing the Union:**

Hershel M. Sigall, Esq.  
Ohio State Trooper Association  
190 West Johnstown Road  
Gahanna, Ohio 43230

Jack Buettner was selected by the parties to arbitrate this matter as a member of the panel of permanent umpires pursuant to Article 20, Section 20.8, of the Collective Bargaining Agreement which is effective from 2012-2015. By mutual agreement the parties agreed to submit the case on briefs. The briefs were received on March 10, 2017.

The parties each stipulated to the statement of the issue and submitted the joint exhibits listed below.

The Employer raised and documented a procedural objection based on an untimely filing of the grievance, but the parties mutually agreed to waive the timelines for the filing of the grievance at Step Two on May 19-20, 2013. As stipulated in the Factual Stipulations, Stacy Arnold Grievance-15-03-20130906-0071-04-0, the parties agree to submit the case on briefs for a binding decision by the Arbitrator. The matter is now properly before the Arbitrator for a determination of the merits.

**The following were submitted as Joint Exhibits:**

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|------------------|--|
| Joint Exhibit #1 | 2012-2015 Bargaining Agreement between the State of Ohio and OSTA, Inc., Unit 1 and 15 |
| Joint Exhibit #2 | Grievance Trail  |
| Joint Exhibit #3 | Grievant Civil Union Certificate dated March 10, 2009                                  |
| Joint Exhibit #4 | Birth Certificate of Gerrit Arnold-Yerkes  |
| Joint Exhibit #5 | Written congratulations from Col. Born and Captain Allen on the birth of her son       |
| Joint Exhibit #6 | “Highway Patrol Brat” certificate  |
| Joint Exhibit #7 | E-mail chain between Lisa Crouse and Stacey Arnold                                     |
| Joint Exhibit #8 | Co-custody order from the court dated May 8, 2013                                      |

- Joint Exhibit #9                      FMLA approval letter (The Grievant chose not to use her approved FMLA.)
- Joint Exhibit #10                     Grievant's DAS paperwork to add Gerrit Arnold-Yerkes to her medical insurance
- Joint Exhibit #11                     Grievant's HMS Entries reflecting the use of Vacation from May 21, 2013-June 21, 2013
- Joint Exhibit #12                     Marriage Certificate of the Grievant and Emily Yerkes dated July 13, 2015

**The following were submitted as Employer Exhibits:**

- Employer Exhibit #1                 Arbitration Summary and Award Log, OCB Award #: 555
- Employer Exhibit #2                 Opinion and Award by Arbitrator Virginia Wallace-Curry, OCB # 15-03-071221-0188-04-01

**The following were submitted as Union Exhibits:**

- Union Exhibit #1                     Opinion and Award by Arbitrator Sarah R. Cole, Grievance Numbers 07-00-201217-0019-01-14 and 26-00-20130327-02-01-07
- Union Exhibit #2                     US District Court Southern District of Ohio, Western Division, Case: 1:13-cv-00501-TSB
- Union Exhibit #3                     *In re Bonfield*, 97 Ohio St.3d 387, 2002-Ohio-6660
- Union Exhibit #4                     United States v. Windsor, October Term, 2012

**Background:**

The Grievant, Trp. Stacey Arnold, graduated from the Academy in 1994 and was employed by the Employer during all relevant times of the grievance.

On April 14, 2013, the Grievant's significant other, Emily Yerkes, gave birth to a son, Gerrit Steven Arnold-Yerkes. On May 8, 2013, the Grievant was granted co-custody pursuant to a court order from the Toledo Juvenile Court. On May 8, 2013, the Grievant submitted Childbirth/Adoption Leave paperwork to the Employer on May 8, 2103, along with the copy of the court order. The Employer denied the request for Child Birth/Adoption Leave.

**Issue:**

In conformance with Article 20, Section 20.08 (8) of the Collective Bargaining Agreement the parties submit the following statement of issue for resolution by the Arbitrator:

Did the Employer violate Section 49.09 of the Collective Bargaining Agreement (CBA) when it did not approve Adoption/Childbirth Leave for the Grievant? If so, what shall the remedy be?

**Union Position:**

The Union's position is that Trp. Arnold was treated discriminatorily, a violation of Article 7: Nondiscrimination, and wrongfully denied the benefits of Article 49.09, Paid Adoption/Childbirth Leave. She was not afforded leave that would have been otherwise available to heterosexual troopers in the same instance.

The Union acknowledged the limits set forth in Article 49.09 but posited that Trp. Arnold was discriminated against because of her sexual orientation. Because of her sexual orientation, she could not legally marry Emily Jo Yerkes in the State of Ohio. She did, however, have a committed relationship since 2009 as evidenced by the Certificate of Sacred Union (Joint Exhibit # 3) and the two were later legally married.

In regards to adoption, the Grievant could not have filed for adoption of the baby Gerrit Steven Arnold-Yerkes because the State of Ohio did not permit co-parenting adoption. In order for Trp. Arnold to adopt the baby, Ms. Yerkes would have had to give up her parental rights to Gerrit secured to her as the biological mother. The couple filed an action in the Common Pleas Court of Lucas County seeking a court ordered

determination of parental rights. On May 10, 2013, the Court decreed Stacey Lynn Arnold and Emily Jo Yerkes the legal custodians of Gerrit Steven Arnold-Yerkes. Further, it stated:

“They shall be treated in the law as two equal parents of their minor child, the same as they would be treated under law if they were any two unmarried parents of a child.” (Joint Exhibit #8)

The Union contends Trp. Arnold was not treated as an equal parent. Because she was not in a heterosexual relation, and despite her efforts to try to comply with the language of Article 49.09, she was denied Adoption/Childbirth Leave.

The Union contends that one must look into the reasoning behind Article 49.09 instead of a literal interpretation. The intent of the article was to support new parents and help them welcome, bond and adapt to a new child. It was about adjusting to parenthood, not how one became a parent.

The Union stated that the Employer also misled Trp. Arnold into thinking that her application would be approved. It took nearly two months for the Employer to issue its denial in July, 2013.

In conclusion, The Union contends that the denial of “baby leave” was an act of discrimination based upon Trp. Arnold’s sexual orientation and a violation of Article 7 and Article 49.09 of the CBA.

### **Employer Position:**

The Employer’s position is that Trp. Arnold was rightfully denied her request for Adoption/Childbirth Leave as stated in Article 49-Leaves of Absence, Section 49.09 Paid Adoption/Childbirth Leave of the CBA.

The Grievant’s significant other gave birth to a child on April 14, 2013. At the time of the birth, the Grievant and her significant other were not legally married nor could they legally marry in the State of Ohio. Because of this, the Grievant could not legally adopt the child without the biological parent giving up her parental rights. Therefore, on May 8, 2013, the Grievant was granted co-custody pursuant to a court order from the Toledo Juvenile Court. (Joint Exhibit #8)

The Employer cites the precise language of the CBA, Section 49.09, in denying the grievance:

“To be eligible for leave an employee must be the biological parent; or in the case of adoption the employee must be the prospective adoptive parent.”

Clearly Trp. Arnold was not the biological mother but nor was she an adoptive parent. Her court order was for co-custody, not adoption. The Employer also cited Trp. Arnold's State of Ohio Health Benefits Verification Form for Adding or Dropping Dependent Benefits in which she selected "Legal Guardianship" instead of "Adopted" when referring to the child.

Additionally, the Employer cited other language in the CBA that specifically refers to family relationships that might have been inclusive of Trp. Arnold's situation. Article 50- Bereavement Leave and Article 48.01- Definitions: Sick Leave for State Employees contain the language "legal guardian" and "other person who stands in the place of a parent (in loco parentis)". Article 49.09 did not include those terms and was very specific to biological or adoptive parents. Therefore, the Employer denied the request for Adoption/Childbirth Leave.

#### **ARBITRABILITY:**

The first issue to address becomes that of arbitrability. The Employer raised the question based on the timeliness of the grievance. I find that the parties reached a mutual agreement to waive the timeliness at Step Two for consideration. This applies to the filing of the Step Two appeal of Grievance # 15-03-20130906-0071-0401 filed by Stacey L. Arnold on September 19-20, 2013. On October 8, 2013, the Union referred the grievance for Step 3 consideration. The Arbitrator finds that the issue is properly before the Arbitrator.

#### **DISCUSSION:**

In reviewing the grievance, one must look first to the specific language of the article in question in the CBA. The language was very specific in defining eligibility. First, the employee must work thirty (30) or more hours per week. Trp. Arnold met that requirement. There is no minimal length of service so Trp. Arnold met that requirement. The article goes on to say that eligibility is established on the day of birth of the child or the day upon which custody is taken for adoption placement. Trp. Arnold was not the birth mother so she did not meet that standard of eligibility. Additionally, Trp. Arnold was not the adoptive parent. She was granted co-custody of the child (Joint Exhibit # 8) but did not adopt the child. There is a difference between adoption and custody and the language clearly refers to adoption.

The Employer pointed out other language in the CBA that specifically addresses specific addresses the familial relationship of a legal guardian or of a parent in loco

parentis. Such language was not included in Article 49.09 and cannot be inferred. The language stands on its own and clearly does not qualify Trp. Arnold for Adoption/Childbirth leave.

In the original grievance, the Grievant did not list Article 7, Non-Discrimination as an alleged violation. The Grievant believed that she was entitled to receive benefits based on the provisions of Article 49.09, Adoption/Childbirth Leave. The Union is now arguing the issue based on a perceived violation of Article 7, specifically in terms of “sexual preference” and “for the purpose of evading the spirit” of the CBA. The Union submitted several exhibits to support their position, but all related to same-sex marriages. (Union Exhibits #1, 2, 3, and 4). It was noted by both Parties that Trp. Arnold was not married to Ms. Yerkes at the time of grievance. This issue did not come into consideration, and the Employer based their denial of the grievance strictly on the specific language of Article 49.09 of the CBA.

The Union brings up many issues that affected Trp. Arnold’s ability to adopt the child. Ohio law prohibited same-sex marriages and adoption was impossible unless the birthmother gave up her legal rights to the child. These factors, while not meeting today’s standards, were the result of laws beyond the control the Employer and the Union. The Arbitrator must look at laws that were in effect at the time of the grievance. The situation was what it was, based on the laws in 2013 and must reviewed as such.

When reviewing the grievance, this Arbitrator must consider the language of Article 49.09 itself. As the Employer cited in Elkhouri & Elkhouri, *How Arbitration Works*, “If the words are plain and clear, convey a distinct idea, there is no occasion to resort to interpretation, and their meaning is to be derived entirely from the nature of the language used.” The Arbitrator also found numerous other references in Elkhouri & Elkhouri that relate to clear and unambiguous language. “If the language of an agreement is clear and unequivocal, an arbitrator will generally not give it meaning other than that expressed.” (Arbitrator Adams in 95 LA 829,834). Further, Arbitrator Fred Witney stated that an arbitrator cannot “ignore clear-cut contractual language” and “may not legislate new language since to do so would usurp the role of the labor organization and employer.” (Clean Coverall Supply Co., supra note 59, at 277).

There is no room for interpretation. Therefore, this Arbitrator cannot extend the eligibility of Adoption/Childbirth Leave to those falling into categories outside of this scope.

**AWARD:**

In reviewing the denial of paid Adoption/Childbirth Leave of Trp. Stacey Arnold, I have analyzed the briefs and exhibits put forth by both sides. I believe that the Employer established their case by clear evidence and language, demonstrating they were within their rights deny the grievance. For the reasons stated above, the grievance is denied.

This concludes the arbitration.

Respectfully submitted this 2<sup>th</sup> day of April, 2017,

John F. Buettner, Arbitrator



## **CERTIFICATE OF SERVICE**

The undersigned hereby certifies that one (1) copy each of the Arbitration report was delivered via email on the 2nd day of April, 2017, to

Mr. Hershel Sigall, Esq., Union Counsel

and

S/Lt. Cassie Brewster, Advocate for the State

*Jack Buettner*

Jack Buettner