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IN THE MATTER OF THE ARBITRATION BETWEEN	*
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THE HEALTH CARE AND SOCIAL SERVICE	* Grievance No.
UNION, SERVICE EMPLOYEES	*
INTERNATIONAL UNION	* 14-00-930714-0070-02
DISTRICT 1199	* 11
	*
- and -	* Grievant: John Park
	*
THE STATE OF OHIO	*

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ARBITRATOR: Mollie H. Bowers

This grievance was brought by John Park (hereinafter, "the Grievant"), with the assistance of District 1199 of the Service Employees International Union District 1199 (hereinafter, "the Union"), wherein they assert that the State of Ohio (hereinafter, "the State") violated several provisions of the parties' collective bargaining Agreement in dealing with the Grievant. The parties have stipulated that this dispute is properly before the Arbitrator and will be presented to her through briefs only.

ISSUE

Did the Employer violate Articles 6 and 14 of the Agreement when it denied the Grievant's bereavement leave for the Father of his domestic partner? If so, what should the remedy be ?

EXHIBITS

- JX - 1 1992-1994 Collective Bargaining Agreement.
- JX - 2 Grievance Package.
- UX - 1,4 Portions of current Collective Bargaining Agreement.
- UX - 2 Portions of Collective Bargaining Agreement, 1986-1989.
- UX - 3 Portions of Collective Bargaining Agreement, 1989-1992.
- SX - 1 Excerpt from Black's Law Dictionary, 1979.
- SX - 2 Excerpt from Ohio State Code. Section 3101.01 re: Persons who may marry.

SX - 3 Award of Arbitrator John Drotning, 1991.

CONTRACT CLAUSES

ARTICLE 6 - NON-DISCRIMINATION

Neither the Employer nor the Union shall unlawfully discriminate against any employee of the bargaining units on the basis of race, sex, creed, color, religion, age, national origin, political affiliation, union affiliation and activity, handicap or sexual orientation, or discriminate in the application or interpretation of the provisions of this Agreement...

ARTICLE 7 - GRIEVANCE PROCEDURE

7.08 Arbitration

E. Arbitrator Limitations.

Only disputes involving the interpretation, application or alleged violation of a provision of this Agreement shall be subject to arbitration. The arbitrator shall have no power to add to, subtract from, or modify any of the terms of this Agreement...

ARTICLE 14 - BEREAVEMENT

Three (3) consecutive workdays of bereavement leave shall be granted to each employee upon the death of a member of his/her family. For the purpose of this article, family shall include spouse, domestic partner (domestic partner is defined as one who stands in place of a spouse and who resides with the employee), child, grandchild, parents, grandparents, siblings, aunt, uncle, 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.

BACKGROUND

The Grievant is a Surveyor in the Department of Public Health, NWDO, Toledo, Ohio, and is a member of the bargaining unit represented by the Union. On June 30, 1993, he requested eight hours' bereavement leave to attend the funeral of the Father of his domestic partner. It is undisputed that the State denied this request. However, the Grievant was permitted to

utilize a vacation day to attend the funeral. On July 14, 1993, the Grievant filed a grievance protesting this denial and asserting that the State's refusal was a violation of Articles 6 and 14 of the parties' Agreement (JX-1). This matter was not resolved during the various steps of the negotiated Grievance Procedure and is now before this Arbitrator for final decision.

#### UNION POSITION

The Grievant charges that, "In denying a request for bereavement leave following the death of a parent of an employee's significant other, the State is denying the existence of the reality of the relationship between the employee and the employee's significant other."

The Union argues that this case involves not only contractual rights, but also civil rights. According to the Union, at the time of the first negotiations with the State, explicit recognition was given to the "nuclear family" and members of this family were identified as persons for whom an employee would be given bereavement leave by virtue of Article 14 of the Agreement. Today, the Union contends that the definition of "family" extends beyond that of the "nuclear family", and includes the family of domestic partners as well ( Union Brief, p.1).

It is also the Union's position that, because the language in the current Agreement refers to domestic partners in addition to a spouse, it is logical to conclude that the awarding of bereavement leave should be inferred as extending to the

children, siblings, or parents of these domestic partners just as it applies to those relatives of a spouse. To do otherwise, the Union maintains, would be discriminatory and a violation of Article 6 of the Agreement (JX-1). In support of its position, the Union offers the language contained in the relevant Agreement and in two prior Agreements ( UX's, 1,2,3,4).

The Union asks the Arbitrator to find that the State has violated the Agreement. As the remedy, it requests that the State be required to pay the Grievant for the eight hours' vacation time he used to attend the subject funeral and that he be made whole in every way. The Union also asks that a decision be issued that clarifies the intent of Article 14 as including its application to both gay and non-gay employees who have domestic partners ( Union Brief, p.2).

#### STATE POSITION

The State denies that management's refusal to grant the Grievant's bereavement leave request violated the Agreement. It maintains that the denial was not based on the Grievant's sexual orientation and, had the Grievant's domestic partner been of the opposite sex, he still would have been denied the leave. It is the State's position that bereavement leave is a matter mutually agreed upon by the parties in their current Agreement and, while it provides leave for the death of a domestic partner, this coverage does not extend to the parents of a domestic partner (State Brief, p. 2).

In support of this contention, the State presents a multi-

faceted argument. It notes that the standard for contract interpretation involves three rules as noted in Elkori<sup>1</sup>. First, arbitrators should give words their ordinary and popularly accepted meaning. Second, in the absence of evidence of a mutual agreement on the interpretation by the parties, arbitrators oftentimes utilize the definition contained in a recognized dictionary. Third, the rule "expressio unius exclusion alterius" <sup>2</sup> applies in this dispute (State Brief, p. 3). The State asserts that subjecting the facts of this grievance to the litmus test of these rules proves that the parties did not include the father of a domestic partner among those persons who's death would authorize an employee to take bereavement leave under the Agreement. The State notes that the parties bargained about which persons would be identified specifically as entitling employees to bereavement leave and that the parents of domestic partners, regardless of sex, were not included in this category. As further support for its position, the State submits an excerpt from Black's Law Dictionary, 1979 Ed. (SX-1), an excerpt from Ohio State Code, Section 3101.01 regarding "Persons who may marry" (SX-2), and a 1991, award authored by Arbitrator John Drotning (SX-3).

Based upon all of the aforesaid considerations, the State asks that the Grievance be denied.

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<sup>1</sup> Elkouri & Elkouri, How Arbitration Works, 4th Ed. (1985) pages 350,352 and 355.

<sup>2</sup> Loosely translated, this phrase means that " to express one thing is to exclude all others."

DECISION

In reaching a decision, the Arbitrator reviewed and considered all the evidence and the briefs submitted by the parties. While this is obviously a sensitive and emotional issue for the Grievant, resolution of the differences between the Union and management ultimately depends upon interpretation of the parties' collective bargaining Agreement.

Based upon the record, specifically the 1991, award prepared by Arbitrator Drotning (SX-3), it is evident that the Union has challenged the State's interpretation of the mutually agreed upon language of Article 14 on a number of occasions in the past (See pp. 7 - 10 of the exhibit). Also evident is the fact that the definition of persons who make an employee eligible to receive bereavement leave has been a subject of several past contract negotiations (See UX's 1 through 4). Thus, the parties have had ample opportunity to agree upon explicit language which identifies those specific persons whose demise entitles employees to receive the benefit of the bereavement leave provision of the Agreement. Examples are: the inclusion of "members of his/her nuclear family (i.e., parents, spouse, siblings or children) (1986-1989 Agreement, UX-2); the addition of "significant other" and the definition of such a person (1989-1992 Agreement, UX-3); and the current contract which refers to and defines the term, "domestic partner" (1992-1994 Agreement, UX -4) and a plethora of specific "in-laws".

Given the parties bargaining history on this subject, it is

obvious that they have carefully considered who would be included in the list of persons entitling an employee to take time off for bereavement leave. Further, to be included as an "in-law" under the Ohio State Code, the marriage must be between two members of the opposite sex (See Ohio State Code, Section 3101.01, p. 8, SX-2). There are no provisions either in the law or in the Agreement which identify or pertain to "in-law equivalents".

Application of the rule that inclusion of certain things is to exclude all others, also makes it clear that the parent of a domestic partner, irregardless of the sexual orientation of the employee, is not covered by Article 14 of the Agreement. The Arbitrator therefore finds that the State has not violated Article 14 of the Agreement.

Since it has been determined that a parent of a domestic partner, regardless of the sexual orientation of the employee, does not entitle an employee to bereavement leave, it is also found that the State did not engage in a discriminatory practice by violating Article 6 of the Agreement when it denied the Grievant bereavement leave to attend the funeral of his domestic partner's Father.

AWARD

The Grievance is denied.

DATE: October 16, 1995

Mollie H. Bowers  
Mollie H. Bowers, Arbitrator