

IN THE MATTER OF AN ARBITRATION

BETWEEN:

CANADIAN UNION OF PUBLIC EMPLOYEES, LOCAL 1909

-AND-

ROSS MEMORIAL HOSPITAL

GRIEVANCE NOS. ML-13-19 AND HN-16-19

AWARD

Board of Arbitration:

Laura Trachuk  
Harold Ball (Employer Nominee)  
Joe Herbert (Union Nominee)

For Canadian Union of Public Employees,  
Local 1909:

Ryan Newell  
Louis Rodrigues  
Heather Nugent  
Becky McManus  
Maggie Jewell  
Janet Sheehey

For Ross Memorial Hospital:

Lisa Meyer  
Sharon Gilchrist

This hearing took place by videoconference on April 25, 2022.

## AWARD

The Canadian Union of Public Employees, Local 1909 (the "Union") has filed a grievance (HN-16-19) alleging that Ross Memorial Hospital (the "Employer") has violated Article 12.04 and 17.04 of the collective agreement by not allowing Becky McManus (the "Grievor") three days paid bereavement leave upon the death of her step-brother. It has also filed a policy grievance (ML-13-19) challenging the Employer's policy of not paying three days bereavement leave under Article 12.04 upon the death of step-siblings.

The parties submitted an Agreed Statement of Facts (ASOF) as follows:

**AGREED STATEMENT OF FACTS**

1. The Hospital is located in Lindsay and provides acute care services to more than 100,000 local residents and seasonal visitors.
2. The Union represents a bargaining unit of roughly 400 employees at the Hospital.
3. The parties' Collective Agreement consists of a Central Agreement negotiated through central bargaining with other Participating Hospitals and the OHA, and a Local Appendix negotiated locally (**Tab 1**).
4. On or around July 25, 2019, the Union filed Grievance #ML-13-19, a policy grievance alleging that the Hospital violated various articles of the Collective Agreement by denying bereavement leave to members after the death of step-siblings (the "policy grievance") (**Tab 2**).
5. On or around July 28, 2019, the Union filed Grievance #HN-16-19 on behalf of Becky McManus (the "Grievor"), alleging that the Hospital violated various articles of the Collective Agreement by denying her bereavement leave after the death of her step-brother (the "individual grievance") (**Tab 3**).
6. The Hospital denied the grievances and the parties agreed to consolidate them for hearing.

**The Collective Agreement**

7. The relevant articles of the Collective Agreement are as follows:

**12.04 – BEREAVEMENT LEAVE**

Any employee who notifies the Hospital as soon as possible following bereavement will be granted bereavement leave for four (4) consecutive working days off without loss of regular pay from regularly scheduled hours in conjunction with the death of the spouse, child, or parent.

Any employee who notifies the Hospital as soon as possible following a bereavement will be granted bereavement leave for three (3) consecutive working days off without loss of regular

pay from regularly scheduled hours in conjunction with the death of the sister, brother, mother-in-law, sister-in-law or grandparent of spouse.

An employee shall be granted one (1) day bereavement leave without loss of regular pay from regularly scheduled hours to attend the funeral of his or her aunt or uncle, niece or nephew.

The Hospital, in its discretion, may extend such leave with or without pay. Where an employee does not qualify under the above-noted conditions, the Hospital may, nonetheless, grant a paid bereavement leave. For the purpose of bereavement leave, the relationships specified in the preceding clause are deemed to include a common-law spouse and a partner of the same sex.

#### 17.04 – BEREAVEMENT DURING VACATION

Where an employee's scheduled vacation is interrupted due to a bereavement, the employee shall be entitled to bereavement leave in accordance with Article 12.04.

The portion of the employee's vacation which is deemed to be bereavement leave under the above provisions will not be counted against the employee's vacation credits.

#### **Circumstances giving rise to the Grievances**

8. On July 16, 2019, the Grievor's step-brother passed away.
9. The Grievor had previously scheduled vacation to begin on July 18. The Grievor attended a gathering of family to mark her step-brother's death on or around July 18, 2019, during her vacation.
10. When the Grievor returned to work after her scheduled vacation, she requested that three of her vacation days be switched to bereavement days and her vacation days restored to her bank. The Hospital denied her request on the basis of its interpretation of article 12.04. As a result, the grievor was denied her request to substitute bereavement leave for her scheduled vacation.

#### **Other step-relationships**

11. Article 12.04 is a central item negotiated between the central parties.
12. Until 2016, the Hospital consistently denied requests for paid bereavement leave for any step-relative, including step-parents and/or step-children, on the Hospital's interpretation of the CUPE Collective Agreement.
13. In 2016, the Union grieved the Hospital's decision to deny bereavement leave to an employee in respect of her step-father. As a result of this grievance, the Hospital reviewed its practices regarding step-relatives and Senior Administration approved

a change to the Hospital's practice to include step-parent and step-child under the bereavement leave provisions in the same manner as "parent" and "child" (**Tab 4**).

14. The June 27, 2016 Briefing Note at Tab 4 was not provided to the Union.
15. The Hospital's decision to exercise its discretion to grant bereavement leave for Step-Parents and Step-Children was communicated to the Union by way of email to the Union President (**Tab 5**) and through the Labour Management Committee (**Tab 6**).
16. The parties entered into Minutes of Settlement resolving the grievance which provided as follows:

The Hospital has reviewed the practice of declining bereavement related to a step parent and although it has not been negotiated in the central Collective Agreement, the Hospital agrees that on a go forward basis we will utilize discretion and will include step parent as an approved family member (**Tab 7**).

17. The Hospital's bereavement leave form was modified in connection with this change in practice to include an option to select bereavement leave for a step-parent or a step-child (**Tab 8**).
18. The Hospital's practice since 2016 has been to grant bereavement leave for step-parent or step-child.
19. The Hospital has not changed its interpretation in respect of other step relationships, including step-siblings.
20. In June of 2017, the current collective agreement was negotiated between the central parties. CUPE did not seek to modify the relations for whom bereavement leave is granted under Article 12 in that round of bargaining. **[Exhibits not included]**

In addition to the ASOF, Ms. McManus testified about her close relationship with her step-brother and step-mother and about her step-brother's death in 2019.

## **COLLECTIVE AGREEMENT**

The only other provision of the collective agreement that refers to family members is also in Article 12 of the Central provisions. It provides:

### 12.10 – MEDICAL CARE AND EMERGENCY LEAVE

An employee is entitled to a leave of absence without pay because of any of the following:

1. A personal illness, injury or medical emergency.
2. The death, illness, injury or medical emergency of an individual described in this Article.
3. An urgent matter that concerns an individual described in this Article.

For the purposes of this Article, the individuals referred to in this Article are:

- the employee's spouse
- the parent, step-parent or foster parent of the employee or the employee's spouse
- a child, step-child or foster child of the employee or the employee's spouse
- a grandparent, step-grandparent, grandchild or step-grandchild of the employee or of the employee's spouse
- the spouse of a child of the employee
- the employee's brother or sister
- a relative of the employee who is dependent on the employee for care and assistance

An employee who wishes to take leave under this section shall advise his or her Hospital that he or she will be doing so. If the employee must begin the leave before advising the Hospital, the employee shall advise the Hospital of the leave as soon as possible after beginning it.

...

#### 12.11 – COMPASSIONATE CARE LEAVE

- (a) Compassionate care leave will be granted to an employee for up to eight (8) weeks within a twenty-six (26) week period to provide care or support to a family member who is at risk of dying within that 26-week period in accordance with section 49.1 of the Employment Standards Act, 2000. ...

### **EMPLOYMENT STANDARDS ACT**

The section of the *Employment Standards Act* (ESA) referred to in Article 12.11 of the collective agreement provides as follows:

#### **Family medical leave**

**49.1** (1) In this section,

“qualified health practitioner” means,

- (a) a person who is qualified to practise as a physician under the laws of the jurisdiction in which care or treatment is provided to the individual described in subsection (3),
- (b) a registered nurse who holds an extended certificate of registration under the [Nursing Act, 1991](#) or an individual who has an equivalent qualification under the laws of the jurisdiction in which care or treatment is provided to the individual described in subsection (3), or
- (c) in the prescribed circumstances, a member of a prescribed class of health practitioners; (“praticien de la santé qualifié”)

“week” means a period of seven consecutive days beginning on Sunday and ending on Saturday. (“semaine”) 2004, c. 15, s. 3; 2017, c. 22, Sched. 1, s. 34 (1).

### **Entitlement to leave**

(2) An employee is entitled to a leave of absence without pay of up to 28 weeks to provide care or support to an individual described in subsection (3) if a qualified health practitioner issues a certificate stating that the individual has a serious medical condition with a significant risk of death occurring within a period of 26 weeks or such shorter period as may be prescribed. 2017, c. 22, Sched. 1, s. 34 (2).

### **Application of subs. (2)**

(3) Subsection (2) applies in respect of the following individuals:

1. The employee’s spouse.
2. A parent, step-parent or foster parent of the employee or the employee’s spouse.
3. A child, step-child or foster child of the employee or the employee’s spouse.
4. A child who is under legal guardianship of the employee or the employee’s spouse.
5. A brother, step-brother, sister or step-sister of the employee.
6. A grandparent, step-grandparent, grandchild or step-grandchild of the employee or the employee’s spouse.
7. A brother-in-law, step-brother-in-law, sister-in-law or step-sister-in-law of the employee.
8. A son-in-law or daughter-in-law of the employee or the employee’s spouse.
9. An uncle or aunt of the employee or the employee’s spouse.
10. A nephew or niece of the employee or the employee’s spouse.
11. The spouse of the employee’s grandchild, uncle, aunt, nephew or niece.
12. A person who considers the employee to be like a family member, provided the prescribed conditions, if any, are met.
13. Any individual prescribed as a family member for the purposes of this section. 2017, c. 22, Sched. 1, s. 34 (2); 2021, c. 4, Sched. 11, s. 9 (4).

The ESA includes other leave provisions that refer to step relatives as well, including sections 49.3, 49.4, 50.0.1, 50.0.2 and 50.1.

## **SUBMISSIONS**

### ***Union***

The Union submits that the reference to sister and brother in Article 12.04 includes step-siblings. It contends that the plain and ordinary meaning of brother includes step-brother and that in contemporary society step-siblings are no less meaningful than biological siblings. The Union maintains that if the parties wanted to exclude certain types of brothers or sisters they could have. It says that it is not necessary to assess the closeness between an employee and their step-sibling to determine entitlement to bereavement leave.

The Union argues that distinguishing between biological relationships and relationships created by marriage is a relic of a bygone era. It maintains that the purposes of bereavement leave clauses are to support family, to allow relatives to mark these relationships, to attend funerals and to grieve. The Union submits that a broad interpretive approach consistent with those purposes should be used. It argues that the inclusion of step-siblings is consistent with those purposes.

The Union also submits that the Grievor and her step-brother had a parent in common through marriage and that the jurisprudence provides that parents must include non-biological relationships. It insists that siblings connected by the marriage of their parents should be considered no less legitimate. Essentially, the Union argues that if a step-mother is included in the category of “mother” then that person’s son must be a brother. It maintains that the Grievor’s relationship with her step-brother fits within the *Merriam-Webster’s Collegiate Dictionary* definition of “brother”, specifically “a male who has the same parents as another or one parent in common with another.”

In the alternative, the Union argues that the Grievor’s relationship with her step-brother was a sibling relationship and he was her brother for the purposes of the Article. It relies upon the Grievor’s evidence about that relationship and about her relationship with her step-mother.

The Union concludes that the language of Article 12.04 is broad enough to comply with today’s family demographics but that the Employer’s interpretation of the Article is not.

The Union refers to the following awards: *Renfrew County and District Health Unit and Ontario Nurses Association*, (Unreported, May 16, 2016 (O’Neil)), *Essex County Roman Catholic Separate School Board and Service Employees’ Union, Loc. 210 (Gillett)* (1997), 65 L.A.C. (4<sup>th</sup>) 86; *Wastech Services Ltd. and International Union of Operating Engineers, Local 115*, (Unreported June 24, 2003 (Burke)); *Re Southern Alta. School Assoc. and Teachers’ Assoc.* (1981), 5 L.A.C. (3d) 351; *SouthEast Community Care Access Centre and ONA (Greene)* (2014), 251 L.A.C. (4<sup>th</sup>) 74; *Ross Memorial Hospital and Canadian Union of Public Employees, Local 1909*, 2019 CanLII 11151 (ON LA); *Re Dominion Colour and Chemical, Energy & Allied Workers* (1998), 75 L.A.C. (4<sup>th</sup>) 364.

### ***Employer***

The Employer denies that the word “brother” in Article 12.04 includes “step-brother”. It also denies that its interpretation is a violation of the *Human Rights Code* the (Code).

The Employer submits that specificity in a bereavement leave clause like Article 12.04 leads to a narrower interpretation than might be applied to less specific clauses. It argues that the parties have defined the classes of relationships for which bereavement leave will be paid. The Employer says that the parties have turned their minds to the

closeness of those relationships and that the closest ones get four paid bereavement leave days, the next set get three paid days etc. It says that equating “step-brother” with “brother” expands the enumerated classifications of relationships to which the parties agreed in Article 12.04. The Employer notes that the parties have also agreed that it can extend a leave or grant one at its discretion. It contends, further, that the parties specifically included common-law and same sex relationships. The Employer asserts that that demonstrates that Article 12.04 is not an antiquated provision and takes into account the nuanced ways that people can organize themselves.

The Employer submits that the plain and ordinary meaning of “brother” does not include a step-brother. It also says that the rest of the collective agreement does not support that interpretation. The Employer provides four definitions of “brother” from various sources and says that none of them includes step-brother. It asserts that the *Merriam-Webster* definition upon which the Union relies does not include step-brother either. The Employer maintains that the relationship of “step-brother” is not better or worse than “brother” but that it is different.

The Employer argues that brothers and step-brothers are differentiated at law. It refers to the provisions of the ESA which include entitlement for “step-brothers” at section 49(1) and (4). The Employer contrasts that with sections 49(3) and 50.0.1 which are restricted to “brothers”. It submits that bereavement leave at section 50.0.2 is also restricted to brothers. The Employer maintains that the Union’s definition of “brother” cannot be reconciled with the ESA.

The Employer argues that these are sophisticated parties who know that there is a distinction at law between a brother and a step-brother and have chosen to provide paid bereavement leave for a brother only. The Employer points to Article 12(10) in which the parties did include some step relationships but did not include step-brother or sister. It also notes that Article 12.11 refers to Article 49.1 of the ESA which also makes a distinction by specifically referring to step-brother. The Employer maintains that the parties, therefore, turned their minds to the step relationships when they negotiated the collective agreement and determined that paid bereavement leave ought to be provided for brothers but not step-brothers. It asserts that Article 12.04 must be interpreted in the context of the whole collective agreement. The Employer submits that the fact that the parties have included some step-relationships and not others must be given meaning.

The Employer submits that the parties have negotiated specific relationships that will trigger paid leave. It argues that the parties have included provisions that determine entitlement objectively by contract and that personal closeness is not part of the test.

The Employer also submits that it decided to provide paid bereavement leave for step-parents and step-children as an exercise of its discretion and not because it considered them to be included within Article 12.04.

The Employer argues that if step-siblings are included in “brother” and “sister” there is nothing that would limit the leave to the children of one remarriage and that people could have many step-siblings because divorce and remarriage are more common than they use to be. The Employer also argues that while some step-siblings may be close others may not be. It notes that step siblings could already be adults when their parents marry. The Employer maintains that a blanket acceptance of step-siblings in light of that reality is inappropriate.



The Employer also submits that it would be invidious for it to engage in an assessment of the actual relationships to determine if someone is a brother for the purposes of Article 12.04. It says that it should not be examining the level of grief to determine entitlement.

The Employer contends that a step-brother is not in the same situation as a step-parent or grandparent because they may stand in the place of a parent and provide basic needs. It says that sibling relationships do not bear any legal obligations or care components. The Employer submits that one cannot identify the core components of a sibling relationship. It maintains that it could not assess whether someone stood in the place of a sibling and asks that it not be put in that position.

The Employer also argues that it would only be possible to find that the Grievor had a parent in common with her step-brother by assessing whether her step-mother was her mother.

The Union did not assert a violation of section 12 the Code but it was raised in one of the awards upon which it relies (*Renfrew County and District Health Unit, supra*). The Employer, therefore, provided submissions on that issue. It maintains that there is no nexus between any adverse treatment of an employee and a personal characteristic. It asserts that there is, therefore, no *prima facie* case. The Employer also argues that bereavement leave is defined by the relationship between the employee and the deceased. For example, according to the Employer, if the clause includes "aunt" the employee is entitled to the leave because the deceased person is their aunt not because of the employee's relationship with their parent who is the sibling of the aunt. The Employer submits that the fact of the relationship should not be conflated with the adverse impact. It insists that the adverse impact has to be caused by the relationship. The Employer contends that without that any relationship would be caught by section 12 of the Code.

The Employer argues that Article 12.04 represents an agreement the parties have made to confer a monetary benefit and that benefit is limited to the relationships listed. It asks that the grievances be dismissed.

The Employer relies on the following awards: *Dominion Glass Co. v. U.G.C.W., Local 235*, 1973 CarswellOnt 1460; *OPPA and Ontario Provincial Police*, 2018 CarswellOnt 14884; *Council of Northern Interior Forest Employment Relations v. IWA-Canada*, 2000 CarswellBC 3762; *Children's Aid Society of Prince Edward (County) v. O.P.S.E.U.*, 2008 CarswellOnt 3447; *O.L.B.E.U. v. Ontario (Liquor Control Board)*, 2001 CarswellOnt 9685; *Wellington Nursing Home v. U.F.C.W., Local 175*, 2007 CarswellOnt 7548, *Jeffrey Forde and Elementary Teachers' Federation of Ontario*, *Jim White*, *Mary Bricco*, *Merlin Leis* and *Victoria Reaume*, 2011 HRTO 1389 (CanLII); *Gabor Karman and PSATT Inc. and Gilles Charbonneau*, 2021 HRTO 438 (CanLII).

The Union denies that the inclusion of step-parents and step-children in Article 12.04 required an exercise of the Hospital's discretion. It says that the language of the provision is broad enough to include them. The Union maintains that the Employer's decision to include step-parents and step-children supports the argument that a broad and liberal interpretation should be consistent across the classifications. It says that if

the death of one's step-parent leads to bereavement leave there is no reason that the death of a step-sibling should not.

The Union replies that collective agreements evolve and the fact that the parties have included step relatives in one place does not mean that a different provision should be narrowly interpreted to exclude them. The Union replies, further, that the parties' intentions with clauses like 12.04 should be presumed to evolve along with society.

The Union also replies that the definition of "brother" requires one parent in common so its interpretation would not mean that someone outside that relationship would also qualify. It maintains that the Grievor and her step-brother had a parent in common even though it was not a biological parent.

The Union confirms that it is not relying on section 12 of the Code and that that part of the *Renfrew County* award was *obiter*. The Union argues, however, that the context of the *Renfrew County* award ought to be considered.

## **DECISION**

We accept that the Grievor was close to her step-brother and is close to her step-mother. We also accept that the Grievor considered her step-brother to be a brother and that she considers her step-mother to be one of her mothers. However, the task before this panel is to interpret the collective agreement and to determine whether the language used in Article 12.04 includes step-brothers.

In interpreting Article 12.04 we must give the words used their ordinary meaning while considering the collective agreement as a whole. In *Renfrew County*, to which the Union refers, the arbitrator described the approach to interpretation at page 9 as follows:

...My task is to choose the preferable interpretation of the collective agreement. In doing so, an arbitrator must give the words of the collective agreement their ordinary meaning, read harmoniously with the whole of the agreement, its purpose, and the intention of the parties as expressed in the words they have chosen in context. Interpretations leading to absurdity or inconsistency with the rest of the collective agreement or any applicable statute are to be avoided.

There are three types of bereavement leave clauses described in the jurisprudence. Arbitrators have exercised varying degrees of willingness to broadly interpret the language the parties have used or to consider the relationship between the grievor and the person they have lost, depending on the type of bereavement leave clause before them. *Renfrew County* sets out "three main types of language used in bereavement leave clauses to describe the categories of relationship in which death will trigger entitlement to bereavement leave". The arbitrator lists them at page 11:

1. Named classes of persons, such as a list of specific relationships;
2. A described group of persons, such as "immediate family", with specificity as to which relationships are included in the term;
3. A variant of #2, with the definition of the group presented in inclusive, or non-exhaustive language.

Article 12.04 falls into the first category above and arbitrators have been reluctant to read other classes of people into the list that the parties have negotiated. This collective agreement provides for three days paid leave for a brother but does not refer to “step-brother”. There is no definition of “brother” in the collective agreement. We have not been provided with any jurisprudence dealing with the question of whether the reference to “brother” in a bereavement leave provision includes a step-brother. However, the jurisprudence provided by both parties demonstrates that the inclusion of step relatives does arise as an issue in negotiating such clauses and that they are often listed. Nevertheless, if there were no other indication in the collective agreement that the parties made such a distinction we may have found that the plain and ordinary meaning of the word “brother” was broad enough to include a step-brother. However, the bereavement leave provision must be read in the context of the rest of the collective agreement and that leads to the conclusion that the parties did not intend for the reference to “brother” to be construed that broadly.

The parties have not listed “step-brother” in Article 12.04 of this collective agreement but some step relatives have been listed in Article 12.10. That demonstrates that these sophisticated bargaining parties know how to include step relatives if they intend to do so and leads to the conclusion that they did not intend to include step-brothers when they listed “brother”. That conclusion is further supported by the reference to section 49.1 of the ESA which does list “step-brother” under section (3). Thus, the parties negotiating Article 12 listed specific step relatives or statutory provisions listing specific step relatives when they wanted a provision to apply to them and did not do so when they did not want one to. We must conclude, therefore, that they did not agree that the three days paid bereavement leave would be paid for the death of a step-brother.

The Union argues that the reality of collective agreement negotiations means that the parties may not have considered whether “step-brother” was listed elsewhere and that they still intended to include step-siblings in Article 12.04. However, Article 12 is part of the Central provisions of this collective agreement and was negotiated by sophisticated and experienced parties. The provision that refers to step-parents, step-grandparents and step-children is in the same Article as the bereavement leave provision although not the same sub-article. One would certainly expect that the parties negotiated the provisions of Article 12 in the context of the other parts of the Article even if they made changes to them at different times. This is not a situation in which a provision in the Central part of the collective agreement appears to use a word or words in a different way or with a different meaning than they are used in the Local provisions. Local provisions are negotiated by the local parties who are not necessarily involved in negotiating the Central language.

The Union contends that “step-brother” must be included in the word “brother” to reflect contemporary social values. However, the fact that people have more step-siblings than they may have had a few decades ago does not necessarily mean that they were not valued at that time or considered to be brothers just as much then as they are now. Now, as then, some step-siblings will consider each other to be siblings and some will not. It is not the same issue as common-law or same sex spouses who were not considered to be equal to heterosexual married couples at one time. Significantly, these parties have clearly put their minds to ensuring that the bereavement leave language reflects contemporary societal expectations because they have agreed at the end of Article

12.04 that spouse includes common-law spouse and same sex partner. They did not state that all family references also include step-relatives.

The Employer advised the Union at the time that it started providing paid bereavement leave for the death of step-parents and step-children that it was doing so as an exercise of its discretion. That discretion is set out in Article 12.04. The Employer was not, therefore, acknowledging that it agreed with the Union's interpretation of Article 12.04 when it changed its policy. We do not find that the Employer's decision to provide bereavement leave for step-parents and step-children leads to the conclusion that it must also provide it for step-siblings.

Paid bereavement leave clauses are messy bargains. The parties have to put a kind of value on different relationships knowing that they may not reflect the reality in any particular employee's family. Bereavement leave clauses are monetary items in which the Employer agrees to forgo the employee's work contribution for a certain number of days and to pay them while they are off. Some clauses, like Article 12.04, provide more paid days off for some family members than others. That reflects a presumption that the loss of certain family members requires more time for the purposes for which bereavement leave is provided than others. But again, that may not be true in any given case. Being told that you are not entitled to paid bereavement leave for someone you love as much as someone on the list or consider to be your family as much as someone on the list may be hurtful. However, these are bargains which have a cost attached to them and the parties, therefore, need to decide when employees will receive paid bereavement leave. These parties have done that in Article 12.04 and they did not include step-siblings.

The Union has not asserted a violation of the Code and we will not, therefore, address that argument.

For all of the above reasons, the grievances are dismissed.

July 6, 2022



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Laura Trachuk  
Arbitrator

"I concur"

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Harold Ball  
Nominee

"See Addendum"

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Joe Herbert  
Nominee

## ADDENDUM

I cannot disagree with the Chair's careful analysis of the relevant collective agreement provisions. It is apparent, in article 12.10 for example, where certain step-relations are identified and included while others, like step-siblings, are not, that the term 'brother' in article 12.10 at least, is intended to strictly mean the employee's brother. Unless one is prepared to give the same word, 'brother' in article 12.04, a different meaning than 'brother' in 12.10, it is apparent that the term in 12.04 does not include step-relations. That is augmented, as the Chair notes, by the absence of any reference in 12.04 to the inclusion of step-relations, notwithstanding the express inclusion in that article of other 'non-traditional' relationships such as same-sex or common law ones.

But while this is well and good for the purposes of accurately construing the terms of a collective agreement, it does nothing to allow for both a recognition of the significance of some step-relations to employees, and nor does it permit the employees paid time off to grieve the loss of those step-relations. In that regard, it is notable that the employer in this case took it on its own to initiate a policy to provide paid bereavement leave for certain step-relatives in view of the necessity of recognizing the significance of those relations.

Moreover, it is in my view entirely inconsistent and counter-intuitive, that an employee should be permitted extensive unpaid Compassionate Care Leave at article 12.11 for step-siblings, while being permitted no leave at all under 12.04 for bereavement on their loss. And while that may not be sufficient to move the needle for the purpose of interpretation, it underlines a need for a change from the status quo.

All of this of course, points to a need to amend article 12.04 to include step-relatives for the purpose of bereavement leave. This is a 'central rights' case, and to my knowledge

the first giving rise to this issue. It has pointed to an area of the collective agreement now requiring address by the central parties in bargaining, in order to avoid other employees having to confront the same circumstances as has Ms. McManus.

Dated this 5<sup>th</sup> day of July, 2022.

Joe Herbert  
Union Nominee