

STATE OF INDIANA)
)
COUNTY OF MARION)

IN THE MARION SUPERIOR COURT
CIVIL DIVISION, ROOM 4
CAUSE NO. 49D04 0002 CP 180

JANA CORNELL,)
)
Plaintiff,)
)
vs.)
)
JOHN HAMILTON, Secretary, Indiana)
Family and Social Services Administration,)
and D. SUE ROBERSON, State Personnel)
Director,)
)
Defendants.)

FILED
FEB 13 2002
Sue A. Taylor
CLERK OF THE COURT
MARION CIRCUIT COURT

**PARTIES' STIPULATION OF UNDISPUTED, MATERIAL FACTS
FOR THE PURPOSE OF MOTIONS FOR SUMMARY JUDGMENT**

The parties, by counsel, and solely for the purposes of the cross-motions for summary judgment filed on February 13, 2002, hereby STIPULATE to the following undisputed, material facts:

1. Jana Cornell ("Ms. Cornell") has been employed by the Indiana Family and Social Services Administration (FSSA) since May 1988. Since August 1995 she has worked in the Children's Services Division of the Marion County Office of Family and Children, a division of FSSA. (Complaint ¶20, Answer ¶20.)
2. John Hamilton is the Secretary of the Indiana Family and Social Services Administration.
3. D. Sue Roberson is the Director of Indiana's State Personnel Department (SPD).

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4. As an employee of FSSA, Ms. Cornell is entitled to funeral leave under the State Department of Personnel rule regarding funeral leave. (Deposition of Brian Keith Beesley (hereinafter "Beesley Dep.") p. 7).

5. The authority to grant State employees paid leave is delegated by the General Assembly to the Director of Personnel pursuant to Indiana Code § 4-15-2-29. (Beesley Dep. p. 7).

6. Indiana Code § 4-15-2-29 provides as follows:

The rules shall provide for the hours of work, holidays, attendance regulation and leaves of absence in the various classes of positions in the classified service. They shall contain provisions for annual, sick and special leaves of absence with or without pay or with reduced pay, and may allow special extended leaves for employees disabled through injury or illness arising out of their employment, and the accumulation of annual and sick leaves.

7. The State Personnel Department rule regarding funeral leave, codified at 31 IAC 2-11-8(B), provides as follows:

The appointing authority may allow leave with pay, not to exceed the employee's next three (3) regularly scheduled work days, in the event of the death of any relative specified in this section. The amount of time granted ordinarily will depend upon the closeness of the relationship to the deceased and amount of travel necessitated by attendance at the funeral. Such leave may be granted upon the death of a husband, wife, father, mother, son, daughter, brother, sister, grandparent, grandchild, or the spouse of any of these, or a person living in the same household with the employee. For a married employee, these

members of the spouse's family are included.

(Beesley Declaration ¶ 9.)

8. In addition to the Personnel Department rule, FSSA has a "Bereavement Leave" policy which provides the procedures to be followed to request funeral leave and *administratively interprets the Personnel Department rule to include "steps," "halves" and "greats" within the list of relationships for which funeral leave is permitted.* (FSSA-HR2-17; Beesley Dep. p. 8.)

9. In addition, Indiana has entered into agreements with unions representing groups of state employees. Employees in the job classification of Family Case Manager 2 were represented by the American Federation of State, County and Municipal employees, AFL/CIO, AFSCME/Indiana Council 62. The current agreement with AFSCME covers from July 1, 1997 through June 30, 2001 (hereinafter "AFSCME Settlement"). Article 39 of the AFSCME Settlement provides as follows:

FUNERAL LEAVE

Section A. The State shall allow leave with pay, not to exceed three (3) work days, in the event of the death of any relative specified in this Article. The employee's request for the leave shall be honored. The days shall be in conjunction with the time of *the death or date of the funeral.*

Section B. The leave shall be granted upon the death of husband, wife, father, mother, son, daughter, brother, sister, grandparent, grandchild, or the spouse of any of these, *or a person living in the same household with the employee.* For a married employee, these members of the spouse's family are included. For purposes of this

Article, "steps" or "greats" of the above listed relatives are also covered. An employee will be permitted to attend funeral services for an individual not specified herein, if the request to attend is approved and employee uses accrued vacation, personal or compensatory paid leave to cover the absence.

Section C. The employee's request shall be communicated to the appropriate designated management representative within fifteen (15) minutes from the start of his/her shift or sooner, if possible. For employees in seven (7) day, twenty-four (24) hour operations, notice shall be required one (1) hour prior to the start of the shift.

Section D. If the employee needs additional time off, s/he may use accrued compensatory time, vacation or personal leave to cover that additional time with the approval of the supervisor.

Section E. The State reserves the right to require documentation to verify the *authenticity of the request when there is legitimate reason to compel* such verification. Documentation means a statement from a funeral home or obituary indicating the name of the deceased, date of death, location and date of funeral.

(Beesley Declaration ¶¶ 10-11.)

10. The funeral leave provision of the union settlements is virtually a mirror image of the State Personnel Department policy. It adds further *operational detail and constrains agency discretion to determine the amount of funeral leave to be granted*. Under the union settlements, if the employee requests three days of funeral leave the agency cannot decide that only one or two days would be sufficient. (Beesley Dep. pp. 8-9).

11. Funeral leave is separate from other types of paid leave, such as vacation or

personal leave, and is available in addition to such other types of leave. (Complaint ¶15; Answer ¶15.)

12. The purpose of providing funeral leave to State employees is to allow the employee to make funeral arrangements, attend the funeral, and perhaps attend to the legal affairs of the decedent. (Beesley dep. pp. 9-10.) As with other forms of leave and holidays, the State benefits when its employees are treated well. It is both humane and beneficial to allow the employee to take time off to attend to personal matters rather than be preoccupied and mourning at work. (Beesley Dep. pp. 10-11.)

13. The defendants agree that the policy also validly promotes the support, security and stability in family relationships which in turn contribute to employee productivity (Complaint ¶17; Answer ¶17.)

14. Under the funeral leave policies of Defendants (hereinafter collectively “the State”), the funeral leave privilege is available in the event of the death of relatives of a married employee’s spouse. (Complaint ¶16; Answer ¶16).

15. Marriage is the exclusive criterion for determining whether an employee is entitled to funeral leave when a relative of the employee’s homosexual (or same-sex) domestic partner dies. *If the employee is not married to his/her homosexual (or same-sex) domestic partner, then the employee is not entitled to funeral leave when a relative of the homosexual (or same-sex) domestic partner dies.* (Complaint ¶18; Answer ¶18.)

16. Likewise, marriage is the exclusive criterion for determining whether an employee is entitled to funeral leave for any person (a) to whom the employee is not related and (b) who is not living in the same household. If the employee is not married to a roommate,

housemate, or heterosexual companion or partner, then the employee is not entitled to funeral leave when a relative of that mate or companion dies. (31 IAC 2-11-8(B).)

17. A representative of the State articulated seven reasons for using marriage as the criterion for denying unmarried employees funeral leave when a relative of their domestic partner or other companion dies:

- a. marriage is an objective standard that is readily ascertainable;
- b. marriage is a relationship recognized in the law for many purposes;
- c. marriage is commonly used as a qualifying standard for employee benefits;
- d. there is no legally recognized family relationship between the employee and the deceased;
- e. the cost of extending benefits;
- f. the difficulty with defining a standard for what constitutes a domestic partner – it would be impractical and intrusive to ask employees to verify their personal relationships by asking them, for example, to sign affidavits;
- g. if same-sex partners were to qualify, there would be no reason to exclude unmarried, cohabiting heterosexuals.

(Beesley Dep. pp. 13-18.)

18. Marriage is considered by the State to be an objective standard because it can be established through filings with the clerk of the court in Indiana. The payroll clerk probably knows about the marriage through benefit or tax forms. Also, whether an employee is married is generally known among co-workers. (Beesley Dep. pp. 18-19.)

19. The State's funeral leave policies do not require married employees to provide

documentation of their marriage in order to access funeral leave. Although the State could require such proof, it knows of no instance in which proof of marriage was required in order for an employee to take funeral leave. (Beesley Dep. pp. 18-19.)

20. According to the State, the fact that marriage is a relationship recognized in the law for many purposes is an important factor in the development of personnel policies because the Personnel Department administers the law but does not create it. According to the State, any recognition of same-sex domestic partners for purposes of personnel policies should be left to legislature. (Beesley Dep pp. 21-22)

21. Regarding cost, the State has not performed any study or analysis of the cost of allowing employees to take funeral leave when a relative of their domestic partner dies. There is an opportunity cost whenever an employee is provided paid leave. In addition, if the employee must be replaced by another employee during the leave, a hard cost would be incurred. (Beesley Dep pp 20-21)

22. The State believes that operationalizing a domestic partner standard in an organization of 38,000 employees would be difficult and impractical. Asking employees to sign affidavits describing the details of their relationships with other people might be considered an unwarranted intrusion into employee privacy by a government employer. (Beesley Dep. pp. 15-18.)

23. Ms. Cornell is in a relationship with a same-sex domestic partner. (Affidavit of Jana Cornell (hereinafter "Cornell Aff.") ¶2.)

24. Ms. Cornell and her partner have been involved in a loving, committed, intimate relationship for more than five (5) years. They live in Indianapolis as domestic partners, where

they share the expenses of the home they own jointly. (Cornell Aff. ¶3.)

25. Ms. Cornell and her partner share joint finances and a joint mortgage on their residence. Each has a life insurance policy naming the other as beneficiary. They share joint checking, savings and money market accounts. They have mutual wills, durable powers of attorney and health care powers of attorney. (Cornell Aff. ¶4.)

26. Ms. Cornell and her partner consider themselves to be life partners and hold themselves out to their families, friends and community as a couple in a committed, loving relationship. (Cornell Aff. ¶5.)

27. During the time Ms. Cornell and her partner have been together, Ms. Cornell has developed a close relationship with her partner's family, including her partner's father. (Cornell Aff. ¶7.)

28. Ms. Cornell and her partner would marry one another if Indiana law did not prohibit such a marriage. (Cornell Aff. ¶6.)

29. Pursuant to Indiana Code § 31-11-1-1, only a female may marry a male and only a male may marry a female. As a result, Ms. Cornell and her same sex domestic partner are prohibited from marrying one another. (I.C. §31-11-1-1; Complaint ¶7-9; Answer ¶7-9.)

30. On Monday, June 21, 1999, the father of Ms. Cornell's domestic partner died. (Cornell Aff. ¶8.)

31. His death was unexpected and was difficult for Ms. Cornell. During the days immediately following his death, she was personally in mourning and had to provide support to her partner as she dealt with funeral arrangements and estate matters. (Cornell Aff. ¶9.)

32. On Tuesday, June 22, 1999, Ms. Cornell informed her immediate supervisor,

Angela Coulon, of the death and requested the remainder of the week off (Tuesday through Friday). Her request was approved by Ms. Coulon. (Cornell Aff. ¶10; Beesley Decl. ¶14(A).)

33. On June 28, 1999, Ms. Cornell submitted the time request form necessary to take funeral leave and personal leave. She requested three (3) days of funeral leave due to the death of her spouse's father. She requested personal leave for the fourth day off. (Cornell Aff. ¶11.)

34. On June 29, 1999, Angela Coulon approved the request for funeral leave with full knowledge that Ms. Cornell's "spouse" was her same-sex domestic partner. Ms. Coulon knew this because Ms. Cornell's relationship with her partner was common knowledge among co-workers and Ms. Cornell had conversations with Ms. Coulon about her partner and their relationship. (Cornell Aff. ¶12.)

35. On or about July 2, 1999, FSSA Human Resources staff overruled Angela Coulon's prior approval and denied Ms. Cornell's request for funeral leave because she is not legally married to her domestic partner. (Cornell Aff. ¶13.)

36. On or about July 6, 1999, FSSA Human Resources staff notified Ms. Cornell that she was charged 22.5 hours of lost time she had taken as funeral leave because she and her domestic partner are not "spouses" as defined in Webster's 9th Collegiate Dictionary. (Cornell Aff. ¶14.)

37. On or about July 7, 1999, Ms. Cornell requested that the denial be reviewed by the State Department of Personnel. (Cornell Aff. ¶15.)

38. On or about July 13, 1999, the FSSA payroll department, through Deborah Glover, requested that, in order to be granted the funeral leave days requested, Ms. Cornell provide documentation, such as an envelope received in the mail, to establish that she and her

domestic partner share the same residence. (Cornell Aff. ¶16.)

39. On or about July 14, 1999, Ms. Cornell provided to Deborah Glover a copy of their mortgage statement showing that she and her partner share the same residence. (Cornell Aff. ¶17.)

40. On or about July 22, 1999, the State Personnel Department confirmed that Ms. Cornell was denied funeral leave to attend the funeral of her partner's father. (Cornell Aff. ¶18.)

41. On July 22, 1999, Deborah K. Glover sent the following electronic mail message to Cornell: "I have just been informed by central office you will not be paid funeral leave for the 3 funeral days you requested. Therefore the 22.5 hours lost time you were charged will stand. However, you may submit an amended attendance sheet (A-4) requesting to use vacation days for days lost. Use of vacation time must be approved by your supervisor. Please let me know how you would like to proceed." (Beesley Decl. ¶ 14(B).)

42. On November 23, 1999, Cornell requested the use of vacation leave to be paid for her absence on June 22, 23 and 24, 1990, the dates for which funeral leave was denied. Payment of vacation leave was approved. (Beesley Decl. ¶ 14(E).)

43. Ms. Cornell did not seek any further review of the denial of funeral leave, either through the State Personnel merit employee grievance procedure or by way of a union grievance. (Beesley Declaration ¶14(F).)

44. Ms. Cornell was denied the requested funeral leave to attend the funeral of her partner's father because she is not married to her domestic partner. (Complaint ¶32; Answer ¶32).

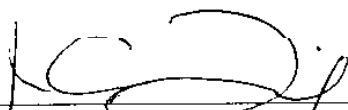
45. Because Ms. Cornell was denied funeral leave, she had to use vacation leave in

order to be paid for the 22.5 hours that otherwise would have been paid pursuant to the funeral leave policy. If she had not used vacation leave, she would not have been paid for those hours.

(Cornell Aff. ¶19.)

Respectfully submitted:

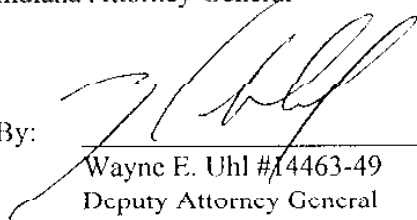
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