

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Case CXVII
No. 28084 DR(M)-177
Decision No. 19042

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services positions supported by federal funds which require that personnel standards on a merit basis be established and maintained. The department of health and social services, pursuant to ss 46.016, 46.22 (6), 49.50(2) and (5), 51.42(12), 51.437(16) and 227.014(2), Stats. shall ensure the continued receipt of those federal funds by providing direct merit personnel services to local employes or assigning that responsibility to local employers.

HSS 5.03 Recruitment, selection and appointment. Recruitment, selection and appointment of applicants for employment and advancement of employes shall be on the basis of their relative ability, knowledge and skills.

(1) RECRUITMENT. Recruiting efforts shall ensure that interested and qualified applicants from outside the employing agency are considered for employment.

(a) Emphasis shall be placed on recruiting efforts to attract minorities, women and members of other groups substantially under-represented in the work force to help ensure they are among the candidates from whom appointments are made.

(b) The recruiting program shall be designed to meet current and projected work force needs and shall be tailored to the number and type of positions to be filled and to labor market conditions.

(2) SELECTION AND APPOINTMENT. Selection procedures shall assess applicant attributes necessary for successful job performance, shall be based upon the duties and responsibilities of the job to be filled and shall provide for the appropriate ranking of applicants from the most qualified to the least qualified which shall constitute the employment list.

(a) Appointments shall be made from employment lists established on the basis of the relative ability, knowledge and skills of the applicants.

(b) The number of applicants to be considered for employment shall be determined prior to the initiation of any selection procedure.

(c) Job related minimum training and experience requirements shall be established for each job. The requirements shall be met by all candidates in order for them to be eligible for examination and appointment.

(d) Permanent appointments shall be contingent upon satisfactory performance by the employee during a fixed probationary period.

(e) Temporary appointments shall have a reasonable time limit. If the employment lists of eligible applicants are available, they normally shall be used for filling temporary positions. Temporary appointments may be made to provide for maintenance of essential services in an emergency situation.

(3) CAREER ADVANCEMENT. Only employes who successfully complete a fixed probationary period may be promoted to higher level job provided the agency ensures that all those considered eligible for promotion are qualified for the job.

HSS 5.04 Classification and compensation plan.
Equitable and adequate compensation shall be provided.

(1) CLASSIFICATION PLAN. The classification plan shall be maintained on a current basis. It shall include all job groupings with similar duties, responsibilities, training and experience requirements and other characteristics to which common job titles and compensation provisions may be applied. It shall be utilized for decision making on compensation selection, employee development and other personnel program activities.

(2) COMPENSATION PLAN. The compensation plan shall assign pay rates or ranges to the different job groupings in the classification plan on a current basis and shall take into account the responsibility and difficulty of the work and the compensation needed to compete in the labor market.

4. That during bargaining over their 1981 contract, the parties were unable to agree on the scope of the County's obligation to bargain with the Association over the number of classifications which should exist within the Department of Social Services and over the qualifications which may be required of individuals within said classifications; and that to resolve said dispute they agreed to seek the instant declaratory ruling from the Commission.

5. That the determination of number of classifications within the Brown County Department of Social Services primarily relates to the formulation or management of public policy.

6. That the determination of the minimum qualifications for a classification within the Brown County Department of Social Services primarily relates to the formulation or management of public policy.

7. That the selection criteria to be applied when determining which qualified bargaining unit applicant should be promoted primarily relates to wages, hours and working conditions.

Based upon the above and foregoing Findings of Fact, the Commission makes and issues the following

CONCLUSIONS OF LAW

1. That the determination of the number of classifications within the Brown County Department of Social Services and the minimum qualifications applicable thereto are permissive subjects of bargaining within the meaning of Section 111.70(1)(d), 111.70(2), and 111.70(3)(a)4 of the Municipal Employment Relations Act.

2. That the selection criteria to be applied when determining which qualified bargaining unit applicant should be promoted is a mandatory subject of bargaining within the meaning of Sections 111.70(1)(d), 111.70(2), and 111.70(3)(a)4 of the Municipal Employment Relations Act.

2. That Brown County has a duty to bargain with the Brown County Department of Social Services Professional Employees Association with respect to the selection criteria to be applied when determining which qualified bargaining unit applicants should be promoted.

Given under our hands and seal at the City of Madison, Wisconsin this 11th day of November, 1981.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

Gary L. Covelli
Gary L. Covelli, Chairman

Morris Slavney
Morris Slavney, Commissioner

Herman Torosian
Herman Torosian, Commissioner

MEMORANDUM ACCOMPANYING FINDINGS OF FACT,
CONCLUSIONS OF LAW AND DECLARATORY RULING

As indicated in Finding of Fact 4, the parties seek the Commission's ruling on the extent of the County's obligation to bargain with the Association over the number of classifications and the qualifications which may be attached to said classifications within the Department of Social Services. The County argues that both items relate to permissive subjects of bargaining in that they primarily relate to the formulation or management of public policy. It places substantial reliance upon the Commission's decision in City of Waukesha (Fire Department) 1/ as support for its position. The County also argues that Section 49.50, Stats. and PW-PA10, Wis. Admin. Code should be interpreted as relieving a delegated municipal employer from any obligation to bargain over the subjects at issue herein.

The Association contends that items in dispute relate to mandatory subjects of bargaining in that they primarily relate to the wages, hours and conditions of employment of the employees it represents. It cites City of Waukesha (Fire Department), and City of Madison 2/ as prior Commission decisions which support its position.

In Unified School District of Racine vs. WERC 3/ the Wisconsin Supreme Court set forth the distinction between mandatory and non-mandatory subjects of bargaining in the following manner:

"The question is whether a particular decision is primarily related to the wages, hours and conditions of employment of the employees, or whether it is primarily related to the formulation or management of public policy."

Applying the foregoing standard in other cases involving the number of classifications or positions which will exist, the Commission has consistently held that any proposal which would require that a municipal employer establish or maintain certain positions constitutes a non-mandatory subject of bargaining. 4/ As stated in Milwaukee Board of School Directors we reach that conclusion because

"The shape of its organizational structure so directly influences the ability of a municipal employer to operate so as to carry out its governmental mission that decisions regarding that structure primarily relates to the formulation and management of public policy."

Being satisfied as to the continuing validity of the foregoing, the Commission concludes that the decision regarding the number of classifications which will exist within the Department of Social Services primarily relates to the formulation or management of public policy and thus is a non-mandatory subject of bargaining. However, the impact of any change in the existing organizational structure on wages, hours and conditions of employment of employees in the unit represented by the Association is a mandatory subject of bargaining. 5/

1/ Decision No. 17830, 5/80

2/ Decision No. 16590, 10/78

3/ 81 Wis. 2d 89 (1977)

4/ Sewerage Commission of the City of Milwaukee (17025) 5/79; Milwaukee Board of School Directors (17504) 12/79; City of Waukesha (Fire Department), supra

5/ Sewerage Commission of the City of Milwaukee, supra

Turning to question of qualifications, in City of Waukesha (Fire Dept.) the Commission held that while the municipal employer need not bargain over the minimum qualifications needed to hold a position or classification, the selection criteria to be applied when promoting qualified bargaining unit candidates affects promotional or transfer opportunities for unit employees, is primarily related to wages, hours and working conditions, and thus constitutes a mandatory subject of bargaining. This holding remains viable and defines with some specificity the scope of the County's duty to bargain herein. However, there remains the question raised by the County as to whether its bargaining obligation is limited or eliminated by the provisions of Section 49.50, Stats. 6/ and the administrative rules promulgated thereunder.

Sections 49.50(2) and 5, Stats. authorize the delegation to counties of the Department of Health and Social Services' authority to establish and maintain merit based personnel standards for county social service employees. Section 49.50(2) Stats., which has existed in current form since 1953, states "The provisions of this section relating to personnel standards on a merit basis supersede any inconsistent provision of any law relating to county personnel. . . ." The County argues that the foregoing language removes any obligation to bargain which MERA might otherwise impose upon it. The Commission disagrees. Initially it can be noted that there is little likelihood that when enacting Section 49.50(2) Stats. the Legislature considered the possible impact of collective bargaining upon the establishment of personnel standards inasmuch as MERA was not created until 1971. Furthermore it can well be argued that as the Legislature enacted MERA with full knowledge of preexisting statutory provisions and that as MERA contains no limitation upon a county's duty to bargain over the wages, hours and conditions of employment of its employees, the Legislature did not intend that Section 49.50, Stats., and the administrative rules promulgated thereunder, should create such a limitation. Furthermore, even if one were to assume the applicability of Section 49.50, Stats. and HSS 5 to the issues before the Commission, we believe that the "harmonization" process endorsed by the Wisconsin Supreme Court in Glendale Professional Policemen's Association vs. Glendale 7/ can be utilized to give viability to both statutory provisions. As we have

6/ 49.50 State supervision. (2) RULES AND REGULATIONS, MERIT SYSTEM. The department shall adopt rules and regulations, not in conflict with law, for the efficient administration of aid to families with dependent children in agreement with the requirements for federal aid, including the establishment and maintenance of personnel standards on a merit basis. The provisions of this section relating to personnel standards on a merit basis supersede any inconsistent provisions of any law relating to county personnel, but this subsection shall not be construed to invalidate the provisions of s. 46.22 (6).

. . .

(5) COUNTY PERSONNEL SYSTEMS. Pursuant to rules established under sub. (2), the department where requested by the county shall delegate to that county, without restriction because of enumeration, any or all of the department's authority under sub.(2) to establish and maintain personnel standards including salary levels.

. . .

7/ 83 Wis. 2d 90 (1978)

been asked in this proceeding to only provide broad guidance to the parties, we find it unnecessary and inappropriate to attempt to precisely define the parameters of such a harmonization.

Dated at Madison, Wisconsin this 11th day of November, 1981.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By 
Gary L. Covelli, Chairman


Morris Slavney, Commissioner


Herman Torosian, Commissioner