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STATE OF WISCONSIN

CIRCUIT COURT
Branch 11

FEB 12 1987
DANE COUNTY

WISCONSIN EMPLOYMENT
RELATIONS COMMISSION

DANE COUNTY,

Plaintiff,

-v-

WI EMPLOYMENT RELATIONS COMM.,

Defendant.

MEMORANDUM

DECISION

Case No. 84 CV 1409

Decision No. 21397

This matter is before the court upon the County of Dane's Petition for Review under Chapter 227, Wis. Stats., of the decision of the Wisconsin Employment Relations Commission (Commission) dated February 14, 1984, in Case XCI, No. 32194, ME-2280, Decision No. 21397, In the Matter of the Petition of Dane County Joint Council of Unions, AFSCME, AFL-CIO, Involving Certain Employees of Dane County.

In response to a threshold issue raised by the Commission, the court finds that the County of Dane is an aggrieved person as contemplated by sec. 227.16(1), Wis. Stats., and thus has standing to bring this petition.

The Commission's decision resulted from a petition by the Dane County Joint Council of Unions for a clarification of a bargaining unit to determine whether the position of Clerk of Courts Data Base Coordinator should be included in the bargaining unit, which excludes, among others, professional employees. The Commission decided that the position was not a professional one and therefore belonged in the bargaining unit.

Sec. 111.70(1)(L)(1), Wis. Stats., defines "professional employee" as:

1. Any employee engaged in work:
 - a. Predominantly intellectual and varied in character

as opposed to routine mental, manual, mechanical or physical work;

- b. Involving the consistent exercise of discretion and judgment in its performance;
- c. Of such a character that the output produced or the result accomplished cannot be standardized in relation to a given period of time;
- d. Requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study in an institution of higher education or a hospital, as distinguished from a general academic education or from an apprenticeship or from training in the performance of routine mental, manual or physical process;

The Commission found that the Data Base Coordinator position met the first three statutory requirements, but did not require knowledge of an advanced type in a field of learning customarily acquired by a prolonged course of specialized intellectual instruction and study in an institution of higher learning.

The training and experience required for the Data Base Coordinator are "any combination of training and experience equivalent to an Associate Degree in Systems and Data Processing, plus one year of professional level experience in systems analysis." The training and experience of the person hired to fill the position include one year of college at the University of Wisconsin; one six- to eight-week course in data processing; six years as a clerk-typist for the County; and 2½ years as an LTE for the County working on the conversion of the record system to the on-line computer system, which she was then hired to coordinate in the Data Base Coordinator position.

The application of a statute to a particular set of facts presents a question of law, and while a reviewing court may substitute its judgment for that of the agency, it should hesitate to do so if the agency's interpretation has a rational basis and

it does not conflict with the statute's legislative history, prior appellate decisions, or the constitution. City of Onalaska v. LIRC, 120 Wis. 2d 363, 366, ____ N.W. 2d ____ (1984) (Citations omitted). The construction of a statute by the agency charged with administering it is entitled to great weight, and should not be upset if a rational basis for it exists. Environmental Decade v. ILHR Dept., 104 Wis. 2d 640, 644, 312 N.W. 2d 749, 751 (1981) (Citation omitted). But where the question is one of first impression, the court does not use the "great weight" standard, but rather accords "due weight" to the agency's determination as to the appropriate construction. Berns v. Wis. Employment Relations Comm., 99 Wis. 2d 252, 261, 299 N.W. 2d 248 (1980).

Although this is apparently a case of first impression for the courts, the Commission has dealt with the interpretation of this statute in previous cases. See, e.g. City of Cudahy, Decision No. 19507 (3/82), Milwaukee County, 14786-B (4/80), and Milwaukee County, 8765-E, 14786 (7/76). Dane County argues that the instant Commission decision is inconsistent with its prior decisions because it has the effect of requiring a four-year college degree, or its equivalent, for all professional positions, contrary to previous decisions stating that a college degree is not a prerequisite for professional status. However, the fact that the Commission finds the training and experience for the Data Base Coordinator to fall short of the statutory requirement for professional status does not lead inevitably to the conclusion that a four-year degree is required. Innumerable possible combinations of formal education and job training may exceed the requirements for this job and yet fall short of a four-year college

degree.

Dane County also argues that the Commission inappropriately distinguished a similar position in City of Cudahy, supra., which had been found to be a professional one. However, the Commission's explanation of the Cudahy position indicates that the knowledge required of that position was more advanced than that required of the Data Base Coordinator. With deference to the agency in those areas in which it has specialized knowledge and technical expertise, Dairy Equipment Co. v. ILHR Dept., 95 Wis. 2d 319, 327, 290 N.W. 2d 330, 334 (1980); sec. 227.20(10), Wis. Stats., this court declines to second-guess the distinction made by the Commission.

Accordingly, the court finds that the Commission's decision is not inconsistent with its prior decisions.

The court also finds that there is a rational basis to the Commission's decision, which is supported by the record. Systems analysis is a broad term which ranges from the simple to the very complex. The job announcement itself does not provide the necessary information to determine where in the spectrum of systems analysis this position falls. Only by review of the actual incumbent's training and experience can the Commission (or the court) determine the meaning of "any combination of training and experience equivalent to an Associate Degree in Systems and Data Processing, plus one year of professional level experience in systems analysis". The incumbent's training and experience suggest that for purposes of this position, one year of college plus a six- to eight-week course in data processing is equivalent to an Associate Degree in Systems and Data Processing, and working on the court's particular system constitutes professional level

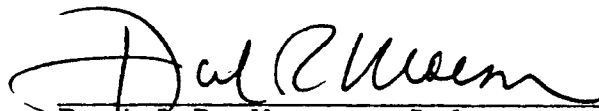
experience in systems analysis. It is rational for the Commission to determine, based on the record, the credibility of the witnesses, and its own expertise, that the training and experience required for this level of systems analysis does not meet the statutory standards for professionalism, notwithstanding the words in the job announcement.

Therefore, using either the "great weight" standard applied generally in administrative reviews, or the "due weight" standard applicable to questions of first impression (Berns, supra.), the court finds that the Commission's construction of sec. 111.70 (1) (L)(1) is appropriate. Accordingly, the Commission's decision and order are affirmed in their entirety.

Counsel for the Commission shall prepare Findings of Fact, Conclusions of Law and a Judgment consistent with this Memorandum Decision within thirty days, and provide them to opposing counsel for approval and then to this court for signature.

Dated this 29th day of January, 1985.

BY THE COURT:

A handwritten signature in dark ink, appearing to read "Daniel R. Moeser", written over a horizontal line.

Daniel R. Moeser, Judge
Circuit Court Branch 11