

STATE OF WISCONSIN  
CIRCUIT COURT  
DODGE COUNTY  
BRANCH II

MAYVILLE SCHOOL DISTRICT and THE BOARD OF EDUCATION OF MAYVILLE  
SCHOOL DISTRICT,  
Petitioners,

vs.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION,  
Respondent.

Case No. 92 CV 342

MAYVILLE EDUCATION ASSOCIATION and LOUISE MACIEJEWSKI, President,  
MAYVILLE EDUCATION ASSOCIATION,  
Petitioners,

vs.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION,  
Respondent,

MAYVILLE SCHOOL DISTRICT, and THE BOARD OF EDUCATION OF THE MAYVILLE  
SCHOOL DISTRICT,  
Interested Parties.

Case No. 92 CV 341

Memorandum Decision: Chapter 227 Review of WERC Decision 25144-D.

These actions are before this Court based on two Petitions, filed pursuant to Sec. 227.52 - 227.57, Stats., to review the order of the Wisconsin Employment Relations Commission (WERC) in, Mayville Education Association and Louise Maciejewski, President, Mayville Education Association v. Mayville School District and the Board of Education of the Mayville School District, Case No. 17, No. 39952, MP-2052, Decision No. 25144-D, dated May 5, 1992. (WERC Decision 25144-D). In its Decision, the WERC held that: 1) The Mayville School District (District) and Mayville School Board (Board) committed prohibited practices as specified in Sec. 111.70(3)(a)4, Stats., when they self-funded health and dental benefits; 2) The District and Board did not improperly reduce or change benefits in the health and dental plans and so did not violate Sec. 111.70(3)(a)4, Stats.; 3) The District and Board committed prohibited practices as specified in Sec. 111.70(3)(a)4, Stats., by failing to timely provide the Mayville Education Association (Association) with information regarding the implementation of the self-funded plans. The Parties filed Petitions for Judicial Review challenging the WERC's holdings.

This Court has examined the record in these cases in light of the procedures and standards for the review of administrative actions set forth in Sec. 227.57, Stats., and the authorities cited, *infra*. Based on that review, this Court finds that substantial evidence exists in the record to support the WERC's Decision. Accordingly, WERC Decision 25144-D is Affirmed.

The facts which gave rise to these actions are not in dispute and may be summarized as follows.

The Association and the District have been parties to a series of collective bargaining agreements. The Parties' 1986-1987 collective bargaining agreement expired on June 30, 1987. The parties were without a contract and in a hiatus period for approximately 20 months after June 30, 1987. The 1986-1987 collective bargaining agreement provided for health and dental insurance plans, but it did not specify a carrier.

In August of 1987, the District announced that it would shift to a self-funded insurance plan. The self-funded plan went into effect on January 1, 1988. The terms of the self-funded plan were identical to those in the predecessor plan. The District hired two outside agencies to administer the plan.

The Association filed a prohibited practices complaint with the WERC on January 5, 1988. The Association alleged that the District and Board had violated Sec. 111.70(3)(a)4, Stats., by: 1) unilaterally terminating health and dental plans and replacing them with self-funded plans; 2) unilaterally reducing benefits; and, 3) failing to timely provide requested information about the self-funded plan. On June 20, 1990, the WERC Examiner issued Findings of Fact, Conclusions of Law, and an order dismissing all three causes of action.

The Association appealed the Examiner's Decision to the WERC. In WERC Decision 25144-D, the WERC held that:

1. The... District and the Board... committed prohibited practices within the meaning of Sec.111.70(3)(a)4, Stats., when they self-funded health and dental benefits on January 1, 1988.
2. The... District and the Board... did not improperly reduce and/or change benefits in said plans and thus did not violate Sec. 111.70(3)(a)4, Wis. Stats.
3. The... District and the Board... committed prohibited practices within the meaning of Sec. 111.70(3)(a)4, Stats., by failing to timely provide the... Association with relevant and necessary information regarding the District's intended implementation of self-funded health and dental benefits.

WERC Decision 25144-D at 8.

The Association petitioned for review of the WERC's second holding (Case No. 92 CV 341), while the District and Board petitioned for review of the WERC's first and third holdings (Case No. 92 CV 342). These cases were consolidated by an Order of this Court filed on July 20, 1992.

The scope of this Court's review of WERC Decision 25144-D is governed by Sec. 227.57, Stats. Specifically, Sec. 227.57(2), Stats. directs that "Unless the court finds a ground for setting aside, modifying, remanding or ordering agency action or ancillary relief under a specified provision of this section, it shall affirm the agency's action".

The record presented in these cases is extensive. In addition, the Parties, by their attorneys, have filed exhaustive Briefs on the issues presented for review by this Court. The Court has examined the record in great detail. The Court has also closely studied the papers filed by the Parties, and the authorities cited therein. In this Memorandum Decision, each of the three Conclusions of Law in WERC Decision 25144-D will be discussed individually in the order listed, supra.

First, the WERC held that "The ... District and the Board committed prohibited practices within the meaning of Sec. 111.70(3)(a)4, Stats., when they self-funded health and dental benefits on January 1, 1988". WERC Decision 25144-D at 8. In its "Memorandum Accompanying Order", the WERC found a wage impact in the District's decision to adopt a self-funded insurance plan. The WERC determined that the self-funded plans made it necessary for employees to pursue a civil action against their employer to seek redress of a benefit denial. The WERC further found that 893.80, Stats., which restricts the remedies available against a municipal employer, created an additional wage impact of self-funding. WERC Decision 25144-D at 14. The District and Board seek reversal of this WERC holding.

The dispute regarding the WERC's first Conclusion of Law presents a question of law. In reviewing a question of law, a court is not bound by an administrative agency's conclusions. Accordingly, the standard of review to be applied is de novo. Sauk County v. WERC, 165 Wis. 2d 406, 413, 477 N.W.2d 267 (1991).

The District and Board first argue that by basing its first Conclusion of Law on Sec. 893.80, Stats., the WERC violated the District's and the Board's procedural due process rights. The District and the Board argue that the WERC violated Secs. 227.57(4) and (8), Stats., and, Wis. Admin. Code Sec. ERB 12. (District and Board Brief at 29.)

The District's and Board's procedural challenge is not supported by the record. The issue presented by Sec. 893.80, Stats., is one of law and was properly before the WERC. As indicated in the WERC Decision, the District did not take the opportunity to address the Sec. 893.80, Stats., issue in its responsive Brief to the WERC. WERC Decision 25144-D at 14. This Court finds that the WERC did not violate the District's and the Board's procedural due process rights.

The District and Board further argue that based on the rules set forth in, Marshall v. City of Green Bay, 18 Wis. 2d 496, 118 N.W.2d 715 (1963), and, Gonzales v. City of Franklin, 137 Wis. 2d 109, 403 N.W.2d 747 (1987), the WERC's application of Sec. 893.80, Stats., is wrong as a matter of law because the District has waived the limitations of Sec. 893.80, Stats. (District and Board Brief at 21-25.) However, both Marshall and Gonzales are distinguishable in that those precedents address the power of a city to waive its immunity from suit. This Court has not been presented with any authority which supports a school district's power to waive its immunity. In addition, the record does not support the position that the District waived its immunity in this case.

This Court finds that when the District began to self-fund benefits, it created a situation where employees of the District who need to seek redress for denied claims will be required to bring a civil action against their employer. In addition, the plain language of Sec. 893-80, Stats., clearly imposes restrictions and limitations on the abilities of the District's employees to recover damages in actions against the District. The WERC correctly determined that the operation Sec. 893.80, Stats., creates a direct wage impact under the self-funded plans. WERC Decision 25144-D at 14-15.

It is well established in Wisconsin that "subject matters that [are] primarily related to wages or hours or conditions of employment [are] mandatorily bargainable". Beloit Education Association v. WERC, 73 Wis. 2d 43, 54, 242 N.W.2d 231 (1976). In light of the direct wage impact of the decision to self-fund, the WERC correctly found that the District and Board had violated Sec. 111.70(3)(a)4, Stats., in refusing to bargain with the Association on the decision to self-fund.

Second, the WERC held that "The ... District and the Board... did not improperly reduce and/or change benefits in said plans and thus did not violate Sec. 111.70(3)(a)4, Wis. Stats. WERC Decision 25144-D at 8. In reaching this conclusion, the WERC affirmed the findings of the Hearing Examiner who determined that the status quo of the Parties permitted a change in the identity of the entity interpreting and administering health and dental benefits. The WERC also found that after self-funding, the District continued to maintain benefits at the levels specified in the predecessor insurance coverage. WERC Decision 25144-D at 19. The Association seeks reversal of this WERC holding.

The question of whether the status quo as to benefit levels was maintained after self-funding presents an issue of fact. As such, this Court's review is governed by Sec. 227.57(6), Stats. which states:

If the agency's action depends on any fact found by the agency in a contested case proceeding, the court shall not substitute its judgment for that of the agency as to the weight of the evidence on any disputed finding of fact. The court shall, however, set aside agency action or remand the case to the agency if it finds that the agency's action depends on any finding of fact that is not supported by substantial evidence in the record.

An examination of the record reveals that the WERC's factual determinations are supported by substantial evidence as required under Sec. 227.57(6), Stats. The WERC closely considered the extensive findings of the Hearing Examiner regarding the differences in benefit administration before and after self-funding. Furthermore, the WERC correctly determined that maintaining the status quo does not mean maintaining precisely identical benefit levels. Citing, Madison Metro. School District v. WERC, 133 Wis. 2d 462, 468, 395 N.W.2d 825 (Ct. App. 1986), the WERC recognized that no two providers can produce the same benefit levels including administration, interpretation and processes. WERC Decision 25144-D at 19.

The WERC's decision applying the facts presented regarding the impact of self-funding on benefit levels to Sec. 111-70, Stats., is entitled to great weight. Local 695 v. LIRC, 154 Wis. 2d 75, 82-83,

452 N.W.2d 368 (1990). Accordingly, this Court finds that substantial evidence exists in the record to support the WERC's factual findings, and that the WERC correctly concluded that the implementation of self-funding did not reduce or change benefit levels, and so was not a violation of Sec. 111.70(3)(a)4, Stats.

Third, the WERC held that "The... District and the Board... committed prohibited practices within the meaning of Sec. 111.70(3)(a)4, Stats., by failing to timely provide the... Association with relevant and necessary information regarding the District's intended implementation of self-funded health and dental benefits". WERC Decision 25144-D at 8. The District and Board seek reversal of this WERC holding.

The question of whether the District and the Board failed to timely provide the Association with relevant and necessary information regarding the self-funding plan is clearly an issue of fact. As such this Court's review is governed by the "substantial evidence,, test set forth at Sec. 227.57(6), Stats.

The record reflects that the WERC thoroughly and accurately set forth the relevant evidence pertaining to the District's actions in failing to comply with the Association's requests for information. WERC Decision 25144-D at 31-36. The District's explanations for its refusals to provide the requested information are without merit. (District's Brief at 34-35.) An examination of the record clearly supports the WERC's conclusion that the District unnecessarily delayed providing information regarding the self-funding plan to the Association.

This Court finds that, under the standard set forth in Sec. 227.57(6), Stats., substantial evidence exists in the record to support the WERC's conclusion that the District violated Sec. 111.70(3)(a)4, Stats., by failing to timely provide the Association with relevant and necessary information regarding the District's intended implementation of self-funded health and dental plans. Furthermore, this Court expressly adopts and incorporates pages 31 through 36, inclusive, of WERC Decision 25144-D as part of this Memorandum Decision.

It is therefore,

ORDERED, that in Case No. 92 CV 341, the Petitioners' request that an Order be issued reversing the WERC decision finding no improper reduction of benefit levels is hereby DENIED,

ORDERED, that in Case No. 92 CV 342, the Petitioners' request that an Order be issued reversing the WERC decision finding that the Petitioners committed prohibited practices within the meaning of Sec. 111.70(3)(a)4, Stats., by unilaterally adopting a self-funded health and dental plans, and, by failing to timely provide the Association with relevant and necessary information is hereby DENIED, and,

FURTHER ORDERED, that Order of the Wisconsin Employment Relations Commission (WERC) in, Mayville Education Association and Louise Maciejewski, President, Mayville Education Association v. Mayville School District and the Board of Education of the Mayville School District, Case No. 17, No. 39952, MP-2052, Decision No. 25144-D, dated May 5, 1992, is hereby AFFIRMED WITHOUT MODIFICATION.

Dated: October 7th, 1993

BY THE COURT:

/s/ Joseph E. Schultz

Honorable Joseph E. Schultz  
Circuit Judge