

In the Matter of the Petition of:

SHEBOYGAN FEDERATION OF NURSES
& HEALTH PROFESSIONALS, LOCAL
5011, AFT, AFL-CIO

Requesting a Declaratory Ruling
Pursuant to Section 111.70(4)(b),
Wis. Stats., Involving a Dispute
Between Said Petitioner and

SHEBOYGAN COUNTY

Appearances:
Mr. Bob Russell, Field Representative, 6525 West Bluemound Road, Milwaukee, Wisconsin 53213, for the Union.
Mr. Alexander Hopp, Corporation Counsel, Sheboygan County Courthouse, 615 North 6th Street, Sheboygan, Wisconsin 53081, for the County.

The Sheboygan Federation of Nurses & Health Professionals, Local 5011, AFT, AFL-CIO, having on August 8, 1988, filed a petition with the Commission pursuant to Sec. 111.70(4)(b), Stats., seeking a declaratory ruling as to Sheboygan County's duty to bargain with Local 5011 over certain matters; and Sheboygan County having on August 18, 1988, filed a written response to said petition; and the parties having on October 24, 1988, filed a Stipulation of Facts with the Commission which inter alia requested that the Commission proceed to issue its declaratory ruling without hearing or further proceedings upon the record before it consisting of the petition for declaratory ruling, the County's response thereto and the matters contained in the Stipulation of Facts; and the Commission having considered the matter and being fully advised in the premises, makes and issues the following

1. That Sheboygan County, herein the County, is a municipal employer having its principal offices at 615 North 6th Street, Sheboygan, Wisconsin 53081 and which provides certain health care services to County residents.
2. That Sheboygan Federation of Nurses & Health Professionals, Local 5011, AFT, AFL-CIO, herein the Union, is a labor organization functioning as the collective bargaining representative of certain employees of the County.
3. That during the term of an existing collective bargaining agreement, the County and the Union engaged in negotiations in an effort to address problems related to the recruitment and retention of County employees represented by the Union who provide health care services; that during said negotiations a dispute arose between the parties as to whether the following policies, which the County has unilaterally implemented, are mandatory subjects of bargaining:

Sheboygan County, by this policy establishes a program to encourage continuing education of institution employees and to assist them in attaining the status of Registered Nurse and/or Licensed Practical Nurse.

II. PROCEDURE

1. The candidate for Tuition Reimbursement must be a current employee of Sheboygan County and must be employed in the capacity of Nurses Aide or Attendant, Licensed Practical Nurse or Registered Nurse at any of the County Institutions, namely, Rocky Knoll, Sunny Ridge or the Comprehensive Health Center.
2. This Tuition Reimbursement Policy can be applied to a BSN (baccalaureate degree in nursing), ADN (Associate Degree Nursing) or LPN (Licensed Practical Nurse).
3. The Candidate for Tuition Reimbursement will complete an application for consideration. (Tuition Reimbursement application attached.)
4. Final approval or denial of Tuition Reimbursement will be the responsibility of the Institution Administrators, Personnel Director and Personnel Committee.
5. Individual personnel records regarding Tuition Reimbursement will be maintained and kept by the County Personnel Office.
6. A passing grade of "C" or 2.0 must be achieved for the course in order for its expense to be qualified for reimbursement.
7. Actual tuition invoices indicating costs must be presented to the Personnel Department for reimbursement after successful completion of the course. Tuition Reimbursement shall not exceed \$3,200.00.
8. It will be the responsibility of the tuition Recipient to notify the Personnel Department within forty-eight (48) hours of dropping, withdrawing, or rescheduling the originally designated courses.
9. In receiving Tuition Reimbursement, the Recipient agrees to provide a minimum of one (1) year of service in the County's employee beyond the attainment of the degree, certification or licensure. If the employee does not comply with this provision, the employee agrees to repay the monies spent by the County for Tuition Reimbursement.
10. If for a reason beyond the recipients control or in matters involving extreme hardship the recipient cannot complete the education originally planned, review of the circumstances will be made by the Personnel Committee to determine whether repayment should be waived by the County.

232 - MOVING AND RELOCATION EXPENSES - REGISTERED NURSES

I. POLICY

Sheboygan County will provide reimbursement for moving and relocation expenses for Registered Nurses employed by Sheboygan County.

II. PROCEDURE

1. Consideration for reimbursement of moving and relocation expenses will be given to Registered Nurses employed after May 1, 1988.
2. The Registered Nurse must live in excess of fifty (50) miles from the hiring institution to be eligible for reimbursement.
3. Expenses for transportation, lodging, meals, and movement of household goods can be reimbursed to a maximum total of \$2,000.00. Initial interview expenses are inclusive of the total reimbursable amount.
4. Estimates or actual expenses incurred must be submitted to the Personnel Director for review. Final approval for relocation is at the discretion of the Personnel Committee.
5. A Registered Nurse who is the recipient of relocation allowance (excluding interview expense) is expected to provide one year of employment from the start date.
6. Actual receipts documenting the expenditures for interview, relocation and moving expenses must be submitted to the Personnel Department for consideration of payment. Upon review and approval of the Personnel Committee, payment will be made directly to the employee.

TERMS AND CONDITIONS OF YOUR EMPLOYMENT AND RELOCATION AGREEMENT

The following applies to your employment assignment location.

In accepting the assistance of transportation, relocation, etc., in connection with the following items, you understand that your employment is an employment at will or covered by respective labor contract which either you or Sheboygan County may terminate and, accordingly, you agree that if you voluntarily terminate your employment with Sheboygan County within twelve months from the date your employment begins, you will reimburse Sheboygan County for all funds it has furnished or paid on your behalf in respect to all of the items contained in this agreement.

Transportation, Enroute Expenses, Household and Personal Effects Shipment are reimbursable to a maximum of \$2,000.00. If you exceed the aforementioned amount, you are personally responsible for any amounts in excess of the \$2,000.00. By acceptance of these conditions as signified by signing this form, you are obligated or remain in the employ of the County for one (1) year beyond your initial employment date. If you decide to terminate your employment prior to one (1) year of service, you will become subject to reimbursing Sheboygan County.

TRANSPORTATION EXPENSES

(From point of origin direct to assignment location)
Public Carrier

The actual cost of coach ('Y' Class) air travel for yourself, your spouse, and authorized dependents will be reimbursed following your arrival at your assignment location. Also included are related expenses to and from the airport or stations. You must retain and submit all transportation receipts.

If you are traveling by air and would like the Sheboygan County to prepay your tickets, please contact the Personnel Department.

Private Automobile

Should you or any of your authorized dependents elect to travel by private automobile, you will be reimbursed for actual mileage at the rate of \$.21 per mile.

ENROUTE EXPENSES

(In addition to mileage reimbursement)
All reimbursable expenses in traveling, you must retain and submit all receipts.

HOUSEHOLD AND PERSONAL EFFECTS SHIPMENT

Sheboygan County will pay for the actual expenses of packing, crating, and transporting your household and personal effects by a common carrier from your current residence to your new residence. The County will pay the cost of in-transit insurance in an amount equal to \$150 per pound shipped. This coverage will be purchased from the carrier. (You may arrange for additional coverage with the carrier if you desire, however, the additional cost will be at your expense. Weight allowances apply only to ordinary and necessary effects and do not include pets, building materials, autos, boats, trailers, recreational vehicles, airplanes, and items or services which require special handling or "bulky" article charge. The County will also pay for the cost of storage of your personal and household effects at your new location not to exceed a period of sixty (60) days.

If you elect to ship your personal and household effects yourself by renting a "U-HAUL" type truck or trailer in lieu of a commercial carrier, the Company will reimburse you at the actual cost of such shipment upon presentation of proper receipts, so long as such cost does not exceed the cost of shipping the same effects by commercial carrier.

QUESTIONS REGARDING THIS AGREEMENT SHOULD BE DIRECTED TO THE PERSONNEL DEPARTMENT.

4. That the County policies set forth in Finding of Fact 3 primarily relate to wages, hours and conditions of employment.

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

CONCLUSION OF LAW

That the County policies set forth in Finding of Fact 3 are mandatory subjects of bargaining within the meaning of Secs. 111.70(1)(a) and (3)(a)4, Stats.

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

DECLARATORY RULING1/

That the County has a duty to bargain with the Union within the meaning of Secs. 111.70(1)(a) and (3)(a)4, Stats., as to the County policies set forth in Finding of Fact 3.

Given under our hands and seal at the City of
Madison, Wisconsin this 8th day of November, 1988.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Stephen Schoenfeld
Stephen Schoenfeld, Chairman

Herman Torosian
Herman Torosian, Commissioner

A. Henry Hempe
A. Henry Hempe, Commissioner

- 1/ Pursuant to Sec. 227.48(2), Stats., the Commission hereby notifies the parties that a petition for rehearing may be filed with the Commission by following the procedures set forth in Sec. 227.49 and that a petition for judicial review naming the Commission as Respondent, may be filed by following the procedures set forth in Sec. 227.53, Stats.

227.49 Petitions for rehearing in contested cases. (1) A petition for rehearing shall not be prerequisite for appeal or review. Any person aggrieved by a final order may, within 20 days after service of the order, file a written petition for rehearing which shall specify in detail the grounds for the relief sought and supporting authorities. An agency may order a rehearing on its own motion within 20 days after service of a final order. This subsection does not apply to s. 17.025(3)(e). No agency is required to conduct more than one rehearing based on a petition for rehearing filed under this subsection in any contested case.

227.53 Parties and proceedings for review. (1) Except as otherwise specifically provided by law, any person aggrieved by a decision specified in s. 227.52 shall be entitled to judicial review thereof as provided in this chapter.

(a) Proceedings for review shall be instituted by serving a petition therefore personally or by certified mail upon the agency or one of its officials, and filing the petition in the office of the clerk of the circuit court for the county where the judicial review proceedings are to be held. Unless a rehearing is requested under s. 227.49, petitions for review under this paragraph shall be served and filed within 30 days after the service of the decision of the agency upon all parties under s. 227.48. If a rehearing is requested under s. 227.49, any party desiring judicial review shall serve and file a petition for review within 30 days after service of the order finally disposing of the application for rehearing, or within 30 days after the final disposition by operation of law of any such application for rehearing. The 30-day period for serving and filing a petition under this paragraph commences on the day after personal service or mailing of the decision by the agency. If the petitioner is a resident, the proceedings shall be held in the circuit court for the county where the petitioner resides, except that if the petitioner is an agency, the proceedings shall be in the circuit court for the county where the respondent resides and except as provided in ss. 77.59(6)(b), 182.70(6) and 182.71(5)(g). The proceedings shall be in the circuit court for Dane county if the petitioner is a

(See Footnote 1/ continued on Page 6)

1/ (continued)

nonresident. If all parties stipulate and the court to which the parties desire to transfer the proceedings agrees, the proceedings may be held in the county designated by the parties. If 2 or more petitions for review of the same decision are filed in different counties, the circuit judge for the county in which a petition for review of the decision was first filed shall determine the venue for judicial review of the decision, and shall order transfer or consolidation where appropriate.

(b) The petition shall state the nature of the petitioner's interest, the facts showing that petitioner is a person aggrieved by the decision, and the grounds specified in s. 227.57 upon which petitioner contends that the decision should be reversed or modified.

. . .

(c) Copies of the petition shall be served, personally or by certified mail, or, when service is timely admitted in writing, by first class mail, not later than 30 days after the institution of the proceeding, upon all parties who appeared before the agency in the proceeding in which the order sought to be reviewed was made.

Note: For purposes of the above-noted statutory time-limits, the date of Commission service of this decision is the date it is placed in the mail (in this case the date appearing immediately above the signatures); the date of filing of a rehearing petition is the date of actual receipt by the Commission; and the service date of a judicial review petition is the date of actual receipt by the Court and placement in the mail to the Commission.

SHEBOYGAN COUNTY

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

BACKGROUND

Although the parties have engaged in successful negotiations to address mutual concerns regarding recruitment and retention of employees in the County operated health care facilities, they disagree as to whether the County policies set forth in Finding of Fact 3 fall within the scope of matters as to which the County must bargain with the Union. The Union seeks a declaratory ruling from the Commission to resolve this dispute.

POSITIONS OF THE PARTIES

The Union

The Union asserts that the payment of tuition reimbursement and relocation of expenses are economic issues related to the total compensation paid to an employee. As such, the Union argues that the County policies primarily relate to wages in this respect. The Union notes that the policies in question are applicable to current employees of the County represented by the Union. The Union further argues that the County policies are akin to bonuses paid to employees, matters which the National Labor Relations Board has consistently held are subject to collective bargaining, citing Specialty Steel Treating, Inc. 279 NLRB No. 67 (1986) and Koenig Iron Works, 282 NLRB No. 100 (1987).

The Union argues that the component of the County policies requiring that the recipient of payments provide a minimum of service to the County establishes a requirement that is primarily related to conditions of employment and as such is a mandatory subject of bargaining.

Given the foregoing, the Union requests that the Commission declare that the payment of tuition reimbursement and relocation expenses are primarily related to wages and conditions of employment and, therefore, are mandatory subjects of bargaining.

The County

The County asserts that granting scholarships in the form of tuition reimbursement to retain employees and to improve their skills and providing relocation expenses as a recruitment device are essentially policy judgments primarily related to public policy considerations. The County notes that the Commission is obligated to engage in a "case by case" analysis when resolving duty to bargain disputes and asserts that the County's commitment to provide health care services in a manner consistent with the health, safety and welfare of the public is a public policy consideration which warrants finding the policies in question to be permissive subjects of bargaining. The County contends that quality of care is a matter as to which it has considerable responsibility and, if not properly provided, severe liability. If the County is not able to unilaterally take action which furthers its ability to function in a manner consistent with the "safety and welfare" of the public it serves, the County asserts that the Commission will be "throwing the balancing test away."

The County asserts that its policy of paying for the moving and relocation expenses is a "recruitment policy" for County employees and is not a wage issue. The County contends, contrary to the Union, that the inclusion of certain eligibility standards for receipt of such expenses in the County policy does not make the policy a "condition of employment" but instead simply creates a qualification for reimbursement. As to the reimbursement for educational expenses, the County asserts that it is, in essence, reimbursing an employee for what that employee does on her or his own time and that said reimbursement, including the qualification requirement related to length of service, is not primarily related to wages, hours or conditions of employment.

When deciding this case, the County urges the Commission to consider that a finding that the policy is a mandatory subject of bargaining, in the context of an interest arbitration statute, could preclude the County from establishing the

policies in question, thereby preventing the County from dealing with these important policy matters.

Given the foregoing, the County asserts that neither proposal is a mandatory subject of bargaining.

DISCUSSION

Initially, it is useful to set forth the general legal framework within which the issues herein must be resolved. In Beloit Education Association v. WERC, 73 Wis.2d 43 (1976), Unified School District No. 1 of Racine County v. WERC, 81 Wis.2d 89 (1977) and City of Brookfield v. WERC, 87 Wis.2d 819 (1979), the Wisconsin Supreme Court set forth the definition of mandatory and permissive subjects of bargaining under Sec. 111.70(1)a, Stats., as matters which primarily relate to "wages, hours and conditions of employment" or to the "formulation or management of public policy," respectively. We have consistently held that access to binding interest arbitration under Secs. 111.77 or 111.70(4)(cm), Stats., does not alter the balancing test which we are obligated to apply in each case when determining whether a proposal is primarily related to wages, hours and conditions of employment or to management and direction of public policy. See Racine Unified School District, Dec. No. 20653-A (WERC, 1/84), aff'd CtApp II, Case No. 85-0158 (3/86 unpublished).

Looking first at the tuition reimbursement policy, in School District of Janesville, Dec. No. 21466 (WERC, 3/84), we concluded that a proposal which reimbursed teachers for expenses incurred when acquiring additional graduate or undergraduate degree credits was, on balance, primarily related to wages and thus was a mandatory subject of bargaining. We see no reason for departing from that analysis herein. Whether an employee who seeks additional education will be reimbursed for tuition or other expenses by her or his employer as a function of the employer/employee relationship seems to us to be primarily a matter of economic impact upon the employee. Reimbursement becomes part of the compensation package received by an individual by virtue of their status as a County employee.

The County's argues that it will be unable to attract and/or retain employees if it is not able to extend such a benefit to employees. This argument may well be true, but, in our view, goes to the merits of the proposal, not to its mandatory or permissive status. If we were to find the County's argument to be persuasive, we would, by analogy, be concluding that wage rates become permissive subjects of bargaining if it is necessary for the County to adjust same to provide adequate services to County residents. 2/ We also would note that there is no indication herein that the Union will be, or has been, hostile to the County's interest in increasing the compensation of employees represented by the Union. Clearly, our conclusion that the policy is a mandatory subject of bargaining does not prevent the Union and the County from agreeing through the collective bargaining process to inclusion of this policy or some variant thereof in the parties' collective bargaining agreement to meet the important concerns raised by the County, but which the parties should share, regarding retention of health care employees.

As to the County policy relating to reimbursement for moving and relocation expenses for County employees who are represented by the Union, we conclude that said policy is primarily related to wages and conditions of employment. Again, we do not seek to denigrate the County's purpose which here appears to be directed at attracting qualified health care employees, but we regard the analysis relative to the tuition reimbursement policy as equally applicable here and dispositive of this issue as well.

2/ In extreme situations, the doctrine of necessity might allow for unilateral changes in employee compensation. However, necessity does not alter the mandatory status of compensation issues. Necessity only provides a potential defense against the claim that the employer's unilateral action breached its duty to bargain. This record falls far short of establishing necessity.

Given the foregoing, we conclude that the two policies in question herein primarily relate to wages and conditions of employment and, as such, are mandatory subjects of bargaining.

Dated at Madison, Wisconsin this 8th day of November, 1988.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Stephen Schoenfeld
Stephen Schoenfeld, Chairman

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Herman Torosian, Commissioner

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