

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

DANIEL WARREN, Complainant,

vs.

TOWN OF CALEDONIA, Respondent.

Case 57
No. 54079
MP-3171

Decision No. 28737-C

Appearances:

Mr. Steven J. Urso, Executive Assistant, Wisconsin Professional Police Association/LEER Division, 7 North Pinckney Street, Suite 220, Madison, Wisconsin 53703, appearing on behalf of Daniel Warren.

Long & Halsey Associates, Inc., by **Attorney William R. Halsey**, 8338 Corporate Drive, Suite 500, Racine, Wisconsin 53406, appearing on behalf of the Town of Caledonia.

ORDER

On April 17, 1997, Examiner Karen J. Mawhinney issued Findings of Fact, Conclusion of Law and Order in the above matter wherein she concluded the Town of Caledonia had committed a prohibited practice within the meaning of Sec. 111.70(3)(a)3, Stats., by failing to promote Daniel Warren to the position of Sergeant at least in part because of hostility toward his having engaged in concerted activity protected by the Municipal Employment Relations Act.

As part of her Order, Examiner Mawhinney directed the Town to:

- a. Immediately vacate either one of the two sergeants' positions occupied by Lisa Seils and Keith Stannis and promote Daniel Warren to fill one of those sergeants' positions.

- b. Make Daniel Warren whole by paying to him the difference in his rate of pay and the wage rate of sergeant from the date in 1995 that Seils and Stannis were promoted to the date of his actual promotion, plus interest.
(footnote omitted)

No. 28737-C

No petition for review of the Examiner's decision was filed and the Examiner's decision became the Commission's on May 10, 1997.

By letter dated June 4, 1997, Complainant asserted that Respondent had failed to comply with the Commission's Order. By letter dated June 18, 1997, Respondent replied that it had fully complied with the Commission's Order

Hearing was held in the Town of Caledonia on August 21, 1997 by Examiner Peter G. Davis and the parties thereafter filed written argument, the last of which was received October 23, 1997.

Having considered the matter and being fully advised in the premises, the Commission makes and issues the following

ORDER

Respondent Town of Caledonia has complied with the Commission's Order in the above matter.

Given under our hands and seal at the City of Madison, Wisconsin this 5th day of June, 1998.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James R. Meier /s/

James R. Meier, Chairperson

A. Henry Hempe /s/

A. Henry Hempe, Commissioner

Paul A. Hahn /s/

Paul A. Hahn, Commissioner

Town of Caledonia

MEMORANDUM ACCOMPANYING ORDER

Background

In the spring of 1995, employees Warren, Seils and Stannis applied for promotion to the position of Sergeant. The Respondent had two Sergeant vacancies to fill. Although Warren received higher scores than either Seils or Stannis during the promotional process, the Sergeant vacancies were filled by Stannis on June 22, 1995 and Seils on July 1, 1995. Seils and Stannis successfully completed a contractually established probationary period as Sergeants and both were employed in that capacity in April, 1997 when Examiner Mawhinney issued her decision directing the Respondent to:

- a. Immediately vacate either one of the two sergeants' positions occupied by Lisa Seils and Keith Stannis and promote Daniel Warren to fill one of those sergeants' positions.

In response to the Commission's Order, the Respondent Town of Caledonia chose to promote Warren to Seils' position because she had less seniority than Stannis. Warren was given a July 1, 1995 seniority date inasmuch as that was the date on which Seils' promotion had taken effect. Warren was advised that his promotion was subject to a contractually established probationary period.

Because there were no vacant Sergeant positions at the time Warren replaced Seils and because the Chief of Police's lobbying for creation of an additional Sergeant's position proved unsuccessful, Seils returned to her prior rank of Police Investigator.

Complainant asserts that Respondent has not complied with the Commission's Order because Respondent: (1) displaced Seils from her Sergeant position; (2) gave Warren a seniority date of July 1, 1995 instead of June 22, 1995; and (3) required that Warren serve a contractually established probationary period beginning with his actual assumption of Sergeant's duties. We conclude that none of these actions are at odds with our Order.

As to Seils' removal from her Sergeant's position, our Order did not obligate Respondent to retain Seils in a Sergeant's position. Subject to applicable statutory and/or contractual provisions, Respondent was free to take whatever action it wished as to Seils once Warren was given her position. Our Order does not govern Respondent's conduct as to Seils. To the extent Complainant argues that Respondent acted toward Seils in a manner contrary to provisions of the parties' contract or to the provisions of Chapter 62 of the Wisconsin Statutes, Complainant/Seils are free to pursue those contentions in the appropriate forum. Thus, we conclude that Respondent's action as to Seils does not violate our Order.

As to the matter of Warren's seniority date, Respondent acted in a manner consistent with our Order when Warren received the seniority date of Seils -- the Sergeant he displaced. Warren's request for a June 22, 1995 seniority date reflects his view that because he received the highest grade during the 1995 promotional process, he should have received the first available Sergeant position in 1995 (Stannis' position) and should now at least receive the same seniority date as Stannis. However, our Order gave Respondent the choice of whether Warren should displace Seils or Stannis and certainly did not obligate Respondent to provide Warren with a June 22, 1995 seniority date if the Respondent chose to displace Seils. Thus, we conclude that Respondent's action as to Warren's seniority date does not violate our Order.

Lastly, there is the matter of Warren's contention that because he is receiving the Sergeant's position retroactively, he should not be required to serve a probationary period. We do not find this contention persuasive. The probationary period Warren is being asked to serve is contractually mandated and our Order did not waive the applicability of promotional probationary periods. Therefore, Respondent did not act in a manner inconsistent with our Order when it required Warren to complete a probationary period.

Given all of the foregoing, we find that Respondent has complied with our Order and needs to take no further action with respect thereto.

Dated at the City of Madison, Wisconsin this 5th day of June, 1998.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James R. Meier /s/

James R. Meier, Chairperson

A. Henry Hempe /s/

A. Henry Hempe, Commissioner

Paul A. Hahn /s/

Paul A. Hahn, Commissioner