STATE OF WISCONSIN CIRCUIT COURT, BRANCH 5 DANE COUNTY

MICHAEL RAY,

Petitioner,

v.

STATE OF WISCONSIN and its PERSONNEL COMMISSION,

Respondent.

MEMORANDUM DECISION

Case No. 84CV6165

This is a proceeding commenced under sec. 111.375(2) and Ch. 227, Wis. Stats., to review a decision of the Wisconsin Personnel Commission under the Wisconsin Fair Employment Act (WFEA), secs. 111.31-111.395, Wis. Stats. The Commission decided that the Department of Health and Social Services, and the Group Insurance Board, did not unlawfully discriminate against petitioner Michael Ray on the basis of marital status with respect to health insurance coverage.

Michael Ray is employed by the Department of Health and Social Services. His wife is also a state employee. Ray's wife elected to have "family" health insurance coverage for herself and their children. In October 1983, Ray sought "single" health insurance coverage for himself. Ray was denied single health insurance coverage on the basis of section GRP 20.11, Wis. Adm. Code, which provies in pertinent part:

> If both spouses are eligible for coverage, each may elect single coverage, but . . .(i)f one eligible spouse elects family coverage, the other eligible spouse may be covered as a dependent but may not elect any other coverage.

On November 18, 1983, Ray filed a complaint with the Wisconsin Personnel Commission under the Wisconsin Fair Employment Act, alleg-

ing that he was unlawfully discriminated against on the basis of marital status when he was denied single health insurance coverage. On October 10, 1984, the Commission decided that it had jurisdiction over Ray's complaint[1] but that the denial of single health insurance coverage to Ray did not constitute marital status discrimination within the meaning of the WFEA. Ray now seeks judicial review.

The Commission is charged with the duty of applying the WFEA with respect to complaints of state employees. Sec. 111.375(2), Wis. Stats. Generally, the interpretation of the statute by an agency charged with applying the statute is entitled to great weight, and the agency's interpretation of the statute will be sustained if a rational basis exists for such interpretation. Blackhawk Teacher's Federation v. WERC, 109 Wis. 2d 415, 421-22, 326 N.W.2d 247 (Ct. App. 1982). Great weight need not be afforded, however, when the issue presented involves the relationship between the statute enforced by the agency and another statute. Glendale Prof. Policemen's Assoc. v. Glendale, 83 Wis. 2d 90, 100-01, 264 N.W.2d 594 (1978). In such cases, the agency's interpretation nonetheless should be given due weight. Drivers Local 695 v. WERC, 121 Wis. 2d 291, 296, 359 N.W.2d 174 (Ct. App. 1984). In this case, the Commission interpreted the WFEA in conjunction with secs. 40.02(20) and 40.52(1)(a), Wis. Stats., and sec. GRP 20.11, Wis. Adm. Code. Accordingly, the Court, while not bound by the agency's interpretation, gives it due weight.

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[1]The Department of Health and Social Servides, and the Group Insurance Board, have not appealed from the Commission's decision that it had jurisdiction over Ray's complaint. Consequently, that part of the Commission's decision is not subject to judicial review.

The Wisconsin Fair Employment Act, secs. 111.321 and 111.322(1), was amended in 1981 to prohibit discrimination in compensation and other conditions of employment on the basis of marital status. Section GRP 20.11, Wis. Adm. Code (originally numbered sec. GRP 20.10), was created in 1960 and provides that "(i)f one eligible spouse elects family coverage, the other eligible spouse. . .may not elect any other coverage." Section 40.52(1)(a), Wis. Stats., passed in 1981, directs the Group Insurance Board to establish a health insurance plan which provides "(a) family coverage option for persons desiring to provide for coverage of all eligible dependents and a single coverage option for other eligible persons." (Emphasis added). Section 40.02(20) defines the term "dependent" to include, among others, a spouse. Since the second spouse is covered by the first spouse's family coverage, the second spouse is no longer an "eligible person" for a "single coverage option." The legal issue presented, then, is whether the denial of single health insurance coverage to Ray constitutes unlawful marital status discrimination within the meaning of the WFEA.

A fundamental rule of statutory construction is that the intent of the legislature is a controlling factor. Milwaukee County v. ILHR Dept., 80 Wis. 2d 445, 451, 259 N.W.2d 118 (1977). The aim of statutory construction is to discern the intent of the legislature. Id. This is especially true when one is confronted with apparently inconsistent legislation. Cross v. Soderbeck, 94 Wis. 2d 331, 344, 288 N.W.2d 779 (1980).

When the Legislature amended the WFEA to prohibit marital status discrimination, it could not have intended to nullify the restricted options for health insurance coverage which it created in

secs. 40.52(1)(a) and 40.02(20), Wis. Stats. This is true for several reasons. First, the Legislature added the marital status discrimination provision to the WFEA in the same legislative session that it created secs. 40.52(1) and 40.02(20) to restrict options for health insurance coverage.

Second, the creation of secs. 40.52(1)(a) and 40.02(20) gave statutory recognition to the long-standing administrative rule, sec. GRP 20.11, Wis. Adm. Code, which had mandated such restricted coverage since 1960. When the legislature enacts a statute it is presumed to act with full knowledge of existing laws. Mack v. Joint School District No. 3, 92 Wis. 2d 476, 489, 285 N.W.2d 604 (1979).

Third, there is no indication on the record that the Legislature debated or intended a repeal of secs. 40.52(1)(a) and 40.02(20) or sec. GRP 20.11. Repeals by implication are not favored in the law. Pattermann v. Whitewater, 32 Wis. 2d 350,356, 145 N.W.2d 705 (1966).

Fourth, it is a cardinal rule of statutory construction that when a general statute and a specific statute relate to the same subject matter, the specific statute controls. Raisanen v. Milwaukee, 35 Wis. 2d 504, 516, 151 N.W.2d 129 (1967). In this case, the specific restriction on health insruance options contained in secs. 40.52(1)(a) and 40.02(20), control over the general prohibition against marital status discrimination contained in the WFEA.

Petitioner Ray points out that the prohibition against marital status discrimination contains only one express exception, namely, where an individual directly supervises or is directly supervised by his or her spouse. Sec. 111.345, Wis. Stats. Although it is a general rule of statutory construction that the express mention

of one thing implies the exclusion of all others, Gottlieb v. Milwaukee, 90 Wis. 2d 86, 95, 279 N.W.2d 479 (Ct. App. 1979), such rule should be employed only as a means of discovering legislative intent Id. It is not a "Procrustean standard to which all statutory language must be made to conform," but is to be applied in a flexible manner. Hathaway v. Green Bay School Dist., 116 Wis. 2d 388, 401, 342 N.W.2d 682 (1984). (Citations omitted). There should be some evidence the Legislature intended its application. Columbia Hospital Assoc. v. Milwaukee, 35 Wis. 2d 660, 669, 151 N.W.2d 750 (1967). Here, there are sufficient other indicators of the Legislature's intent that the Court does not feel compelled to apply this general rule.

Although the Legislature amended the WFEA to prohibit discrimination on the basis of marital status, and notwithstanding its direction that discrimination prohibitions be "liberally construed", sec. 111.31(3), Wis. Stats., it cannot reasonably be concluded that this general prohibition was intended to impliedly repeal the more specific restriction on health insurance options. Neither the express mention/implied exclusion rule, Gottlieb v. Milwaukee, supra., nor the liberal construction rule can justify such a result. American Motors Corp. v. ILHR Dept., 101 Wis. 2d 337, 350-51, 305 N.W.2d 62 (1981). Statutory construction simply cannot nullify the existence of secs. 40.52(1)(a) and 40.02(20), Wis. Stats.

Accordingly, the Court finds the Commission's interpretation to be correct. 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 15th day of May, 1985

BY THE COURT:

ROBERT R. PEKOWSKY, Judge
Dane County Circuit Court, Br. 5

cc: Atty. Richard Graylow
Asst. Atty. Gen. David Rice