



COUNTY OF DANE
DEPARTMENT OF ADMINISTRATION
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GREG BROCKMEYER
DIRECTOR OF ADMINISTRATION

MEMORANDUM

DATE: July 21, 2020

TO: Brian Standing
Employee Group Representative

FROM: Greg Brockmeyer
Director of Administration

SUBJECT: 3rd Step Answer to Paid Time Standards Grievance

This grievance contests the policy setting forth civil service paid time standards. The policy was developed to ensure the County's legal compliance with the uniformity standard in the civil service statute and county ordinances. Further, it effectuates the specific recommendation of Judge Maryann Sumi to develop standards of general application for authorizing the use of paid time and resources.

For the reasons set forth below, the Step 3 grievance is denied.

The County developed the civil service standards in response to the legal opinions of the Office of Corporation Counsel and Judge Maryann Sumi. Pursuant to those opinions, the County is obliged by the civil service statute and ordinance to treat comparable categories of employees uniformly, i.e. equally. See Wis. Stat. §52.52(8) and DCO §18.03. Further, the County has committed through its ordinances to maintain a view-point neutral position on employee membership in the AFSCME-affiliated employee group association ("AFSCME-EGA"). See DCO §§18.06(3) and (4). In other words, employees who choose not to join AFSCME-EGA are situated in the county system the same as those who choose to join. Both groups are therefore entitled to be treated equally.

Many of the practices predating the disputed policy were both written and applied in a manner that did not comply with the above requirements. Rather, many practices gave privileges to the AFSCME-EGA members, and their Employee Group Representatives (EGRs) in particular, that were not also enjoyed by non-AFSCME-EGA members. Since the County is required by law to treat all comparable employees the same, the past practices could not continue. Because the changes to past practices made by the policy were done to comply with the law and the law controls, there is no term of the Employee Benefit Handbook that invalidates the policy. See DCO §§18.06(7) and 18.24(6).

Finally, there are interrelated claims that are not grievable. One is a challenge to the paid time standards and their reasonableness. The other is to management's choice to adopt the paid time standards as a policy in the Administrative Practices Manual (APM).

The County committed in the EBH to pay for "reasonable time spent" on work-related activities and associations. See EBH Topic: Employee Group Representation and Work Related Associations. The disputed policy keeps those commitments. The terms "reasonable time spent," "work-related activities" and "work-related associations" are

not defined in the EBH. The EBH Management Rights clause preserves to the County the right to exercise those powers and responsibilities it has not abridged, delegated or modified. See EBH Topic Management Rights. Because the noted terms are not defined, they are subjects the County retained authority to define. In other words, what constitutes work-related activities and associations as well as reasonable time spent are decisions for county management to make at its discretion. It is therefore wholly appropriate that those standards were adopted through the APM.

In closing, your July 17 email asks that the legal opinions of Mark Sweet you attached be made part of the grievance record. I will honor that request and will also include below the January 23, 2020 opinion memorandum from ACC Amy Tutwiler responding to Atty. Sweet.

MEMORANDUM

To: Greg Brockmeyer
From: ACC Amy Tutwiler
Date: January 23, 2020
Re: Uniformity / Review of January 7, 2020 opinion letter from Atty. Mark Sweet

On January 15, 2020, Neil Rainford emailed Joe Parisi an opinion letter dated January 7, 2020 from Atty. Mark Sweet that is a written response to my December 18, 2020 memo to you on application of the uniformity standard. This memo responds to Attorney Sweet's letter.

The January 7, 2020 letter does not respond to the central point of the December 18, 2020 memo. It doesn't even mention it. My memo addressed the civil service uniformity standard set forth in Wis. Stat. § 59.52(8) and DCO 18.03 and Judge Sumi's opinion that these standards require the County to adopt the same paid time standards for all civil service employees. The Sweet letter make only a passing reference to § 59.52(8), Wis. Stats. vis-à-vis a quote by Judge Sumi about the statute's content. (Sweet Ltr, p. 2) The letter provides no analysis of either the statute or Judge Sumi's opinion about what the statute requires. Further, the letter does not contain a single reference to the County's uniformity rule in DCO 18.03.

The only commentary in the Sweet letter that has any relationship to the opinions in the December 18, 2019 memo is Attorney Sweet's argument that the County must use the process set forth in DCO § 18.24 to make modifications to the Employee Benefit Handbook (EBH). (Sweet Ltr, p. 4). That requirement is not in dispute. The Sweet letter fails to address the salient point that the EBH must be interpreted and applied in a manner that complies with the laws. This is a legal mandate which is codified in the DCO § 18.24(6) (stating that nothing in the EBH ordinance section shall prevent the county or its officials from fulfilling any legal duties) and DCO § 18.06(7) (providing that in the event of a conflict between the EBH and the Ordinance, the Ordinance controls). It is this legal mandate that requires that the County revise its policies and practices governing the activities for which employees may be paid in order to fulfill its legal commitment to having a uniform civil service system. Therefore, my legal opinions remain the same as stated in the December memo.