STATE OF WISCONSIN STATE BOARD OF PERSONNEL

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Albert W. Harriman,

Appellant,

VS.

ORDER

BUREAU OF PERSONNEL
DEPARTMENT OF ADMINISTRATION
STATE OF WISCONSIN,

Respondent.

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The State Board of Personnel having made and filed its Findings of Fact and Conclusions of Law, constituting its decision in this case;

IT IS ORDERED:

That the appeal of Albert W. Harriman be and the same is hereby dismissed on its merits and with prejudice.

Dated at Madison, Wisconsin

this 17 day of March, 1965

WISCONSIN STATE BOARD OF PERSONNEL

By _____
Chairman

STATE OF WISCONSIN STATE BOARD OF PERSONNEL

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Albert W. Harriman,

Appellant,

VS.

BUREAU OF PERSONNEL
DEPARTMENT OF ADMINISTRATION
STATE OF WISCONSIN

Respondent.

FINDINGS OF FACT

and

CONCLUSIONS OF LAW

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The above entitled matter having come on to be heard before the State Board of Personnel on the 30th day of October, 1964, at 10:00 A.M. in the State Office Building in Madison, Wisconsin, pursuant the legal notice thereof;

Present: John H. Shiels, Chairman
Jerome M. Slechta
Charles F. Brecher
John A. Serpe
George E. Strother

(Shiels, Slechta, and Brecher were present at all sessions and Serpe and Strother were present at some sessions, but have read the entire transcript.)

The Appellant, Albert W. Harriman, appeared in person.

The Respondent Bureau of Personnel, Department of Administration, appeared by C. K. Wettengel, its Director;

The State Board of Personnel having heard the statements of the parties, taken testimony and being further advised in the premises, makes and files the following Findings of Fact and Conclusions of Law, constituting its decision in this case.

## FINDINGS OF FACT

1. That on April 2, 1964, the Appellant, Albert W. Harriman was employed by the Attorney General of the State of Wisconsin as the Assistant Attorney General IV in the classified service of the State of Wisconsin.

2. That on April 2, 1964, the Attorney General submitted to the Bureau of Personnel, a reclassification request, requesting that the position held by Albert W. Harriman be reclassified and made an Assistant Attorney General V.

3. That said reclassification request was assigned for review to Trygve Thoresen, Senior Classification Analyst in the Bureau of Personnel and the analyst with the most experience with the Assistant Attorney General series, who spent 3 days in the audit of the position of the Albert W. Harriman as compared to one-half day normally spent in the audit of a senior administrative position.

4. That Thoresen concluded from his audit that Harriman was not a top expert in any field or fields of law as required by the specifications for Assistant Attorney General V, even though he was an expert.

5. That Thoresen concluded from his audit that the position occupied by the Harriman was not comparable in level to that of other Assistant Attorneys General V in the Attorney General's office.

6. That as a result of said audit, the Bureau of Personnel on June 16, 1964 denied the reclassification request; that within 10 days thereafter Albert W. Harriman appealed the order to this Board.

7. That while Albert W. Harriman has assignments and does legal work of importance and complexity, it was within the province of the Bureau of Personnel to conclude that he is not a top legal expert in the Attorney General's office.

8. That while Albert W. Harriman's assignments and work are similar to that of Assistant Attorneys General V, it is within the province of Bureau of Personnel to conclude that his position is not on the same level as that of the Assistant Attorneys General V.

9. That before entering denial of the request for reclassification, Bureau of Personnel carefully studied the Albert W. Harriman's position and evaluated its job contents and compared it to other positions in state service.

## CONCLUSIONS OF LAW

1. That it is the duty of said Bureau of Personnel to classify positions and allocate positions so classified to salary ranges.

2. That the denial by the Bureau of Personnel, to reclassify the position held by Albert W. Harriman from Assistant Attorney General IV to Assistant Attorney General V was a proper administrative decision.

3. That said denial was in good faith; it was not an abuse of the Bureau of Personnel's judgment and discretion; it was neither arbitrary nor capricious; there were no religious or political considerations a part of the decision.

Let an Order be entered accordingly.

Dated at Madison, Wisconsin

this 17th day of [illegible] 1965.

WISCONSIN STATE BOARD OF PERSONNEL

by _____
John H. Shiels, Chairman

_____
Charles Brecher, Member

_____
Jerome M. Slechta, Member

_____
John A. Serpe, Member

_____
George E. Strother, Member

STATE OF WISCONSIN STATE BOARD OF PERSONNEL

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Albert W. Harriman,

Appellant,

VS.

ORDER

BUREAU OF PERSONNEL
DEPARTMENT OF ADMINISTRATION
STATE OF WISCONSIN,

Respondent.

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The State Board of Personnel having made and filed its Findings of Fact and Conclusions of Law, constituting its decision in this case;

IT IS ORDERED:

That the appeal of Albert W. Harriman be and the same is hereby dismissed on its merits and with prejudice.

Dated at Madison, Wisconsin

this 17 day of June, 1965

WISCONSIN STATE BOARD OF PERSONNEL

By _____
Chairman

STATE OF WISCONSIN STATE BOARD OF PERSONNEL

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Albert W. Harriman,

Appellant,

MEMORANDUM

VS.

DECISION

BUREAU OF PERSONNEL
DEPARTMENT OF ADMINISTRATION
STATE OF WISCONSIN

Respondent.

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It is only fair to state that in the conduct of the hearing of this appeal, that the chairman permitted the matter to become more involved than the fundamental issues warrant.

This was probably the occasioned by the extreme difficulty that the Board has had over the past years with the specifications for the Assistant Attorney General series, the fact that the Board definitely feels that professional personnel cannot be satisfactorily classified by the same techniques applied to nonprofessional personnel, and the understandable reluctance of the Respondent Bureau to produce evidence of the comparison of the Appellant's position to that of other Assistant Attorneys General, when in fact, comparisons were an essential part of the audit made of the Appellant's position. A reading of the record might well lead one to believe that the Board is in a power struggle with the Bureau as to how positions should be classified.

That all this should have happened is regrettable, because the case is quite simple.

The Appellant, Albert W. Harriman, was at all times mentioned herein an Assistant Attorney General IV in the classified service of the State of Wisconsin. He has served the office of Attorney General as a lawyer in various classifications continuously since June 9, 1947. His position is in salary range 1-18 ($974-$1264 per month). On April 2, 1964, the Attorney General submitted a reclassification request to the Bureau of Personnel proposing that the position occupied by the Appellant Harriman be made an Assistant Attorney General V in salary range 1-20 ($1139-$1479 per month). On June 16, 1964, the Respondent Bureau refused to grant

the reclassification request. Within ten days the Appellant Harriman appealed the order of denial to this Board. After several stipulated adjournments the appeal came on to be heard on October 30, 19-4.

This appeal must be decided on the basis of the pronouncement of this Board in the case of Louis Verch vs. Bureau of Personnel, decided September 16, 196

> "A continuous and consistent line of legal authority is to be effect that the Board of Personnel may not substitute its judgment for that of the agency charged with management of governmental functions; the Board has a function of review and not administration. The Board has no right or authority to upset or reverse an administrative ruling unless it is proved to be arbitrary, capricious, done in bad faith so as to constitute an abuse of judgment or discretion, or have been motivated by reasons, religious or political."

Accordingly, to reverse the Respondent Bureau, the Board must find that the Bureau's denial of this reclassification request was arbitrary and capricious and in bad faith, and the burden of proof of such is upon the Appellant Harriman.

The record indicates that on receipt of the reclassification request, the review of it was assigned to Trygve Thoresen, Senior Classification Analyst and the staff technician with the most experience in the Assistant Attorney General series. Thoresen testified that he spent three days in the audit of Appellant Harriman's position as compared to one-half day spent on normal senior position audits. This in itself indicates that the Respondent Bureau accorded to the reclassification request the highest degree of competent attention that it could afford and that extraordinary time was devoted in that audit. Certainly, the audit was not done in a cursory manner or by an inexperienced staff member.

Thoresen stated that Appellant Harriman was not a top legal expert in any particular field or fields of law as called for in the specifications for an Assistant Attorney General V. He testified that Appellant Harriman was an expert, but not a top expert.

This conclusion was reached by the evaluation of the assignments and work of Appellant Harriman, with which Thoresen demonstrated that he had a working under-

standing. It was also reached by Thoresen's comparison of Appellant Harriman's position with all other positions in the Attorney General's office. (Record, page 90)

Appellant Harriman produced voluminous evidence relating to the nature of his legal assignments and work. The Board was impressed by its complexity and importance. However, the work and assignments should have been such for an Assistant Attorney General IV as a top range position, highly paid and of considerable stature in the profession. Appellant Harriman's testimony, though, fell short of its persuading this Board that it was arbitrary, capricious or in bad faith for the Respondent Bureau to refuse to recognize Appellant Harriman as a top expert in any legal field or fields.

Appellant Harriman also produced considerable evidence that his position was comparable to that of other Assistant Attorneys General V, particularly the younger ones in point of service. His evidence was excellent evidence, and would be most persuasive had the Board been sitting as a classification agency. However, his evidence did not convince this Board that the Respondent Bureau was in bad faith or arbitrary or capricious in determining that Appellant Harriman's position was not at the same level as that of the other Assistant Attorneys General V.

The refusal of the Respondent Bureau to make definitive comparisons as a part of its case has confused the issue. The Respondent Bureau, however, did not have to present any more evidence than it chose to. It did not have a case to prove by the preponderance of the evidence, nor did it have the burden of proof. Had Appellant Harriman's proof that his position was comparable to other Assistant Attorneys General V been more overwhelming than it was, the Respondent Bureau might regret the way it proceeded, unless it stood ready to tempt fate on the basis of that a court would determine that the Bureau can rest a classification solely on the basis of the relation of the job to the specifications without making comparisons in its audit to other similar positions.

Be assured that if this Board felt that the Respondent Bureau did not make comparisons of the Appellant Harriman's position to other legal positions in

the Attorney General's office that it would have, in this decision, found that consideration of the reclassification request was arbitrary and capricious. However the Respondent Bureau did use the test of comparables as is entirely evident from the record.

There is undue concern in the record as to Exhibit 7, a letter of the Attorney General to the Respondent Bureau, and as to Exhibit 17, a later letter of the Attorney General to the Respondent Bureau. It is true that these letters have certain evidentiary value that the Board would give great weight to if throug this continuing hassel over the Assistant Attorney General series, the Attorney General had taken a consistent position as to the rating of his subordinates and if he had been more helpful in the derivation of class specifications. This is not to say that his observations were not welcome as the opinion of one should be in a better position to know.

The Decision and Findings of Fact and Conclusions of Law in the Roy Mita case and the Leroy Dalton case have been made a part of this record.

In deciding the Mita case, this Board felt that the action of the Direct of the Bureau of Personnel in refusing to reclassify an Assistant Attorney General III to a IV was arbitrary and capricious. The documentation in that case was poorly drawn and there is no Finding of Fact that the Director of the Bureau of Personnel was arbitrary or capricious. We have little doubt that had the Director sought judicial review of that decision that he could have obtained a reversal of this Board just because of the inadequacy of the Findings of Fact and Conclusions of Law.

The Dalton case involved only that part of the specification for Assista Attorney General V that requires 15 years of legal experience, and the decision in that case was a justification of such a requirement. There was no issue as to whether or not Dalton was doing the work and had the assignments of Assistant Attorney General V.

In the conduct of hearings on appeals of this type, the Board and the parties often lose sight of the role of the Board. Again, the Board of Personnel is not a classification agency; it sits only in administrative review of whether or not the actions of the Director were exercised within his broad prerogatives in the area of public personnel administration. As long as that Director is in good faith the Board cannot substitute judgment for his, even if he is definitely wrong and even if it be shown that he is consistently wrong.

Findings of Fact and Conclusions of Law will be prepared in accordance with this decision.

Dated at Madison, Wisconsin

this _____ day of March, 1965

WISCONSIN STATE BOARD OF PERSONNEL

By _____
Chairman