

II. Conclusions

The Effective Date Of
Appellant's Reallocation
To Craftsmen Electrician
Was April 29, 1973

In the first Opinion and Order on this appeal we concluded that Respondent's decision to reallocate Appellant to Maintenance Mechanic 3 was improper and that he should have been reallocated to Craftsmen Electrician. Appellant was reallocated to the Craftsmen Electrician classification in compliance with the Order. The effective date of said reallocation was July 8, 1975. Appellant contends that the effective date should have been April 29, 1973. We find merit in this contention.

Section 16.38 (4), Wis. Stats., states:

Any employee who has been removed, demoted or reclassified, from or in any position or employment in contravention or violation of this subchapter, and who has been reinstated to such position or employment by order of the board or any court upon review, shall be entitled to compensation therefor from the date of such unlawful removal, demotion or reclassification at the rate to which he would have been entitled by law but for such unlawful removal, demotion or reclassification, and such employee shall be entitled to an order of mandamus to enforce the payment or other provisions of such order. (Emphasis added.)

This subsection has two preliminary requirements. First, there must be a violation of Subchapter II of Chapter 16 regarding certain actions by the Appointing Authorities and/or the Director. The instant appeal is concerned only with a reallocation or reclassification action by the Director.

Second, the Personnel Board must have acted in favor of the employee. In a reclassification or reallocation action, the Board must have rejected the Director's action and reclassified or reallocated the employee's position to the classification sought by the employee.

If these two requirements are met, then the employee is entitled to "compensation therefor from the date of such unlawful . . . reclassification at the rate to which he would have been entitled by law but for such unlawful . . . reclassification." In other words he is entitled to back pay.

Under Section 16.07, Wis. Stats., the Director is empowered to create a classification plan subject to approval by the Personnel Board. Furthermore, the Director has the power to allocate a position as the needs of the civil service require. (Sections 16.07 (2) and (2) (a), Wis. Stats., Administrative Code Section Pers. 3.03 (1).)

Resondent conducted a maintenance survey from which he determined that Appellant's position was incorrectly classified. However, he then in turn reclassified his position incorrectly as Maintenance Mechanic 3.

This incorrect reclassification or reallocation was made in violation of the civil service law. The Director is mandated under Section 16.07 (2) to reallocate or reclassify a position as the needs of the civil service require. This mandate is two pronged. First, the Director must look to what must be done to run the state service efficiently and effectively and then classify positions accordingly. Secondly, the Director must look to what is actually being done by a person in a particular position and then determine whether those tasks are appropriate to his classification. If they do not fit the classification, then he must determine whether the classification or the duties must be changed.

The Director failed to meet this two-prong mandate. In 1964 two Craftsmen Electrician positions were allocated to the Wisconsin Correctional Institution at Fox Lake. When in 1970 Rueben Bruessel who filled one of those positions retired, his position was

reallocated to Maintenance Mechanic 2. Appellant filled that position at the lower classification.

We found in the first Opinion and Order on this matter that the need for two Electricians has continued. In fact, the workload has been increasing. Therefore, we conclude that Respondent failed in his duty to classify positions so that the optimum efficiency and effectiveness could be obtained.

Furthermore, we concluded in the first Opinion that Appellant was actually performing the duties and responsibilities of a Craftsmen Electrician. Respondent recognized that Appellant was not performing Maintenance Mechanic 2 work but failed to realize that the duties and responsibilities he was performing were best described by the Craftsmen Electrician class specifications. The classification title should reflect what the employee is actually doing. In the instant appeal, Respondent incorrectly determined that Appellant's position was Maintenance Mechanic 3.

Therefore, Respondent violated both aspects of his mandate to reallocate or reclassify as the needs of the civil service require. He must look to the needs of the service from a management viewpoint so that there is peak effectiveness with no waste. Here, there was a continuing need for two Craftsmen Electrician positions. Respondent failed to recognize this need.

In addition, Respondent is required to view a position from the employee's standpoint. One of the safeguards of civil service is that the duties and responsibilities undertaken by an employee will be adequately reflected by a particular classification and thereby correctly compensated.

If the employee is given and accepts duties and responsibilities outside his classification, and he demonstrates his ability to perform the work well, then Respondent has a duty to determine in which classification the position should be. If as here it is found that the employee is performing the duties and responsibilities of another job and that there is a need for a position at that level in order to run state service efficiently and effectively, then Respondent is required under 16.07, Wis. Stats. to classify the employee accordingly. By failing to do so, we conclude that Respondent violated this section as well as the spirit and intent of the civil service law.

Respondent contends for several reasons that the effective date of the reallocation should be July 8, 1975. First, he claims that the improper reallocation was not intentional. Although he does not expand much on this theory, we assume that he means that the decision was not based on any personal bias against Appellant. Section 16.38 (4) does not require that the violation involve some sort of subjective bias or prejudice against the employee. It requires only that there be a violation. We make no finding on whether there was any personal bias. We conclude only that Respondent intended to exercise his power as Director to reallocate Appellant.

As stated above, we conclude that that exercise violated civil service law by incorrectly classifying Appellant's position. There was need for the second Electrician position because of the workload and Appellant was performing the duties and responsibilities of that classification. Respondent, therefore, was required under Section 16.07 to classify Appellant's position to Craftsmen Electrician.

The second contention of Respondent is that because Appellant does not need to pay attorney's fees (the union represented him), he will receive a "windfall" if the back pay is awarded. We find no merit in this contention at all.

Perhaps because Appellant was represented by counsel, he was better able to present his case. The purpose of the award of back pay is not to provide the employee with funds to pay his attorney fees. Section 16.38 (4) does not distinguish between employees who are represented by counsel or not. If there were a violation of the civil service law, then the employee is entitled to the rate of compensation he would have received but for the violation from the date thereof. Clearly then Appellant is entitled to the difference between what he was receiving as a Maintenance Mechanic 3 and what he should have been receiving as a Craftsmen Electrician from the date of the incorrect reallocation.

In the first Opinion we concluded that Appellant's position had been improperly reallocated. In April of 1973 and for some time prior, Appellant had been performing Craftsmen Electrician work. He should have been reallocated to that classification. Had he been properly reallocated, he would have received the amount in question. He is entitled to it since through no fault of his own his position was improperly classified.

The final contention is that Appellant should not receive the back pay award because the record is not clear on when he actually began doing Electrician work and because it is claimed he no longer does it. In our first Opinion and Order we concluded that Appellant was doing Craftsmen Electrician work at the time of the original

reallocation decision, that is, April 29, 1973. Appellant requests that the effective date of the reallocation made in compliance with our first Order be April 29, 1973. We see no conflict here.

Respondent alleges:

Assuming that the Board's decision is correct there still is considerable conflicting testimony in the record as to when the Appellant actually started doing electrician work. Also, the Department of Health and Social Services has informed me that Mr. Alderden definitely has not been performing electrician work since the time of the hearing. (Letter from Edward D. Main dated August 7, 1975.)

We concluded in one Opinion and Order entered June 2, 1975, that the Appellant had been performing the work of a Craftsman Electrician since his appointment to Maintenance Mechanic 2. As to the period of time subsequent to the hearing, we have no basis for making a determination. Even if Appellant were not performing electrician's duties after the hearing, he might still be eligible for the salary differential depending on the circumstances of the change in duties and the nature of those duties. In order to determine whether or not a further evidentiary hearing is required, we will direct the parties to file written material relative to Appellant's status after the date of the hearing and the parties' position with regard to that information's relevance and materiality.

ORDER

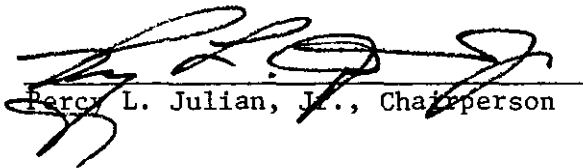
IT IS HEREBY ORDERED that Respondent within ten working days of the date of this Order serve and file an affidavit or affidavits setting forth the facts and circumstances surrounding Appellant's employment status after the date of the hearing herein, along with

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such other evidentiary materials and written arguments or statement of position he may desire to submit; that Appellant may respond in kind within ten working days thereafter; and that Respondent may serve and file a reply within five working days thereafter.

Dated November 24, 1975. STATE PERSONNEL BOARD


Percy L. Julian, Jr., Chairperson