

* * * * *

CLARENCE ALDERDEN,

Appellant,

v.

C. K. WETTENGEL, Director,
State Bureau of Personnel,

Respondent.

Case No. 73-87

* * * * *

OFFICIAL

OPINION AND ORDER

III

Before: JULIAN, Chairperson, SERPE, STEININGER, WILSON and DEWITT, Board Members.

OPINION

I. Facts

In May, 1973 Appellant appealed his reallocation from a Maintenance Mechanic 2 (SR 3-10) to Maintenance Mechanic 3 (SR 3-10). He claimed his position should have been properly reallocated to Craftsmen Electrician. The Personnel Board agreed with Appellant and on June 2, 1975 ordered Respondent to reallocate Appellant's position to Craftsmen Electrician. Respondent complied with the order by reallocating the position. The reallocation became effective June 8, 1975.

On July 8, 1975 Appellant requested that this Board clarify its prior decision by making the effective date of the reallocation to Craftsmen Electrician April 29, 1973 which was the effective date of the original reallocation. In an Opinion and Order issued on November 24, 1975 we concluded that the reallocation of Appellant's position to Craftsmen Electrician became effective April 29, 1973. However, since there was a question whether Appellant performed the duties of the Craftsmen Electrician after May 31, 1974, the date of the hearing, we ordered the parties to:

...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 such other evidentiary materials and written arguments or statement of position he may desire to submit...

In response to this Order Respondent filed on December 16, 1975 a letter with supporting affidavits stating that Appellant was performing the duties and responsibilities of a Maintenance Mechanic 3 and not a Craftsmen Electrician from May 31, 1974 to June 8, 1975. See Appendices A, B, C. On January 7, 1976 Appellant filed two letters verifying the truth of Respondent's affidavits. See Appendices D, E.

II. Conclusions

Appellant Is Entitled
To Receive Pay At The Craftsmen
Electrician Rate From
April 29, 1973

Appellant clearly is entitled to the Craftsmen Electrician rate of pay from April 29, 1973 through May 31, 1974. From the materials submitted by the parties, it is equally clear that after the date of the hearing until June 8, 1975 Appellant did not perform Craftsmen Electrician work. Walter Walker, Appellant's supervisor and a witness at the hearing, did not assign the duties of this classification to Appellant "because of the events of the hearing." (See Appendix C, Affidavit of Walter Walker, paragraph 10.)

The Personnel Board is vested by statute with jurisdiction to hear appeals by employees from actions of the Director of the Bureau of Personnel. See Section 16.05(1)(f), Wis. Stats.. Within this jurisdiction then is the power of this Board to hear appeals from reallocation actions. The instant case is such an appeal.

After an appeal from a reallocation action is filed and especially after a hearing is held thereon, the decision as to the proper classification of an appellant's position rests with the Board alone. During the period of time while such an appeal is pending, the duties and responsibilities

attached to the appellant's position should not be changed except under certain circumstances. For example, if an appellant wishes to seek a promotion or a transfer, then such efforts should not be barred because of a pending appeal. Likewise, if management finds that a position's duties and responsibilities should be changed in order to continue or better the efficient and effective running of state service, then it should be able to do so. This change could be either gradual or abrupt. A gradual change could, for instance, come about through a natural evolution of duties and responsibilities. An abrupt change could take place through a reorganization, a disciplinary action, or a realization by management that some of an employee's duties and responsibilities are outside the scope of his position's classification. In the last instance, management may withdraw those duties and responsibilities which exceed the employee's classification but only if such action betters the efficiency and effectiveness of state service.

However, in the instant case, the duties were changed not by any act of Appellant except his exercising his right to appeal and not by management either through gradual evolution or through abrupt change to attain the ultimate goal of a more efficient and effective civil service. Rather, Mr. Walker changed Appellant's duties and responsibilities only "because of the events of the hearing." (See Appendix C, Affidavit of Walter Walker, paragraph 10.)

In essence Appellant was penalized for exercising his right to appeal. Management decided to not assign to Appellant those duties which gave rise to the appeal. It was established at the hearing that a second Craftsmen Electrician was needed and that Appellant was performing the duties and responsibilities of that position.

State service too was penalized by this management action. The Personnel Board concluded in its first opinion in this case that Appellant's

position would be most properly classified as Craftsmen Electrician. This conclusion was based on the evaluation of the needs of State service and the realities of what Appellant was doing.

Therefore, we conclude that Appellant's position should have been re-allocated from Maintenance Mechanic 3 to Craftsmen Electrician effective April 29, 1973. Further, we conclude that he should receive the difference in pay between those two classifications from April 29, 1973 to June 8, 1975.

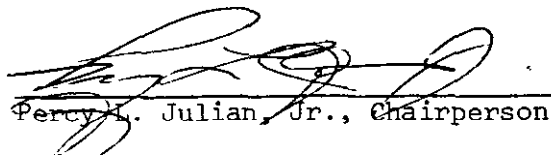
We wish to emphasize that we are not holding today that management has no prerogative to change the duties and responsibilities of an appellant while an appeal is pending. However, where management changes those duties as it did in the instant reallocation appeal without prior approval of this Board and for no other purpose than because of the appeal itself, then we conclude that the appellant whose position we have determined to have been improperly classified is entitled to back pay. Such back pay will be measured by the difference in the pay rates of the two classifications where the appellant's position has been reallocated by Board order to the higher paying classification. Further, such back pay will be measured from the date that the appellant's position was originally wrongfully reallocated including any time during which the appellant was not performing the duties and responsibilities of the higher paying classification.

ORDER

IT IS HEREBY ORDERED that Appellant receive the difference between the Maintenance Mechanic 3 (SR 3-10) and Craftsmen Electrician pay rates from April 29, 1973 to June 8, 1975.

Dated March 22, 1976.

STATE PERSONNEL BOARD


Percy L. Julian, Jr., Chairperson



State of Wisconsin \ DEPARTMENT OF ADMINISTRATION
 STATE OF WISCONSIN
 MADISON

Patrick J. Lucey
 Governor

1975 DEC 16 PM 3 59

Anthony S. Earl
 Secretary

James B. Wood
 Deputy Secretary

1 WEST WILSON STREET
 MADISON, WISCONSIN 53702


December 12, 1975

Mr. Anthony J. Theodore
 Legal Counsel
 State Personnel Board
 1 W. Wilson St., Rm. 1120
 Madison, Wisconsin

Dear Mr. Theodore:

Attached to this letter are two affidavits setting forth the nature of the work performed by Mr. Clarence Alderden from May 31, 1974 to June 8, 1975. These affidavits are submitted in response to the Personnel Board's order in this matter dated November 24, 1975. During that period, Mr. Alderden was working as a Maintenance Mechanic 3 rather than a Craftsman Electrician. For this reason it would be inappropriate for him to receive the higher pay for that time.

Sincerely,


 Edward D. Main
 Attorney

pw

cc: Jim Stratton w/affidavits
 Glen Blahnik "
 Bob Belongia "
 Richard Graylow "

Enclosure

AFFIDAVIT

State of Wisconsin)
 County of Dane) ss.

In Re: Clarence Alderden vs. Wettengel
 Case No. 73-87

James Stratton being first duly sworn on oath deposes and says as follows:

1. That he is employed by the State of Wisconsin, Department of Health and Social Services, as a classification analyst in the department's central personnel office.

2. That he was a witness in the State Personnel Board hearing on May 31, 1974 held in connection with the above entitled matter and as such he is well acquainted with the facts and circumstances surrounding this matter.

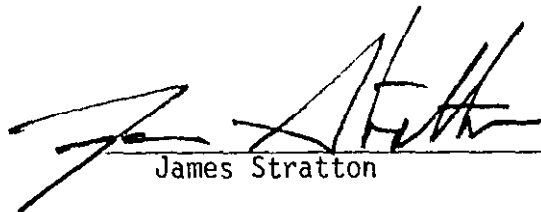
3. That he is very familiar with the Maintenance Mechanic 3 and Craftsman Electrician class specifications and has worked with these classifications many times in connection with various positions.

4. That on December 4, 1975 he went to the Wisconsin Correctional Institution at Fox Lake, Wisconsin for the purpose of determining which classification most appropriately described the work performed by Mr. Clarence Alderden from May 31, 1974 until June 8, 1975 when the classification of Mr. Alderden's position was changed from Maintenance Mechanic 3 to Craftsman Electrician.

5. That he spent the better part of a full day at the Wisconsin Correctional Institution on December 4, 1975 and during that time he interviewed Mr. Walter Walker who is and has been since before May 31, 1974, the first line supervisor of Mr. Clarence Alderden.


6. That Mr. Walter Walker described to him the work done by Mr. Alderden between May 31, 1974 and June 8, 1975 and that Mr. Walker escorted this affiant about the grounds of the Wisconsin Correctional Institution and showed him examples of work performed by Mr. Alderden between May 31, 1974 and June 8, 1975.

7. That he has carefully compared the work performed by Mr. Alderden between May 31, 1974 and June 8, 1975 with the class specifications for Maintenance Mechanic 3 and Craftsman Electrician and that he is of the firm opinion that the work done during the period May 31, 1974 until June 8, 1975 by Mr. Alderden is best described by the Maintenance Mechanic 3 class specification.


James Stratton

State of Wisconsin)
County of Dane) ss.

Subscribed and sworn to before me this 11th day of December, 1975.


Edward D. Main
Notary Public, Dane County, Wis.
My Commission is Permanent

AFFIDAVIT

State of Wisconsin)
County of Dodge) ss.

In Re: Clarence Alderden vs. Wettengel
Case No. 73-87

Walter Walker being first duly sworn on oath deposes and says as follows:

1. That he is employed by the State of Wisconsin, Department of Health and Social Services as Superintendent of Buildings and Grounds for Wisconsin Correctional Institution at Fox Lake, Wisconsin.
2. That he is and has been since before May 31, 1974 the first line supervisor of Clarence Alderden who is also employed at the Wisconsin Correctional Institution and who is presently classified as a Craftsman Electrician.
3. That as said first line supervisor of Mr. Clarence Alderden, he is and has been since before May 31, 1974 the person who makes daily work assignments to Mr. Alderden.
4. That he testified as a witness at a State Personnel Board hearing which was held on May 31, 1974 in connection with the above entitled matter and for that reason the date and certain subsequent events are firmly fixed in his mind.

5. That the classification of Mr. Clarence Alderden's position was changed from Maintenance Mechanic 3 to Craftsman Electrician as of June 8, 1975.

6. That as a result of being a witness and spectator at the hearing dated May 31, 1974 in the above matter he is well acquainted with the required duties and responsibilities of positions that are classified as Maintenance Mechanic 3 and with the required duties and responsibilities of positions that are classified as Craftsman Electrician.

7. That from May 31, 1974 to June 8, 1975, Mr. Clarence Alderden was doing work which is described in the class specification for Maintenance Mechanic 3 and was not prevailing rate craft electrician work which is described in the class specification for Craftsman Electrician.

8. That during the period May 31, 1974 to June 8, 1975 all Craftsman Electrician work was done by a Mr. Edward Haimerl who is and has been in a position which is classified as Craftsman Electrician since before May 31, 1974 and that Mr. Haimerl is also and has been since before May 31, 1974 under affiant's direct supervision and therefore this affiant is well aware of the daily work of Mr. Edward Haimerl since May 31, 1974.


9. That he has been particularly careful to see that Mr. Alderden did not perform any Craftsman Electrician work after May 31, 1974 because of the events of the hearing until June 8, 1975 when Mr. Alderden was reallocated to Craftsman Electrician.

10. That examples of work performed during the period May 31, 1974 to June 8, 1975 by Mr. Clarence Alderden are as follows:

- a. maintains and repairs refrigerator units including pump and valves;
- b. assigns work to inmates;
- c. keeps time records and inspects work when completed; and
- d. repair and maintenance of other equipment.

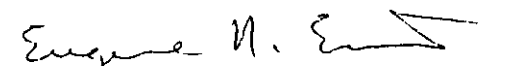
11. That examples of work not performed during the period May 31, 1974 to June 8, 1975 by Mr. Clarence Alderden but rather were performed by Mr. Edward Haimerl are as follows:

- a. lays out, assembles, installs and tests electrical fixtures and other electrical equipment;
- b. plans proposed installation from blueprints, sketches or specifications;
- c. adapts and installs conduit;
- d. directs and instructs inmate helpers in the electrical trade; and
- e. keeps records and reports.


Walter Walker

State of Wisconsin)
) ss.
County of Dodge)

Subscribed and sworn to before me this 12th day of December 1975.


Notary Public, Dodge County, Wis.
My Commission Expires Oct 30, 1977

LAW OFFICES
LAWTON & CATES
 TENNEY BUILDING
 MADISON, WISCONSIN 53703

JOHN A LAWTON
 RICHARD L CATES
 JOHN H BOWERS
 GEORGE E AUMOCK
 JOHN C CARLSON
 JAMES A OLSON
 BRUCE M DAVEY

AREA CODE 608 256-9031

January 5, 1976

BRUCE F EHLKE
 RICHARD V GRAYLOW
 KENT I CARNELL
 JEAN H LAWTON
 MICHAEL S WEIDEN
 JAMES W GARDNER
 DAVID B GAEBLER
 ROBERT J ARNOT
 DONALD R RITTEL

Mr. Anthony J. Theodore
 Legal Counsel
 State Personnel Board
 One West Wilson Street
 Madison, WI 53702

JAN 07 1976
 Rec'd
 Personnel Board

RECEIVED
 JAN 6 - 1976
 DEPARTMENT OF
 ADMINISTRATION

RE: Alderden v. Wettengel
 Case No. 73-87

Dear Mr. Theodore:

Complying with the Board's "ORDER" of November 24, 1975, I enclose herewith an original letter I received from my client, Clarence R. Alderden.

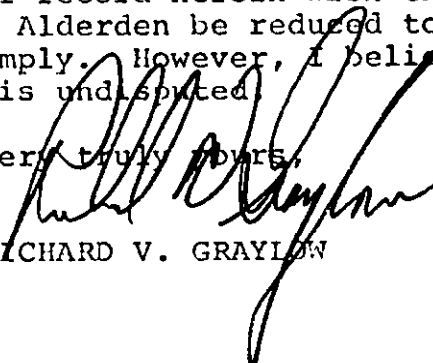
As you can see, neither Alderden or I have any objection with the accuracy of the statements contained in the affidavits submitted by James Stratton and Walter Walker.

By way of clarification of the third paragraph of Alderden's letter to me, I advise that Mr. Haimerl has suffered a heart attack and is currently convalescing. If and when he returns to work at the Wisconsin Correctional Institution remains conjecture.

Based on the Board's "ORDER" of November 24, 1975, recognizing the validity of the affidavits previously identified and referred to, and further in light of this letter, it appears that Alderden is entitled to the prevailing rate for journeyman Electrician from April 29, 1973, through and including, at the very least, the present time, excluding May 31, 1974, through June 8, 1975.

If any of the appearing parties of record herein wish that the information unique to the knowledge of Alderden be reduced to affidavit form, I would be most happy to comply. However, I believe all of the information contained herein is undisputed.

Very truly yours,


 RICHARD V. GRAYLOW

RVG:llh
 Enclosure
 cc: Mr. Edward Main
 Mr. Clarence Alderden

December 30, 1975

Mr. Richard V. Graylow
Lawton & Cates
Tenney Building
Madison, Wisconsin 53703

Dear Mr. Graylow,

In reference to the Affidavits dated the 11th of December, 1975, signed by Edward D. Main and another dated the 12th of December, 1975, signed by Walter Walker.

This is to state that the information on these Affidavits is correct, I was not ordered to do any electrical work during the period of May 31, 1974 to June 8, 1975, as a result of my hearing.

As of June 8, 1975 I was reclassified from Maintenance Mechanic 3 to Craftsman Electrician and have since been doing electrical work. Since December 1, 1975 I have been the only Electrician at Wisconsin Correctional Inst., due to the illness of Mr. Haimerl.

Sincerely,

Clarence R. Alderdes