

4. The appellant does not build or construct lock parts from raw materials.

5. On August 18, 1976, the respondent denied the appellant's request for reclassification to Locksmith 3. In reviewing this request, the respondent conducted a job audit and compared the position with the appropriate position standards. The respondent did not review comparable positions.

CONCLUSIONS OF LAW

1. The Board has jurisdiction over this appeal.

Wis. Stats., § 16.05(1)(f)
Griggs v. Weaver, 76-184, 2/23/77.

2. The burden of proof is on the appellant to show to a reasonable certainty, by the greater weight of the credible evidence, that his position should be classified at the level he alleges and that the Director was incorrect in refusing to reclassify him to that level.

Reinke v. Personnel Board, 53 Wis. 2d. 123 (1971).
Ryczek v. Wettengel, 73-26, 7/3/74.
Lyons v. Wettengel, 73-36, 11/20/74.
Alderden v. Wettengel, 73-87, 6/2/75.

3. The appellant has not met this burden. He has not established that the Locksmith 3 classification is proper for his position or that the Director was incorrect in refusing to reclassify him to that level.

4. The Director's action must be affirmed.

OPINION

The record shows that the appellant performs all of the duties characteristic of a Locksmith 3 position except for that of using a lathe, milling machine, and

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drill press to fabricate parts for locks on a continuing basis. It is the absence of this particular duty that prevents him from being reclassified to the Locksmith 3 level. The position standard for Locksmith 3 states that:

Work at this level is distinguished from the 2 level by the fact that the work requires the fabrication of lock parts using a lathe, milling machine and drill press on a continuing basis.

Thus, this activity is the critical duty that must be performed on a continuing basis before a Locksmith 2 position can be reclassified to the 3 level. Since the appellant does not fabricate lock parts and since he does not use these machines on a continuing basis, his position does not merit the Locksmith 3 classification.

The appellant challenges any conclusion that he does not "fabricate" lock parts. He asserts that he continually repairs locks and that some element of fabrication is inherent in any repair work. However, the Board has ruled in a parallel case that the word "fabricate" in the Locksmith 3 position standard should be defined as the creation of locks and lock parts from metals not previously machined into the form of a lock or lock part. Hasse v. Wettengel, 73-84, 11/22/74. This interpretation is supported by a reference to the "making" of lock parts that is present in the position description's listing of typical examples of work. By the appellant's own admission, he does not create lock parts from raw materials in this manner. Furthermore, even if the appellant's interpretation of "fabrication" were to be accepted, he would still not meet the requirement of using the specified machinery on a continuing basis in this fabrication work.

The appellant also asserts that the similarity of his work duties to those of two recently retired Locksmith 3 employees from the Madison shop requires that

he be reclassified to that higher level. He asserts that similar positions must be similarly classified and that the respondent has waived any right to apply the fabrication of lock parts standard to him by failing to apply it to these other employees. It is true that the appellant's duties are very similar to those performed by these two individuals and that they did not fabricate lock parts by using the specified machines on a regular basis either. However, it is also true that these other employees did use the specified machines in such work to some extent at the time their positions were originally designated at the Locksmith 3 level, that a new policy of purchasing completely finished replacement parts was instituted after the classification of their positions was established, and that their positions were replaced by Locksmith 1 and 2 level positions when they retired from state service. The fact that these two employees may have been working outside of their classification for a few years prior to their retirement does not justify reclassifying the appellant to a level that is beyond the scope of his duties. Nor does it indicate that the respondent has waived his right to apply the appropriate position standards to the appellant by in some way voluntarily and intentionally relinquishing the right to classify positions properly.¹

Finally, the appellant, citing Harriman v. Bureau of Personnel, 154, 3/19/65, contends that the respondent's failure to compare his position with positions at the Locksmith 3 level constitutes arbitrary and capricious action.

In Harriman, the Board stated:

. . .if this Board felt that the Respondent Bureau did not make comparisons of the Appellant Harriman's position to other . . . positions. . . it would have, in this decision, found that

1. Waiver is the voluntary and intentional relinquishment of a known right. Hanz Trucking, Inc. v. Harris Brothers Co., 29 Wis. 2d. 254 (1965).

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[the] consideration of the reclassification request
was arbitrary and capricious." (emphasis added).

Yet, the Board also stated that it had experienced "extreme difficulty. . . over the past years with the specifications" for the specific professional level classification series involved in the appeal and that "professional personnel cannot be satisfactorily classified by the same techniques applied to nonprofessional personnel." In the present case, no similar record of difficulty with the classification series exists. Furthermore, the present appeal involves one of the nonprofessional level classification actions that is clearly distinguished from the type of action taken in Harriman. The Board's statement of dicta in Harriman is clearly limited by the phrase "in this case" to fact situations more similar in nature than those in the present case. Nevertheless, further consideration might have been given to this particular point were it not for the clarity of the distinguishing factors that separate the Locksmith 2 and 3 class specifications in this case and were it not for the clarity of the facts on record pertaining to these classification factors.

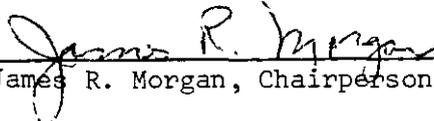
The appellant has failed to meet his burden of showing that his position should be classified at the Locksmith 3 level and that the Director was incorrect in refusing to reclassify him to that level. Hence, the decision of the Director must be affirmed.

ORDER

IT IS HEREBY ORDERED that the decision of the Director is affirmed and this appeal is dismissed.

Dated: May 18, 1978

STATE PERSONNEL BOARD


James R. Morgan, Chairperson