

STATE OF WISCONSIN

STATE PERSONNEL BOARD

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SECRETARY, DEPARTMENT OF TRANSPORTATION,

Appellant,

v.

DEPUTY DIRECTOR, STATE BUREAU OF PERSONNEL
and MARY O'BRIEN,

Respondents.

Case No. 77-2

* * * * *

OFFICIAL

OPINION AND ORDER

Before: James R. Morgan, Calvin Hessert and Dana Warren, Board Members.

OPINION

NATURE OF THE CASE

This appeal was taken from a decision of the deputy director of the Bureau of Personnel, which overruled appellant's determination of the appropriate effective date of the action reclassifying respondent O'Brien's position from Planning Analyst 2 to Planning Analyst 3.

FACTS

By letter dated May 12, 1976, respondent O'Brien and another state employee appealed to this Board appellant's decision denying their requests for reclassifications of their positions from Research Analyst 1 to Planning Analyst 3 (see O'Brien and Novick v. Rice & Knoll, Case No. 76-85). Each position was reclassified to Planning Analyst 2 and Planning Analyst 1 respectively. Subsequently, upon reconsideration, appellant determined that respondent O'Brien's position should be properly classified at the higher level but that the effective date of said reclassification should be December 3, 1976. By letter dated January 4, 1977, respondent Verne Knoll, Deputy Director of the Bureau of Personnel, overruled appellant's decision only with respect to

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the effective date. Mr. Knoll determined that respondent O'Brien's position should be reclassified to the Planning Analyst 3 level effective July 4, 1976. By letter dated January 7, 1977, appellant appealed the Knoll decision to the Personnel Board.

A prehearing conference was not held but in lieu thereof, the parties met informally and submitted a memorandum to the Board setting forth the agreed upon issues and stating:

The attorneys will also informally exchange copies of exhibits and names of witnesses and apprise the Personnel Board thereof in order to expedite a hearing date in the above entitled matter. (See Appendix A--Appellant's Exhibit #12.)

Statutory Notice of hearing, dated January 14, 1977, was sent scheduling a hearing for February 10, 1977. (See Appendix B--Appellant's Exhibit #13.) Respondent Knoll submitted copies of 16 exhibits and names of 7 witnesses by letter dated January 25, 1977. An additional name of a witness was submitted February 2, 1977. No copies of exhibits nor names of witnesses were received by the Board from appellant prior to the date of the hearing.

The hearing was held on February 10, 1977. Appellant attempted to call two witnesses to whom respondents objected on the grounds that he had failed to comply with the mandatory disclosure requirements set forth in Section P.B. 2.01, W.A.C. The objection was sustained by the hearing examiner. Appellant proceeded to call two additional witnesses who had been named by respondent Knoll. At the close of appellant's case, respondents moved to dismiss on the grounds that appellant had failed to meet his burden of proof. Respondents did not call any witnesses.

In his testimony, Mark Braunhut, a Personnel Specialist from the Bureau of Personnel, stated that he reviewed Ms. O'Brien's reclassification request first in February of 1976. At that time he agreed with appellant's decision that her position was more appropriately classified as a Planning Analyst 2. He

came to that conclusion based on his evaluation that Ms. O'Brien failed to meet the required training and experience for the higher level. However, he had also determined that she was functioning as a Planning Analyst 3. He reviewed the request again after the instant appeal was filed. His conclusion remained the same, that is, Ms. O'Brien was functioning at the 3 level but she lacked sufficient training and experience to be reclassified. Mr. Braunhut reviewed the position yet a third time in September, 1976, at which time he determined that it could be classified at the higher level effective July, 1976, because Ms. O'Brien had by then satisfied the training and experience requirements.

Mr. Braunhut testified that the factors he used to determine that Ms. O'Brien was functioning at the 3 level included the complexity of the planning work involved and the independent manner in which she performed her work. He did not compare the position to other positions in state service. However, he did receive information from Ms. O'Brien, her supervisor and appellant. He also testified that based upon this information he determined that Ms. O'Brien was functioning at the 3 level prior to the February 1, 1976, evaluation date.

The reclassification request in the instant case apparently involved a delegated action. Mr. Braunhut testified that he gave considerable weight to appellant's determination. He further stated that but for the appeal the Bureau of Personnel would not have been aware of nor participated in these delegated reclassification requests.

Robert Baker, Ms. O'Brien's supervisor, whose position was classified as Civil Engineer 7 - Transportation-supervisor, was initially supportive of her reclassification request to a Planning Analyst 3. But after conferring with personnel officers in DOT, he changed his recommendation to the 2 level.

CONCLUSIONS

Respondents' motion to dismiss on the grounds that appellant failed to meet his burden of proof is granted. Section P.B. 2.01, W.A.C., requires mandatory disclosure of names of witnesses and copies of exhibits. The section in part states:

Following the prehearing conference, or if no prehearing conference is held, the parties are under a continuing obligation to file and exchange lists of further witnesses and further evidentiary matter which they intend to utilize at the hearing. With the exception of rebuttal matter, witnesses or evidence not so submitted prior to three working days before the hearing will not be permitted to testify or be received at the hearing, unless good cause for the failure of submission is shown.

Appellant failed to comply with this requirement and, therefore, was precluded from calling two witnesses. That the parties did not intend to waive this requirement is evidenced by Appellant's Exhibit #12 (Appendix A), by respondent's submission of names of witnesses and copies of exhibits by memoranda dated January 27, 1977 and February 2, 1977 and the objection raised at the hearing itself.

There were two issues raised with this appeal. These were:

- (1) Whether the action of the Director in overruling the delegated reclassification action of the Department of Transportation reclassifying the position occupied by Mary O'Brien from a Planning Analyst 2 to a Planning Analyst 3 effective December 5, 1976 and reclassifying Mary O'Brien to a Planning Analyst 3 effective July 4, 1976, is incorrect on the basis of the Wisconsin Administrative Code and the class specifications.
- (2) Whether or not any necessary pay adjustments should be held in abeyance pending decision of this appeal.

(See Appendices A and B.)

With regard to issue one, there was no proof from appellant that the decision of the deputy director was incorrect, arbitrary or capricious, or otherwise an

abuse of discretion. Mr. Braunhut stated the factors he used to evaluate Ms. O'Brien's position initially and why he agreed with appellant's decision. He also set forth the reasons for his later disagreement and ultimate recommendation to the deputy director to overrule that decision.

It is clear that the deputy director of the Bureau of Personnel had the authority to overrule the decision of appellant. Appellant's authority was delegated and that delegation is granted in situations where the allocation pattern is set and where it is determined by the Bureau of Personnel that a department has the capability to make the decisions. It seems reasonable for the Bureau to generally not participate in individual reclassification requests which involve delegated actions. For it to do so would thwart the entire purpose of delegation. However, it seems equally reasonable for it to intercede in cases in which it does become involved, for instance, because of an appeal, and in which it determines that a department made an error.

Appellant, of course, had a right under Section 16.05(1)(f), Wis. Stats., to appeal from the Knoll decision. It did exercise that right. A hearing was held on this appeal, at which only two witnesses testified. The testimony of the personnel specialist from the Bureau set forth reasons for his recommendations and ultimately then the reasons for overruling the decision. There was no evidence from appellant that the Bureau's decision was incorrect under the civil service statutes or rules promulgated thereunder or that it was arbitrary and capricious or otherwise an abuse of discretion. Therefore, we conclude that the decision of the deputy director should be upheld.

Because we are making a final decision with this Opinion and Order, we find we do not have to reach the second issue.

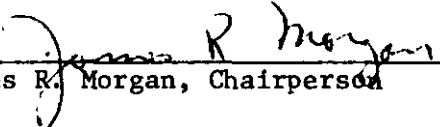
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ORDER

IT IS HEREBY ORDERED that the motion to dismiss is granted, that the decision of the director is affirmed and that this appeal is dismissed.

Dated: 2-20, 1978.

STATE PERSONNEL BOARD


James R. Morgan, Chairperson

CORRESPONDENCE MEMORANDUM

STATE OF WISCONSIN

Date: January 12, 1977
To: Tony Theodore, Jim Thiel
From: Deborah Strickland *DS*
Subject: RE: Rice v. Knoll

File Ref:

RECEIVED

JAN 13 1977

STATE PERSONNEL BOARD

The following two issues have been agreed upon by the attorneys for Rice and for Knoll. The attorneys will also informally exchange copies of exhibits and names of witnesses and apprise the Personnel Board thereof in order to expedite a hearing date in the above-entitled matter.

The two issues are as follows:

- #1: Whether the action of the Director in overruling the delegated reclassification action of the Department of Transportation reclassifying the position occupied by Mary O'Brien from a Planning Analyst 2 to a Planning Analyst 3 effective December 5, 1976 and reclassifying Mary O'Brien to a Planning Analyst 3 effective July 4, 1976, is incorrect on the basis of the Wisconsin Administrative Code and the class specifications.
- #2: Whether or not any necessary pay adjustments should be held in abeyance pending decision of this appeal.

Per a verbal agreement with Cheryl Weston, the attorney for Ms. O'Brien, it is my understanding that Ms. Weston will be copied by the Personnel Board regarding major correspondence in the above-entitled matter.

cc: Mark Braunhut
Kitty Anderson
Robert Barnes

APPELLANT'S

EXHIBIT # 12.



State of Wisconsin \ PERSONNEL BOARD

1 WEST WILSON STREET
MADISON, WISCONSIN 53702
(608) 266-8434

January 14, 1977

PERCY L. JULIAN, JR., CHAIRPERSON
MADISON, WISCONSIN

LAURENE DEWITT, VICE CHAIRPERSON
MARINETTE, WISCONSIN

JOHN A. SERPE, MEMBER
KENOSHA, WISCONSIN

SUSAN STEININGER, MEMBER
JANESVILLE, WISCONSIN

NELLIE E. WILSON, MEMBER
MILWAUKEE, WISCONSIN

Mr. James Thiel, Attorney
Department of Transportation
4802 Sheboygan Avenue
Madison, WI 53702

Mr. Edward Main, Attorney
Department of Administration
1 West Wilson Street
Madison, WI 53702

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Gentlemen:

A hearing in the above matter has been scheduled for:

February 10, 1977 beginning at 8:30 a.m. in Room
244, 1 West Wilson Street, Madison, WI

Pursuant to S. 227.07(2), Stats., you are hereby notified that:

- (a) This hearing is a class 3 proceeding.
- (b) The legal authority and jurisdiction under which the hearing is to be held is S. 16.05(1)(f), Stats.
- (c) The matters asserted are:
 - (1) Whether the action of the Director in overruling the delegated reclassification action of the Department of Transportation reclassifying the position occupied by Mary O'Brien from a Planning Analyst 2 to a Planning Analyst 3 effective December 5, 1976 and reclassifying Mary O'Brien to a Planning Analyst 3 effective July 4, 1976, is incorrect on the basis of the Wisconsin Administrative Code and the class specifications.
 - (2) Whether or not any necessary pay adjustments should be held in abeyance pending decision of this appeal.

If any party will be unable to proceed on the scheduled date, please call the Personnel Board office at (608) 266-8434 immediately upon receipt of this notice.

Very truly yours,

Anthony J. Theodore
Anthony J. Theodore
Legal Counsel

APPELLANT'S

AJT:jh
cc: Mark Braunhut
Robert Barnes
Cheryl Weston

EXHIBIT # 13