

STATE OF WISCONSIN

PERSONNEL COMMISSION

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RALPH DOLL,

Appellant,

v.

DIVISION OF PERSONNEL,

Respondent.

Case No. 78-110-PC

* * * * *

DECISION
AND
ORDER

NATURE OF THE CASE

This appeal, filed pursuant to §230.44(1)(a), Wis. Stats., arose as the result of the denial of the appellant's request for reclassification of his position from Maintenance Mechanic 1 (PR 3 - 07) to Maintenance Mechanic 2 (PR 3 - 08). Hearing in this matter was conducted before Commissioner Charlotte M. Higbee, on December 20, 1978 who issued a Proposed Opinion and Order on March 2, 1979. On April 30, 1979, the Commission examined the objections to the Proposed Opinion submitted by the parties, discussed the case with the hearing examiner, and agreed to grant the respondent's request for oral arguments on the issue the appropriate effective date of the appellant's reclassification on May 31, 1979. The Commission herewith issues an amended Decision and Order.

FINDING OF FACT

The Commission adopts and incorporates by reference the Findings of Fact proposed by the hearing examiner in the Proposed Opinion and Order, a copy of which is attached.

CONCLUSIONS OF LAW AND OPINION

The Commission adopts and incorporates by reference the attached Conclusions of Law and Opinion proposed by the hearing examiner, with the addition of the following determination regarding the effective date of the appellant's reclassification.

EFFECTIVE DATE

The Commission heard oral arguments on this issue on May 31, 1979. Respondent argued that, based on the precedent of Van Laanen v. Knoll and Carballo, case no. 74-17-PB, affirmed in the circuit court for Dane County on May 31, 1977 (Van Laanen v. State Personnel Board, case no. 153-348), the effective date should be October 8, 1978. This is based on the theory enunciated in Van Laanen that the effective date should be no earlier than the closest payroll date following completion of the hearing on which the statute requires issuance of a decision (45 days under Van Laanen 90 days under the present §230.44(2)(f), Stats.

In Van Laanen, the predecessor Personnel Board determined that it did not have authority under §16.38(4), Stats., to grant retroactive pay where reclassification was denied. Although the substance of the comparable present statute, §230.43(4), has not changed, §230.44(4)(c), Stats. does expand the authority of the Personnel Commission over that of the Personnel Board under the former §16.05(1)(f), Stats. Whereas the Personnel Board could only affirm or reject the action of the director, §230.44(4)(c) empowers the Commission to "either affirm, modify (emphasis provided) or reject the action which is the subject of the

appeal." This expanded authority confers broader remedial powers on the Commission which includes the power to determine the effective date of the reclassification as well as to reject the action of the director. This authority logically includes the concomitant authority to grant the retroactive compensation necessary to make the petitioner whole, in addition to the power specifically conferred by §230.43(4).

In the instant case, had the request for reclassification been granted at the time of respondent's review, there is no question that the effective date of the action would have been December 5, 1976. Previously, appellant had requested reclassification which was denied by the Department of Administration on October 18, 1976. On November 2, 1976, appellant requested a review of that action, which was forwarded to the then Bureau of Personnel on November 8, 1976. The January 27, 1977, letter from the personnel specialist to the appellant, which set February 8, 1977, as the first available date for the audit, stated: "If we do determine to approve your classification request to the MM2 level, the action would be effective December 5, 1976. Therefore, you have no reason to fear that you will be adversely affected by this delay."

Following the Division of Personnel audit, which was completed at a later date by a different personnel specialist, the reclassification was denied by letter dated June 21, 1978, and this appeal was received by the Personnel Commission on July 5, 1978.

Under all these circumstances, the Personnel Commission within its discretion, determines that the effective date of the appellant's

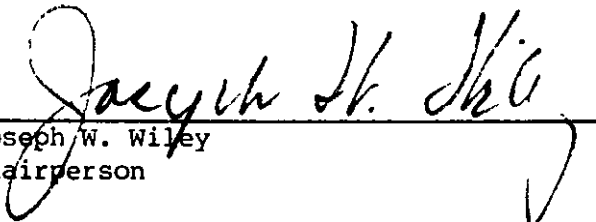
reclassification should be December 5, 1976.

ORDER

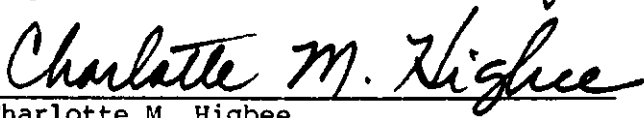
IT IS HEREBY ORDERED that the actions and decisions of the respondent denying the appellant's reclassification request are modified and this matter is remanded to the administrator for action in accordance with this decision, pursuant to §230.44(4)(c), Stats.

Dated: July 5, 1979.

STATE PERSONNEL COMMISSION



Joseph W. Wiley
Chairperson



Charlotte M. Higbee.
Commissioner

CMH:AJT:jmg

6/28/79

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RALPH DOLL,

Appellant,

v.

THE DIVISION OF PERSONNEL,

Respondent.

Case No. 78-110-PC

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PROPOSED
OPINION
AND
ORDER

NATURE OF THE CASE

This appeal, filed pursuant to s. 230.44(1)(a), Wis. Stats., arose as the result of the denial of the appellant's request for reclassification of his position from Maintenance Mechanic 1 (PR 3 - 07) to Maintenance Mechanic 2 (PR 3 - 08). Hearing in this matter was conducted before Commissioner Charlotte M. Higbee, on December 20, 1978.

ISSUE

The only issue in this case is whether the appellant's position was properly classified as Maintenance Mechanic 1 (PR 03 - 07).

FINDINGS OF FACT

1. The appellant had worked at the Milwaukee State Office Building in the classified service, in his present classification of MM-1, with working title of Maintenance Mechanic, for eight and a half years, from his date of hire to the present.
2. At the time of his reclassification request he was one of five maintenance mechanics at the facility, four MM-1's and one MM-3; the MM-1's

worked rotating shifts including weekends, having every fourth weekend off.

3. The appellant worked on the first (day) shift about four days per month.

4. There was supervision (i.e., the building superintendent, maintenance supervisor) on the first shift only, and, as a safety precaution, regular repair work was done on the first shift, since maintenance mechanics work alone on the second and third shifts.

5. A journeyman electrician was employed at the facility on the day shift Monday through Friday. No other craftworkers were employed at the facility .

6. The majority of the duties performed by the appellant are either preventive or routine corrective maintenance, as set forth in the MM-1 position standards (Respondent's Exhibit No. 9) and the appellant's position description (Respondent's Exhibit No. 3).

7. The position description accurately describes the duties assigned to the appellant by his supervisor at the time of the classification review.

8. The Appellant performs some of the mechanical maintenance and repair duties set forth in MM-2 position standards (Respondent's Exhibit No. 10), which are also listed in his position description (Respondent's Exhibit No. 3), specifically taking meter readings of utilities servicing the buildings and inspecting steam traps, pipes and coils.

9. The appellant performs some duties listed in the MM-2 standards which are listed in his position description, namely inspection of plumbing equipment such as pipes, valves and faucets, and some mechanical maintenance done without supervision, primarily based on his own judgement and his ability to perform such work frequently, when he has become aware of a problem

during routine second or third shift inspections.

10. At the time of the classification review, the appellant had ceased doing any electrical work (except on an emergency basis during the second and third shifts) following instruction by his supervisor not to do such work.

11. Ten percent of the appellant's time was spent on plumbing work, including the repair of flush valves and faucets and replacing of traps, which standards set forth as MM-2 duties.

12. The appellant also repaired an air line in the air control system, installed a water closet and lavatory, and repaired a malfunctioning water cooler without assistance. At no time was he instructed not to perform such plumbing duties.

13. Except for routine daily-shift inspections and emergencies, the appellant performs preventative maintenance assignments scheduled by work orders prepared by his supervisor, who checks that schedules are followed.

14. The appellant writes up his own work orders for emergency work when he observes malfunctioning equipment and makes repairs. He was never advised orally or in writing regarding emergency procedures, or told to call someone in when an emergency arose.

15. The appellant spends about 15% of his time on repairs, including some complex repairs. On the days he works first shift, this constitutes 50% of his time. He performs all repairs on the yard equipment and makes repairs as necessary on the scrubbers and vacuum cleaners during the second shift, when that equipment is used by the cleaning staff.

16. The appellant did about 80% of the installation and moving of partitions, which is done on the first shift. This work was assigned to

to him by his supervisor and was done without instruction or supervision, taking about 10% of his total work time. About 40% of the time no drawings were provided for this work and the appellant made his own plans for fulfilling requests for office space and/or partitions (a total of 4 times).

17. The installation and moving of partitions is essentially a carpentry job which previously had been done by carpenters from Madison. It is more appropriately performed by the Facility Repair Worker II at a pay range corresponding to MM-1. There are no carpenters or FRW's at the Milwaukee S.O.B.

18. The MM-3 did about the same amount of trades work as the appellant, including plumbing, a little partitioning including some layout plans, and some heating, but no electrical work.

19. Other than electrical work, the appellant was expected to perform the trades duties and was never told not to do such work.

20. The appellant designed and fabricated certain parts as needed; this work constituted less than 5% of his total work time.

21. There is considerable overlapping in job duties between the appellant's position and that of the MM-2 (Respondent's Exhibit No. 14) whose position was looked at very closely for comparables and which was characterized by the respondent as "a type of benchmark," a "solid MM2," "in essence the model" into which the appellant's position must fit if reclassification is to be approved.

a. Although the class description in the classification standards defines the MM-2 as responsible mechanical maintenance and repair work, exclusive of preventive maintenance (emphasis provided), respondent concedes that in practice, this statement was not accurate.

b. Twenty-five percent of the tasks listed in the MM-2's position description are listed as preventive maintenance under the direction of the maintenance supervisor and closely correspond to duties performed by the appellant.

c. An additional 15% of the MM-2's tasks listed in position description includes the maintenance of records, tools, and equipment, reading of meters and gauges, and recording readings, and keeping work areas, tools, and equipment clean, painted and organized, making reports on anything other than routine conditioned and assist in record keeping and inventory control as required; all of which are listed as constituting 15% of the appellant's tasks. The only elements in this general grouping not included in the appellant's position description are "Maintain history record on each item of equipment as to repair and lubrication" and "Assist in ... requisitioning of supplies as required" as part of inventory control item.

d. Two of Eight tasks (A1-8) listed as comprising 60% of the MM-2's work, which were also performed regularly as required by the appellant are:

"A. 1 Make periodic repairs to traps, strainers, valves.

A. 5 Make repairs and replacement to small combustion engines and related equipment such as snow blowers, lawn mowers, tractors and trucks."

e. A. 7 of both the appellant's position description and that of the compared MM-2 are very similar, listing repair to door closers, doors, partitions, etc.

f. Where A. 6 of the appellant's position description states: "clean and repair heating, ventilating and air conditioning, plumbing and

electrical equipments and apparatus and perform related work as required. Major repair work will be done by the tradesman with your occasional assistance." A. 8 of the MM-2 position description provides: "Assist craft workers in more technical aspects of heating, ventilating, air-conditioning, plumbing, and electrical apparatus."

22. Part A. of both position description provides that the incumbent "Functions in a semi-skilled capacity," "under the direction of the Maintenance Supervisor."

23. The respondent concedes that the appellant possesses mechanical and electrical skills above the level required by an MM-1.

24. Outside crafts workers are called in when necessary at the Milwaukee State Office Building to handle emergency repairs.

CONCLUSIONS OF LAW

1. The Personnel Commission has jurisdiction over this appeal pursuant to s. 230.44(1)(a), Wis. Stats.

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

Reinke v. Personnel Board, 53 Wis 2d 123 (1971)

Lyons v. Wettengel, 73-26, 7/3/74

Alderden v. Wettengel, 73-87, 6/2/75

Rottier v. Wettengel, 78-31, 6/16/78

3. The appellant has met this burden. He has established that the Maintenance Mechanic 2 classification is proper for his position and that the respondent was incorrect in refusing to classify him at that level.

4. The acting Deputy Administrator's action denying the appellant's

reclassification should be rejected.

OPINION

The appellant has the burden of showing to a reasonable certainty that his position should be classified at the MM-2 level. He has carried that burden in establishing that his duties and responsibilities are most properly identified with the criteria set forth in the MM-2 position standard and with the duties and responsibilities of the MM-2 position which was looked at closely for comparables. That position was characterized by the respondent as "a type of benchmark," a "solid MM-2," "in essence the model" into which the appellant's position must fit if reclassification is to be approved.

Despite the fact that the MM-1 position is characterized as routine general mechanical maintenance and repair work, largely preventative in nature, whereas the MM-2 position is defined as responsible mechanical maintenance and repair work, exclusive of preventive maintenance, these distinctions did not in fact exist between the appellant and the MM-2 position to which he was most closely compared. The uncontroverted evidence adduced at the hearing revealed substantial similarity between the between the two positions.

In the light of testimony at the hearing that the staffing of the maintenance workforce at the Milwaukee State Office Building has changed since the date of the review and that the duties of the appellant may also have changed, it is recommended that the appellant request an updating of his position description if appropriate.

ORDER

IT IS HEREBY ORDERED that the actions and decisions of the respondent denying the appellant's reclassification request are rejected and the matter is remanded to the administrator for action in accordance with this decision, pursuant to s. 230.44(4)(c).

Before the issuance of the final order, parties are directed to file briefs regarding the effective date of the reclassification, taking into consideration any changes in the appellant's duties since the request for reclassification.

Dated: _____, 1979. State Personnel Commission

Joseph W. Wiley
Commission Chairperson

Edward D. Durkin
Commissioner

Charlotte M. Higbee
Commissioner

CMH:skv

2/27/79