

STATE OF WISCONSIN

CIRCUIT COURT

DANE COUNTY

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DR. ROBERT ZECHNICH

Petitioner,

vs.

STATE OF WISCONSIN,
PERSONNEL COMMISSION

Respondent.

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OPINION AND ORDER

Case No 80CV6092

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The Bureau of Mental Health in the Department of Health and Social Services had charge, among other things, of three mental health institutions. These institutions each had a superintendent who, prior to petitioner's employment, reported directly to the Bureau director. Petitioner was employed to supervise the superintendents of the three institutions and was given the title of Clinical Services Director reporting to the Bureau Director and was classified under civil service as a section chief, as were the superintendents of the three institutions. Petitioner's pay was determined by a base applicable to section chief, with an add-on for his professional status and an add-on for responsibility. Petitioner was given a responsibility add-on of \$1.44 per hour of which he complains, largely because the institution's superintendents he supervised were receiving \$2.02 per hour. The issue in this case relates solely to the amount of the responsibility add-on. Petitioner complained that his subordinates were receiving more pay than he because of the difference in responsibility add-on. The Personnel Commission found that, in determining the level of responsibility, the Division of Personnel had not properly considered all of the five factors to be considered in determining the levels of responsibility.

Petitioner took the position that he should have been assigned at least the same add-on as the institution superintendents he supervised. But the Commission refused relief because "Appellant has not met the burden of showing to what level of added pay he is entitled, other than to the level to which he was assigned . . ." What this means we think is explained in the Opinion at page 17 thereof: "In spite of the testimony of Dr. Zechnich, the record does not persuasively indicate that his position exceeds that of an institution superintendent in scope and complexity of programs supervised It would be only speculation to decide that Dr. Zechnich's position is comparable to that of an institution superintendent in the responsibilities involved."

We may well sympathize with a worker whose gross pay is less than those he supervises. However, the add-on for responsibility is based upon categories, none of which appear to fit petitioner's position with respect to responsibility. The category that petitioner was placed in was, as above noted, probably wrong because it was not based on the proper tests being applied. Since there appears to be no category of responsibility which fits petitioner's position and petitioner does not contest his classification as section chief or his add-on for professional status, it falls on someone to show that the add-on for responsibility should be increased.

The rule of burden of proof means only that the party who seeks relief must establish the basis for the relief requested. It is sometimes illustrated by the circumstances that if petitioner had offered no proof, relief would be denied. He had the affirmative of the issue of whether his responsibility add-on should be enlarged and to what extent. Respondent had no obligation to pursue the subject of the inquiry and, if not by the petitioner, the issue would die. Such is the meaning of the burden of proof in this administrative proceeding.

Since the Commission in its opinion clearly stated that on the state of the record it was not convinced that there was a category of responsibility add-on that petitioner's position fitted into, it was left in the position of having no place to

put petitioner's position. It was as if the proof had failed to show a basis for relief.

While it may well be that the initial placing of petitioner's position in the category of add-on responsibility was erroneous, because it did not take into consideration all of the tests to be applied, that does not cure the lack of a showing what the correct category should be.

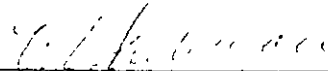
This is not an equity case and the result may seem harsh, but it was an administrative proceeding where we are bound by the statutes and administrative rules in determining whether the result was improper. We are cited to no statutes or rules or authorities which counsel a reversal of the Commission's order. Petitioner does not complain of his classification as a section chief so this is not a case of a claim for reclassification, so the authorities on classification do not apply.

It may well be that the rules for responsibility add-ons need change to include positions such as petitioners, but the court cannot afford such relief since we cannot legislate.

IT IS THEREFORE ORDERED that the order of the State Personnel Commission dated September 29, 1980, affirming the decision of the administrator and dismissing the appeal to the Commission is hereby affirmed.

Dated: February 7, 1981.

BY THE COURT:



W. L. Jackman
Assigned Judge