

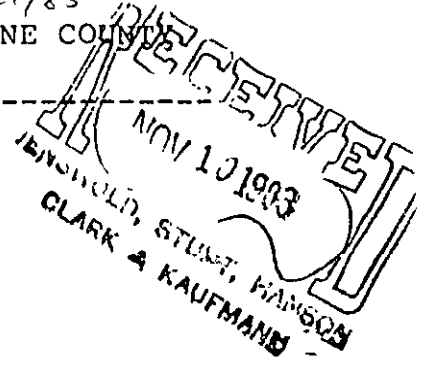
appeal from Marx v DP, 78-132-PC, 10/1/81

NOTE: rev'd by Ct of Appeals.

see Div of Pers v. Pers Comm. (separate file)
84-1024, 11/21/85

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STATE OF WISCONSIN CIRCUIT COURT DANE COUNTY



DIVISION OF PERSONNEL,
DEPARTMENT OF EMPLOYMENT RELATIONS,
STATE OF WISCONSIN,

Petitioner,

vs.

MEMORANDUM DECISION

PERSONNEL COMMISSION,
STATE OF WISCONSIN,

Case No. 81 CV 5798

Respondent,

and

RUSSELL MARX,

Intervenor.

This administrative appeal involves the job classification of Richard Marx, a long-term Department of Agriculture, Trade and Consumer Protection employee, who currently oversees the State Seed Program. The controversy arose as a result of a 1978 personnel management survey and the State Personnel Board's subsequent reallocation of Marx's position from Seed Laboratory Supervisor to Agricultural Supervisor I. The reallocation did not alter Marx's rate of pay. Marx appealed the reallocation to the Personnel Commission. In a decision dated October 1, 1981, the Commission determined that, based on Marx's March, 1978, job description and the testimony adduced at the hearing, his position should have been classified as Agricultural Supervisor III rather than Agricultural Supervisor I.¹ The Division of Personnel (the

¹Ag. Supv. III is two pay levels higher than Ag. Supv. I. Marx had unsuccessfully attempted, prior to the survey, to upgrade his position in light of his increasing responsibilities.

respondent at the administrative level) has appealed from the Commission's decision pursuant to ch. 227, Stats.

The Division claims that the Commission abused its discretion in overturning the administrator's determination, or, in the alternative, that the Commission erred as a matter of law in its application of the established classification specifications to Marx's position, and in effect, rewrote existing class specifications. Because some of Marx's duties as State Seed Laboratory supervisor were explicitly included in the specifications as an example of a position within the Ag. Supv. I classification,² and because these classifications carry the same effect as legal standards or rules of law, the Division argues that Marx's position, by definition, must fall within the Ag. Supv. I classification.

The Commission maintains that its findings of fact and conclusions of law are supported by substantial evidence in the record, and therefore must be affirmed on review. These findings include, inter alia: (1) by 1978, Marx was spending 50% of his time on enforcement of the Wisconsin and federal seed programs, and 50% of his time supporting the department's Seed Laboratory staff; (2) the Ag. Supv. I definition includes roughly half of Marx's actual job responsibilities, some but not all of his

²The Ag. Supv. I class description, dated June 1978, in the section entitled Examples of Work Performed, includes "Supervise the activities of the State Seed Laboratory including the direction of seed analysts performing purity analysis and germination tests, provision of technical information and advice to the seed industry and the public relative to seed analysis and testing programs, the issuance [of] warning notices and stop sale orders for non-compliance with the Wisconsin Seed Law, the analysis of the results of pre-inoculated seed tests, and the supervision of the issuing of seed labelers' licenses.

enforcement activities, and makes no reference to direction of the field inspectors or any duties relating to the federal seed act; and (3) Marx's job duties at the time of the reallocation are most nearly those described in the definition of Ag. Supv. III. In its narrative opinion, the Commission stated, "It was apparent from his testimony that the department's personnel director continued to perceive Marx solely as the supervisor of the Seed Lab, a classification based on 1963 specifications. . . .The result was a failure to take into consideration the expansion of his duties over the years to include supervision of the entire seed program, statewide, involving a wide range of enforcement and liaison responsibilities." The Commission's decision, in summary, is that the general provisions of Ag. Supv. III more closely fit the actual duties required by Marx's position than do the general provisions of Ag. Supv. I, notwithstanding the fact that supervisor of the State Seed Laboratory is specifically mentioned in the latter job description.

The question is whether the Commission has the authority to look beyond the explicit language of the Ag. Supv. I Classification. The Commission itself has consistently refused to make an independent determination as to whether individual position classification standards are correct or appropriate, stating that it "simply lacks the authority to amend those standards. . . .[E]ven where the position standards are clearly outdated, it must apply those standards to the position(s) in question." Wambold v. DILHR & D.P., Case No. 82-161-PC (1/20/82); Cf., Hockmuth v. D.P., 81-76-PC;

Ziegler, et al. v. D.P., 80-34-PC, 79-358 PC; Burgus v. D.P., 81-38-PC; Kerndt v. D.P., 81-151-PC; and Shepard, et al. v. D.P., 80-234, 237, 239-PC.

The policy reasons underlying the delegation of separate powers to the Personnel Board and the Personnel Commission were articulated by the Commission in Ziegler, supra:

"In the opinion of the Commission it is more likely that the legislature intended that more general questions about the position standards be handled in a quasi-legislative setting before the Personnel Board with the possibility of some form of subsequent judicial review, rather than in an appeal of a particular personnel transaction which could occur months or years after the standards have been approved, and after many possibly interrelated personnel transactions have occurred in reliance on those standards."

This interpretation appears to be consistent with the provisions of ss. 230.44(1)(a),³ 230.09(2)(am),⁴ and 230.09(2)(a),⁽⁵⁾ Stats., and Wis. Adm. Code, sec. ER-Pers 2.04(2).⁶

However, in the instant case the Commission did not appear to place itself within the established constraints. A finding that the general classification Ag. Supv. III best fit the petitioner's position necessarily ignored the express language in the Ag. Supv. I description. Although no "rewriting" of the Ag. Supv. III description was required to arrive at this conclusion, the Commission effectively voided specific language in the Ag.

³Sec. 230.44(1)(a) grants the right of appeal to the Commission of "actions and decisions of the administrator under sec. 230.09, Stats."

⁴Sec. 230.09(2)(am) specifically requires approval of the Personnel Board of actions by the administrator establishing, modifying, or abolishing classifications.

⁵Sec. 230.09(2)(a) delegates power to the administrator to reclassify and reallocate positions to appropriate classes.

⁶"Class specifications" shall be the basic authority for the assignment of positions to a class.

Supv. I description--language which was only recently drafted when the classification plan was overhauled as a result of the personnel management survey.

The Commission's determination was based in large part on the comparison of Marx's position description with positions already allocated to the Ag. Supv. III classifications. The Commission has frequently reserved this kind of comparison for cases where the class specifications utilize very general language. Sec, e.g., Young v. D.P., 81-7-PC and Utynek v. D.P., 81-83-PC. Where the class description is clear and specific, however, that language cannot be ignored.

"Although comparisons with other positions in the classified service may be helpful in classifying a particular position, such comparisons are not to be regarded as dispositive of the classification question under consideration. Each position must be reviewed separately and the 'best fit' standard applied on an individual basis." Hockmuth v. D.P., 81-76-PC.

On review, administrative determinations are entitled to a high level of deference. Decisions of an agency which deal with the scope of the agency's own power, however, are not binding on the reviewing court. Board of Regents v. Wisconsin Personnel Comm., 103 Wis. 2d 545, 309 N.W.2d 366 (Ct. App. 1981). Nevertheless, the Commission's long-standing and well-reasoned self restraint from rewriting classifications established under the approval of the Personnel Board, coupled with the total lack, in the instant decision, of any discussion of why this practice should be discontinued, mandates a finding that the Commission abused its discretion. The end result, although perhaps the most equitable

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one in this case, is not within the Commission's powers and must be reversed. The Administrative Procedure Act, sec. 227.20(8), provides,

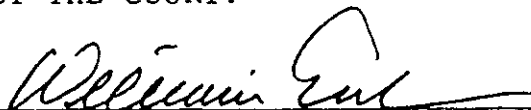
"The court shall reverse or remand the case to the agency if it finds that the agency's exercise of discretion is outside the range of discretion delegated to the agency by law; is consistent with an agency rule, an officially stated agency policy or a prior agency practice, if deviation therefrom is not explained to the satisfaction of the court by the agency; [or] is otherwise in violation of a constitutional or statutory provision. . . ."

Counsel for the petitioner may draft the appropriate order.

Dated at Madison, Wisconsin, this 8th day of

November, 1983.

BY THE COURT:


WILLIAM EICH
CIRCUIT JUDGE

cc: Ward L. Johnson
Richard Graylow
Maureen McGlynn