

STATE OF WISCONSIN

PERSONNEL COMMISSION

\* \* \* \* \*

FRANK W. NOVAK,

Appellant,

v.

Secretary, DEPARTMENT OF  
EMPLOYMENT RELATIONS,

Respondent.

Case No. 83-0104-PC

\* \* \* \* \*

INTERIM  
DECISION  
AND  
ORDER

This matter is before the Commission as a result of a dispute between the parties as to the appropriate issue for hearing.

After a prehearing conference was held on July 26, 1983, a conference report was issued which stated that the appellant had recommended four issues for hearing:

1. Whether or not the Research, Analyst, and Planning Survey was proper and legally consistent with Sec. 230.09(1) of the statutes, which states in part: "Each classification so established shall include all positions which are comparable with respect to authority, responsibility and nature of work."
2. Whether or not, as a result of the Research, Analyst, and Planning Survey, the decision of the administrator to reallocate this position to the Research Analyst series was correct. [Sec. 230.09(2)(a)]
3. Whether or not, as a result of the Research, Analyst, and Planning Survey, the decision of the administrator to reallocate this position to Research Analyst 6 level was correct. [Sec. 230.09(2)(b)]
4. If not, whether the appellant's position is more properly classified as a Civil Engineer 5 - Supervisor.

The conference report noted that the respondent raised a jurisdictional objection as to the first issue. After the parties had filed briefs, the Commission issued an interim decision and order that

sustained the respondent's objection and struck the first issue from consideration. On October 11, 1983, the appellant filed a petition for judicial review which was subsequently dismissed for lack of subject matter jurisdiction.

In a letter to the Commission dated October 6, 1983, the appellant identified what he considered to be several errors in the prehearing conference report:

1. The appellant only recommended or presented the first three of the four issues.
2. Issue Number 4 was presented by the respondent and was agreed to by the appellant.
3. Issue Number 4 is not correct as to position title; what was agreed to was: Civil Engineer 5 - Transportation - Supervisor (not Civil Engineer 5 - Supervisor).

The respondent subsequently objected to any change in the issue as noted on the conference report.

In a letter dated October 11, 1983, the appellant asked the Commission to amend Issue 4 to include an additional classification, Civil Engineering 6 - Transportation - Supervisor, and stated:

At the time of the prehearing the appellant had inadvertently missed this obvious comparison [to the Civil Engineering 6 classification] and hereby requests said amendment to correct this oversight. The amended issue would read as follows:

4. If not, whether the appellant's position is more properly classified as a Civil Engineer 5 - Transportation - Supervisor or Civil Engineer 6 - Transportation - Supervisor.

The introduction to the Civil Engineer - Transportation position standard indicates that it is distinct from other classifications that exist for other engineering positions involved in areas such as building construction and electrical engineering.

Both parties were provided an opportunity to submit briefs regarding the appellant's motion to amend the issues for hearing.

The Commission has previously granted requests by parties to be relieved of the obligations of a stipulation. In Nunnelee v. Knoll, 75-77 (3-22-76), the Commission's predecessor, the Personnel Board, was petitioned by the appellant to add issues for hearing beyond the issue that had been agreed to at the prehearing conference. In agreeing to reopen the stipulation as to issues, the Board stated:

We conclude that a party may be relieved of the obligations of a stipulation in certain circumstances. See 73 AM JUR 2d Stipulations S. 14:

It is generally held that relief may be afforded from a stipulation which has been entered into as the result of inadvertence, improvidence, or excusable neglect, provided that the situation has not materially changed to the prejudice of the antagonist and that the one seeking relief has been reasonably diligent in doing so.

See also Schmidt v. Schmidt, 40 Wis. 2d 649, 654, 162 N.W. 2d 618 (1968):

The discretion of the trial court to relieve parties from stipulations when improvident or induced by fraud, misunderstanding or mistake, or rendered inequitable by the development of a new situation, is a legal discretion to be exercised in the promotion of justice and equity, and there must be a plain case of fraud, misunderstanding or mistake to justify relief.

The authorities further distinguish among different types of stipulations, being more ready to relieve a party of the obligations of a stipulation as to procedural matters than stipulations as to settlement: "It has been noted that more liberality in the granting of relief as to procedural matters is evident where no prejudice will result and the best interests and convenience of the parties, and expedition of the proceedings, will result." 73 AM JUR 2d Stipulations S.15.

In the later cases of Radovich & Monk v. DP, 81-117, 118-PC (1-21-83), an examiner for the Commission granted the respondent's request to be relieved of a stipulation. The parties had stipulated to waive a hearing in the Monk appeal and to have the Commission issue one decision covering both cases with the decision based entirely on the Radovich hearing. The

stipulation had been agreed to in October and the respondents sought relief from the stipulation in December.

In the present case, the appellant argues that at the prehearing conference he had understood the language of Issue 4 to mean Civil Engineer - Transportation - Supervisor "because that is the series used throughout the Department [of Transportation] for all of its engineering positions, and is commonly referred to, in DOT, as the CE series." In addition, the appellant argues that in preparing for the hearing that had been scheduled for October 27, 1983, he discovered the appropriateness of the CE 6 - Transportation - Supervisor classification. Both of the changes proposed by the appellant are founded upon the appellant's inadvertence or excusable neglect at the prehearing conference. They were not noted immediately after the conclusion of the conference although it is not clear exactly when the appellant first realized that there was a distinction between the Civil Engineer - Supervisor classification and the Civil Engineer - Transportation - Supervisor classification. While it would have been preferable if the appellant's request to amend the issue had been made earlier, nothing in the record indicates that the respondent has been prejudiced by the delay. No date for hearing is currently scheduled in this matter so the respondent will have adequate time to prepare for hearing on a revised issue.

Therefore, consistent with the goal of promoting justice and equity, the appellant's request to amend the issue for hearing should be granted. The revised issue accurately indicates that in deciding to reallocate the appellant's position to the Planning Analyst 6 level, the respondent implicitly decided that the position was not appropriately classified at either the CE 5 - Transportation - Supervisor or CE 6 - Transportation - Supervisor levels.

ORDER

The appellant's motion to amend is granted and the issues for hearing in this matter shall read as follows:

1. Whether or not, as a result of the Research, Analyst, and Planning Survey, the decision of the administrator to reallocate this position to the Research Analyst series was correct. [Sec. 230.09(2)(a)]
2. Whether or not, as a result of the Research, Analyst, and Planning Survey, the decision of the administrator to reallocate this position to Research Analyst 6 level was correct. [Sec. 230.09(2)(b)]
3. If not, whether the appellant's position is more properly classified as a Civil Engineer 5 - Transportation - Supervisor or Civil Engineer 6 - Transportation Supervisor.

The Commission will contact the parties to schedule a date for hearing.

Dated: February 29, 1984

STATE PERSONNEL COMMISSION

  
DONALD R. MURPHY, Chairperson

  
LAURIE R. McCALLUM, Commissioner

  
DENNIS P. MCGILLIGAN, Commissioner

KMS:jat

Parties:

Frank W. Novak  
5605 Dorsett Drive  
Madison, WI 53711

Howard Fuller, Secretary  
DER  
P.O. Box 7855  
Madison, WI 53707