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STATE OF WISCONSIN

PERSONNEL COMMISSION

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 \*  
 EARNEST E. ELLIS, \*  
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                   Complainant, \*  
 \*  
 v. \*  
 \*  
 Secretary, DEPARTMENT OF \*  
 TRANSPORTATION, \*  
 \*  
                   Respondent. \*  
 \*  
 Case No. 83-0137-PC-ER \*  
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 \* \* \* \* \*

DECISION  
AND  
ORDER

This controversy is an allegation of racial discrimination. Complainant Earnest E. Ellis alleges that respondent, Department of Transportation, failed to reclassify his position from Engineering Technician 3 to Engineering Technician 4 because he is black. On September 16, 1985, a hearing on the issue of whether there was probable cause to believe complainant was discriminated against on the basis of his race by respondent when respondent denied complainant's request for reclassification, was held before Commissioner Donald R. Murphy. The following findings of fact, conclusions of law and order are based upon the evidence produced at that hearing and post-hearing briefs which were filed with the Commission by December 22, 1985.

FINDINGS OF FACT

1. Complainant, a black male, has been employed by respondent since October, 1968. Currently, he is classified as an Engineering Technician 3 and assigned to District 2, headquartered in Waukesha.
2. Respondent is responsible for, among other things, designing road projects and insuring that contractors hired for these projects comply with the plan specifications for the projects. The construction season generally

occurs between April and mid-October. Complainant works on construction projects during the construction season and is assigned to the design unit the other part of the year.

3. In early 1983 complainant contacted and conferred with Department of Employment Relations (DER) about the classification of his position. At the request of DER, respondent reviewed complainant's job classification. The review and evaluation was conducted by Mr. Barnes, respondent's Chief of Personnel Services. He concluded that complainant could not appropriately be reclassified to Engineering Technician 4. On December 14, 1983 complainant filed a charge of discrimination with the Personnel Commission alleging, among other things, that respondent denied his reclassification request because of his race.

4. From January 1, 1981 to June 4, 1983, the period Mr. Barnes used to review complainant's position for reclassification, complainant was employed periodically as a draftsman and as an inspector.

5. Over this span of twenty-nine (29) months, complainant was employed for a total of some twenty-one (21) months as a draftsman. In that capacity he prepares finished project plans from engineering sketches. This work was routine and did not require the use of geometric layouts or trigonometric computations.

6. During the remainder of that time, approximately eight months, complainant was an inspector. From June 22, 1981 through July 20, 1981 he was a bituminous paving inspector. He worked as a structure inspector, inspecting paving and grading, from July 20, 1981 through October 19, 1981. And from July 19, 1982 through October 25, 1982 complainant, as an inspector, inspected grading, paving (primarily bituminous) and storm sewers and

controlled traffic. Much of this work was performed during the night shift and often alone.

7. The classification of complainant's position is governed by the state position standard for the Engineering Technician series.

8. Complainant's drafting activities from January 1, 1981 to June 3, 1983 are comparable to the Engineering Technician 2 position description respecting a Detail Technician in a design unit or the Engineering Technician 3 position description respecting a Layout Technician in a design unit.

9. None of the Engineering Technician 4 position descriptions describe the complainant's drafting activities. Complainant does not meet the ET 4 design requirement of doing geometric layouts of complex projects, including trigonometric computations.

10. The Engineering Technician 4 position standard does not describe complainant's work as an inspector. Complainant does not inspect bridges, large complex box culverts or retaining walls, nor function as a construction survey Crew Chief, a Project Supervisor or an Assistant Project Supervisor, as described in the construction segment of the ET 4 classification.

11. Respondent's decision not to reclassify complainant's position to the ET 4 classification was not motivated by racial discrimination.

#### CONCLUSIONS OF LAW

1. The Commission has authority to hear this matter pursuant to sec. 230.45(1)(b), Wis. Stats.

2. The burden of persuasion is on the complainant to show the existence of probable cause, as probable cause is defined in §PC 4.03(2) Wis. Adm. Code.

3. Complainant has failed to carry his burden of persuasion.

4. There is no probable cause to believe that complainant was discriminated against on the basis of race, with respect to the denial of the reclassification of his position in violation of the Wis. Fair Employment Act.

OPINION

On December 14, 1983 the complainant Earnest E. Ellis filed a charge of discrimination with the Personnel Commission alleging that the Department of Transportation: kept attendance records on him that were not kept on other employees, denied his reclass request, failed to assign him to work which could lead to reclassification, and denied him training opportunities because of his race in violation of the Wisconsin Fair Employment Act. Subsequently, an Equal Rights Officer for the Commission investigated complainant's charges and concluded that no probable cause existed to believe that Mr. Ellis had been discriminated against by the Department of Transportation (DOT) as charged.

Mr. Ellis duly petitioned the Commission for a hearing on the issue of probable cause. Accordingly a prehearing conference was held. Afterwards Mr. Ellis dropped three of the four charges of discrimination against DOT. By a letter dated September 7, 1985 Mr. Ellis stated that he wished to pursue only the allegation of discrimination against DOT regarding his reclassification request.

On this point, in summary, Mr. Ellis argues that between January 1, 1981 and June, 1983, he worked on various construction projects at the Engineering Technician 4 level for a period of more than six months. During the hearing he testified that in 1981 and 1982 he performed as an assistant Project Supervisor and worked as a Bridge Detailer for five or six months. He also said that in 1983 he was a construction Survey Crew Chief for five or six

months. He testified that most of this work was at night; he was alone and had sole responsibility for the project.

In rebuttal, respondent presented documentary evidence (Resp. Exhibit 3) showing that, during the period under review, Mr. Ellis was employed as an inspector from June 22 to October 19, 1981--a period of four months, and from July 19, 1982 to October 25, 1982--some three months. He was never designated as a project engineer, assistant project engineer or crew chief -- other persons had those responsibilities. While Mr. Ellis disputed the accuracy of the description of his work in respondent's documentary evidence, he agreed that it accurately reflected the various periods he functioned as an inspector and as a draftsman.

Reclassification of a position involves many factors. Chapter ER-Pers 3 Wis. Adm. Code defines reclassification and articulates many of the requisites for reclassification. Also reclassification involves measuring the class specifications or position standards and allocation patterns against the actual work performed. And there is case law which references reclassification decisions.

Section ER-Pers. 3.015(3) Wis. Adm. Code requires an incumbent to perform higher level duties for at least six months to be considered for reclassification. Also the higher level duties must constitute a majority of the total duties. Bender v. DOA & DP, Case No. 80-210-PC (7/1/81).

Mr. Ellis fails to meet these requirements for reclassification. The record shows that Mr. Ellis, regardless of the level of his duties, was employed as an inspector for only four months or thirty-three percent (33%) of any one 12 month period. Assuming Mr. Ellis' duties as an inspector were at the ET 4 level, he did not perform these duties for a sufficient time to entitle him to reclassification to that level. In addition, Mr. Ellis'

duties as inspector did not constitute a majority of his total duties as required for reclassification.


Regarding the question of racial discrimination, the facts do not support a finding of probable cause. Even though Mr. Ellis' post-hearing reply brief is replete with allegations, facts and statistics supporting his argument of discrimination, he did not present this information at the hearing and it can not be considered here. At the hearing Mr. Ellis presented little evidence on disparate treatment. He testified almost exclusively about his duties and how they demonstrated ET 4 level work. Having concluded Mr. Ellis' position does not meet the ET 4 position standard and based upon the evidence presented on the issue of racial discrimination, the Commission must conclude that there is no probable cause to believe DOT discriminated against Mr. Ellis because of his race.

ORDER

The discrimination complaint by Mr. Ellis against the Department of Transportation is dismissed.

Dated: April 30, 1986

STATE PERSONNEL COMMISSION

  
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DENNIS P. MCGILLIGAN, Chairperson

  
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DONALD R. MURPHY, Commissioner

DRM:vic  
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Parties

Earnest E. Ellis  
3529 N. 41st Street  
Milwaukee, WI 53216

Lowell Jackson  
DOT  
P. O. Box 7910  
Madison, WI 53707