

appeal for Boldt v. OP

81-96-PL

9/28/83

2492

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

STATE OF WISCONSIN

CIRCUIT COURT  
BRANCH V

BROWN COUNTY

JOHN BOLDT,

:

Petitioner,

:

Case No. 83-CV-2733

vs.

:

JUDGE'S DECISION AND ORDER

STATE PERSONNEL COMMISSION  
AND ADMINISTRATOR, DIVISION  
OF PERSONNEL,

:

March 6, 1984

:

(Partial Transcript)

Respondent.

:

HONORABLE CHARLES E. KUEHN  
JUDGE PRESIDING

APPEARANCES:

JOHN S. WILLIAMSON, JR., Attorney at law, 777 East Wisconsin Avenue, Suite 2200, Milwaukee, Wisconsin 53202, appearing on behalf of the Petitioner, John Boldt, who is present.

ROBERT J. VERGERONT, Assistant Attorney General, P. O. Box 7857, Madison, Wisconsin 53707, appearing on behalf of the Respondent, State Personnel Commission and Administrator, Division of Personnel, who is not present.

Sheri L. Etten  
Official Reporter

1 \* \* \* TRANSCRIPT OF PROCEEDINGS \* \* \*

2 (Whereupon the following is a partial transcript  
3 of the proceedings, which contains the Judge's decision.)

4 THE COURT: All right, counsels, if you  
5 have completed your remarks, I'm prepared to address  
6 the issue? Mr. Williamson?

7 MR. WILLIAMSON: I've completed my remarks,  
8 your Honor.

9 THE COURT: Mr. Vergeront?

10 MR. VERGERONT: I have, your Honor.

11 THE COURT: As I would hope, counsels  
12 and Mr. Boldt are aware my first experience with this  
13 case did not occur this afternoon with the arguments  
14 of counsel. I think the comment about Fox Lake ought  
15 to indicate that I did some preparation for this matter  
16 in advance of argument.

17 In the first instance, I was concerned that the  
18 Administrative Agency did not make a specific finding  
19 of fact associated with the compulsory or lack of  
20 compulsory educational program at GBCI. I ponder  
21 the appropriateness of Chapter 118, and specifically,  
22 the provisions of 118.15 generally entitled  
23 Compulsory School Education. While this Court might  
24 have information available to it concerning GBCI, as  
25 its residents come and go through this court with

1 some regularity, parenthetically, Mr. Vergeront,  
2 I am also the felony judge, one of them, so from  
3 time to time GBCI people come through here. What  
4 I must know about GBCI in this proceeding must be  
5 limited to the record produced.

6 I reviewed carefully the findings of fact that  
7 are articulated in the record on file denominated  
8 generally Decision and Order dated September 28, 1983.  
9 I read those findings of fact and reviewed the record  
10 to determine initially whether or not any of those  
11 findings were suspect with respect to being directly  
12 or inferentially not supported by the record made.

13 As with any reviewing authority, and certainly  
14 no one knows it better than a trial judge, the findings  
15 of fact and/or conclusions of law that an appellate  
16 court looks at and the appropriate standard of  
17 review to be ascribed to those findings and conclusions  
18 required not that I would make other findings and/or  
19 require other findings, but rather whether or not  
20 those findings as made were supported directly or  
21 inferentially from the evidence, and if supported  
22 directly or inferentially from the evidence, did  
23 the conclusions of law arising therefrom and the  
24 appropriate mandate or decision, whether those things  
25 were valid.

1           The more challenged finding appears to be the  
2           second sentence of paragraph 2, findings of fact.  
3           The evidence, direct and inferential, I have concluded  
4           permitted the court to make the Administrative  
5           Tribunal to make that finding. It is not whether  
6           I would have made another one or would have supplemented  
7           the other--the one place therein or required still  
8           a further finding, but rather whether that finding is  
9           supportable.

10           I think correctly stated with respect to the  
11           findings identified in the record, one through nine--  
12           one through eleven inclusive, I think those findings  
13           are supportable in this record.

14           With respect to the findings made by the agency,  
15           I think, counsels agree with the Court concerning the  
16           standard of review. The much more difficult responsi-  
17           bility of a trial judge who is placed in the position  
18           as I have reviewing Administrative Agency work is to  
19           take off the mantel that the trial judge generally  
20           has of making the finding and substitute the appellate  
21           mantel of review of existent findings. The conclusions  
22           of law articulated by the Agency that are challenged  
23           in the petition for review are conclusions of law  
24           No.'s 2, 3, and 4, essentially, well stated as 3 and 4.  
25           Those conclusions from the perspective of this Court

1 sitting in review of the evidentiary matters before  
2 the Court are, in fact, sustainable. Again, recognizing  
3 the standard of review with respect to finding--with  
4 respect to conclusions, the issue is not whether those  
5 would have been this Court's findings and conclusions,  
6 but rather whether those findings and conclusions are  
7 sustained in the record produced, whether the Court  
8 concludes a supplemental finding with specificity as  
9 to GBCI, and compulsory school education is required  
10 was a difficult decision.

11 At first blush, as I had probably indicated to  
12 counsels, I thought that would have been a finding  
13 the Administrative Agency would have chosen to make,  
14 rather than to do it in the form in which it did  
15 specifically the more generalized findings supplemented  
16 by what has been denominated, an "opinion." I am  
17 making these observations for the record so that it  
18 will be abundantly clear should review of this  
19 decision be undertaken, that my analysis of the scope  
20 of review, the permissible findings, and the conclusions  
21 drawn therefrom, were from the perspective of this  
22 trial judge sitting in the posture of an appellate  
23 judge, whether this judge in this circumstance can  
24 sustain the findings, conclusions, and judgment  
25 better denominated Order Affirming A Reallocation

1 Decision and the Dismissal of an Appeal.

2 227.20, as I have noted, and counsels have  
3 alluded to, sets the standard of review. I'm  
4 satisfied on this record, and based on this record,  
5 that each and all of the findings articulated, one  
6 through eleven, are supportable on the evidence  
7 presented. I am further satisfied that the conclusions  
8 of law drawn therefrom are permissible conclusions  
9 that are supportable. I am further satisfied that  
10 were I to consider remand either for fairness or  
11 correctness or for other reasons, that that would not  
12 be indicated as it is my view the burden of production  
13 of record in this matter has been adequately presented  
14 by both counsels before the Agency.

15 If counsel for the petitioner-appellant is  
16 correct, that Chapter 118 is a matter of law  
17 applicable to the Department of Health and Social  
18 Services, an appellate court can grant that relief  
19 as a matter of law. If an appellate court is not so  
20 satisfied, it likely could remand either to this  
21 Court for inquiry, or if not to this Court, directly  
22 to the Agency reversing the order affirming a  
23 reallocation decision and dismissing an appeal.  
24 That should not be and is not intended to be from my  
25 perspective a passing of that responsibility. I do

1 not find as a matter of law, nor will I on this  
2 record that Chapter 118 applies to the State of  
3 Wisconsin and it's agencies among them, the Department  
4 of Health and Social Services. I do not find as a  
5 matter of law that there has been any inappropriate  
6 reallocation decision based on the findings and  
7 conclusions in this record.

8 I do not address what is better denominated as  
9 the third argument of counsel for the petitioner as  
10 I do not find that merits a statement by the Court.  
11 This is not from my perspective an analysis intended  
12 to either applaud or deprecate what Mr. Boldt has done  
13 during his state service. It is abundantly clear  
14 to me that Mr. Boldt has performed admirably for the  
15 State in the correctional institution in which he has  
16 been assigned responsibilities. It is abundantly  
17 clear to me that this reallocation of his position will  
18 have some significant and substantial monetary  
19 implications for his future. That, however, and  
20 having said that, does not from my perspective permit  
21 me to overturn on that ground the order of the State  
22 Personnel Commission.

23 I would ask each of the counsels now since I  
24 make it a practice of making specific statements  
25 hopefully articulating the review made by the Court

1 and the reasons for its conclusions and opinions,  
2 I now afford counsels an opportunity to submit, if  
3 you choose to do so, either now or by letter, any  
4 additional matters you want in this record before  
5 I enter the order that I contemplate entering right now?  
6 Anything you want in this record more, Mr. Williamson,  
7 from your perspective?

8 MR. WILLIAMSON: Well, I want the record to  
9 be very clear. If it is not that I did make an  
10 application, that the matter be remanded, if the  
11 Court concluded it necessary on the question of  
12 whether there was compulsory school attendance required  
13 of those juveniles who are residents at Green Bay  
14 Correctional Institute and--

15 THE COURT: I'll address that. Anything else?

16 MR. WILLIAMSON: No, your Honor.

17 THE COURT: Mr.--

18 MR. WILLIAMSON: I did, your Honor, at one  
19 point request during the hearing that I be given a  
20 time to brief the issue of the meaning of "person" in  
21 118.15.

22 THE COURT: That issue in this case has been  
23 since the appeal was filed, counsel.

24 MR. WILLIAMSON: You asked me what I would  
25 like the record to show, your Honor.



1 THE COURT: Of course. Sure. I want  
2 those things in here for benefit of someone who  
3 looks at it.

4 MR. WILLIAMSON: At the time I made the  
5 request, I was not aware that you were going to rule  
6 from the bench.

7 THE COURT: All right.

8 MR. VERGERONT: If it please the Court,  
9 227--I think it's 20--talks about judgment rather than  
10 the order, and I think, Judge, what you are going to  
11 give should be denominated judgment rather than order.  
12 That's the only thing I have to say, your Honor.

13 THE COURT: All right. On the two issues  
14 then articulated by the appellant and the single issue  
15 articulated by the respondent, it is my view that a  
16 reference to the Agency at this stage associated with  
17 a specific finding of fact on compulsory education  
18 is not merited within the scope of the review statute  
19 and the Administrative Procedure Code. I, therefore,  
20 on this record as indicated before having advised  
21 counsels that from my perspective findings one through  
22 eleven and conclusions one through four inclusion are  
23 sustainable, now does not on that record thus produced  
24 determine it appropriate for reference--for further  
25 fact finding and/or testimonial and/or related

1 evidentiary hearings.

2 On the issue of leave associated with the  
3 applicability or lack thereof of Chapter 118, and  
4 specifically the compulsory education section, .15  
5 of that statute, leave will not be granted to  
6 supplement this record with additional brief. If  
7 that, in fact, is an issue of law, it can be decided  
8 as an issue of law and my review independent of  
9 counsels and their briefs perhaps inadequate and  
10 perhaps if error does not indicate the applicability  
11 or lack thereof of 118 to DHSS and/or institutions it  
12 operates, and leave is not granted to you to support  
13 your position with additional brief.

14 With respect to the appropriate orders and/or  
15 judgments entered into herein, the Personnel  
16 Commission's order dated September 28, 1983, providing  
17 that the respondent's reallocation decision is affirmed  
18 and appellant appeal is dismissed, is affirmed by this  
19 Court with findings of fact, conclusions of law as  
20 articulated with specificity in this decision from  
21 the bench, which decision shall stand as and for the  
22 findings of fact, conclusions of law of the reviewing  
23 court.

24 Upon the foregoing, judgment is now entered in  
25 favor of the respondent herein and against the petitioner

1 herein in the usual and customary form drafted by  
2 counsel for the respondent, submit it to counsel for  
3 the petitioner within 30 days as to form, and to  
4 this Court within 10 days thereafter. I require  
5 the submission only as to form, Mr. Vergeront, of the  
6 judgment, and you may transmit hopefully to counsel  
7 within the indicated time parameters and within the  
8 Court to the indicated time parameters, but I'll hear  
9 you on that if you need more time.

10 MR. VERGERONT: That would be sufficient,  
11 your Honor.

12 THE COURT: Anything further on the record  
13 this day in this matter from you, Mr. Williamson?

14 MR. WILLIAMSON: No, your Honor.

15 THE COURT: From you, Mr. Vergeront?

16 MR. VERGERONT: No, your Honor.

17 THE COURT: This proceeding is concluded.

18 MR. WILLIAMSON: Thank you.

19 MR. VERGERONT: Thank you.

20 (End of the proceedings at 4:25 p.m.)  
21  
22  
23  
24  
25

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

STATE OF WISCONSIN )  
                                  ) SS.  
COUNTY OF BROWN  )

CERTIFICATE

I, SHERI ETTEN, certify that I am an official court reporter for said county; that the foregoing 11 pages have been carefully compared against my stenographic notes; that the foregoing pages is a true and accurate partial transcript of the proceedings taken March 6, 1984.

Dated this 12th day of March, 1984.

*Sheri Etten*  
-----  
Sheri Etten, Official Reporter