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COURT OF APPEALS  
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NOV 26 1985

JENOWOLD, STUPT, HANCOCK &  
CLARK & KAUFMAN

NOV 21 1985

Personnel  
Commission

*hand-delivered*

*84CV-5798*

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals pursuant to s. 808.10 within 30 days hereof, pursuant to Rule 809.62 (1).

No. 84-1024

NOTICE

This opinion is subject to further editing. If published the official version will appear in the bound volume of the Official Reports.

STATE OF WISCONSIN

IN COURT OF APPEALS  
DISTRICT IV

FILED

NOV 21 1985

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

Petitioner-Respondent,

CLERK OF COURT OF APPEALS  
OF WISCONSIN

v.

PERSONNEL COMMISSION, STATE  
OF WISCONSIN,

Appellant,

RUSSELL MARX,

Intervenor-Appellant.

APPEAL from a judgment of the circuit court for Dane county:  
WILLIAM F. EICH, Judge. Reversed.

Before Gartzke, P.J., Dykman, J., and LaRocque, J.

GARTZKE, P.J. Russell Marx and the state personnel commission appeal from a judgment reversing the commission's classification of Marx' position in the Department of Agriculture, Trade and Consumer Protection. Marx is chief of the seed section of the Bureau of Special Services in the Plant Industry Division of the department. Before July

31, 1978, his civil service classification was Seed Laboratory Supervisor. After that date the administrator of the division of personnel reallocated Marx' position to Agricultural Supervisor 1, a new classification. Marx appealed to the state personnel commission. The commission reallocated Marx' position to Agricultural Supervisor 3, another new classification. The circuit court concluded that the commission erred. Appellants argue that the commission properly determined that Agricultural Supervisor 3 "best fit" Marx' job duties. We accept appellants' contentions and reverse.

The administrator of the division of personnel is authorized to establish classifications for all positions in the classified service, subject to the approval of the personnel board. Sec. 230.09(1), Stats. 1977.<sup>1</sup> Class descriptions include definition statements, representative examples of work performed, and other information to facilitate the assignment of positions to the appropriate classification. Wis. Adm. Code sec. ER-Pers 2.04(1). We turn to the two classifications.

Agricultural Supervisor 1 is defined as follows:

This is professional supervisory and coordinative work in conjunction with the State's grain inspection and/or weighing programs; the statewide fruit and vegetable inspection and grading program; or the testing, grading and quality control of grains, feeds, and seeds in a laboratory setting; or other inspection and/or grading or laboratory programs of similar scope and complexity. Employees in this class are responsible for supervising and evaluating assigned staff; coordinating program activities; providing subordinate staff with necessary training and information relative

to program policies, procedures, laws, rules, and regulations; and determining appropriate staffing levels at various work sites. The work is performed under the general supervision of a higher level supervisor or program administrator.

The Agricultural Supervisor 1 definition is followed by thirteen examples of work performed, including the following:

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 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.

The Agricultural Supervisor 3 classification is described as follows:

This is supervisory and administrative work performed in the Department of Agricultural, Trade, and Consumer Protection as the head of: (1) the Milwaukee grain inspection and weighing programs; (2) the Field Service programs of the Bureau of Grading Services which include fruit and vegetable inspection, multiple product grading and county and district fair regulation; (3) a statewide plant industry program such as White Pine Blister Rust Control; (4) the field investigation program of the Meat Inspection Division; (5) the investigation program in the Division of Animal Health; or (6) a multifaceted program of similar scope and complexity. Employees in this class typically function as "section chiefs" or at a comparable level of responsibility within the organizational structure. The work involves providing administrative direction in the assigned program areas, supervising all program staff,

evaluating staff and program activities for appropriateness and efficiency, developing necessary operating policies and procedures, and providing assistance to higher level managers relative to overall program administration. Limited administrative supervision is received from higher level personnel in the form of periodic conferences and the review of reports and related sources of information on program activities.

The Agricultural Supervisor 3 definition is followed by nine examples of work performed, none of which expressly refers to the State Seed Laboratory.

The circuit court concluded that because Marx supervises the State Seed Laboratory, the personnel commission effectively voided specific language in the Agricultural Supervisor 1 classification when the commission reallocated Marx' position to Agricultural Supervisor 3.

The commission admits it cannot modify class descriptions. It admits that if Marx only supervised the State Seed Laboratory, that work example could not be ignored. The commission found, however, that the work example merely partially identifies Marx' job. Relying on the record made before it, the commission found that Marx also functions as a section chief, heads the department's statewide seed program, has not only laboratory but also enforcement responsibilities, and performs most of the Agricultural Supervisor 3 examples of work performed. These factual findings are not disputed. - Taking into account Marx' total duties,

authority and responsibilities, the commission concluded that his position "best fits" the Agricultural Supervisor 3 classification.

The first step in determining the scope of our review is to identify the nature of a position classification. When the administrator develops a classification, the administrator ascertains and records the duties, responsibilities and authorities of the position, using appropriate job evaluation methods. Sec. 230.09(1), Stats. 1977. A classification is not necessarily limited to a particular position. Indeed, sec. 230.09(1) provides in part, "[e]ach classification so established shall include all positions which are comparable with respect to authority, responsibility and nature of work required. Each classification shall be established to include as many positions as are reasonable and practicable."

We conclude that classifications are comparable to administrative standards. Their application to a particular position involves first determining the facts as to the position and then exercising judgment as to which classification best describes, encompasses or fits the position. Although that process involves some discretion in weighing factors against each other, it is essentially the application of a standard to a set of facts.

We therefore view the personnel commission's application of the various classifications to a particular position as raising issues of law. Compare Nottelson v. ILHR Department, 94 Wis.2d 106, 115-16, 287 N.W.2d 763, 768 (1980) (whether facts fulfill a legal standard is an issue of law).

Given the commission's statutory role under sec. 230.44(1)(a), Stats. 1977, in reviewing reallocation decisions, we should sustain the commission's decision if a rational basis exists for it. Arrowhead United Teachers v. ERC, 116 Wis.2d 580, 593-94, 342 N.W.2d 709, 716 (1984).

Using the rational basis standard of review, the commission's reclassification of Marx' position should be accepted. Having first established the facts as to Marx' position, the commission attempted to place it in the classification that "best fits" the position's duties, authority, and responsibilities. The weight to be given an individual position characteristic or function is for the commission. Marx' duties exceed merely supervising the seed laboratory. Marx' laboratory duties are adequately described by the definition of Agricultural Supervisor 1, but he is also a section chief and supervises the entire seed program, with attendant supervisory, laboratory and enforcement functions. Those functions fall into the Agricultural Supervisor 3 classification, and the commission's decision shows it viewed those functions or characteristics of Marx' position to outweigh the factor of supervising the seed laboratory. The commission's decision that Agricultural Supervisor 3 best describes his position is rational, and we should accept it. Arrowhead United Teachers, supra.

By the Court.--Judgment reversed.

Inclusion in the official reports is not recommended.

## APPENDIX

<sup>1</sup> All statutory citations are to 1977 statutes. Marx' position was reallocated July 31, 1978. The statutes regarding classification were later amended. The versions in effect at the time of Marx' reallocation apply. Dairy Equipment Co. v. ILHR Department, 95 Wis.2d 319, 331-32 n.8, 290 N.W.2d 330, 336 (1980).