

COURT OF APPEALS
DECISION
DATED SEP 19 1985

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SEP 26 1985

Personnel
Commission

SEP 19 1985

A party may file a petition for a writ of habeas corpus with the Court of Appeals for the State of Wisconsin within 30 days hereof. Wisconsin Statutes, Section 809.52 (1)

NOTICE
This opinion is not to be used for other editing than the official version in the bound Official Report.

No. 84-1603

STATE OF WISCONSIN IN COURT OF APPEALS
DISTRICT IV

JAY G. HOCHMUTH,
Petitioner-Appellant,
v.
PERSONNEL COMMISSION,
Respondent.

FILED

SEP 19 1985

CLERK OF COURT OF APPEALS
OF WISCONSIN

APPEAL from a judgment of the circuit court for Dane county: DANIEL R. MOESER, Judge. Affirmed.

Before Gartzke, P.J., Dykman and Eich, JJ.

PER CURIAM. Jay Hochmuth appeals from a judgment affirming a decision of the Personnel Commission. The commission denied appellant's request for reclassification to either Environmental Engineer 7 (EE7) or Administrative Officer 3 (AO3). We conclude that the commission's decision rests on a rational basis. We therefore affirm.

Appellant works for the Department of Natural Resources in the classified civil service. In 1978 he was appointed to an Environmental Engineer 6 (EE6) position.

His title was Special Assistant - Milwaukee Metropolitan Sewerage Commission. His position description described his duties as: integration of all DNR activities relating to the Milwaukee Metropolitan Sewerage District (MMSD) - 35%; representation of the DNR in meetings with various agencies - 20%; preparation of compliance progress reports - 5%; representation of the DNR in dealings with the Department of Justice relating to the MMSD - 5%; representation of the DNR in complex enforcement actions involving major sources of water pollution - 5%; representation of the DNR in complex enforcement actions involving major sources of water pollution - 5%; providing technical and enforcement-related information during the development and implementation of wasteload allocation procedures for the Fox and Wisconsin Rivers - 15%; and assisting in the development of the Municipal Compliance Strategy - 10%.

The Division of Personnel denied appellant's request for reclassification to a Natural Resources Administrator 3,¹ an A03 or an EE7. Appellant appealed to the commission pursuant to sec. 230.44(1)(a), Stats. The commission compared the EE6², EE7³ and A03⁴ class specifications with appellant's present position description and found that seventy percent of his duties related

directly to the Milwaukee Water Pollution Abatement Project, a regional as opposed to a statewide program. It concluded that appellant should not be classified as an EE7 because that classification required that a majority of duties be statewide in scope.

The commission concluded that positions in the Administrative Officer series provided auxiliary support services in an administrative/managerial capacity and did not perform line functions. It found that appellant's position primarily involved performance of line functions, and therefore would not appropriately be classified as an A03. It concluded that appellant's position most appropriately matched the EE6 class specification because it involved both statewide and regional responsibilities. It dismissed the appeal. The trial court affirmed.

Class specifications are The basic authority for assigning positions to a class. Wis. Adm. Code, sec. ER-Pers 2.04(2). A filled position may be reclassified if a logical and gradual change has occurred to the duties or responsibilities of the position. Wis. Adm. Code, sec. ER-Pers 3.01(3). Appellant had the burden of proving that he was entitled to reclassification.

Class specifications are comparable to administrative rules. As such, their construction is a question of law. We are not bound by an agency's decision on a question of law. However, only when the interpretation by the administrative agency charged with the duty of construing and interpreting the rule is irrational will a reviewing court not defer to it. Arrowhead United Teachers v. ERC, 116 Wis.2d 580, 593, 342 N.W.2d 709, 716 (1984), quoting Beloit Education Asso. v. WERC, 73 Wis.2d 43, 67, 242 N.W.2d 231, 242 (1976).

Appellant contends the commission's interpretations of these particular class specifications should be given little weight because they are of first impression. Where the question is one of first impression, we accord the agency's interpretation due weight. Arrowhead, 116 Wis.2d at 594, 342 N.W.2d at 716 (citation omitted). "Whether the question is one of first impression depends not on whether the agency has previously dealt with the specific type of situation involved, but rather on whether the agency has developed expertise through similar general determinations about the application of [the relevant statute or rule.]" School Dist. of Drummond v. ERC, 120 Wis.2d 1, 7, 352 N.W.2d

662, 666 (Ct. App), aff'd, 121 Wis.2d 126, 358 N.W.2d 285 (1984). While the record does not reflect whether the commission has previously construed the class specifications at issue, it is charged under sec. 230.44(1)(b), Stats., with hearing appeals from decisions made under secs. 230.09(2)(a) or (d). Section 230.09(2)(a) involves classifying and reclassifying positions. Section 230.09(2)(d) involves regrading positions. Respondent has developed expertise in construing and applying class specifications in reclassification appeals. We conclude that the commission's decision is entitled to great weight and should be set aside only if irrational.

Appellant argues that the commission's decision is irrational. He contends his position does not fit the EE6 specification requiring work in a district because his work is regional, and that it does not meet the EE6 specification requiring administrative work because the commission held that he is not an administrative officer. He contends that the only remaining job duty under the EE6 specification is planning and directing a program on a statewide basis, and that if he does not function on a statewide basis for purposes of the EE7 specifications, he cannot do so to satisfy the EE6 specifications.

The commission found that appellant's duties involved both administrative⁵ and professional engineering work, a finding not challenged. The first sentence of the EE6 specification is satisfied. While the commission found that appellant's work was performed on a regional, rather than districtwide basis, the commission apparently considered "district" analogous to "region." "District" includes "an area, region, or section with a distinguishing character." Webster's New Collegiate Dictionary 333 (1977)(emphasis added). "Region" is "an administrative area, division or district." Id. at 973. Appellant has not pointed to other definitions of these terms which would indicate that they could not be used synonymously. A witness testified that appellant's responsibilities could be considered districtwide. Appellant's position satisfies the districtwide function of the EE6 specifications. While appellant also performed a statewide function, this function was not a majority of his job. The EE7 specifications require that a majority of one's functions be statewide. We conclude that the commission's decision not to reclassify appellant to an EE7 is rational. We defer to it.

Appellant next contends that he should have been reclassified to an A03 because the evidence shows he is an administrative officer as well as a sanitary engineer and that A03s carry out line functions as well as supervisory or administrative duties.

The A03 specifications require responsibility for division-wide, bureau-wide or agency-wide management functions such as personnel, fiscal matters, policy development, data processing and capital procurement. Appellant had no budgetary or supervisory responsibilities, and was not the principal advisor for departmental policies. He did not develop legislation for department-wide application or perform staff services for a large department in areas of budget, fiscal management, or public relations.

Appellant argues that the decision denying him reclassification to the A0 series because he performed line functions was erroneous. He notes that George Meyer, an A03, testified that he performed line functions and knew of other AOs who performed line functions.

Meyer actually testified that he knew of A03s who did not have direct line supervisory authority. Greg Samp testified that the A0 series does not specifically require

supervisory authority. Appellant's lack of responsibility for the other functions of the A03 class such as budget and policy development supports respondent's decision. The commission's decision not to reclassify appellant to an A03 was rational. We defer to it.

By the Court:--Judgment affirmed.

Publication in the official reports is not recommended.

APPENDIX

1 Reclassification to Natural Resources Administrator 3
is not an issue on appeal.

2 The EE6 specifications provide:

This is responsible administrative and professional engineering work in environmental health or protection. An employe in this class directs a complex environmental sanitation program in a district in the capacity of district administrative officer and district sanitary engineer; plans and directs a difficult and specialized program of sanitary or civil engineering and environmental health or protection on a state-wide basis; work involves supervision of professional and technical assistants as well as performing highly complex planning and advisory responsibilities in assisting public officials, civic groups or private individuals in their public health engineering problems. Work is reviewed through conferences and written reports by an administrative supervisor.

3 The EE7 specifications provide:

This is a responsible administrative and professional work in environmental health sanitation, protection, and engineering. Employes in this class direct a highly specialized and varied public health program on a state-wide basis under the general supervision of a Division Chief in a large department, or a Bureau Chief in a major department.

4

The A03 specifications provide:

This is highly responsible administrative and managerial work in providing highly complex executive, liaison, and staff functions and services. An employe in this class is responsible for major management functions including program development and evaluation. The work involves responsibility for management functions as they affect the programs of numerous complex organizational segments with professional or technical programs, and for the evaluation and improvement of such operations in any management area. An employe develops departmental policies and regulations, recommends the establishment and revision of legislation, and makes responsible management decisions within a broad framework of laws, rules and policies which have a great effect upon departmental programs. The work is performed with a high degree of independence, subject only to administrative review by the department head. Positions allocated to this class differ from those allocated to Administrative Officer 2 in the amount of authority delegated by the agency head, the influence of the administrative officer's decisions on the line functions of the agency, the variety, complexity, and professional nature of the agency's programs, the relationship of the administrative officer to professional program administrators, and the nature and complexity of the agency's organizational structure.

5 Appellant contends it is inconsistent to find that his duties include administrative work but that he is not an administrative officer. We disagree. Appellant may perform

administrative work not of the type specified in the A03 specifications.