

STATE OF WISCONSIN

PERSONNEL COMMISSION

\* \* \* \* \*  
 CHRISTIAN ENGBREGSTEN,  
                     Appellant,  
 v.  
 Secretary, DEPARTMENT OF  
 HEALTH AND SOCIAL SERVICES  
 and Secretary, DEPARTMENT OF  
 EMPLOYMENT RELATIONS,  
                     Respondents.  
 Case No. 85-0156-PC  
 \* \* \* \* \*

pr  
 DECISION  
 AND  
 ORDER

NATURE OF THE CASE

This is an appeal of a denial by respondents of a request to reclassify appellant's position from Officer 2 (PR5-08) to Officer 3 (PR5-09). The hearing was held before Laurie R. McCallum, Commissioner, on November 18, 1985, and the briefing schedule was completed on January 6, 1986.

FINDINGS OF FACT

1. At all times relevant to this appeal, appellant has been employed in the classified service in the Officer series for the Division of Corrections of the Department of Health and Social Services (DHSS) and has been assigned to the Kettle Moraine Correctional Institution (KMCI).
2. Immediately prior to July of 1982, appellant was classified as an Officer 2 and was performing the standard duties and responsibilities of an Officer 2 at KMCI, i.e., direction of the facility's residents (10%); counseling and treatment of residents (10%); inspection of the facility and residents for proper security, health, and safety precautions (60%); reporting to superiors, adjustment committees, etc., regarding residents

and incidents (5%); maintenance of the facility's records and record keeping systems (5%); establishment of proper public relations with visitors to the facility (5%); and other duties as assigned (5%).

2. Prior to July 7, 1982, respondent DHSS created a new position at KMCI with a working title of inmate property officer. Appellant was selected, through the job posting process, to fill this position effective July 7, 1982. The majority of this position's time was devoted to the control and accounting of all inmate personal property and the remainder of time to the performance of other officer duties and the observation and control of inmate behavior. This position was supervised by the administrative captain (Dennis Blumke) who continued for a time to make many of the major decisions relating to the inmate property program at KMCI. It appears to be undisputed that the subject position was properly classified at the Officer 2 level as of July 7, 1982.

3. As KMCI's inmate property officer, the duties and responsibilities of appellant's position gradually changed to include more independent decision-making; more public contact; more interpretation of the relevant statutes, administrative rules, and department guidelines; and greater participation in the establishment of procedures for control and accounting of inmate property.

4. The inmate property officer positions at the other correctional institutions within the Department of Health and Social Service's Division of Corrections are classified at the Officer 3 level and are regarded as key security posts.

5. On or around March 6, 1984, appellant requested the reclassification of his position from Officer 2 to Officer 3. Respondents denied such request and appellant filed a timely appeal of such denial.

6. The position standard for the Officer series provides in pertinent part:

Officer 2

Class Description

Definition:

This is responsible security and rehabilitative work performed in a maximum security psychiatric hospital or a correctional institution. Employees in this class have responsibility for supervising inmate or patient activities and work programs for security and rehabilitative purposes. This class is distinguishable from the Officer 1 class by its rehabilitative and inmate supervisory responsibilities. Work is performed in accordance with established rules, regulations, and oral instructions of supervising officers but with more independence of action and responsibility for patient or inmate leadership and guidance than an Officer 1. Officers 1 move to this class only upon demonstrated ability to perform advanced level rehabilitative or security services indicated herein as observed and recorded by supervisors.

Officer 3

Class Description

Definition:

This is very responsible security and rehabilitative work assisting in directing the operation of a correctional farm or forestry camp or lead work over other officers on an assigned post in a correctional institution or maximum security psychiatric hospital. Employees in this class have considerable responsibility for supervising inmate activities and work programs for custodial and rehabilitation purposes on an assigned shift. In addition, certain especially responsible key security posts or positions with a specific program role are defined at this level. These positions include center turnkey, mail and dining room officer, bathhouse officer, sally port officer, front gate officer, control center officer yard officer, reception and orientation officer, and other corporate functions. This class is distinguishable from lower level classes by the greater degree of independent responsibility for the custody and rehabilitation of inmates in a minimum security setting, the assignment of lead work responsibilities over other officers, the importance placed on certain key security posts, or the degree of specialized program responsibility required at this level. Work is performed in accordance with established rules and regulations under the supervision of other Officers or a camp supervisor but daily tasks are performed with considerable discretion.

The requested reclassification does not involve an approved progression series.

CONCLUSIONS OF LAW

1. This matter is properly before the Commission pursuant to §230.44(1)(b), Stats.

2. The appellant has the burden of proving that respondents' decision denying the reclassification of appellant's position from Officer 2 to Officer 3 was incorrect.

3. The appellant has satisfied that burden. Respondents' decision denying appellant's request for reclassification was incorrect.

OPINION

Section ER-Pers. 3.01(3), Wis. Adm. Code, defines a reclassification as:

The assignment of a filled position to a different classification... based upon a logical and gradual change to the duties or responsibilities of a position or the attainment of specified education or experience by the incumbent.

Since the requested reclassification does not involve an approved progression series (see Finding of Fact #6), there must be a logical and gradual change to the duties or responsibilities of appellant's position in order to satisfy the requirements for reclassification.

The duties and responsibilities of appellant's inmate property officer position did undergo such a logical and gradual change (See Finding of Fact 3). Respondents acknowledge in their brief that the original intent behind the creation of the subject position was to create a position which would assist the administrative captain with the inmate property program (page 7) and that assisting a higher level officer with the inmate property program is an Officer 2 level duty (page 11). Respondents implicitly acknowledge,

therefore, that the subject position was properly classified at the Officer 2 level when it was filled by appellant effective July 7, 1982. Respondents go on to state in their brief (page 8) that the duties of appellant's position changed after July of 1982, that these changes included more responsibilities and less supervision by the administrative captain and that, in fact, the administrative captain had turned over the entire responsibility for the inmate property program to appellant's position as of the time the subject reclassification request was made. Finally, respondents acknowledge in their brief (page 4, number 12) that the duties and responsibilities performed by appellant's position as of the date of the subject reclassification request were Officer 3 level duties and responsibilities.

Despite the above acknowledgements, respondents denied appellant's request for the reclassification of his position. Respondents offer several reasons for their action in this regard.

First, respondents, in assessing whether or not there has been a logical and gradual change in the duties and responsibilities of appellant's position, compare the duties and responsibilities appellant was performing as of the date of the subject reclassification request with those appellant was performing prior to July 7, 1982, i.e., prior to filling the inmate property officer position. The result is that respondents are comparing the duties and responsibilities of two entirely separate positions. The proper comparison is between the duties and responsibilities appellant's inmate property position was performing as of the date of the subject reclassification request and the duties and responsibilities appellant's inmate property position was performing as of the date that appellant filled such position, i.e., July 7, 1982. A

reclassification involves the comparison of the duties and responsibilities of one particular position at two different points in time, not a comparison of the duties and responsibilities of two different positions.

Respondents appear to take issue with the manner in which the newly created inmate property officer position was filled in 1982. This, however, is not the issue in this appeal which is limited to a review of the correctness of the decision to deny appellant's request for the reclassification of his position. In any event, at the time the position was filled in 1982, it admittedly was at the Officer 2 level, and there was no way it could have been foreseen then that it would evolve to the Officer 3 level.

Finally, respondents contend that the allocation pattern for the Officer series prohibits advancement from the Officer 2 to Officer 3 level by means of reclassification. Respondents cite as authority for this prohibition the Wisconsin Personnel Manual (WPM), a publication of the Department of Employment Relations. Chapter 332, Section E.2.e. of the WPM provides that competition is appropriate even if there has been a logical and gradual change in the duties and responsibilities of a filled position when a position was selected to be assigned duties and responsibilities which warrant a higher or lower classification level where such assignments could reasonably have been assigned to other positions. (The other situations described as appropriate for competition in this subsection are clearly inapplicable to the present appeal). In the instant case, the only Officer 2 performing inmate property duties was appellant so to assign higher level inmate property duties to another Officer 2 would have been illogical and impractical. Respondents cite no other authority for their position that advancement from the Officer 2 to Officer 3 level cannot be

accomplished by means of reclassification and the Commission finds no such authority in the applicable statutes, administrative rules, or classification specifications.

Respondent's Exhibit #4, an excerpt from the institutional care and custody survey, includes the following:

Advancement from the 1 level to the 2 level ... will be by reclassification following completion of the departmental in-service training course. Advancement beyond these levels will be by examination for all levels.

This reference to advancement by examination at higher levels distinguishes these transactions from the "progression" nature of the movement from the 1 to the 2 level. It would be reading far too much into this language to interpret it as precluding reclassification at the higher levels as positions change due to program and other changes. To the contrary, a number of cases have dealt with higher level officer reclassifications on the merits, including Nitschke v. DP/DHSS, Wis. Pers. Commn. No. 80-293-PC (9/23/82); Fredisdorf et al v. DP, Wis. Pers. Commn. No. 80-300-PC (3/19/82); Bleich v. DHSS/DP, Wis. Pers. Commn. No. 79-274-PC (6/3/81); Eschenfeldt v. DP/DHSS, Wis. Pers. Commn. No. 78-257-PC (7/22/81); Polinske v. Schmidt, Wis. Pers. Bd. No. 74-101 L(10/17/75). In Eschenfeldt, the Commission explicitly rejected the argument that the Officer 5 classification could only be obtained by competition.

ORDER

The decision of respondents is reversed and this appeal is remanded for action in accordance with this decision.

Dated: March 13, 1986 STATE PERSONNEL COMMISSION

  
DENNIS P. MCGILLIGAN, Chairperson

  
DONALD R. MURPHY, Commissioner

  
LAURIE R. McCALLUM, Commissioner

LRM:jmf  
JANE/2

Parties:

Christian Engbregsten  
Kettle Moraine Correctional Institution  
P. O. Box 31  
Plymouth, WI 53073

Linda Reivitz  
Secretary, DHSS  
P. O. Box 7850  
Madison, WI 53707

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