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COURT OF APPEALS
DECISION
DATED AND RELEASED

DEC 15 1989

NOV 21 1989

No. 89-0825

Personnel
Commission

NOV 21 1989

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 Rdt 809.62 (1)

STATE OF WISCONSIN

IN COURT OF APPEALS
DISTRICT III

NOTICE

RAJ V. KUMRAH, D.V.M.,

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

Plaintiff-Respondent,

v.

WISCONSIN PERSONNEL COMMISSION,
and SECRETARY, DEPARTMENT OF
AGRICULTURE, TRADE AND CONSUMER
PROTECTION,

Defendants-Appellants.

APPEAL from a judgment of the circuit court for Brown county: VIVI L. DILWEG, Judge. *Affirmed.*

Before Cane, P.J., LaRocque and Myse, JJ.

PER CURIAM. The Wisconsin Personnel Commission and the Secretary of the Department of Agriculture, Trade and Consumer Protection (DATCP), appeal a judgment reversing a commission decision. The commission concluded that "highest level position" as used in sec. ER-PERS 22.09(2)(b) refers only to a salary level. Because we conclude that the commission erroneously interpreted that rule, we affirm the trial court's decision.

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Kumrah was employed as a Veterinarian Supervisor I by the DATCP. He was laid off as a result of a reorganization, and was offered a Veterinarian III position pursuant to sec. ER-Pers 22.08(2), which is subject to the criteria for a reasonable offer of appointment under sec. ER-Pers 22.09. Kumrah also applied for a position as an Agricultural Supervisor V, but was not offered that position. Sections 22.08 and 22.09 require an offer of a position that is "the highest level position available within the agency to which the employe could either transfer or demote." Kumrah contends that the DATCP refusal to give him the Agricultural Supervisor V position violates sec. 22.08.

The commission, with one member dissenting, concluded that an Agricultural Supervisor V was not a higher level position than a Veterinarian III. The commission ruled that the pay classification was the only criterion to be used in applying the administrative rules and since both positions had the same pay level, they were the same level position. The dissenting commissioner held that the agricultural supervisor position was a higher level position in terms of salary potential and organizational level.

We are not bound by the commission's conclusions of law. However, if its conclusion is reasonable, we will

sustain it even though an alternative conclusion may be equally reasonable. *United Way of Greater Milwaukee, Inc. v. DILHR*, 105 Wis.2d 447, 453, 313 N.W.2d 858, 861 (Ct. App. 1981).

The commission's conclusion that "highest level position" refers only to salary level is not a reasonable construction of the rule. The phrase "highest level position" does not, on its face, restrict consideration to salary; and, considering the rule in its entirety, it is clear that no such restriction was intended. Section 22.09(2) lists five criteria for determining whether an offer of appointment is reasonable. The second of those criteria requires that it be the "highest level position." The fifth criterion requires that "the pay range of the position offered is no more than 2 pay ranges ... lower than the pay range of the position from which the employee was laid off" Because the rule separates the "highest level position" from the restrictions on pay range, "highest level position" must mean something other than pay range.

The commission contends that the two subsections could be read together to mean that the employer must offer the highest salary level available, but no more than two pay ranges lower than the previous position. If that was the drafter's intent, it could have been much more clearly

stated. It is illogical to separate the rules relating to salary level into two parts with a discussion of work hours and location sandwiched between them. The commission's construction of the rule is unnatural and contorted, and cannot be sustained regardless of the deference this court accords its decision.

By the Court.--Judgment affirmed.

Publication in the official reports is not recommended.