

STATE OF WISCONSIN

PERSONNEL COMMISSION

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MICHAEL COULTER,

Appellant,

v.

Secretary, DEPARTMENT OF
CORRECTIONS,

Respondent.

Case No. 90-0355-PC

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DECISION
AND
ORDER

NATURE OF THE CASE

This is an appeal pursuant to §230.44(1)(d), stats., of respondent's decision to deny appellant certain add-on compensation under the Compensation Plan for teachers. In an interim decision and order entered January 24, 1991, the Commission denied respondent's motion to dismiss on the bases of untimely filing, lack of subject matter jurisdiction, and supersession of jurisdiction pursuant to §111.93(3), stats.

FINDINGS OF FACT

1. Appellant was appointed to a position in the classified civil service at Waupun Correctional Institution (WCI) teaching welding and classified as Teacher 1, effective February 13, 1989. This position was in a bargaining unit represented by the Wisconsin Federation of Teachers (WFT).

2. At the time he was hired, appellant did not have a post-secondary degree. Appellant had been certified by the State Board of Vocational, Technical and Adult Education (VTAE) as a VTAE teacher on the basis of his occupational experience pursuant to §VTAE 3.01(4)(i), Wis. Adm. Code, which provides that "extensive occupational experience for a total of 7 years . . . will be equivalent to a baccalaureate degree for certification purposes." Appellant had been employed as a welder from 1964 to 1974, when he went to work for the Moraine Park VTAE district as a welding instructor, and he continued to work as a welder in the summertime after that.

3. Appellant took an examination at UW-Stout in 1978 to evaluate his vocational expertise. This test evaluated his welding knowledge and skills and what he could communicate about welding. The testing took about 12 hours. As a result of his successful completion of this examination, UW-Stout placed the following entry on his transcript: "CREDITS BY EXAMINATION Trade Exam 16 11/15/78." This entry was in addition to other entries reflecting credits for coursework, and the 16 "credits by examination" did not reflect any course work he had completed. UW-Stout is an accredited university.

4. The 16 "credits by examination" had the effect at UW-Stout of giving appellant the opportunity to have advanced standing in certain courses without the need of taking certain prerequisite courses, and of counting against the total number of credit hours needed for a degree if he should become involved in a degree program there. The 16 credits by examination would not be accepted for transfer by another university.

5. Appellant received compensation credit for the 16 credits by examination from his employer at Moraine Park. However, this was pursuant to the relevant provisions of a collective bargaining agreement, the terms of which are not of record.

6. By memo dated May 29, 1990, to WCI Education Director Tom Donovan (Exhibit 4), appellant made the following request:

I am requesting that I receive additional add-on credits which date back to my additional employment with WCI, as of February 1989. Having earned 19 credits University of Wisconsin-Stout [this included the 16 credits by examination], 8 credits University of Wisconsin-Oshkosh and 2 credits University of Wisconsin-Extension, I am entitled to the additional add-ons.

7. The subject of the additional compensation requested was at that time a non-bargainable subject governed by the following provision in the Compensation Plan (Exhibit 37):

K. Teacher and Teacher Supervisor Add-On: An amount may be added to the base pay of an employee whose position is allocated to one of the Teacher or Teacher Supervisor classes, based on credits earned from an accredited college or university, over and above those needed for basic certification as a teacher, as provided in the schedule below. The add-on amount is calculated based on the principle that for each six

credits of relevant credits earned, the add-on amount will be equal to one-half a within-range step.

In order to be eligible for the add-on, the appointing authority must make a determination that the additional credits on which the add-on is based are relevant to the duties and responsibilities of the position. It shall be the sole discretion of the appointing authority to determine the relevance of the credits. If granted, the add-on shall be effective at the beginning of the first pay period following receipt by the appointing authority of proof that the relevant credits were earned.

This provision in the compensation plan also included a chart showing the add-on amounts for the "number of credits Beyond Bachelor's Degree."

8. By document dated June 21, 1990, (Exhibit 5), Mr. Donovan initially evaluated appellant's credits and indicated approval of 12 credits for add-on compensation but disapproval of 16 credits (16 credits by examination from UW-Stout).

9. Mr. Donovan ultimately enlisted the assistance of Phyllis Hill, Director, Bureau of Education and Employment, DOC, in his evaluation of the 16 credits by examination.

10. Ms. Hill in consultation with Harold Steinhilber, the Coordinator for Correctional Education and an employee of Moraine Park Technical College, reached the conclusion that the credits by examination should not be allowed for purposes of add-on compensation. The basic rationale for this conclusion is set forth in an August 13, 1990, memo from Ms. Hill to Glen Weeks, WCI Personnel Manager (Exhibit 11) as follows:

As we discussed, I referred the matter for the additional opinion of Howard Steinhilber, Coordinator for Correctional Education of Moraine Park Technical College. He is familiar with the credit by examination procedure and with the Department's practices in administering add-on pay supplements.

In Mr. Steinhilber's memo to me, he states, after reviewing the attached documents that:

1. it appears that Mr. Coulter is a non-degree teacher; therefore, he needed seven years of occupational experience.
2. the competency test at U.W. Stout verified his occupational expertise and were not credits granted for learning new material.

The work experience and credits by examination are one-in-the-same and can't be used for certification and to compute add-on amounts. Add-on amounts are computed after certification requirements are met.

Further, in a memorandum from Robert Hable to Education Directors, January 7, 1987 (attached), the directive is that add-on pay amounts will be allowed for credits for relevant courses and for courses leading to a recognized degree in the field of education. The unit of measurement is, therefore, courses — courses taken to increase a certified teacher's professional expertise.

Mr. Steinhilber supports Mr. Donovan's position in this matter that credits received by examination in Mr. Coulter's case cannot be accepted for supplemental pay.

11. Respondent notified appellant of its final decision denying credit for the 16 credits by examination via an August 9, 1990, memo from WCI personnel Manager Glen Weeks (Exhibit 13).

12. Appellant was granted 15 credits towards add-on compensation based on credit hours for completed course work. This was retroactive to the date of his hiring (February 13, 1989).

13. A number of documents issued by DOC/DHSS which provide guidance and interpretive commentary regarding the implementation of the teacher add-on compensation program refer at several points to compensation for course credits, see exhibits 29, 30, 38 and 39. While these documents imply that course credits are what come within the meaning of credits as used in the compensation plan, they do not address this point explicitly.

CONCLUSIONS OF LAW

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

2. Appellant has the burden of proving by a preponderance of the evidence that respondent's decision to disallow add-on compensation for the 16 credits by examination he attained at UW-Stout was illegal or an abuse of discretion.

3. Appellant has not sustained his burden and it is concluded that respondent's decision to disallow add-on compensation for the 16 credits by examination appellant attained at UW-Stout was neither illegal nor an abuse of discretion.

DISCUSSION

Section 230.44(1)(d), stats., which is the jurisdictional basis for this appeal, provides for an appeal of a "personnel action after certification which is related to the hiring process in the classified service and which is alleged to be illegal or an abuse of discretion." This subsection also contains the standard of review of an appealed transaction — i.e., whether it was "illegal or an abuse of discretion." The issue for hearing agreed to by the parties is "[w]hether respondent's decision denying appellant add-on pay for 16 college credits was illegal or an abuse of discretion." (prehearing conference report dated March 21, 1991). It has not been contended that respondent's decision regarding appellant's add-on compensation was illegal. There are no substantive provisions in the potentially relevant statutes and administrative code rules which govern this subject. Therefore, the decision of this case turns on the question of whether respondent's decision constituted an abuse of discretion.

In Lundeen v. DOA, No. 79-208-PC (6/3/81), the Commission relied on the definition of "abuse of discretion" found in Black's Law Dictionary (4th Ed.), p. 25, and Murray v. Buell, 74 Wis. 14, 19 (1889): "discretion exercised to an end or purpose not justified by and clearly against reason and evidence." Thus the question in a case governed by this standard is not whether the Commission would have made the same decision as respondent did if it had been making the decision, but whether there was a rational basis for the decision respondent actually made.

In determining whether there was an abuse of discretion in this case, it is necessary to focus primarily on the criteria set forth in the amendment to the compensation plan (Exhibit 37). In order to qualify for compensation add-on, there must be:

1. credits;
2. earned from an accredited college or university;

3. over and above those needed for certification;
4. relevant to the duties and responsibilities of the position.

The parties are not in dispute about item #2 — i.e., UW-Stout is an accredited university. There is no real dispute about the fourth criterion, inasmuch as respondent's witnesses conceded that if appellant received credit for courses taken in the subject area for which he had been examined, relevancy would not be contested. Therefore, the Commission will not address further the parties' arguments on the relevance of the credits. Respondent contests criteria 1 and 3, contending that the credits by examination in question are not the kind of "credits" covered by the compensation plan, and that, since appellant was non-degreed and obtained his certification on the basis of his work experience, his credits by examination amount to a credentialization of the experience he had relied on for certification and hence were not over and above those needed for certification.

To reiterate what was discussed above, the Commission is deciding this case under the §230.44(1)(d), stats., standard of "abuse of discretion." Therefore, the question that must be answered is whether respondent had a rational basis for its determination. Both parties have reasonably good arguments in support of their interpretations of the pay plan. Since the Commission concludes that respondent has at least a rational basis for its position, it concludes that its decision did not constitute an abuse of discretion.

Respondent's decision rested essentially on the opinion of Howard Steinhilber, the Coordinator for Correctional Education of the Moraine Park Technical College for 15 years. His work includes duties and responsibilities related to the hiring and certification of teachers. He has a masters degree in vocational education. He clearly has a certain amount of expertise in the field of evaluating college credits. He testified that credits by examination at UW-Stout served two functions — they could permit a student to take an advanced course without having to take what otherwise would be a required prerequisite course or courses, and if a student went on to get a degree, he or she could count up to 24 credits by examination toward the total number of credits required for graduation. However, he did not consider these credits by examination to be credits in the usual sense because they are not transferrable to another institution. He testified that they constituted "16 credits of advanced

standing. They're not collegiate credits, they would count as collegiate credits if he went on to get a [degree]."

Mr. Steinhilber also was of the opinion that the credits by examination "credentialized" experience appellant had relied on for his initial certification and hence were not over and above those needed for certification:

This is what a trade examination does. A trade examination tests an individual on their competency in that particular skill. He had to have seven years trade experience before he was hired, so that tested that competency.

The strongest argument appellant makes against respondent's decision is based on the literal language in the pay plan. That is, since the pay plan refers only to "credits" as opposed to "course credits" or other similar terminology, there is no reason to exclude credits by examination from the coverage of the program. While this argument certainly is rational, it is not conclusive. The term "credit" in the academic area typically carries the connotation of academic work completed at, or under the auspices of, an educational institution. For example, the definition of "credit" in the education context in Webster's New World Dictionary 333 (2d College Edition 1972) is: "the certification of a student's successful completion of a unit or course of study." (emphasis added). It also is rational to contend that the use of the word "credit" in the pay plan was not meant to include anything that an accredited university might denominate as a credit regardless of the context, but rather was intended to include the more commonly understood meaning of the term "credit" as, for example, in the dictionary definition cited above, and as was understood by respondent's expert witness.

Respondent also had a rational basis for concluding that the 16 credits by examination were not "over and above those needed for basic certification as a teacher." As noted above, Mr. Steinhilber testified that since appellant's initial certification had been based on his having seven years of work experience, and the credits by examination were awarded for passing an examination of skills he had acquired through that work experience, the credits amounted to a credentialization of the experience he had relied on for his initial certification. Appellant contends, in essence, that since he did not have the credits at the time of his initial certification in 1974, they must have been "over and above those needed for basic certification as a teacher." Again, both

arguments are rational, and the Commission cannot conclude that respondent's position or this issue constitutes an abuse of discretion. It is correct that the appellant did not have the 16 credits by examination when he was certified in 1974. In a sense it can be said that these credits were "over and above those needed for basic certification." This is because no credits were needed for appellant's basic certification, since he qualified under §VTAE 3.01(4)(i), Wis. Adm. Code, which provides that "extensive occupational experience for a total of 7 years . . . will be equivalent to a baccalaureate degree for certification purposes." (emphasis added). Since appellant was granted this equivalency on the basis of at least seven years of work experience, and since the subsequently granted credits by examination can reasonably be characterized as having been based on an evaluation of how much skill and knowledge he had acquired through his work experience, it also was not unreasonable to have concluded that the credits by examination in effect granted appellant credentials for his prior work experience that constituted the basis for his certification, and hence were not "over and above those needed for basic certification."

The Commission takes issue with one aspect of respondent's determination on this criterion. That is, respondent assumed or otherwise concluded that the 1978 examination tested solely the skills and knowledge appellant had acquired while working as a welder prior to 1974. However, it is undisputed that appellant worked as a welder during the summers after he began employment at Moraine Park in 1974, and therefore this experience would have been part of his experience when he was tested in 1978. It also is undisputed that the NOCTI exam tested his ability to verbally communicate his welding knowledge and skills. Therefore, his experience as an instructor at Moraine Park entered into this area of the exam. These points suggest that respondent should not have concluded that all 16 credits by examination were non-qualifying under the fourth criterion. However, since the Commission has already concluded that respondent had a rational basis to have rejected these credits under the first criterion, the failure to have considered prorating the credits is at most harmless error.

The Commission also will address a number of other arguments. Appellant pointed out that the 16 hours credit by examination were accepted for add-on pay purposes at Moraine Park. Since appellant's salary structure at

Moraine Park was controlled by a collective bargaining agreement, the terms of which are not of record, it is not known whether Moraine Park was applying the same or similar criteria to those found in the pay plan. Therefore, this information has little or no probative value.

Appellant also contends that the process of taking the exam was educational in and of itself, and that it benefited his overall educational program by identifying areas where further study was indicated. To the extent this contention runs to the issue of relevance, it already has been determined that relevance effectively has been conceded and is not really in issue. To the extent it runs to other criteria, it has little if any impact on the question of whether respondent had a rational basis for its decision. The ancillary benefits of an examination do not translate the process into the equivalent of a course of study. Furthermore, the Commission agrees with respondent's characterization of the time spent in the examination process (12 hours) as basically de minimis when compared to the number of hours involved in a course of study represented by 16 credits.

Both parties made arguments based on the intent of the add-on compensation program. While it is true that one goal of the program is to enhance teacher compensation and improve the state's competitiveness in the teacher labor market, this goal could be cited in any dispute about add-on compensation, and this adds little to the debate in this case. A more material goal is that of encouraging teachers to improve their skills and knowledge and thereby to become more effective teachers. Since the credits by examination represent essentially a recognition of past vocational experience, this goal is not furthered by the recognition of these credits for add-on compensation purposes.

In conclusion, the Commission believes that both sides had reasonable arguments on the question of whether the 16 credits by examination should have been counted for add-on pay under the compensation plan. Under an abuse of discretion standard, it cannot be concluded that respondent lacked a rational basis for its decision. It was based on the opinion of an expert in the area of vocational education who was employed outside the department, whose analysis of the situation in itself appears to be reasonable. Respondent's position also is supported by the fact that the term "credits" commonly has a connotation of credits given for the completion of a course of study.


ORDER

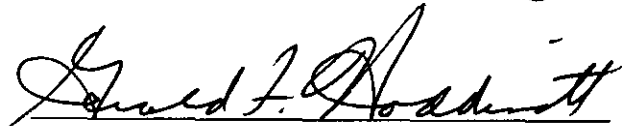
Respondent's action denying appellant compensation add-on for the 16 credits by examination from UW-Stout is affirmed and this appeal is dismissed.

Dated: January 24, 1992 STATE PERSONNEL COMMISSION


LAURIE R. McCALLUM, Chairperson

AJT/gdt/2


DONALD R. MURPHY, Commissioner


GERALD F. HODDINOTT, Commissioner

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