

STATE OF WISCONSIN

PERSONNEL COMMISSION

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JAMES NAGORSEN,
and DENNIS BOEHRIG,

Appellants,

v.

Secretary, DEPARTMENT OF
CORRECTIONS, and Secretary
DEPARTMENT OF EMPLOYMENT,
RELATIONS,

Respondents

Case Nos. 92-0158, 0165-PC

* * * * *

DECISION
AND
ORDER

This matter is before the Commission as a dispute arising from a classification decision. The parties agreed to the following issue for hearing:

Whether respondent's decision to reallocate instead of reclassifying appellants' positions from Facilities Repair Worker 3 to Facilities Repair Worker 4 was correct.

The parties declined to file post-hearing briefs.

FINDINGS OF FACT

1. At all times relevant to these proceedings, the appellants have been employed to maintain the facilities at the Taycheedah Correctional Institution.

2. Prior to September 23, 1990, the appellants' positions were both classified at the Facilities Repair Worker 3 (FRW 3) level

3. Appellant Boehrig's position description dated June of 1988 described the goals of the position as follows:

50% Preventative maintenance of heating, ventilating,
plumbing, refrigeration and other [mechanical] equipment

30% Repair and replacement of worn or damaged building
components

8% Operation of institution vehicles

2% Provision of assistance to licensed operators in operation of water works

10% Direct the work of inmates assigned as assistants

The position description went on to indicate that in meeting the last goal, Mr. Boehrig provided training, assigned work, inspected and approved completed work and evaluated inmate performance.

4. Appellant Nagorsen's position description dated August of 1989 was substantially identical to Mr. Boehrig's 1988 position description.

5. Late in 1990, the appellants requested reclassification of their positions from FRW 3 to FRW 4. They supported their request with identical updated position descriptions which included the following position summaries:

Provide repairs and maintenance in the areas of carpentry, masonry, painting, [furniture] and equipment repairs, lock repairs, shop fabrication and vehicle maintenance. Supervise inmate crews, monitor boiler and utility equipment. Respond to off-time urgent repair needs when available. Assist in mechanical and plumbing repairs as needed.

The position descriptions went on to describe the goals of the position as follows:

55% Inspect, maintain and repair all types of interior and exterior building components and surfaces.

10% Maintain grounds, walks and roads.

10% Maintain institution vehicles.

10% Maintain records and paperwork as required.

10% Supervise inmates assigned as assistants.

5% Provide transportation services and misc. mechanical repairs.

6. Since the time the appellants began working as FRW 3's at Taycheedah, two buildings were constructed on institution grounds. Prior to 1988, they did not have any responsibility to oversee the work of inmates. In 1990, the size of the inmate crew increased as the inmates were relied on to

perform certain work which had previously been performed by limited term employees.

7. The FRW 3 position standard includes the following definition:

This is responsible buildings and grounds maintenance and repair work. Employees in this class perform a variety of inspections, adjustments and repairs to buildings and grounds and make minor repairs to mechanical equipment. Positions at this level also function as a member of a concrete crew. Work is performed under the general supervision of higher level maintenance personnel.

8. The FRW 4 position standard includes the following definition:

This is very responsible buildings and grounds maintenance work. Employees in this class are responsible for guiding the activities of a crew responsible for general buildings and grounds maintenance and repair. Work is performed under the general supervision of higher level maintenance personnel.

9. Prior to approximately October of 1990, respondent Department of Employment Relations (DER) took the position that only those Facilities Repair Workers who served as leadworkers for other permanent state employees would be considered leadworkers for classification purposes. The classification of individual positions reflected this policy.

10. In October of 1991, the personnel specialist at the Department of Corrections (DOC) who was assigned to review the appellants' reclassification request contacted DER and was informed that approximately one year earlier, DER had changed its interpretation of leadwork to include those employees who had an ongoing assignment to lead inmates, where that leadwork responsibility included both assigning and reviewing work.

11. Respondent DOC then reviewed all of its FRW 3 positions which had leadwork responsibility over inmates for reallocation to the FRW 4 level.

12. By letter dated February 27, 1992, the appellants' positions were reallocated from FRW 3 to FRW 4, effective September 23, 1990.

CONCLUSIONS OF LAW

1. This Commission has jurisdiction over this matter pursuant to §230.44(1)(b), Stats.

2. The appellants have the burden of proof to show that the decision to reallocate rather than reclassify their positions from FRW 3 to 4 was incorrect.

3. The appellants have failed to sustain their burden.

4. The respondents' decision was not incorrect.

OPINION

The respondent DER has, in §ER 3.01, Wis. Adm. Code, issued administrative rules which define the terms "reallocation" and "reclassification":

(2) Reallocation. "Reallocation" means the assignment of a position to a different class by the secretary as provided in s. 230.09(2), Stats., based upon:

- (a) A change in concept of the class or series;
- (b) The creation of new classes;
- (c) The abolishment of existing classes;
- (d) A change in the pay range of the class;
- (e) The correction of an error in the previous assignment of a position;
- (f) A logical change in the duties and responsibilities of a position; or
- (g) A permanent change in the level of accountability of a position such as that resulting from a reorganization when the change in level of accountability is the determinant factor for the change in classification.

(3) Reclassification. "Reclassification" means the assignment of a filed position to a different class by the secretary as provided in s. 230.09(2), Stats., 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.

The question here is whether the appellants have been able to show that their positions have undergone a "logical and gradual" change so as to require reclassification rather than reallocation to the FRW 4 level.

The FRW 3 and 4 definitional statements indicate that the primary distinction between the two levels is that a FRW 4 position serves as leadworker

"guiding the activities of a crew." Commencing in 1988, both of the appellants began to train inmates, assign them work and evaluate their performance. This responsibility grew out of the decision to integrate an education department program into the building and grounds area. At that time, DER defined leadwork in terms of leading the work of other permanent civil service employees. Then in 1990, DER changed its interpretation of leadwork to include leading the work of inmates. The respondent DOC's classification staff learned of this change in October of 1991 and issued a memo (respondent's exhibit 9) to the personnel managers at the various institutions in order to identify all of the FRW 3 positions which would be affected by this change in interpretation. After the other positions had been identified, all of them, including the appellants' positions, were reallocated to the higher level based upon the revised interpretation.

This classification change occurred because of a revision in DER's interpretation of the leadwork requirement rather than because of some gradual accretion of new duties prior to the September, 1990 effective date. The testimony at hearing indicated that prior to when DER revised its interpretation, no positions within DOC institutions were classified at the FRW 4 level because of leading the work of inmates. The evidence indicates that if DER had *not* changed its interpretation of the leadwork requirement, the respondents would have continued to classify the appellants' positions at the FRW 3 level.

The new interpretation by DER effectively changed the concept of the FRW 4 class specifications from how their specifications had been previously interpreted and applied. The new interpretation by DER therefore falls within the scope of the definition of reallocation found in §ER 3.01(2)(a). The Commission notes that administrative rule refers to a "change in the *concept* of the class or series" rather than to a change in the *language* of the class or series. Here there was no change to the language of FRW 4 specifications, but there was a revision to the concept of the leadwork requirement at the FRW 4 level.

In addition, the appellants have failed to show that their positions have undergone the gradual change required by the definition of reclassification in §ER 3.01(3). The leadwork responsibility which now justifies the classifica-

tion of the appellants' positions at the FRW 4 level was assigned in 1988.¹
Nothing in the record of this matter suggest that the appellants gradually acquired their leadwork responsibility.²

ORDER

The respondents' decisions are affirmed and these appeals are dismissed.

Dated: December 17, 1992 STATE PERSONNEL COMMISSION

KMS:kms
K:D:Merits-rec1/reall (Nagorsen & Boehrig)


LAURIE R. MCCALLUM, Chairperson


DONALD R. MURPHY, Commissioner


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¹With the exception of the leadwork responsibility, the duties performed by the appellants fall within the FRW 3 classification.

²In 1990, there was an increase in the number of inmates on the crews being lead by the appellants. However, there is no dispute that the (smaller) number of inmates being lead prior to 1990 would still have met the FRW 4 leadwork requirement as presently interpreted and applied by DER.

**NOTICE
OF RIGHT OF PARTIES TO PETITION FOR REHEARING AND JUDICIAL REVIEW
OF AN ADVERSE DECISION BY THE PERSONNEL COMMISSION**

Petition for Rehearing. Any person aggrieved by a final order may, within 20 days after service of the order, file a written petition with the Commission for rehearing. Unless the Commission's order was served personally, service occurred on the date of mailing as set forth in the attached affidavit of mailing. The petition for rehearing must specify the grounds for the relief sought and supporting authorities. Copies shall be served on all parties of record. See §227.49, Wis. Stats., for procedural details regarding petitions for rehearing.

Petition for Judicial Review. Any person aggrieved by a decision is entitled to judicial review thereof. The petition for judicial review must be filed in the appropriate circuit court as provided in §227.53(1)(a)3, Wis. Stats., and a copy of the petition must be served on the Commission pursuant to §227.53(1)(a)1, Wis. Stats. The petition must identify the Wisconsin Personnel Commission as respondent. The petition for judicial review must be served and filed within 30 days after the service of the commission's decision except that if a rehearing is requested, any party desiring judicial review must serve and file a petition for review within 30 days after the service of the Commission's order finally disposing of the application for rehearing, or within 30 days after the final disposition by operation of law of any such application for rehearing. Unless the Commission's decision was served personally, service of the decision occurred on the date of mailing as set forth in the attached affidavit of mailing. Not later than 30 days after the petition has been filed in circuit court, the petitioner must also serve a copy of the petition on all parties who appeared in the proceeding before the Commission (who are identified immediately above as "parties") or upon the party's attorney of record. See §227.53, Wis. Stats., for procedural details regarding petitions for judicial review.

It is the responsibility of the petitioning party to arrange for the preparation of the necessary legal documents because neither the commission nor its staff may assist in such preparation.