

STATE OF WISCONSIN

PERSONNEL COMMISSION

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DAVID S. EDWARDS,

Appellant,

v.

Secretary, DEPARTMENT OF
EMPLOYMENT RELATIONS,

Respondent.

Case No. 92-0423-PC

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DECISION
AND
ORDER

A hearing was held in the above-noted case on September 20, 1993, with Judy M. Rogers presiding. The issue for resolution was agreed upon at a prehearing conference held on January 29, 1993, as noted below:

Whether respondent's decision to reallocate appellant's position to Waste Management Specialist - Senior, instead of Waste Management Specialist - Advanced, was correct.

The burden of proof was on the appellant to show by a preponderance of the evidence that respondent's decision was incorrect. Appellant failed to sustain his burden.

Appellant works for the Department of Natural Resources (DNR), in its solid and hazardous waste program. He is part of the Southern District working out of the Horicon office. He has been in the position for about 12 years. He is very knowledgeable in his job, has a positive attitude about his work and needs little (if any) supervision.

Under the general supervision of a unit leader, appellant works in all aspects of the solid and hazardous waste program in the Horicon area (with duties in Jefferson county which is not part of the Southern District). He takes the lead on complaint investigations, referrals to the Department of Justice, toxic-waste cleanup/disposal cases, and the many other duties reflected in his position description; as supplemented by his hearing testimony. This is an important position with potential significant impact on the environment, as well as on animal and human health and life.

Respondent conducted a survey of science classifications, which included appellant's position. The survey resulted in his position being classified as a Waste Management Specialist at the senior level, effective April 19, 1992. He filed an appeal with the Commission because he feels the Advanced level is the best fit for his position.

The class specifications for Waste Management Specialists contain threshold requirements at each level referred to as "allocation patterns". Basically, these are various combinations of duties at different levels of responsibility which are needed to qualify at each level.

Two allocation patterns exist at the advanced level, as shown below:

(1) department expert for a significant segment of the waste management program, or (2) a districtwide expert with multi-faceted responsibilities (providing districtwide expertise and coordination for multiple and significant segments of the waste management program).

Appellant and Joseph Brusca (the Southern District Supervisor, and appellant's second-level supervisor), testified that appellant did not meet the second criteria, but did meet the first. Both individuals felt appellant's position met the first criteria because appellant is required to answer all types of inquiries on hazardous and solid waste disposal which come to him in the Horicon office. They felt appellant was serving as a "department expert" in answering inquiries. They also felt since he answered all types of inquiries, this should meet the "significant segment" portion of the first allocation pattern noted above. The Commission disagrees. It was clear from the testimony of Ms. Bidner (DER classification expert) and Ms. Steinmetz (DNR classification expert) that statewide program responsibility over a significant segment of the program is required. This interpretation was further supported by the position descriptions of individuals classified at the Advanced level.

There are no Advanced level waste management specialists working in the districts. All Advanced levels work in DNR's central office. Ms. Steinmetz testified that the first allocation pattern in the Advanced class specifications was intended for central office staff, and the second allocation pattern was intended to provide district office staff with the same potential although not under the current structure of the district offices. Appellant does not like this arrangement.

Most Waste Management Specialist - Seniors at the district level emphasize issues relating to either solid or hazardous waste. The appellant, however, is expected to perform duties in both solid and hazardous waste. He would like the class specifications to reward him for his multiple-program role by including this distinction as a recognized allocation pattern at the advanced level.¹ The Commission, however, lacks authority to rewrite the class specifications. Zhe et al. v. DHSS & DP, 80-285, 286, 292, 296-PC, 11/19/81; aff'd by Dane County Circuit Court, Zhe et al. v. Pers. Comm., 81-CV-6492 (11/82).

Central office staff have an in-depth knowledge about a few aspects of the program, but also have statewide responsibility for that segment of the program. District office staff, on the other hand, must know quite a bit about many aspects of the program to fulfill their district-wide responsibilities. Appellant clearly felt the class specifications undervalued the mix of knowledges required at the district office level. Again, however, the Commission is limited to applying the class specifications as written by respondent.²

Appellant's position meets the first allocation pattern listed under the Senior level in the class specifications, which is noted below.

(1) a senior area/district waste management specialist responsible for developing, administering and evaluating the waste management program in the assigned geographic area/area of expertise.

It was clear that Mr. Brusca would have liked to reward appellant for the quality of his work by giving him an Advanced level classification. He testified that there were few rewards a supervisor could give outstanding staff. However, the best fit for the appellant's position is Waste Management Specialist - Senior.

¹ The wording of this paragraph was changed to clarify the nature of appellant's criticism of the class specifications and of the work performed at the district versus central-office levels.

² This paragraph was added for the same reasons as noted in the previous footnote.

ORDER

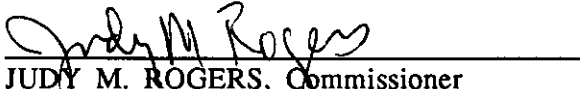
Respondent's reallocation of appellant's position to Waste Management Specialist - Senior is affirmed and appellant's appeal is dismissed.

Dated: November 29, 1993 STATE PERSONNEL COMMISSION


LAURIE R. McCALLUM, Chairperson

JMR


DONALD R. MURPHY, Commissioner


JUDY M. ROGERS, Commissioner

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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.

Pursuant to 1993 Wis. Act 16, effective August 12, 1993, there are certain additional procedures which apply if the Commission's decision is rendered in an appeal of a classification-related decision made by the Secretary of the Department of Employment Relations (DER) or delegated by DER to another agency. The additional procedures for such decisions are as follows:

1. If the Commission's decision was issued after a contested case hearing, the Commission has 90 days after receipt of notice that a petition for judicial review has been filed in which to issue written findings of fact and conclusions of law. (§3020, 1993 Wis. Act 16, creating §227.47(2), Wis. Stats.)

2. The record of the hearing or arbitration before the Commission is transcribed at the expense of the party petitioning for judicial review. (§3012, 1993 Wis. Act 16, amending §227.44(8), Wis. Stats.)