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RICHARD PEREA,

Appellant,

v.

Secretary, DEPARTMENT OF
HEALTH AND SOCIAL SERVICES,
and Secretary, DEPARTMENT OF
EMPLOYMENT RELATIONS,

Respondents.

Case No. 93-0036-PC

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DECISION
AND
ORDER

A proposed decision and order was mailed to the parties on December 23, 1993, with an opportunity to present oral or written arguments. The only response received was from respondent's representative by letter dated January 24, 1994.

The examiner found in the proposed decision that appellant's reclassification request was properly denied because he failed to show that his job duties underwent a logical and gradual change in assigned duties and that he performed those duties for a minimum of six months preceding February 14, 1992, when he made his reclassification request. The examiner further noted in the decision her potential concerns regarding the classification of appellant as compared to the classification of the laundry worker at Ethan Allan School (EAS). In particular, the examiner noted as follows:

The record indicates that a laundry worker and Mr. Perea perform essentially the same functions; albeit Mr. Perea provides leadership to students with a focus on cleaning buildings, whereas the other position provides leadership to students with a focus on cleaning clothes. The laundry position is classified at the YC1 level, whereas Mr. Perea is at the lower-paid C3 classification. To be consistent with respondents' prior explanation, no better-fitting classification should exist for the laundry worker than YC1. Respondents' expert, however, was unable to tell the examiner whether laundry classifications exist. If laundry classifications do exist, then the prior explanation would appear suspect.

Respondent's reply to the proposed decision was contained in its letter dated January 14, 1994, which stated in pertinent part as follows:

It should be clarified that the respondent's expert knew that laundry worker classifications existed in the state civil service system, however, he did not know whether the classification existed at Ethan Allen School.

The Commission shared the examiner's concern regarding the laundry worker position as compared to Mr. Perea's position. Therefore, the tape recordings of the hearing were reviewed. Mr. Richard Winz is appellant's supervisor and testified at hearing. The examiner asked him why the laundry worker was classified at the YC level while appellant was not. He responded that maybe there is no laundry classification for state workers. Mr. Parker was respondent's expert classification witness at hearing. The following exchange occurred between Mr. Parker and the examiner:

Q: Randy, from the hearing testimony it appears to me that if you are a patrolman or some other similar function which is mainly security, the classification used is the YC series. Do you have any knowledge that can either confirm or not that statement?

A: I can tell you that there are not any other classifications that I'm aware of at EAS for security work.

Q: How about for laundry?

A: I don't know.

The Commission continues to have questions regarding the differences in classification between appellant's position and the laundry worker. However, the record established at hearing was insufficient to clarify the situation. Furthermore, even if clarification were achieved, the ultimate finding in the decision would remain the same; to wit: Appellant's reclassification request was properly denied because there had been no changes in his assigned job duties.


ORDER

That the proposed decision be adopted as the Commission's final decision with the few changes noted in the attached copy of the proposed decision. Such changes were made for the reasons noted in the related footnotes.

Dated March 29, 1994.

STATE PERSONNEL COMMISSION


LAURIE R. McCALLUM, Chairperson


DONALD R. MURPHY, Commissioner


JUDY M. ROGERS, Commissioner

Parties:

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c/o James Hackett,
Union representative
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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.)

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* * * * *

PROPOSED
DECISION
AND
ORDER

A two-day hearing was held in the above-noted matter on September 30 and October 6, 1993. The post-hearing briefing schedule was established with respondents' brief due on November 2, 1993, and appellant's reply due on November 22, 1993.

The hearing issue was defined at a prehearing conference held on May 17, 1993, and was modified later because all building maintenance helpers were reallocated to custodial classifications, effective February 9, 1992. The issue for resolution is shown below:

Whether respondents' decision to deny appellant's reclassification request from Custodian 3 (C3) to Youth Counselor 1 (YC1) was correct.

Mr. Perea requested reclassification from C3 to YC1 on February 14, 1992. Therefore, the duties he performed during the six-month period prior to the request date are at issue. Mr. Perea must show a logical and gradual change in his duties which make the YC1 class specifications a "better fit" for his job than the C3 class specifications.

At all times relevant to this case, Mr. Perea was in the same position at Ethan Allen School (EAS), a facility for youth (age 13-20) who have been adjudicated delinquent. From management's perspective, the main need met by Mr. Perea's position is to keep his assigned building clean. He does this

with help of certain "students"¹ at EAS. The students who participate in cleaning have the opportunity to learn job skills through this on-the-job training experience.

One of EAS's primary functions is to rehabilitate students by providing job skills training. EAS protocol would be for a student interested in working with Mr. Perea to first take a custodial course at EAS, and then be assigned to an EAS custodian for on-the-job training as part of EAS's Work Experience Education Program (WEEP). Exceptions to this protocol have existed where a student asked Mr. Perea for placement and Mr. Perea took the lead in obtaining required approval. Other EAS staff provide on-the-job training to students in the following areas: food service helpers, laundry room, storeroom helpers, barber shop helpers, school orderlies and auto mechanic helpers.

Mr. Perea spends up to 70% of his time providing on-the-job training to his assigned students. About 20% of his position involves providing non-professional counselling services for the students assigned to clean with him. For example, he provides feedback to the students on the quality of their work. He provides a sympathetic and trusted ear for student problems, and sometimes provides advice. At times, he provides particular attention to a student's problem at the request of an EAS clinical staff member but always in context of his lead worker role over the assigned student. He reports in writing on the students' progress at work. While respondent raised concern that counselling was not an assigned duty, the contrary fact was established by Mr. Perea's PPD (A's Exh. 5 & R's Exh. 108).

All EAS staff must be aware of security and safety concerns. Mr. Perea, for example, must monitor the whereabouts of his assigned students. Also, he becomes involved at the first-response level to situations where his assigned students are suspected of theft, aggressive behavior or other forms of inappropriate behavior at work.

Mr. Perea failed to show that his job duties underwent a logical and gradual change in the 6-month period preceding² February 14, 1992, when he made his reclassification request. The

¹ "Student" is the term used to refer to the incarcerated youth.

² This word was changed for clarification.

record supports the conclusion that Mr. Perea's job duties have not changed significantly since 1978. His expertise and ability to perform have increased, but the assigned duties remain essentially the same. The two position descriptions (PDs) for his position (R's Exhs. 103 and 104) merely "rework" the same duties. Such conclusion is consistent with the testimony of Richard Winz, who said he is the Principal at EAS and functions as Mr. Perea's first-line supervisor. Furthermore, Mr. Perea did not dispute in his post-hearing brief respondents' contention that his job has not changed.

A logical and gradual change in duties is required before a reclassification can be granted, pursuant to ER 3.01(3), Wis. Admin. Code. The Commission, therefore, must respectfully decline Mr. Perea's request to reverse respondents' decision to deny his reclassification request.

"Best Fit" for Mr. Perea's Position. The "best fit" question relates to the issue of reclassification. Since Mr. Perea's position did not meet the gradual and logical change required for reclassification, the "best fit" question need not be reached by the Commission.³ However, an aspect of respondents' explanation of "best fit" troubled the examiner. Consequently, the Commission briefly visits the best-fit question in the following paragraphs and encourages respondents to review the situation to determine if an error in classification exists which could be corrected, pursuant to ER 3.01(2)(e), Wis. Admin. Code.

Mr. Perea's position could be interpreted as fitting the class specifications for either a C3 or YC1. For example, the on-the-job training he provides for students could be characterized either as "lead custodial work" for a crew of cleaners within the meaning of the C3 class specifications (R's Exh. 102), or as "assuming responsibility for the counseling, . . . training, [and] rehabilitation" of institutionalized juveniles within the meaning of the YC1 class specifications. (R's Exh. 103).

Mr. Parker, respondents' classification expert, testified that the determinative factor under these circumstances is the main need met by the position as defined by management. The main need met by Mr. Perea's

³ The wording in this sentence was changed to be more correct in the statement of the Commission's scope of review.

position is cleaning services. The security function and the 20% counselling he provides is incidental to the cleaning function under management's view.

The potential inequity identified by the examiner is that respondents may not be applying the same criteria to all positions at EAS. Other positions at EAS are classified as YC1s, even though the positions do not involve contact with students. For example, some of the YC1 positions perform security functions with little (or no) student contact. The YC1 class specification language includes security work, but to refer to it as "youth counselling" when little youth contact exists appears to be a misnomer and a cause for confusion among EAS staff.

The reason given for including security workers in the YC1 classification is that a better classification such as night watcher, for example, does not exist as compared to Mr. Perea's situation where the better classification of C3 exists. This may be a valid explanation. However, the examiner questioned the accuracy of this explanation.

The record indicates that a laundry worker and Mr. Perea perform essentially the same functions; albeit Mr. Perea provides leadership to students with a focus on cleaning buildings, whereas the other position provides leadership to students with a focus on cleaning clothes. The laundry position is classified at the YC1 level, whereas Mr. Perea is at the lower-paid C3 classification. To be consistent with respondents' prior explanation, no better-fitting classification should exist for the laundry work than YC1. Respondents' expert, however, was unable to tell the examiner whether laundry classifications exist. If laundry classifications do exist, then the prior explanation would appear suspect.

The default-classification situation which apparently exists at EAS, understandably makes it difficult for Mr. Perea to accept his lower classification (and associated lower pay). He is not persuaded that the duties of his position are classified on the same level as positions with comparable authority, responsibility and nature of work required.

The Commission does not have unlimited authority to "correct" the inequities which Mr. Perea perceives. For example, the lack of a logical and gradual change in his duties foreclosed further formal inquiry in this case.

Even in a formal review, the Commission would not have authority to rewrite existing class specifications or to create new class specifications.

ORDER

Respondents' reclassification action is affirmed and this appeal is dismissed.

Dated: _____, 1993 STATE PERSONNEL COMMISSION

LAURIE R. McCALLUM, Chairperson

JMR

DONALD R. MURPHY, Commissioner

JUDY M. ROGERS, Commissioner

cc: James Hackett
Richard Perea
Rose Riley