

**JEFF HOLUBOWICZ,**  
*Complainant,*

v.

**Secretary, DEPARTMENT OF  
CORRECTIONS, and**

**Secretary, DEPARTMENT OF  
EMPLOYMENT RELATIONS,**  
*Respondents.*



**DECISION  
AND  
ORDER**

**94-0030-PC-ER**

**NATURE OF THE CASE**

This is a complaint of safety and health reporting retaliation. A hearing was held on June 25, 1996, before Laurie R. McCallum, Chairperson. The parties were permitted to file post-hearing briefs and the briefing schedule ended on September 6, 1996.

**FINDINGS OF FACT**

1. At all times relevant to this matter, complainant has been employed by respondent Department of Corrections or its predecessor<sup>1</sup> in the Prisons Industries (formerly Badger State Industries) unit. This unit is currently located in the Administrative Services Section, Bureau of Correctional Enterprises, Division of Program Services. Complainant has been a supervisor in this unit since 1991.

2. Since at least 1986, complainant has filed written disclosures reporting the presence of toxic chemicals at his work site. Complainant has provided copies of these disclosures to his supervisors. Certain of these disclosures were made by complainant in 1993. These 1993 disclosures were made on November 18, 1993.

3. On June 11, 1993, complainant met with his supervisor Dave Andraska to discuss a Performance Planning and Development (PPD) report which constituted the written evaluation of complainant's performance for the period September of 1992 through June of 1993. This report indicated that complainant's current position description was accurate. In the "Employee Comments" section, complainant stated, "To be considered for ReClass to Industries Supervisor 3." The report indicated that the classification of complainant's position at that time was Industries Supervisor 1.

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<sup>1</sup> Division of Corrections, Department of Health and Social Services

4. The statement by complainant in this PPD report was not processed by respondent as a reclassification request.

5. On February 16, 1994, complainant met with Steve Kronzer, Director of the Bureau of Correctional Enterprises; advised Mr. Kronzer that he had requested a reclassification of his position in writing at his June 11, 1993, PPD session with his supervisor; and inquired as to the status of this request. Mr. Kronzer advised complainant that his position couldn't be reclassified to the requested level until the positions of his subordinates were reclassified.

6. In a memo to Mr. Andraska dated September 13, 1994, complainant stated as follows, in pertinent part:

At the time of signing my annual PPD I requested a copy of my files, and since July 1994 I have waited patiently for that copy, and have not yet received it. Therefore, I am requesting a copy of my 1994 PPD and I am requesting to view any and all personnel files held by the State of Wisconsin. At the planning PPD, I requested an updated position description (P.D.) reflecting my actual duties, such as required to operate trucks and the development and operation of semi-tractor-trailers, supervising off-site Industries Specialists in Oshkosh and Oregon, BCE and DOC committee assignments managing rented off-site warehouses, filling in at high skill level shops, and developing and managing a full health and safety, hazardous response, and emergency response program.

In my 1993 annual PPD I requested in writing a reclassification to Industries Supervisor 3 based on the above duties and with the logical outgrowth of additional duties since I began this job, and in comparing my duties to other positions in BCE, I am requesting a reclassification to Industries Superintendent 2, effective at the time of my original request of 6-11-93 that was never acted on or simply ignored.

7. Respondent's supervisors' manual provides that, if an employee submits a reclassification request to his supervisor and the supervisor fails to take action on the request within 30 days, the employee may file such request directly with respondent's personnel unit, i.e., the Bureau of Personnel and Human Resources. Complainant did not do this until some time in 1996.

8. Prior to August 10, 1993, requests were initiated for the reclassification of certain of complainant's subordinates' positions within the Industries Distribution Center which complainant supervised. Some of these requests were denied at the Division of Program Services level by Administrator Terri Landwehr. It is respondent's practice not to provide written denials of management-initiated reclassification requests to the incumbents of the affected positions when such denials are made at the Division level. The information available at the time indicated that these requests had been initiated by complainant, a member of management. Consistent with respondent's practice, on or around February 7,

1994, Mr. Andraska, complainant's supervisor, directed complainant to advise the affected employees orally of the denials.

9. In a memo to Sanger Powers of respondent's personnel unit dated August 10, 1993, Mr. Kronzer recommended the reclassification of these subordinate positions to the Industries Specialist 3 classification.

10. In a memo to Mr. Kronzer dated August 24, 1993, Mr. Powers stated as follows, in pertinent part:

I am responding to your August 10 memorandum regarding the classification of Industries Distribution Center transportation staff. The Bureau of Personnel and Human Resources has not received any reclassification requests for positions located at the IDC. Since I know that you are familiar with the reclassification process, I am assuming that your memorandum was written to seek an informal review of these positions.

\* \* \* \*

A review of the information provided to me indicates that Mr. Holubowicz has been corresponding with Mr. Andraska on this issue since November of 1992. Mr. Holubowicz's correspondence discusses "effective dates" of reclassification actions. As I indicated earlier, we have received no reclassification actions for any positions at IDC. In accordance with Chapter 303 of the Supervisors Manual, the effective date of a reclassification action for divisional employing units is the beginning of the first pay period following effective receipt by the Bureau of Personnel and Human Resources Administrative Support Unit. Mr. Andraska and Mr. Holubowicz may wish to review the contents of this chapter in detail. The chapter also clearly outlines the process to be followed for reclassification of a position. This includes preparation of a Position Description, a Position Action Request and a Justification for each position. Completion of the Position Action Request also requires obtaining the concurrence and approval of appointing authority, Terri Landwehr. . . .

11. On March 2, 1994, three of the incumbents of these affected positions filed written reclassification requests with respondent's personnel unit. These were processed by respondent and ultimately resulted in denials of the requests which were appealed to and sustained by the Commission.

12. In the course of processing and reviewing these reclassification requests, Mr. Powers issued a memo to one of the three incumbents on April 4, 1994, which stated as follows, in pertinent part:

I am responding to your March 28 memorandum to me regarding your request for reclassification. I will respond to your issues in the order you listed in your correspondence.

1. The November 11, 1992, memorandum you refer to was not directed to or received by the Bureau of Personnel and Human Resources and therefore we did not reply to it. My memorandum of March 17 to Mr.

Kronzer uses the term re-review since your request for reclassification had been denied orally by the Division of Program Services. . . .

13. On September 7, 1993, at the funeral of one of complainant's former co-workers, Mr. Kronzer directed complainant not to purchase sweet corn for an open house scheduled for the following day at the Waupun prison farm, and threatened disciplinary action if complainant did so. Complainant told Mr. Kronzer that he believed the co-worker's death was the result of the presence of toxic chemicals at the work site. Complainant purchased sweet corn using his own funds and served it at the open house. Complainant was not disciplined for doing so.

#### CONCLUSIONS OF LAW

1. This matter is properly before the Commission pursuant to §230.45(1)(g), Stats.
2. Complainant has the burden to show that there is probable cause to believe that he was retaliated against as alleged.
3. Complainant has failed to sustain this burden.

#### OPINION

There are two issues remaining in this case after complainant withdrew the other stipulated issues at hearing and in his post-hearing brief:

1. Whether there is probable cause to believe that . . . respondent retaliated against complainant for activities protected by §101.055, Stats., in regard to complainant's allegation that his request to reclassify his position to Industries Supervisor 3 was denied. (part of Issue #3 in conference report)
2. Whether there is probable cause to believe that respondent retaliated against complainant for activities protected by §101.055, in regard to complainant's allegation that his February 7, 1994, phone conversation with Dave Andraska constituted an adverse employment action against complainant. (Issue #4 in conference report)

Complainant alleged four acts of retaliation in his charge:

1. The constructive denial of complainant's June 11, 1993, request for the reclassification of his position.
2. Mr. Andraska's February 7, 1994, directive to complainant to orally notify certain of complainant's subordinates of the denial of the requests to reclassify their positions.
3. The denial of complainant's request for Protective Occupation Status (POS).
4. Complainant's continuing exposure to toxic chemicals at his work site.

Allegations #3 and #4 were advanced by complainant only within the context of issues which he has withdrawn and will be discussed no further here.

**1. The constructive denial of complainant's request for the reclassification of his position.**

This would fall within the ambit of Issue #1 (safety and health reporting retaliation) stated above.

Complainant contends in this regard that respondent should have interpreted his comment on the PPD he signed on June 11, 1993, as a request for the reclassification of his position and respondent's failure to process it as such was retaliatory. This comment stated that "To be considered for ReClass to Industries Supervisor 3."

Complainant has failed to show that respondent's failure to process this comment as a formal request for the reclassification of his position was unreasonable. The record shows that a formal request for reclassification necessarily includes an updated position description signed by the employee and his or her supervisor and a written explanation of the changes which the position has undergone since it was first classified at its current level. Without this information, none of the individuals charged with reviewing the request would be able to judge whether the requirements for reclassification have been met. The record does not show that complainant provided such information to his supervisor or to anyone else at DOC charged with conducting such a reclassification review. In addition, the comment, as it is stated on the PPD form, does not clearly state nor necessarily imply that complainant's purpose in making the comment is to initiate a formal request for the reclassification of his position. Although complainant clearly indicates that he wants his position to be "considered" for reclassification, it is not clear whether he wants his supervisor to assign him higher level duties to achieve that result or whether he feels that his duties already merit that classification. Furthermore, complainant, as a supervisor, is charged with knowledge of the policies and procedures laid out in respondent's supervisors' manual. This manual provides that, if a reclassification request is initiated by an employee and his or supervisor does not respond to such a request, the proper procedure is for the employee to present the request directly to respondent's personnel unit. The record does not show that complainant presented a reclassification request to respondent's personnel unit until some time in 1996. Complainant has failed to show that he filed a cognizable reclassification request with respondent on June 11, 1993, or thereafter until some time in 1996; or that respondent should have interpreted his written comment on his PPD or any other writing or action on complainant's part (until 1996) as such a request. As a consequence,

complainant has failed to show probable cause to believe that he was retaliated against in this regard.

**2. The directive to notify subordinates orally of denial of their reclassification requests.**

This falls within the ambit of Issue #2 (safety and health reporting retaliation) as stated above.

The record shows that, when a management-initiated reclassification request is denied at the Division level, respondent's typical procedure is not to provide the position incumbents with a written denial but to have someone in their supervisory chain of command notify them orally. Complainant has failed to show that this is not respondent's typical procedure. In addition, complainant has failed to show that the information available to Mr. Kronzer or Ms. Landwehr or anyone in respondent's personnel unit at the time indicated anything other than that the request had been initiated by complainant and/or Mr. Andraska, two members of management. In fact, the record does show that, when three of these position incumbents subsequently filed reclassification requests directly with respondent's personnel unit which clearly indicated they were employee-initiated, they were processed as such. Complainant has failed to show probable cause to believe that he was retaliated against in regard to this allegation.


ORDER

This complaint is dismissed as to respondent DER as the result of the withdrawal by complainant of his charge against DER during the course of the hearing. This complaint is dismissed as to respondent DOC based on the above decision.

Dated: November 14, 1996 STATE PERSONNEL COMMISSION

  
LAURIE R. McCALLUM, Chairperson

LRM:lrn  
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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 (except an order arising from an arbitration conducted pursuant to §230.44(4)(bm), Wis. Stats.) 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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