

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

SEAN CARROLL, Appellant,

vs.

DEPARTMENT OF ADMINISTRATION, Respondent.

Case 18
No. 73216
PA(der)-289

DECISION NO. 35055-A

Appearances:

Sean Carroll, 6816 East Pass Street #109, Madison, Wisconsin, appearing on his own behalf.

Mark A. Herman, Assistant Legal Counsel, Department of Administration, 101 E. Wilson Street, 10th Floor, P.O. Box 7864, Madison, Wisconsin, appearing for Respondent Department of Administration.

DECISION AND ORDER

Sean Carroll appeals his reallocation from Power Plant Operator – In Charge to Power Plant Operator – Senior, effective June 1, 2014. Hearing in the matter was held in Madison, Wisconsin, before Wisconsin Employment Relations Commission Staff Attorney Stuart D. Levitan on September 30, 2014, at which time the parties made oral arguments and waived their right to file written briefs. Being fully advised in the premises, the Commission hereby makes and issues the following

FINDINGS OF FACT

1. Among its various responsibilities, Respondent Wisconsin Department of Administration owns and operates the Capitol Heat & Power Plant (“CHPP”) in downtown Madison.

2. In March 1997, Appellant Sean Carroll was promoted from Power Plant Operator – Senior at the CHPP to Power Plant Operator – In Charge and held that position continuously until June 1, 2014.

3. On June 1, 2014, Carroll's position was reallocated to Power Plant Operator – Senior. Although his pay range was changed from 03-16 to 03-15, his base pay remained as before the reallocation, \$23.60 per hour.

4. Technological improvements which DOA effectuated at the CHPP in 2011 produced a logical change in the duties and responsibilities of the position of Power Plant Operator – In Charge.

Based on the above and foregoing Findings of Fact, the Commission hereby makes and issues the following

CONCLUSIONS OF LAW

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

2. DOA's decision reallocating Carroll's position from Power Plant Operator – In Charge to Power Plant Operator – Senior was lawful.

Based on the above and foregoing Findings of Fact and Conclusions of Law, the Commission makes and issues the following

ORDER

The decision to reallocate Carroll's position is affirmed and the appeal is dismissed.

Signed at the City of Madison, Wisconsin, this 20th day of May 2015.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James R. Scott, Chairman

Rodney G. Pasch, Commissioner

**MEMORANDUM ACCOMPANYING FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER**

The Legislature has extended to us the authority to entertain appeals from decisions made by the director to reclassify or reallocate positions in the civil services. § 230.09(2)(a), Stats. We review those decisions utilizing the adversarial hearing process established under §§ 230.44(1)(b) and 230.45(1)(a), Stats. We are not guided by any standard specifying the scope of our review and review by any court is limited only to assertions that our decision was “procured by corruption, fraud or undue means.” § 230.44(4)(bm), Stats.

One of the purposes of the state job classification and allocation system is to create logical groupings of positions based upon job duties and responsibilities. *Department of Employment Relations v. Building Trades Negotiating Committee*, 2003 WI App 178, ¶23, 266 Wis.2d 512, 527, 669 N.W.2d 499. The goal of which is to allow the state to “efficiently structure its workforce by responding appropriately to changes in a position’s duties and responsibilities.” *Id.* Positions are initially assigned to the appropriate class which in the parlance of the civil service is referred to as an “allocation.” Wis. Admin. Code § ER 3.01(1). Once allocated a position may be changed by “reallocation,” “reclassification” or “regrade” as described in Wis. Admin. Code §§ ER 3.01(2), (3) and (4). We need not address the subtle distinctions between the three as the focus of this matter is the “reallocation” of Carroll’s position.

The administrative rule describes seven different situations whereby the director may reallocate a position from one class to another. Here subsection (f) was selected as the basis for the change and it provides for reallocation when “[a] logical change in duties and responsibilities of a position” occurs.

We are left to decide what a “logical” change is. For purposes of our review of this and future changes we will equate a “logical” change to one that is not arbitrary or capricious. Applying that definition it is clear that the State’s reallocation of Carroll from Power Plant Operator – In Charge to Power Plant Operator – Senior had a sound factual basis and was neither arbitrary nor capricious. Clearly, the modernization of the power plant eliminated the need to have someone in the lead worker or “In Charge” status. Most significantly, plant management could connect remotely into the plant’s control system in order to make operational decisions. This advance effectively eliminated the need for an onsite lead worker. Additionally, the amount of equipment that the individual was responsible for has been reduced. The key difference between the two positions was the “lead worker” responsibilities, which no longer exists. No reduction in pay is involved in the reallocation. The un rebutted evidence clearly supports the fact that a number of Carroll’s duties changed as a result of the modernization. Carroll’s evidence and argument focused primarily on the manner in which the reallocation occurred rather than whether it was legally correct.

Carroll has the burden of proof and is required to prove by a preponderance of the evidence that the Department’s action of reallocating his position was unlawful. Carroll has not met that burden and accordingly we have affirmed the reallocation.

Signed at the City of Madison, Wisconsin, this 20th day of May 2015.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James R. Scott, Chairman

Rodney G. Pasch, Commissioner