

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

ROBERT STROESS, Appellant,

v.

STATE OF WISCONSIN DEPARTMENT OF ADMINISTRATION, Respondent.

Case ID: 315.0010

Case Type: PA

DECISION NO. 37483-A

Appearances:

Daniel P. Bach, Attorney, Lawton & Cates, S.C., 146 East Milwaukee Street, Suite 120, P.O. Box 399, Jefferson, Wisconsin, appearing on behalf of Robert Stroess.

Wilhelmina A. Mickelson, Executive Human Resource Officer, Department of Administration, 101 E. Wilson Street, 4th Floor, P.O. Box 7855, Madison, Wisconsin, appearing on behalf of the State of Wisconsin Department of Administration.

DECISION AND ORDER

On January 2, 2018, Robert Stroess filed an appeal with the Wisconsin Employment Relations Commission pursuant to § 230.44(1)(a), Stats., asserting the State of Wisconsin erred when it did not change his pay retroactive to April, 2014, following a December, 2017 reallocation of his position.

On August 22, 2018, the Commission issued an Order Denying Motion to Dismiss holding the appeal should proceed for a determination as to whether Stroess was correctly classified as a Special Administrative Warden in April, 2014. The State asserts he was correctly so classified while Stroess contends that Administrative Warden was the proper classification. On December 17, 2018, a hearing on that issue was held in Madison, Wisconsin, before Examiner Peter G. Davis. The parties thereafter filed written argument, the last of which was received on February 18, 2019.

On February 28, 2019, Examiner Davis issued a Proposed Decision and Order finding that Stroess was properly classified as a Special Administrative Warden. Objections were filed and the matter became ripe for Commission consideration on April 3, 2019.

Having considered the matter, the Commission makes and issues the following:

FINDINGS OF FACT

1. In April, 2014, Robert Stroess began performing work as an employee of the State of Wisconsin Department of Natural Resources. The classification title of his position was Special Investigative Warden.

2. The Classification Specification in effect in April, 2014, for Special Investigative Warden had an effective date of January 22, 1995, and stated in pertinent part:

Positions allocated to this classification are responsible for planning, directing, controlling and conducting covert and overt illegal commercial wildlife activities for a majority (greater than 50%) of the time.

3. The Classification Specification in effect in April, 2014, for Administrative Warden had an effective date of March 12, 2000, and stated in pertinent part:

Positions allocated to this classification are responsible for planning, coordinating and monitoring specialized statewide natural resource and administrative law enforcement programs.

4. In April, 2014, Stroess did spend more than fifty percent of his time “planning, directing, controlling and conducting covert and overt illegal commercial” fishing activities within the Department of Natural Resources’ Northeast Region.

5. In April, 2014, Stroess did not spend more than fifty percent of his time “planning, coordinating and monitoring specialized statewide natural resource and administrative law enforcement programs.”

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

CONCLUSION OF LAW

In April, 2014, the “best fit” classification for the duties Stroess performed was Special Investigative Warden.

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

ORDER

In April, 2014, Stroess was properly classified as a Special Administrative Warden.

Dated at Madison, Wisconsin, this 11th day of April, 2019.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James J. Daley, Chairman

MEMORANDUM ACCOMPANYING DECISION AND ORDER

Stroess appealed the State's December, 2017, determination that the reallocation of his position from Special Investigative Warden to Administrative Warden (effective June 25, 2017) did not produce an increase in his pay. In effect, he contended that, if the reallocation had been effective in April, 2014, his pay would be greater than it is now. The State asserted that if Stroess believed his April, 2014, position was incorrectly classified (and thus he was paid less than he should have been), it was incumbent on Stroess to then initiate the reclassification or reallocation process and he did not do so. Thus, the State contended the appeal was untimely. Stroess responded by asserting that in April, 2014, there was no State action to appeal.

After the appeal was filed, the State chose to review the December, 2017 notice of reallocation for the following purposes:

- (1) to confirm the correct classification of your position and (2) to verify the appropriate timeline of your request to ensure the effective date of the change complied with stated policy.

In a May 22, 2018, communication to Stroess, the State advised that: (1) he was correctly classified as a Special Investigative Warden in April, 2014; (2) he was currently correctly classified as an Administrative Warden; (3) his position would now be reclassified to Administrative Warden with an effective date of July 10, 2016; and (4) under the 2015-2017 State Compensation Plan no pay adjustment would be made. The May 22, 2018 communication concluded with the following statement:

Normally, following a decision such as this, DPM would indicate you have the right to appeal to the Wisconsin Employment Relations Commission (WERC); however, because this review was done as a result of your appeal to the WERC, for which a hearing is scheduled for May 30, 2018, there is no need to file an additional appeal.

In light of the State's May 22, 2018 communication, the Commission concluded it was appropriate for the appeal to proceed as to the limited issue of whether Stroess was correctly classified as a Special Investigative Warden in April, 2014. Based on the record before it, the Commission now concludes that Stroess' duties in April, 2014 "best fit" the Special Investigative Warden classification rather than the Administrative Warden classification he ultimately received in July, 2016.

While the parties ably litigated all facets of Special Investigative Warden and Administrative Warden classifications, a fundamental and determinative distinction between these two classifications is that one is focused on regional responsibilities (Investigative Warden) while the other (Administrative Warden) is focused on statewide duties. Based largely on the disinterested and credible testimony of Stroess' direct supervisor in April, 2014, it is concluded Stroess' duties at the time were focused on the Department of Natural Resources' Northeast Region and thus he did not spend the requisite "more than fifty percent" of his time performing

the statewide responsibilities needed to be classified as an Administrative Warden. Therefore, it is concluded that Stroess was correctly classified as a Special Investigative Warden in April, 2014.

Dated at Madison, Wisconsin, this 11th day of April, 2019.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James J. Daley, Chairman