

PATRICIA BENGES,

Petitioner,

MEMORANDUM DECISION

vs.

STATE OF WISCONSIN
(Personnel Board),

Respondent.

Case No. 159-220

BEFORE: HON. GEORGE R. CURRIE, Reserve Circuit Judge

This is a proceeding under ch. 227, Stats., to review a decision consisting of an opinion and order of the State Personnel Board (hereafter the Board) dated September 15, 1977. The findings of fact and conclusions of law appear in the opinion portion of the decision.

Since sometime in early 1975 petitioner has been employed by the University of Wisconsin-Madison as a receptionist at Tripp Hall dormitory on the Madison campus, her civil service classification being Typist 2. At some time in late 1976 petitioner sought to have the position she held reclassified to a position having a higher pay range, evidently to a Shipping and Mailing Clerk 1 or 2 or possibly to a Typist 3. A job audit was performed by university officials and the request for reclassification was denied. Petitioner then appealed this denial of reclassification to the Board under sec. 16.05(1)(f), Stats. No issue has been raised as to whether the denial was not made either by the Director of the State Bureau of Personnel, or by someone to whom he had delegated that authority.

The Board conducted a hearing in the appeal at which petitioner was represented by counsel. Approximately 290 pages of testimony was taken and numerous exhibits, some many pages in length, were received in evidence.

The Board's findings of fact and conclusions of law read:

FINDINGS OF FACT

RECEIVED

"The appellant at all relevant times has been employed as a receptionist at Tripp Hall, UW-Madison

with a classification of Typist 2. In this position, she sells meal and laundry tickets, rents refrigerators and cots, accounts for the money she handles, answers the phones, responds to questions from visitors, and does other related receptionist duties. Other duties and responsibilities are related to the postal sub-station at Tripp Hall.

The postal unit is operated by the appellant with the assistance of a part-time seasonal LTE and part-time student employes. The appellant provides training and supervision to the student employes. While her guidance and review of the work of the LTE is so minimal that the appellant is not actually performing a lead work function as to her, appellant's supervisor has organized the work unit in a manner that places this responsibility on the appellant.

The mail-related functions performed by appellant include the sale of stamps, envelopes, and post cards; weighing letters and packages and determining the amount of postage required by referring to simple charts and tables; preparing, collecting for, and dispatching registered and insured mail; preparing daily and quarterly sales reports; dispatching cash to the post office by registered mail; ordering and receiving stamps by registered mail; receiving and sorting incoming mail directed to the residents; sale of postal money orders with related simple bookkeeping functions; collection and distribution of U.S. and campus mail for university housing administrative offices in Schlichter Hall.

In this operation appellant utilizes two postage scales and a money order imprint machine. In order to obtain access to the incoming mail, the appellant must tip over mail bags weighing approximately 35 pounds and drag them along the floor to spill the mail over the floor. Approximately 4 or 5 times a week she weighs packages weighing in excess of 20 pounds. She has very infrequently wrapped packages as a service for students who have not properly wrapped them before coming to the counter. The appellant works under close supervision inasmuch as her work is not complex and is performed pursuant to detailed guidelines. The appellant does not, and has never, performed any typing in this position. She has had the opportunity, which she has not exercised, to type during certain periods of the academic year when she is in a non-work status.

CONCLUSIONS OF LAW

It is concluded that appellant's position is not properly classified as Shipping and Mailing Clerk 2. Referring to the definition section of the class specifications (Appellant's Exhibit 2), appellant does not 'function under limited supervision or guidance,' does not pick up inter-office or campus mail and delivers only limited amounts of this mail and to one location (Schlichter Hall) only. She is involved in some 'routine mail handling and processing,' and some shipping and mailing letters, packages, parcels and other materials. Referring to the examples of work performed it is further concluded that appellant's activities as found above relate to the specific examples as follows:

'Plans, guides, and assists in the pick up and delivery of inter-office or campus mail and the sorting, wrapping, weighing, metering and routing of other mail, packages and parcels.'

Appellant is not involved in the pick up of inter-office or campus mail and delivers it only to Schlichter Hall. She does sort and weigh, but does not wrap, meter or route other mail, packages and parcels. (It is concluded that the package wrapping appellant does as set forth in the findings is too limited in terms of scope and frequency to be construed as 'wrapping' as the term is used in these specifications.)

'Lift and handle large mail containers and heavy cartons.'

The appellant does not do this.

'Make out freight bills and other shipping bills.'

The appellant does not do this.

'Operate postage meters, scales and other simple mail room equipment.'

The appellant does operate scales and a money order imprint machine.

'Operate, set up and maintain a large complex multistation inserting equipment.'

The appellant does not do this.

'Operate set up and maintain large complex multipurpose labeling machines.'

The appellant does not do this.

'May train and guide other employes in equipment operations.'

The appellant does not do this.

'Keep records and make reports.'

The appellant does do this.

'May hand stuff envelopes, tape and label packages.'

The appellant does not hand stuff envelopes and the limited wrapping of packages she does do is too incidental to be construed as taping and labeling packages as the terms are used in these specifications.

It is not unusual for an employe to have some duties and responsibilities identified at a higher level. The limited nature of the appellant's work which falls within the class specifications for Shipping and Mailing Clerk 2 preclude classification of appellant's position at that level.

With respect to the definition section for Shipping and Mailing Clerk 1 specifications (Appellants Exhibit 1), it is concluded that appellant's work as set forth in the findings does involve some routine mail handling and processing, no pickup but some delivery of inter-

office or campus mail (to Schlichter Hall), and some shipping and mailing of letters, packages, parcels and other materials.

With respect to the examples of work performed, it is further concluded that appellant's activities as found above relate to the specific examples as follows:

'Sort, wrap, weigh, meter and route mail, packages, and parcels.'

Appellant does sort and weigh but does not wrap, meter or route mail, packages and parcels.

'Pickup and deliver inter-office or campus mail.'

Again appellant's only involvement here is limited delivery to Schlichter Hall.

'Lift and handle large mail containers and heavy cartons.'

Appellant does not do this.

'May hand stuff envelopes, tape and label packages.'

Appellant does not do this.

'May make out freight bills, UPS bills, postage figures, etc.'

Appellant does not make out freight or UPS bills but does do basic bookkeeping which may be construed as 'postage figures.'

'May receive, store and distribute a stock of printed material.'

The appellant does not do this.

'May operate postage meters, scales and other simple mail room equipment.'

Appellant does operate scales and a money order imprinting machine.

It is concluded that although appellant does do some work identified at the Shipping and Mailing Clerk 1 level, her involvement in this area is not substantial enough to warrant classification at this level.

The Typist 2 position standard (Appellant's Exhibit 3) contain the following definition:

'Positions allocated to this level perform journeyman level typing and related clerical duties as described by the Clerk 2 standards under direct supervision.'

It was found that appellant does not do any typing but has had the opportunity to do typing during certain periods of the academic year. In any event, it cannot be concluded that this classification is appropriate because the Clerk, 2 standards are not in the record.

The position standard for Typist 3 (Appellant's Exhibit 4) has this definition:

'Positions allocated to this level perform advanced clerical and typing duties under general supervision.'

One of the classification factors incorporates by reference the clerical duties and responsibilities as described by the Clerk 3 standard. Since the appellant does not perform advanced typing duties and the Clerk 3 standards are not in the record, it cannot be concluded that this is an appropriate classification.

Since the appellant has the burden of proof, it is concluded that the respondents must be sustained in their denial of appellant's reclassification request."

THE ISSUE

The brief of petitioner states the issue to be:

"Should Bengs be reclassified to Shipping and Mailing Clerk one or Two?"

In view of this statement of the issue the court deems it unnecessary to consider the job position specifications of a Typist 3.

No issue is raised with respect to the correctness of the Board's holding that the burden of proof was upon petitioner to establish that she should be reclassified to a Shipping and Mailing Clerk position.

THE COURT'S DECISION

The test to be employed by the court's review of the Board's findings of fact is whether they are "supported by substantial evidence in the record." Sec. 227.20(6), Stats. The Supreme Court dealt with the proper application of that test in Reinke v. Personnel Board, 53 Wis. 2d 123, 138-139, 237 N.W. 2d 183 (1975), by quoting from its prior decision in Kenosha Teachers Union v. Wisconsin Employment Relations Comm., 39 Wis. 2d 196, 204, 205, 158 N.W. 2d 914 (1968) as follows:

""'[T]he term 'substantial evidence' should be construed to confer finality upon an administrative decision on the facts when, upon an examination of the entire record, the evidence, including the inferences therefrom, is found to be such that a reasonable man, acting reasonably, might have reached the decision; but, on the other hand, if a reasonable man, acting reasonably, could not have reached the decision from the evidence and its inferences then the decision is not supported by substantial evidence and it should be set aside.'"

" . . .
"" We deem that the test of reasonableness is implicit in the statutory words 'substantial evidence.' However, in applying this test the crucial question is whether a reviewing court is only to consider the evidence which tends to support the agency's findings, or whether it is also to consider the evidence which controverts, explains, or impeaches the former. Use of the statutory words 'in view of the entire record as submitted' strongly suggests that the test of reasonableness is to be applied to the evidence as a whole, nor merely to that part which tends to support the agency's findings. ""

The Supreme Court in using the terminology "in view of the entire record as submitted" quoted from former sec. 227.20(1)(d), Stats., while present sec. 227.20(6) enacted in 1975 uses the wording "in the record." However, the court doubts if this change in language has effected any change in the court's standard of review.

The briefs have cited no Wisconsin case dealing with court review of denial of reclassification by the Board. Therefore, the court deems apposite this extract quoted by respondent's brief from 15 Am. Jur. 2d Civil Service, sec. 25, pp. 34-35:

". . . [T]he proceedings of the civil service commission in reclassifying a position cannot be set aside by the courts except in a clear case, and in passing on a reclassification the court will not consider its wisdom but only the power of the commission and the method of its exercise.

The initial premise, in appraising the strength of the foundation for reclassifications, is that the agency has a certain amount of managerial discretion in this field, and a second premise is that the plaintiffs have the burden of showing arbitrariness in, and lack of support for, the administrative determinations. In determining the validity of a reclassification, the test is what the employee did within the title of his former classification, as compared with the duties under the new classification without regard to the duties performed out of title. Merely establishing a title and moving individuals into positions to fill such title in order to establish a differential in pay is not enough; it should be shown that there is a substantial difference in the work performed and that the reclassification accords with realities. To preserve the civil service status of each employee and to properly arrive at a reclassification of an employee, consideration must be given to prior examinations, appointment record, and duties lawfully performed" (Emphasis added.)

The court in conducting its review has read the entire transcript of the testimony given at the hearing and what it considered to be pertinent portions of any material exhibits.

It did not, however, read all of the United States Postal Service manuals because the simple Post Office duties performed by petitioner rendered much of the manual provisions superfluous.

The court finds and determines that all of the findings of fact of the Board are supported by substantial evidence with the one exception now to be noted. This exception has to do with the finding which reads: "The appellant works under close supervision inasmuch as her work is not complex and is performed pursuant to detailed guidelines." The evidence is to the contrary with respect to working under close supervision, and is to the effect that she receives very little supervision from her immediate supervisor Zweifel. The court, however, finds the error in this finding to be immaterial in that none of the Board's conclusions of law were grounded thereon.

The job specifications for Shipping and Mailing Clerk are set forth in Appellant's Exhibit 1 and those for Mailing and Shipping Clerk 2 are set forth in Appellant's Exhibit 2. The testimony which much impressed the court was that given by the witness Webb. He is classified as Personnel Administrative Officer 1 and is the university employee in charge of job classification for the Madison campus. He has worked for the university for twenty years and has had his present classification for eight or nine years. In February, 1977, he performed a field audit of petitioner's work to determine whether she should be reclassified. This audit was performed by observing her work for one or two hours and questioning her to ascertain the details of her work. In his testimony beginning on page 216 of the transcript he explained in detail why petitioner's work did not fall within the job classification specifications of either a Shipping and Mailing Clerk 1 or 2. Many of the Board's findings of fact and of its conclusions of law are grounded on Webb's testimony.

The court sees no necessity for summarizing the testimony given by various witnesses or with respect to particular duties performed by petitioner. The court will refer to only one duty

the petitioner claimed she performed, that of wrapping packages for students. This duty, if performed, was material because the job specifications for Shipping and Mailing Clerk 1 cited as examples of the work to be performed that of wrapping packages and parcels. Petitioner testified that while packages are supposed to be wrapped when brought in for mailing by students, she did wrap those that came in unwrapped "out of courtesy" (Tr. 57). She admitted that no wrapping paper was stocked by the university for her to wrap packages with, and that she brought her wrapping materials from home. Dora Svetnika, the Limited Term Employee (LTE), who was employed as petitioner's assistant all the time petitioner has been employed at Tripp, testified she had never seen petitioner wrap a package (Tr. 188). It is true that Ms. Svetnika was not there during all of petitioner's work shift, but her testimony is substantial evidence to support the Board's findings. "She has very infrequently wrapped packages as a service to students who have not properly wrapped them before coming to the counter."

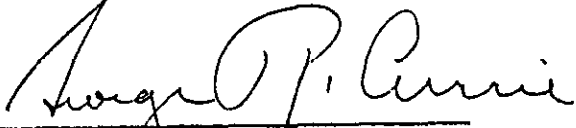
The court determines that the Board's conclusions "that although appellant does do some work identified at the Shipping and Mailing Clerk 1 level, her involvement in this area is not substantial enough to warrant classification at this level," and "It is concluded appellant's position is not properly classified as Shipping and Mailing Clerk 2," are reasonable conclusions to be drawn from the findings of fact, including some that are labeled conclusions of law, and the evidence, and must be upheld by the court.

However, the court is of the opinion that petitioner is probably misclassified and that a new position and specification for it ought to be created for the job she is performing. While much of her work is the same as that performed by the receptionists at the other eight university dormitories who are also classified Typist 2, only Tripp operates a Post Office substation. This requires the receptionist at Tripp to conform to Post Office regulations in operating it and to make out daily and

Reports. This seems to the court to require materially
responsibilities of her than of the other receptionists.
Court, however, has no power to order that she be reclassified.
Judgment be entered affirming the Board's Opinion and
Order which are the subject of this review.

Dated this 16th day of October, 1978.

By the Court:



Reserve Circuit Judge