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DANIEL DOAN, *

Appellant, *

v. *

DIVISION OF PERSONNEL, *

Respondent. *

Case No. 78-11-PC *

* * * * *

DECISION

NATURE OF THE CASE

This is an appeal of a decision of the administrator, state division of personnel, pursuant to §230.44(1)(a), stats. The appellant seeks back pay for certain supervisory or lead work he claims was performed between the years 1964 and 1977.

FINDINGS OF FACT

1. At all relevant times the appellant has been employed by the respondent in the classified civil service of the State of Wisconsin.
2. The appellant began work in the UW - Oshkosh maintenance department in 1963.
3. In 1964 appellant began lead work with respect to certain of the maintenance mechanics in the maintenance department. His work included:
 - a. Directing and scheduling the mechanics work in the maintenance and repair of campus heating equipment (steam lines and controls), refrigeration, air conditioning and ventilation equipment, pumps, electric motors, generators, fire extinguishers, and other mechanical equipment and related controls.
 - b. The appellant's lead work activities included orally reprimanding the maintenance mechanics in the exercise of his discretion, developing preventive maintenance programs and schedules, training,

assigning work, checking and reviewing the work of the maintenance mechanics, and handling some purchasing and contacts with other departments, outside contractors, etc. The appellant also consulted with his supervisors and made recommendations regarding more formal disciplinary action, reclassifications, and appointments, and administered that part of the leave system associated with vacation of less than 3 days that was not handled through the formal leave accounting system. The appellant did informal performance evaluations of the maintenance mechanics while the formal evaluations were done by appellant's supervisor.

c. The appellant spent approximately 50% of his time performing journeyman steamfitter functions.

4. The civil service classification of appellant's position is steamfitter.

5. In 1977 the appellant filed a contractual grievance requesting back pay for supervisory work performed between 1965 and June 1, 1977.

6. This grievance was denied at the third step on November 25, 1977, and the Bureau of Collective Bargaining indicated on December 8, 1977, that the grievance could not be accepted for arbitration because it involved a non-bargainable subject (classification).

7. On or about January 9, 1978, the appellant submitted an appeal on the same subject to the director of the bureau of personnel. See respondent's exhibit 2A.

8. On February 9, 1978, the director denied the appeal. See respondent's exhibit 1.

9. This decision was appealed to the personnel commission on February 28, 1978.

CONCLUSIONS OF LAW

1. This appeal from the decision of the director dated February 9, 1978, was timely filed.

2. While the appellant has been a lead worker, he has not established that he was a supervisor.

3. The appellant has not established that he acted as lead worker with respect to employes who were either in positions classified as craftsmen or positions that were not classified in the crafts series but which performed work set forth in the class specifications for the crafts series.

4. The appellant has not established that his classification as steam-fitter was incorrect or that he was entitled to additional pay for lead or supervisory work.

OPINION

Following the prehearing conference but before the hearing, the respondent raised an objection to subject matter jurisdiction based on the ground that the appeal was not timely filed. This motion was taken under advisement and a hearing was held as to all issues, including the merits.

In the opinion of the commission the respondent's position on timeliness does not run to the subject matter jurisdiction of this agency. What is before the commission is an appeal of a decision of the director (now administrator, division of personnel). So long as there is a decision, the appellant is an interested party, and the appeal is timely with respect to the decision, the commission has jurisdiction to review

the decision of the director. While the respondent can raise the question of whether the director had jurisdiction in the first instance, this does not run to the subject matter jurisdiction of the commission.

In his appeal to the director the appellant indicated he was seeking compensation for supervisory work performed, going back to 1964. The director determined that while the appellant did perform lead work he was not involved in supervision, and he was not entitled to be a Lead Crafts Worker because he did not lead employes in crafts classification. The director concluded that this lead work with respect to maintenance mechanics would only entitle the position to a Maintenance Mechanic 3 level, which is a lower pay range than the actual classification of steamfitter, but that the 50% of appellant's time spent on steamfitter duties justified that classification.

In order for an appeal to have been timely filed with the director, the appeal would have had to have been filed with the director "within 15 days after the effective date of the decision, or within 15 days after the appellant is notified of such decision, whichever is later." See §16.03(4)(d), stats. (1975).

At the prehearing conference it was stipulated that in this appeal the appellant was only seeking supervisory compensation through June 1, 1977. The appeal to the director was not filed until on or about January 9, 1978. While this filing date would be untimely with respect to a June 1, 1977, cutoff, there is nothing in the appellant's letter to the director or the director's decision that recognizes such a cutoff. The appeal and the decision were couched in terms of the period of 1964 to the present, the fact that the appellant stipulated to a June 1, 1977, cutoff in the context of this appeal to the commission should not be used in a retroactive

fashion to determine that the director lacked jurisdiction over the appeal that was actually presented to him.

Laying to one side the question of the stipulated cutoff date, the commission does not believe that absent highly unusual circumstances, which are not present on this record, the appellant can reach back to 1964 to appeal his then current pay rate (and in so doing his classification). However, the director, in his decision, did not address the time limit on appeals set forth in §16.03(4)(d), stats. (1975). As discussed above, there was nothing in the record of the proceeding before the director to indicate that the appeal did not run to the present. Therefore, while the director, if he had agreed with the appellant's contentions, apparently would not have been able to award back pay, if any, beyond 15 days before the appeal was filed, this again does not mean the director lacked all jurisdiction. Compare, Malzahn v. Carballo, Wis. Pers. Bd. 75-39 (2/23/76).

Looking to the substantive issues in the case the commission agrees with the determination of the director as set forth in respondent's exhibit 1. While the appellant performed a wide variety of lead work, he was not responsible for supervisory functions such as the hire and discharge of employees and the adjustment of grievances. Thus, his position was not appropriately classified as a supervisor.

In order to have qualified for classification as Lead Crafts Worker, the positions lead must include craftsmen. The positions lead by appellant were classified as maintenance mechanics. The appellant argued that these positions should have had crafts classifications. However, apart from some conclusory opinions, there was nothing in the record to support this argument. These employees were engaged in preventive maintenance and

repair and not construction and installation.

Even if the appellant had established that these maintenance mechanic positions were improperly classified as all these years and his position should have been classified as Lead Crafts Worker, he would not be entitled to any tangible remedy at this point.

The stipulation at the prehearing conference was that the appellant was seeking compensation through June 1, 1977. Throughout the years appellant claims he worked outside his steamfitter classification without compensation, he never filed an appeal. The statutory requirement that appeals had to be filed within 15 days, see §§16.03(4)(d) or 16.05(2), stats. (1975), serves two purposes. One is to totally cut off appeal rights when an appeal is not timely filed with respect to a particular transaction. Another is to limit the right to recovery if the matter appealed falls into the "continuing violation" area. See Malzahn v. Carballo, Wis. Pers. Bd. 75-39(2/23/76). Therefore, even if this appeal is considered to be of a continuing violation, any possible recovery would be limited to a period of 15 days before the appeal was filed with the director, on or about January 9, 1978. Since the appellant is not claiming compensation for any period after June 1, 1977, he would not be entitled to any possible back pay.

ORDER

The decision of the director set forth in his letter of February 9, 1978,
to Mr. Doan (respondent's exhibit 1) is sustained and this appeal is
dismissed.

Dated: April 15, 1982. STATE PERSONNEL COMMISSION

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Parties

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