

return  
to Doll (DEC/OP)  
file

STATE OF WISCONSIN

CIRCUIT COURT

DANE COUNTY

DEPARTMENT OF EMPLOYMENT  
RELATIONS, DIVISION OF  
PERSONNEL,

Petitioner,

vs.

WISCONSIN PERSONNEL  
COMMISSION (Ralph Doll),

Respondent.

AMENDED  
DECISION

Case No. 79 CV 3860

**RECEIVED**  
SEP 10 1980  
**Personnel  
Commission**

BEFORE HON. RICHARD W. BARDWELL, CIRCUIT JUDGE, BRANCH #1

This is a proceeding, under chap. 227, Stats., for review of a final decision and order of the Wisconsin Personnel Commission in proceedings entitled Ralph Doll v. Division of Personnel, case No. 78-110-PC. The Commission determined that the Division of Personnel erred in denying a request that Doll's position be reclassified from that of Maintenance Mechanic 1 (PR 3-07) to Maintenance Mechanic 2 (PR 3-08) and ordered that the position be reclassified retroactively effective December 5, 1976.

Ralph Doll has been employed as a Maintenance Mechanic 1 (MM1) at the Milwaukee State Office Building for over eight and one-half years. Prior to June 1978, Doll was one of five maintenance mechanics assigned to the building, including four Maintenance Mechanics 1 and one Maintenance Mechanic 3.

Doll's regular duties included taking meter readings and checking mechanical equipment to be certain that it was operating properly. Doll

At some point during 1976, Doll requested that his position be reclassified from the MM1 to the MM2 level. After denial of the request by the employer, the Department of Administration, Doll requested on November 2, 1976, that the matter be reviewed by the Bureau (now Division) of Personnel.

Review of the request was eventually assigned to Robert Belognia, a personnel specialist whose duties include the classification of civil service positions and related matters. In reviewing Doll's reclassification request, Belognia compared the duties of Doll's position with the classification standards for the maintenance mechanic series and with descriptions of other positions classified at both the MM1 and MM2 levels. The portions of the position standards which he found particularly relevant included:

Maintenance Mechanic 1

. . . Definition:

This is routine general mechanical maintenance and repair work. Employees in this class perform: . . . or (3) preventive maintenance in an assigned area on a shift involving utility and environmental control systems and providing assistance to higher level maintenance personnel. Work is performed under the general direction of higher level maintenance personnel.

Maintenance Mechanic 2

. . . Definition:

This is responsible mechanical maintenance and repair work, exclusive of preventive maintenance.

Belognia testified that preventive maintenance duties occupied the majority of Doll's work time. On Belognia's recommendation, Doll was notified that his position was properly classified at the MM1 level and that his reclassification request was denied.

On July 5, 1978, Doll filed with the Personnel Commission a timely appeal of this decision, pursuant to sec. 230.44 (1)(a), Stats. On July 5, 1979, the Commission issued a final decision adopting the recommended findings of fact of the hearing examiner to the effect that Doll's position should properly be classified at the MM2 level. The decision purported to "modify" petitioner's denial of Doll's reclassification request to require that Doll's position be reclassified to the MM2 level effective December 5, 1976, and that he be paid back pay for the entire period between that date and entry of the Commission's order.

Petitioner initiated timely proceedings for review of the Commission's final decision and order pursuant to chap. 227, Stats.

There are two primary issues in this case: (1) Did the Commission err in concluding that Doll's position should be classified at the MM2 level?, and (2) Did the Commission have the authority to award retroactive relief in the form of back pay?

The facts of this case are essentially undisputed. The construction of the applicable personnel standards and their application to this particular set of facts is a question of law. Bucyrus-Eire Co. v. ILHR Dept., 90 Wis. 2d 408, 280 N.W. 2d 142 (1979). Petitioner contends that there is no basis for the Commission's conclusion that there is actually no difference between positions at the MM1 and MM2 levels. Respondent disagrees.

The Wisconsin Civil Service Act, Subchapter II, Chapter 230, Wis. Stats. (1977), affirmatively requires that the Administrator of the Division of Personnel, Department of Employment Relations, State of Wisconsin, create and establish, subject to the approval of the Personnel Board, a classification system for all state employees. See Section 230.09, Wis. Stats., together with Wis. Adm. Code section Pers 2.04 and Chapter 3, generally.

A system comprised of approximately 1,800 classifications has been developed. Each classification is described by a job specification, consisting of three main parts: (1) Title; (2) Position Standards; and (3) Qualification Standards. (Wis. Adm. Code section Pers 2.04) These job specifications provide the analytical framework for determining proper allocation to classes.

"Class specifications. Class specifications shall consist of 3 major parts: title, position standards, and qualification standards. Subject to subsections (1) and (2) the class specifications shall be the basic authority for the allocation of positions to a class and for all phases of the selection process for any class or position therein. (Wis. Adm. Code section Pers 2.04; emphasis added.)

The precursor of the present Personnel Commission, the Personnel Board, developed rules and concepts to be applied in questions of classification and reclassification. One such rule is that reclassification is not an exact science.

"The first is that the classification of employees is not an exact science. Within existing series, all employees cannot be expected to fit exactly within existing classifications. Similarly, at any given point in time, very few series are completely adequate for the included positions. Perhaps it would be ideal if classifications were tailor made for each position so that each employee had his or her own classification and salary range that changed on a daily basis to accommodate changes in duties and responsibilities. However, we suspect that such a system is beyond the scope of the current state resources if not the current state of the art in personnel management." (Janczak, et al. v. Hart, et al., Pers. Bd. Case No. 73-164 (4/76).)

Generally, an incumbent's position is described in part by two (2) job specifications--overlap of specifications is usual and expected

"Personnel classification is not an exact science. In appeals of reclassification denials, it is usually the case that the employee's duties and responsibilities overlap in some respects both of the class specifications in question. The employee is not entitled to reclassification because some aspects of his work fall within the higher class. Resolution of the question involves a weighing of the specifications and the actual work performed to determine which classification best fits the position. An exact fit is very rarely possible." (Kailin v. Weaver & Wettengel, Pers. Bd. Case No. 73-124 (11/75).)

Once a factual determination has been made as to the specifics of an incumbent's job, they must be applied to the various specifications. The specification providing the "best fit" is used to determine the actual classification. (Kailin, supra, and Luebke v. Wettengel, et al., Pers. Bd. Case No. 74-26 (8/75).)

"We conclude that Appellant's position is better classified as Storekeeper 1 than as Stock Clerk 2. He performs all but two of the examples of work performed under the class specification. It has never been held that a person must perform all the duties listed under the examples. The list is neither all inclusive nor exclusive." (Luebke, supra; emphasis added.)

The "best fit" is determined by the specification reflecting job duties and activities within which the employee routinely spends a majority of his/her time.

"While it is true that Appellants Alsmo and Brown perform some tasks which fall within the Laborer (Special) classification (for example, snow removal), the majority of them fall within the Laborer classification. By their own testimony the identical position descriptions introduced as Respondent's Exhibits 1 and 2 summarize their various job duties as of April, 1973. These indicate that Appellants Alsmo and Brown spend considerably less than fifty per cent of their working time operating motorized equipment." (Alsmo, et al. v. Wettengel, Pers. Bd. Case Nos. 73-107, 108 & 109 (7/75); emphasis added.)

Where an appellant's existing classification did not provide the "best fit," the Board ordered reclassification. For example:

"IT IS HEREBY ORDERED that Respondent's decision be reversed and this matter be remanded to him to re-classify Appellant to Storekeeper 1." (Luebke, supra.)

In the present case, the Personnel Commission, upon review of Ralph Doll's job description, the class specification of a Maintenance Mechanic 1, the class description of a Maintenance Mechanic 2, and a "solid MM-2" job description, concluded that the MM-2 classification provides the "best fit" for Doll's position. This was true despite the fact that the classification standard for the MM2 level states: "This is responsible mechanical maintenance and repair work, exclusive of preventive maintenance." (emphasis supplied). Although it is true that Doll does do some preventive maintenance, we do not think that the Commission erred in concluding that he should be classified at the MM2 level. At Finding #21, the Commission stated that "respondent concedes that in practice, this statement (i.e., MM2 job is exclusive of preventive maintenance) is not accurate." This finding was confirmed by the testimony of Mr. Belognia:

"We wish to exclude positions from allocation to the II level by stating very clearly this excludes allocation of preventative (sic) maintenance positions. That's what that english (sic) statement is intended to say. Exclusive of preventative (sic) maintenance. Not saying that any preventative (sic) maintenance could not be done here but that those that function a majority of the time in preventative (sic) maintenance are not intended to be." (Tr., p. 113.)

We conclude that there was sufficient evidence in the record from which the Commission could conclude that there was no actual difference between the work done by Doll and that done by MM2's. There was evidence that MM2's did preventive work on occasion. The Commission interpreted the class specifications in a reasonable manner, consistent with the purpose of sec. 230.09, Stats., that "each classification. . . shall include all positions which are comparable with respect to authority, responsibility and nature of work required. . . . (and) shall be established to include as many positions as are reasonable and practicable." The Commission's order in regard to reclassifying Doll will therefore not be overturned by this court.

There remains, however, the question of the Commission's authority

to award Doll retroactive relief in the form of back pay. Respondent contends that it has such authority under sec. 230.44, Stats., which confers upon the Commission the power to either affirm, modify or reject the action which is the subject of the appeal. Respondent contends that this authority to "modify" decisions necessarily implies that the Commission has authority to award back pay when it reverses the denial of a request for reclassification. We do not agree.

Rather, we agree with petitioner that an employe's right to monetary relief after a successful appeal to the Personnel Commission, under sec. 230.44, Stats., is governed exclusively by sec. 230.43 (4), Stats. That subsection limits retroactive compensation to persons "removed, demoted or reclassified from or in any position. . .in contravention of this subchapter." The plain language of the statute indicates that it is inapplicable in this case. Here, Doll was neither removed nor demoted from his position as Maintenance Mechanic I. The Bureau (now Division) of Personnel denied Doll's request for reclassification at the higher Maintenance Mechanic II level, but this denial cannot be considered an unlawful reclassification within the terms of the statute. Doll was not reclassified at all as a result of that decision; he remained a Maintenance Mechanic. The Commission, the former Board and the circuit courts have consistently viewed sec. 230.43 (4), Stats., and its predecessor sec. 16.38, Stats., as precluding the recovery of retroactive compensation to persons who were denied reclassification. Van Laanen v. Personnel Board, Case No. 153-348 (Dane Co. Cir. Ct., 5/31/77, Currie, J.); Ehly v. Personnel Board, Case No. 158-371 (Dane Co. Cir. Ct., 10/17/78, Bardwell, J.)

The Commission can award back pay as a result of sec. 230.43 (4), Stats., and, in addition, has express power to award back pay as a remedy under the Wisconsin Fair Employment Act. In the past the Commission has itself denied that it could award back pay as a remedy for a successful appeal under sec. 230.44, Stats., Noltemeyer v. DILHR and Division of Personnel, Case Nos. 78-14-PC and 78-28-I, 12/20/78. In that case the Commission concluded that where the legislature has expressly provided for back pay in two specific situations, that it was inappropriate to find authority to grant similar relief under sec. 230.44, Stats., where such relief was not specified by the legislature.

We conclude that since sec. 230.43 (4), Stats., is a specific statute defining when an employe may recover back pay for a successful

appeal under chap. 230, Subchap. II, it must control over any general statutory language contained in sec. 230.44 (4), Stats.; Schroeder v. City of Clintonville, 90 Wis. 2d 457, 462, 280 N.W. 2d 166 (1979). An employe's right to monetary relief after a successful appeal to the Commission under sec. 230.44 is governed exclusively by sec. 230.43 (4), Stats. In this case, since Doll was not reclassified from or in any position, in contravention of sec. 230.43 (4), Stats., the Commission had no authority to award him retroactive pay. The Commission's order in that respect must be overturned.

The Commission's order is therefore affirmed as to the reclassification of Doll as a Maintenance Mechanic II. It is reversed insofar as it awarded him back pay retroactive to December 5, 1976.

Counsel for the Commission may prepare a formal judgment effectuating the rulings of this decision. Copies of the proposed judgment should be furnished counsel for both the Division of Personnel and Mr. Doll before submission to the court for signature.

Dated September 2, 1980.

BY THE COURT:

Richard W. Barkwell  
Circuit Judge