

RECEIVED

STATE OF WISCONSIN

CIRCUIT COURT

SEP 27 1983
DANE COUNTY

Personnel

RECEIVED

Commission

DEPARTMENT OF HEALTH
AND SOCIAL SERVICES and
DONALD PERCY, Secretary
of the Department of Health
and Social Services,

Petitioners,

vs.

WISCONSIN PERSONNEL
COMMISSION and JOANN CRAFT,

Respondents.

SEP 27 1983

Personnel
Commission

DECISION ORDER
RECEIVED
JEROME D. STURT, HANSON
CLARK & KAUFMAN

Case No. 81-CV-3310

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

This is a review under chapter 227, Wis. Stats., of a decision and order of the Wisconsin Personnel Commission. That decision, dated 11 June 1981, ordered petitioner Department of Health and Social Services (hereinafter petitioner or department) to restore respondent Joann Craft to the employment level of Personnel Administrative Officer 2 (PAO 2) effectively nullifying the voluntary demotion to which the parties had agreed. The Personnel Commission based its decision upon the failure of the voluntary demotion to comply with procedural requirements of the Wisconsin Administrative Code.

By memorandum decision dated 15 April 1982 we denied respondent Craft's two motions to dismiss, holding that petitioner had standing to obtain judicial review as a "person aggrieved" by a final order under chapter 227, Stats., and that chapter 227 permits review of this administrative decision. On 13 October 1981, we likewise denied petitioner's motion to stay, pending completion of this review, the Personnel Commission's order. This matter is presently before the Court on the briefs of the parties for consideration of the merits of the petition for judicial review.

The facts in the record are clear and uncontested. Respondent Joann Craft was employed by the Department of Health and Social Services (DHSS) in the Bureau of Personnel and Employment Relations (BPER). For some time prior to the germane events, Ms. Craft held

the position of Personnel Administrative Officer 2 (PAO 2).

On 7 April 1980, she requested in writing that she be demoted for personal reasons to the level of Personnel Specialist 5. That request was addressed to the BPER Chief of Personnel Services and the Bureau Director, the appointing authorities in this matter. Ms. Craft received verbal confirmation of her demotion from the appointing authorities and began work as a Personnel Specialist 5 on 21 April 1980. On 12 May 1980, Ms. Craft wrote the BPER Chief of Personnel Services and the Bureau Director again, this time requesting withdrawal of her voluntary demotion. Denial of this request has prompted the underlying administrative action.

Petitioner asserts the following on appeal: 1) that respondent Craft voluntarily requested a demotion and that her request was approved; and 2) that respondent Wisconsin Personnel Commission erroneously interpreted section Pers. 17.04(3) Wisconsin Administrative Code (1977).

The issue before the Court is whether there exists a rational basis for the Personnel Commission's interpretation of sec. Pers. 17.04(3) Wis. Adm. Code.

DECISION

In judicial review under chapter 227, Wis. Stats., the Court must confine itself to the record. (Sec. 227.20(1), Wis. Stats.) Further, sec. 227.20(10) mandates that "due weight" be afforded an agency's expertise. Such deference is particularly important where an agency has interpreted its own rules. Vonasek v. Hirsch & Stevens, Inc., 65 Wis. 2d 1, 7, 221 N.W.2d 815 (1974). The Wisconsin State Supreme Court has noted:

. . . the courts should not substitute their judgement for the agency's application of a particular statute to the found facts if a rational basis exists in law for the agency's interpretation and it does not conflict with the statute's legislative history, prior decisions of this Court, or Constitutional prohibitions. Pabst v. Wisconsin Dept. of Taxation, 19 Wis.2d 313, 323-24, 120 N.W.2d 77 (1963).

The Court is mindful of the deference to be accorded administrative agency decisions. But we hasten to add that we will not abrogate our responsibility of carefully assessing the law and facts of record. Judicial indifference will not pass for judicial review.

Petitioner correctly asserts that respondent Joann Craft voluntarily requested that she be demoted to the Personnel Specialist 5 position, and that she in fact obtained such demotion. But Ms. Craft's actual working status is not here at issue. Her presence in the Personnel Specialist 5 position does not attest to the legal propriety of her being there.

More to the point is petitioner's assertion that the Personnel Commission incorrectly interpreted sec. Pers. 17.04(3) Wis. Adm. Code, which provides:

(3) VOLUNTARY DEMOTION WITHIN A DEPARTMENT.
An employe may request and with approval of the appointing authority may accept a voluntary demotion within the department either to a position in the same employing unit, or to a position in a different employing unit. Acceptance of such voluntary demotion shall be furnished the director in writing by the employe.

Section Pers. 17.04(3) contemplates essentially a two-step process. The employe may: 1) request a voluntary demotion; and 2) accept that demotion (with the approval of the appointing authority). Section 17.04(3) also defines how acceptance shall be made. The Personnel Commission, in its Conclusions of Law (Comm'n Decision and Order, p. 4) noted that Ms. Craft's voluntary demotion was not legally approved because the administrator of the Division of Personnel was never furnished with Craft's written acceptance of the demotion.

Section 230.06(1)(d), Wis. Stats. (1977), directs that the appointing authority shall:

(d) Report promptly to the * * * administrator such information as the * * * administrator requires in connection with any delegated personnel function and with each appointment, promotion, demotion, suspension or separation from the service or other change in employe status.

The appointing authority is required by sec. Pers. 17.04(3) Wis. Adm. Code to furnish the director (or administrator) with a written statement of an employe's acceptance of voluntary demotion. Where a valid procedure has been properly established statute demands that it be promptly followed. The record reflects that the Director of the Bureau of Personnel never received written acceptance of her demotion from Craft or her appointing authority. Thus, the Personnel Commission declared the voluntary demotion to be "not legally effective," interpreting sec. Pers. 17.04(3) to require that written

acceptance must be furnished the director before the demotion will be legally effective.

Heeding Pabst (supra), this Court will not substitute our judgment for an agency interpretation where a rational basis exists for that interpretation and where neither legislative history, case-law, nor the constitution are thereby offended. We deem there to be a rational basis for the Personnel Commission interpretation of sec. 17.04(3) in the instant matter and find none of the above concerns to have been offended.

The rationality of the Commission interpretation is further witnessed in noting that the clear purpose of sec. 17.04(3) is to insure that voluntary demotions are truly voluntary. That goal is most effectively served when the voluntary nature of the demotion is ascertained before an employee actually moves to a new position. The usual Division of Personnel policy of submitting written employee acceptance of voluntary demotions to the director before actually transferring employees (Comm'n Decision and Order, p. 6) is tacit recognition of the rationality of the Personnel Commission's interpretation of sec. 17.04(3).

The Wisconsin State Supreme Court held in Vonasek v. Hirsch & Stevens, Inc., (supra), that where an agency possesses expertise in the area at issue, a reviewing court must pay special deference to agency rule interpretations unless they are plainly erroneous. (Vonasek, 65 Wis. 2d at 7.) Presumably the Personnel Commission has expertise on personnel matters. The Commission interpreted sec. Pers. 17.04(3) Wis. Adm. Code as requiring the appointing authority to furnish the administrator with an employee's written acceptance of a voluntary demotion before it can become legally effective. We do not think it plainly erroneous that the Commission should mandate compliance with required procedures before voluntary demotions will be effective. It does appear, however, that under the facts Ms. Craft was playing games with her employer, but the rules permit such games when they are ignored.

Accordingly, it is ORDERED that the Personnel Commission decision is affirmed and the petition for review is dismissed.

Counsel for the Wisconsin Personnel Commission shall prepare the appropriate judgment of affirmance with a copy to be given to other counsel prior to submission to the Court for signature.

Dated June 28, 1983.

BY THE COURT:

Richard W. Bardwell
Circuit Judge