

LON ZHE, JAMES HODEK, RICHARD PETERSON  
and ROGER REINHART,

Petitioners,

v.

WISCONSIN STATE PERSONNEL COMMISSION,

Respondent.

MEMORANDUM DECISION

Case No. 81-CV-6492

Petitioners are appealing a decision of the State Personnel Commission (Commission) that petitioners were not entitled to reclassification in their jobs from Officer 5 to Officer 6. In their petition for review of that administrative decision, petitioners request the Court to remand the proceedings to the Commission with direction that the Commission has the authority to order an updating of the Officer 6 class specifications.

For the following reasons, it is the decision of this Court to refuse petitioner' request and affirm the decision of the Commission.

Petitioners raise two issues for review. One is that the Commission misinterpreted its authority under sec. 230.09 and 230.44(1)(a), Wis. Stats. The other is that the Commission abused its discretion by not ordering reclassification.

I.

The grounds for review of a state agency's actions are governed by sec. 227.20, Wis. Stats. Subsection (5) of that provision states:

(5) The court shall set aside or modify the agency action if it finds that the agency has erroneously interpreted a provision of law and a correct interpretation compels a particular action, or it shall remand the case to the agency for further action under a correct interpretation of the provision of law.

The Court believes that subsection (10) is also applicable. The pertinent portion reads:

(10) Upon such review due weight shall be accorded the experience, technical competence, and specialized knowledge of the agency involved, as well as discretionary authority conferred upon it.

The Wisconsin Supreme Court has also ruled on the standard of reviewing an agency's statutory interpretation:

... in fields in which an agency has particular competence or expertise, the court should not substitute their judgment for the agency's application of a particular statute to the found facts if a rational basis exists 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. Dept. of Taxation, 19 Wis. 2d 313, 323, 120 N.W.2d 77 (1963). In the present situation, the Commission's actions must be upheld if there is a rational basis and there is no conflicting legislative history, court decisions or constitutional questions.

The crux of petitioners' argument is that the Commission is required through sec. 230.44, Wis. Stats. to modify the administrator's classification decision by ordering a change in specifications. Specifically it would abolish the twenty-four hour responsibility requirement for Officer 6.

Respondent correctly points out that the establishing of duties and levels for positions lies with the administrator and the Personnel Board under sec. 230.09(1), Wis. Stats. Petitioners assert that the power to rewrite specifications is implied to the Commission by sec. 230.44, Wis. Stats. While this may be reasonable, it is not the only rational reading of the statutes.

As previously stated, this Court will not overturn an agency decision if a rational basis exists for its interpretation. The Commission's action is apparently reasonable since facially sec. 230.09, Wis. Stats. gives no authority to the Commission to engage in re-writing specifications.

The petitioners suggest that the Commission cases of Marx v. DP 78-138-PC (1981); Kailin v. Weaver and Wettengel 73-124-PC (1975); Barry v. DP 80-346-PC (1981); and Lawton v. DP 81-47-PC (1981) allow the Commission to order specifications re-written. In fact, these cases involved interpretation of existing

classifications, not changing the substance of the specifications. Personnel Rule 2.04(2) requires class specifications to be the basic authority for assigning positions. It is not shown that the Commission acted improperly in relying on this rule.

The Commission could rationally find that it must fit reclassification into existing position specifications. The legislature gave rewriting duties to the administrator and Personnel Board. If this power was intended for the Commission it would have been more apparent than the language of sec. 230.44, Wis. Stats. The Commission did not misinterpret the statute.

## II.

Although resolution of the first issue is determinative of this case, the Court will address petitioner's assertion that the Commission abused its discretion. This assertion is also without merit. Petitioner's argument is that Officer 6 classification is obsolete for the Camp System and that there are salary inequities that require reclassification.

The description of an agency's discretion cited by petitioner is "a process of reasoning, not decision making, and a conclusion based upon a logical rationale founded upon proper legal standards". Rickaby v. Health and Social Services Dept., 98 Wis. 2d 456, 297 N.W.2d 35 (Ct. Appeals 1980).

The utility of the present Officer 6 classification for other corrections positions leads to the conclusion that the Commission acted by a "process of reasoning". The Officer 6 classification is still valid for larger correctional facilities. Petitioners have not shown that the difference in institutions is insignificant. The total responsibility requirement may likewise still have validity outside the camps. The Commission could logically defer the decision to keep this requirement to the administrator.

Salary inequities alone are not determinative of an abuse of discretion. Salary inequities may be due to seniority as well as improper classifications.

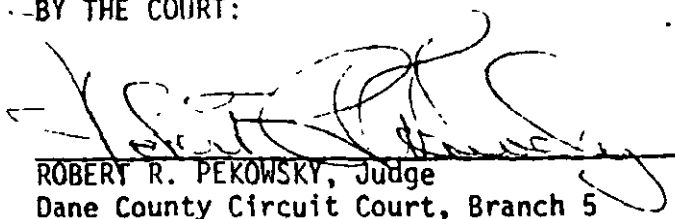
For example, an Officer 5 at the top of his or her range may earn only \$6.60 less a week than a Camp Supervisor II at the bottom of his or her range. While the salary inequities may be a signal that changes in class specifications may be necessary, they do not mandate the Commission to do so.

III.

For the above reasons the motion to remand is denied. Counsel for respondent shall prepare an Order for the Court's signature consistent with this Memorandum Decision.

Dated this 3rd day of November, 1982

BY THE COURT:

A handwritten signature in black ink, appearing to read "Robert R. Pekowsky", written over a horizontal line.

ROBERT R. PEKOWSKY, Judge  
Dane County Circuit Court, Branch 5

cc: Atty. Roberta A. Klein  
Atty. Robert Vergeront  
Atty. Maureen McGlynn