



case on the basis of the record in the case of Marx v. DP, 78-138-PC, plus additional documents to be filed by the respondents. The parties stipulated that respondents reallocated the appellant rather than reclassifying him subsequent to the issuance of the decision in 78-138-PC. The appellant maintains an objection to those documents that may be filed by respondents as additional exhibits. The objections will be discussed in the context of the briefing schedule below.

#### FINDINGS OF FACT

1. After a personnel management survey of certain agricultural positions, the classifications of Seed Laboratory Supervisor and Agricultural Supervisor 1-5 were abolished and the classifications of Agricultural Supervisor 1-6 were created effective July 2, 1978.

2. On July 31, 1978, the Appellant's position was reallocated from Seed Laboratory Supervisor (PR1-12) to Agricultural Supervisor 1 (PR1-12), effective July 2, 1978.

3. The Appellant filed a timely appeal (Marx v. DP, 78-138-PC) from the reallocation decision under s. 230.44 (1) (a), Stats. The issue agreed to by the parties was described at the hearing as follows:

As to the issue, the Prehearing Conference Report indicated that the issue would be as set forth or based on the allegations in the appeal letter which is, which states that the appellant believes that his reallocation to Agricultural Supervisor One, pay range 1-12 does not represent a proper classification for his commission, that he believes that he is unjustly and improperly classified at that level, and that his present duties and responsibilities should result in a classification as the Agricultural Supervisor Two, pay range 1-14 level. Now if I am correct, that should be for Agricultural Supervisor Two. It should be pay range 1-13. Is that right? Then it was further noted in the Notice of Hearing that additionally Agricultural Supervisor Three would be considered as a possible classification which is pay range 1-14. So basically what we're dealing with is whether or not the appellant is properly classified as Agricultural Supervisor One or whether agricultural supervisor two is the appropriate level. Is that agreeable to the parties as the statement of the issue?

MS. ANDERSON: The only concern I have with that as the statement is that I want to make sure that it is understood that the action from which the appeal is taken is a reallocation.

EXAMINER: Right.

(Hearing Transcript, pg. 2 & 3)

4. Subsequent to a hearing being held in Case No. 78-138-PC, the Personnel Commission issued a Decision and Order dated October 1, 1981.

In that decision, the Commission wrote:

NATURE OF THE CASE

This appeal was filed as the result of a personnel management survey and the subsequent reallocation of the appellant's position from Seed Laboratory Supervisor (PR 1-12) to Agricultural Supervisor 1 (PR 1-12), effective July 2, 1978. Hearing was held before Charlotte M. Higbee, Commissioner, on the issue of whether or not the reallocation of the appellant's position to Agricultural Supervisor 1 (Ag. Supv. 1) was correct, with the sub-issue of whether either Ag. Supv. 2 (PR 1-13) or Ag. Supv. 3 (PR 1-14) was the appropriate classification for his position.

\* \* \*

CONCLUSIONS OF LAW

1. The Personnel Commission has jurisdiction over this matter pursuant to §230.44(1)(a), Wis. Stats.
2. The burden of proof is on the appellant to establish by the greater weight of credible evidence that the decision of the administrator was incorrect and that his position should have been reallocated to either Agricultural Supervisor 2 or 3 rather than Agricultural Supervisor 1.
3. The appellant has met his burden of proof.
4. The decision of the respondent in reallocating the position to Agricultural Supervisor 1 was incorrect.
5. The correct classification for appellant's position is Agricultural Supervisor 3.

OPINION

\* \* \*

It was apparent from his testimony that the department's personnel director continued to perceive Marx solely as the supervisor of the Seed Lab, a classification based on 1963 specifications, despite the fact that a new position description (Respondent's Exhibit 8) had been developed in the course of the survey, which he had approved and signed. The result was a failure to take into consideration the expansion of his duties over the years to include supervision of the entire seed program, statewide, involving a wide range of enforcement and liaison responsibilities.

\* \* \*

Marx's position was unique in the department. Classification is complicated by the fact that he was the line supervisor of a relatively small laboratory staff and program supervisor, as relates to state and

federal seed laws, of ten field inspectors. Respondent's emphasis on the level and numbers of employes supervised and the scope and complexity of their duties in denying his reclassification fails to take this into consideration.

\* \* \*

ORDER

IT IS HEREBY ORDERED that the decision and action of respondent in reallocating the appellant's position to Agricultural Supervisor 1 are modified and this matter is remanded to the administrator for action in accordance with this decision, pursuant to §230.44(4)(c). The effective date of reclassification shall be the date of the original reallocation action, July 2, 1978.

5. The respondent Division of Personnel filed a timely petition for review in Dane County Circuit Court. In a decision dated November 8, 1983, the Court reversed the Commission's decision after concluding that the Commission's finding that the Agricultural Supervisor 3 was the "best fit" for the appellant's position had ignored the express language of the Agricultural Supervisor 1 specification and that the Commission, therefore, had abused its discretion.

6. The appellant and the Commission appealed from the Circuit Court's judgment reversing the Commission's decision. In its decision dated November 21, 1985, reversing the Circuit Court decision, the Court of Appeals wrote:

Marx is chief of the seed section of the Bureau of Special Services in the Plant Industry Division of the department. Before July 31, 1978, his civil service classification was Seed Laboratory Supervisor. After that date the administrator of the division of personnel reallocated Marx' position to Agricultural Supervisor 1, a new classification. Marx appealed to the state personnel commission. The commission reallocated Marx' position to Agricultural Supervisor 3, another new classification. The circuit court concluded that the commission erred. Appellants argue that the commission properly determined that Agricultural Supervisor 3 "best fit" Marx' job duties. We accept appellants' contentions and reverse.

\* \* \*

Using the rational basis standard of review, the commission's reclassification of Marx' position should be accepted.

\* \* \*

The commission's decision that Agricultural Supervisor 3 best describes his position is rational, and we should accept it.

7. On or about February 9, 1982 (four months after the Commission's decision and order in Marx v. DP) the Respondent reallocated, rather than reclassified, the appellant's position from Agricultural Supervisor 1 to Agricultural Supervisor 3, effective July 2, 1978.

10. On February 17, 1982 the appellant filed an appeal from the February 8th reallocation of his position from Agricultural Supervisor 1 to Agricultural Supervisor 3. In a letter dated February 22, 1982, the appellant alleged that "the reallocation action previously taken by DOATCP, precipitating the instant appeal, was not in conformity with the earlier Opinion and Order entered by this Commission."

#### CONCLUSIONS OF LAW

The respondent's decision to reallocate the appellant's position was consistent with applicable law and the order of the Commission dated October 1, 1981.

#### DECISION

The appellant believes that the respondent's action on February 8, 1982 to reallocate (rather than reclassify) the appellant's position from Agricultural Supervisor 1 to Agricultural Supervisor 3 violated the Commission's order dated October 1, 1981, which provided:

IT IS HEREBY ORDERED that the decision and action of respondent in reallocating the appellant's position to Agricultural Supervisor 1 are modified and this matter is remanded to the administrator for action in accordance with this decision, pursuant to §230.44(4)(c). The effective date of reclassification shall be the date of the original reallocation action, July 2, 1978.

As noted in the above findings, the Commission's October 1, 1981 decision and order was ultimately affirmed by the Court of Appeals, District IV, on November 21, 1985.

Respondent has raised a jurisdictional objection, contending that the Commission lacks the authority to enforce its own orders. Respondent does not suggest that the Commission lacks the authority to review both reallocation and reclassification decisions. Specific authority for such review exists pursuant to s. 230.44(1)(a), Stats. (1982):

1., APPEALABLE ACTIONS AND STEPS. Except as provided in par. (e), the following are actions appealable to the commission under s. 230.45(1)(a):

(a) Decisions of administrator. Appeal of a personnel decision of the administrator, including but not limited to ... actions and decisions by the administrator under s. 230.09....

In s. 230.09(2)(a), Stats. (1982), the Administrator is given the authority to allocate, reallocate and reclassify positions on the basis of recognized factors. Clearly, respondent's action on or about February 8, 1982 to reallocate the appellant's position is a classification action that was properly appealed to the Commission. Respondent's jurisdictional objection relates only to the order that the Commission might issue if it were to find that respondent's February, 1982 action was inconsistent with the Commission's decision and order dated October 1, 1981. Because the Commission makes no such finding, it is not necessary to reach the respondent's jurisdictional objection.

A review of the findings of fact set out above shows that the reference to "reclassification" in the Commission's October 1, 1981 order was erroneous and unintentional. The reference should have been to "reallocation". The 1978 appeal by Mr. Marx was an appeal of a reallocation decision made subsequent to personnel management survey. Pursuant to the survey, the existing classifications were abolished and new classifications were created. On July 31, 1978, Mr. Marx's position was reallocated from Seed Laboratory Supervisor to Agricultural Supervisor 1. At the time this action was taken, the terms

"reclassification" and "reallocation" were defined in s. Pers. 3.02, Wis. Adm. Code, as follows:

(2) REALLOCATION. The assignment of a position to a different class by the director as provided in section 16.07 (2), Wis. Stats., based upon:

- (a) A change in concept of the class or series.
- (b) The creation of new classes.
- (c) The abolishment of existing classes.
- (d) The reappraisal of the level of the class in terms of the total service such as that resulting from personnel management surveys.
- (e) The correction of an error in the previous placement of a position.
- (f) The redefinition of the duties and responsibilities of a vacant position.
- (g) Reclassification as provided in subsection (4).

(3) REGRADE. The action by the director under section 16.07 (2) (d), Wis. Stats., following the reallocation of a filled position, which results in the determination that consideration of other employes to fill the position is not necessary, and therefore the incumbent remains in the position.

(4) RECLASSIFICATION. The reallocation of a filled position to a different class and the subsequent regrading of the incumbent by the directors as provided in section 16.07 (2), Wis. Stats., based upon:

- (a) A logical and gradual change to the duties and responsibilities of a position.
- (b) Attainment of specified training and experience, and demonstrated performance by an incumbent in a position identified in a classification series where the class levels are differentiated on this basis.

Respondent's reallocation action in 1978 was taken pursuant to s. Pers. 3.02 (2) (b) and (c), Wis. Adm. Code. The issue set for hearing in Case No. 78-138-PC made it clear that it was a reallocation decision that was the subject of appeal. The Commission's October 1, 1981 decision and order accurately described the nature of the case as an appeal of the "reallocation of the appellant's position" and made a conclusion of law that the appellant

had met his burden of proof of establishing that his position "should have been reallocated to either Agricultural Supervisor 2 or 3 rather than Agricultural Supervisor 1." In the opinion section of the decision, there is an obviously erroneous reference to what respondent had emphasized "in denying [Mr. Marx's] reclassification." This language erroneously suggests that Mr. Marx had requested that his position be reclassified from one classification to a higher classification and that the request had been denied. As noted above, the facts show the reallocation decision was initiated by the respondent as a consequence of a personnel management survey.

The second reference in the October 1st decision to "reclassification" is in the order section; "The date of reclassification shall be ...." However, there are other references to reallocation in the order section. In addition, the order directs the administrator to take "action in accordance with this decision." When viewed as a whole, the decision requires the reallocation of Mr. Marx's position to the Agricultural Supervisor 3 level. The reference to "reclassification" in the order must be considered as an error just as the reference in the opinion section to a reclassification denial was also in error.

For the above reasons, the Commission affirms the respondent's reallocation action dated February 8, 1982 and does not address the jurisdictional objections raised by the respondent.



ORDER

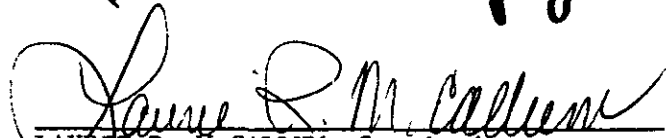
The respondent's action in February of 1982 to reallocate the appellant's position to Agricultural Supervisor 3, effective July 2, 1978 is affirmed and this appeal is dismissed.

Dated: March 18, 1987

STATE PERSONNEL COMMISSION

  
DENNIS P. MCGILLIGAN, Chairperson

  
DONALD R. MURPHY, Commissioner

  
LAURIE R. McCALLUM, Commissioner

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\*Pursuant to the provisions of 1983 Wisconsin Act 27, published on July 1, 1983, the authority previously held by the Administrator, Division of Personnel over classification matters is now held by the Secretary, Department of Employment Relations.