

STATE OF WISCONSIN

CIRCUIT COURT
Branch 11

DANE COUNTY

JAY G. HOCHMUTH,)	
)	
Petitioner,)	MEMORANDUM
)	DECISION
-v-)	
)	
PERSONNEL COMMISSION,)	
)	Case No. 82 CV 6130
Respondent.)	
)	

In this Chapter 227 review proceeding, the Petitioner asks this court to reverse a decision of the Personnel Commission in which the Commission denied the Petitioner's request that the position he holds in the classified civil service be reclassified from that of Environmental Engineer 6 to either Environmental Engineer 7 or Administrative Officer 3. For the reasons stated below, the decision of the Personnel Commission is affirmed.

FACTS

The Petitioner has worked for the Department of Natural Resources (DNR) since 1970. In 1978 he was appointed to a newly created position in the Department, that of Special Assistant - Milwaukee Metropolitan Sewerage Commission. That position was given the civil service classification of Environmental Engineer 6 (EE6). The position was created for the purpose of overseeing the massive public works project involving the discharge of pollutants into Lake Michigan in the Milwaukee Metropolitan area.

In July of 1980, the Petitioner requested that his position be reclassified to that of Natural Resource Administrator 3 (NRA3). The responsibility for such reclassification requests is in the Division of Personnel of the Department of Employment Relations.

In addition to the NRA3 classification, the personnel specialist assigned to this matter also considered reclassification to the levels of Environmental Engineer 7 (EE7) and Administrative Officer 3 (AO3). The Division of Personnel denied the reclassification request with respect to all three positions. The Petitioner does not argue to this court that his position should have been reclassified to NRA3; rather, he contends that the position should be reclassified to either EE7 or AO3.

At the hearing on this matter the Petitioner offered a great deal of documentary and oral evidence to support his claim that the Special Assistant position had undergone a "logical and gradual change" since the position was created in 1978 (see, Sec. ER-Pers 3.01(3), Wis. Adm. Code). The Petitioner was responsible for the coordination of all aspects of the Milwaukee Water Pollution Abatement Project. The Petitioner was the DNR spokesperson with relation to this project in dealing with state and federal agencies. These responsibilities became more complex and difficult as a result of lawsuits filed by the State of Illinois and other entities involving the Milwaukee Sewerage Commission. The Petitioner was the DNR advisor to the Department of Justice in all of the litigation involving the Milwaukee project. The Milwaukee water pollution project was described at the hearing as the largest public works project ever undertaken by the state.

The Personnel Commission concluded that the Petitioner's position is more accurately described by the class specifications for an EE6 than those for an NRA3, EE7, or AO3.

Additional facts will be set out in the opinion.

OPINION

The facts surrounding the Petitioner's duties are not in dispute. The Petitioner contends, however, that the Commission erred in its application of those facts to the various position standards at issue. The positions standards are similar to agency rules or laws. As such, their construction presents a question of law for the court. Bucyrus-Erie v. ILHR Dept., 90 Wis. 2d 408 (1979). "Although the court is not bound by the agency's interpretation, some deference must be given the agency in those areas in which it has specialized knowledge and expertise. Sec. 227.20(10). The court will hesitate to substitute its judgment for that of the agency on a question of law 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.' (Citation)" Bucyrus-Erie, supra at 417.

Section ER-Pers 3.01(3) defines reclassification as "the assignment of a filled position to a different class....based upon a logical and gradual change to the duties or responsibilities of a position...."(Emphasis added) Mr. Gregory Samp, the personnel specialist who made the initial determination herein, testified that the decision to reclassify involved two steps. First, it must be determined that the Petitioner's position has undergone a "logical and gradual change." If it has, then the personnel specialist compares the position standards of the classes under consideration to determine the "best fit" of the employee's position.

The question of whether the Petitioner's position has changed since its creation is not at issue here. Rather, the Petitioner argues that the Commission's finding that the EE6 classification

was the most appropriate, i.e., that it was the "best fit", was without a rational basis.

A. Environmental Engineer 7

The definition section of the EE7 class description states that:

This is responsible administrative and professional work in environmental health sanitation, protection, and engineering. Employees in this class direct a highly specialized and varied public health program on a statewide basis under the general supervision of a Division Chief in a large department, or a Bureau Chief in a major department. (Emphasis added)

In the Position Description submitted by the Petitioner with his request for reclassification in July of 1980, it was stated that seventy percent of his time was taken up with his responsibilities for the Milwaukee Sewerage District and the Milwaukee Water Pollution Abatement Project. The other thirty percent of his time was taken up with responsibilities which were arguably statewide. The Commission found that the EE7 classification was inapplicable to the Petitioner's position under the "best fit" standard because the vast majority of the Petitioner's duties related to the Milwaukee Metropolitan area.

The Petitioner makes several arguments against this finding. First, he argues that because of the complexity of the Milwaukee project, it is equivalent to a statewide project. There was extensive testimony as to the difficulty and complexity of the Petitioner's position. However, complexity does not make what is essentially a regional program a statewide program. The Commission interpreted the term "statewide" in a geographical sense. There is nothing in the position standards for EE7 to indicate that it was intended to be interpreted otherwise, and to do so would be to strain the plain meaning of the word.

The Petitioner next argues that the Commission's finding was arbitrary in that its finding that the Petitioner's position was not statewide conflicts with the position standard for an EE6, the position which the Petitioner presently holds. The class description for EE6 states that:

This is responsible administrative and professional engineering work in environmental health or protection. An employee in this class directs a complex environmental sanitation program in a district in the capacity of district administrative officer and district sanitary engineer; plans and directs a difficult and specialized program of sanitary or civil engineering and environmental health or protection on a state-wide basis; work involves supervision of professional and technical assistants as well as performing highly complex planning and advisory responsibilities in assisting public officials, civil groups or private individuals in their public health engineering problems. Work is reviewed through conferences and written reports by an administrative supervisor. (Emphasis added)

The Petitioner apparently argues that because statewide responsibility is required for the EE6 position, the Commission acted arbitrarily in finding that the EE7 did not apply to the Petitioner's position because it was not statewide.

The Commission did not find that the Petitioner had no statewide responsibilities; it found that the majority (70%) of the Petitioner's duties were regional in scope. The EE6 description comprehends both statewide and district responsibilities; the EE7 description envisions only statewide duties. Although the Petitioner had some statewide responsibilities, the vast majority of his time was taken up with the Milwaukee project. Thus, a classification which called for exclusively statewide responsibility would clearly be inapplicable to the Petitioner; one that allowed for district and statewide responsibility would more closely fit the Petitioner's position.

The Petitioner also argues that even if the Milwaukee project was not statewide in scope, it is also not a district wide project. This refers to the fact that the area covered by the Milwaukee project is not strictly limited by DNR district lines, and the fact that the Petitioner does not work out of a district office but rather from the central office in Madison. The Commission found that responsibility for the Milwaukee project was comparable to district wide responsibility, as opposed to statewide, and that the EE6 classification was therefore the better fit for the Petitioner's position. This is not an unreasonable conclusion. The Court finds that the Petitioner's duties more closely approximate the EE6 classification than the EE7.

B. Administrative Officer 3

The Commission found that this classification did not apply to the Petitioner's position because the A03 description indicated that the A03 does not generally perform the line functions of the agency but rather perform typical administrative/managerial functions. The A03 class description indicates various areas of responsibility: fiscal management, budget analysis, purchasing, personnel, departmental regulations, etc. The Petitioner argues that the class description of EE6 includes some administrative duties and that therefore the Commission's finding that the A03 position is inapplicable to him is arbitrary. The Petitioner's position does include a few administrative functions; however, the majority of his work involved the technical aspects or line functions of the DNR. The description of the Petitioner's duties in the Position Description submitted by the Petitioner indicates that the Petitioner's position more closely approximates the EE6 classification

than the A03.

CONCLUSION

For the reasons stated above, and based on the record herein, the decision of the Personnel Commission is affirmed.

Dated this 27th day of June, 1984.

BY THE COURT:



Daniel R. Moeser, Judge
Circuit Court Branch 11

cc: Atty. Raymond Roder
Robert J. Vergeront, AAG