

appeal from Boldt v. JP
81-96-PC
9/28/83

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COURT OF APPEALS
DECISION
DATED AND RELEASED

FEB 05 1985

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals pursuant to s. 19.10 within 30 days hereof, pursuant to Rule 809.62 (1).

NOTICE

This opinion is subject to further editing. If published the official version will appear in the bound volume of The Official Reports.

No. 84-864

STATE OF WISCONSIN

IN COURT OF APPEALS
DISTRICT III

JOHN BOLDT,

Petitioner-Appellant,

v.

STATE PERSONNEL COMMISSION and
ADMINISTRATOR, DIVISION OF PERSONNEL,

Respondents.

RECEIVED

FEB 11 1985

Personnel
Commission

APPEAL from a judgment and an order of the circuit court for Brown county: CHARLES E. KUEHN, Judge. Affirmed.

Before Cane, P.J., Dean and Brown, JJ.

PER CURIAM. John Boldt appeals a judgment affirming the State Personnel Commission's decision to uphold his job reallocation. The issue is whether the reallocation violated a policy of the Department of Health & Social Services. Because we conclude that substantial evidence supports the commission's finding that the reallocation did not violate DHSS policy, we affirm the judgment.

When Boldt began working as a librarian at the Green Bay Correctional Institute, it was primarily a

juvenile facility. Because of the librarian's role in educating the juveniles, Boldt was teacher certified, and was classified and paid as a teacher. In 1981, after the state transformed GBCI into an adult institution, the Division of Personnel reallocated Boldt's position into the librarian classification, although the duties had not changed. In affirming the reallocation the Personnel Commission found that DHSS's policy did not require librarians to be certified teachers in institutions with primarily an adult population. In the absence of a policy requirement, and considering Boldt's duties, the commission found the reallocation proper and the circuit court agreed.

Boldt contends, however, that DHSS policy requires a certified teacher as librarian at an institution where there are any juvenile inmates subjected to compulsory education, regardless of its primary function. He argues that the evidence established his version of the policy, and the presence of a limited number of juveniles subjected to compulsory education at GBCI. Because neither side produced any written statement of the policy, the commission had to rely on testimony and inferences from DHSS practices.

On appeal our scope of review is identical to the trial court's. City of Onalaska v. LIRC, 120 Wis.2d 363, 365, 354 N.W.2d 223, 224 (Ct. App. 1984). We affirm administrative findings of fact that are supported by substantial evidence. Sec. 227.20(6), Stats. Substantial evidence is that which a reasonable man might use to reach the same conclusion as the administrative agency. Wisconsin's Environmental Decade, Inc. v. Department of Natural Resources, 85 Wis.2d 518, 538, 271 N.W.2d 69, 78 (1978).

Substantial evidence supports the commission's finding concerning the DHSS policy. While that policy requires certified teachers as librarians in juvenile institutions, witnesses testified that librarians are classified as librarians in the adult facilities except where there are additional teaching duties. Boldt failed to present evidence that these facilities do not also have juvenile inmates subjected to compulsory education. Nor did he provide other evidence to contradict the inference the commission could reasonably draw about the policy from its uniform nonapplication in these primarily adult facilities.

Boldt relies on the testimony of personnel specialists who stated, in general, that the policy required a

certified teacher librarian if there were juveniles in the institution, a compulsory education requirement, and a certified public school program. The witnesses did not directly address whether the policy applied to GBCI or other adult facilities. One of the specialists, Lorraine Amundson, did testify, however, that she was aware of juvenile inmates at GBCI, but nevertheless recommended Boldt's reallocation. The commission could reasonably infer from her testimony that she understood the policy not to apply if the prison population was primarily adult, despite her general description of the policy which might have indicated the opposite.

By the Court.--Judgment and order affirmed.

Publication in the official reports is not recommended.