

appeal from Pamperin v. DEK,
83-0191-PC, 10/30/85
4/25/85

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Personnel
Commission
DANE COUNTY

STATE OF WISCONSIN

CIRCUIT COURT

JOHN F. PAMPERIN,

Petitioner,

DECISION

vs.

STATE PERSONNEL COMMISSION,

Respondent.

Case No.: 85-CV-2700

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

This matter is before the Court for review of the Respondent Personnel Commission's decision reallocating the petitioner's position from Planning Analyst 6 to Civil Engineer 6 (CE-6) level (Pay Range-17). The petitioner contests only the issue of whether the CE-6 level was more appropriate than the Civil Engineer 7 (CE-7) level. The Court has examined the record and concludes, for the reasons stated below, that the decision must be affirmed.

Petitioner is employed in the Classified Civil Service in the Department of Transportation, Division of Planning and Budget, Bureau of Data Management, as Chief of the Transportation Network Data Section. Both parties agree that the duties and responsibilities of petitioner's position are set forth in a position description signed by petitioner on May 3, 1982. This document contains a position summary which provides,

"As Chief of the Transportation Network Data Section of the Transportation Department's Division of Planning and Budget, this position functions under the direct administrative review of one of the Department's chief planners-- the Director of the Bureau of Data Management.

"This position reviews and analyzes proposals and regulations from the federal government; the state legislature; other state agencies; and various departmental administrators for anticipated effect upon long-range planning efforts of this section. The position coordinates the efforts of professional and technical staff engaged in major planning and research efforts, and makes effective recommendations concerning the agency's course of action.

"This position is directly responsible for transportation system inventories; travel surveys and traffic analyses; road life and investment studies; certification of public road mileages for apportionment of federal and state transportation funds; and for facility use, performance and needs studies. In this capacity, the position directs and manages a Highway Planning and Research (HPR) program budget of approximately \$1.7 million annually involving 12 to 15 projects; 28 professional and technical employees; and includes the functional supervision, coordination, and monitoring of 8 districts' employees engaged in supplying data for the section's projects."

In June of 1983 the petitioner's position was reallocated from a Planning Analyst 6 (PR1-17) to a Research Administrator I (PR1-17) as a result of a personnel management survey conducted by the Department of Employment Relations. The petitioner appealed this decision, claiming that his position was more accurately classified as a Civil Engineer 7 (PR1-18).

Hearings were held on October 3, 4 and 12, 1984 before Hearing Examiner Anthony J. Theodore. A proposed decision and order was released on March 1, 1985 which rejected the DER's reallocation of Pamperin's position. The examiner found that the position should be classified as CE-6 (PR1-17).

On March 19, 1985 Pamperin filed an objection to the proposed decision, contesting only the CE-6 level of Civil Engineer assigned by the examiner. Pamperin contended CE-7 was the appropriate level.

On April 10, 1985 oral arguments on the issue were presented before three personnel commissioners. On April 25, 1985 the commission issued its final Decision and Order, adopting the conclusions of the hearing examiner. The petitioner filed this action seeking review on May 23, 1985.

The petitioner contends that he has been aggrieved by the commission's decision and that the finding that his position should be classified as CE-6 is not supported by substantial evidence in the record. Petitioner also objects to the commission's adoption of the hearing examiner's decision in its entirety.

Section 227.20, Stats., sets out the scope of judicial review of agency decisions and provides, inter alia,

"(2) Unless the court finds a ground for setting aside, modifying, remanding or ordering agency action or ancillary relief under a specified provision of this section, it shall affirm the agency's action. ***

"(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.

"(6) If the agency's action depends on any fact found by the agency in a contested case proceeding, the court shall not substitute its judgment for that of the agency as to the weight of the evidence on any disputed finding of fact. The court shall, however, set aside agency action or remand the case to the agency if it finds that the agency's action depends on any finding of fact that is not supported by substantial evidence in the record. ***

"(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 right of the appellant to challenge the constitutionality of any act or of its application to the appellant shall not be foreclosed or impaired by the fact that the appellant has applied for or holds a license, permit or privilege under such act."

In Gilbert v. State Medical Examining Board, 119 Wis. 2d 168, 195, 349 N.W. 2d 68(1984), the court interpreted the phrase "substantial evidence" used in sec. 227.20(6), Stats., saying, substantial evidence, for purposes of reviewing an administrative decision, is "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion."

In this case the Court must determine whether there is substantial evidence in the record to support the classification of Pamperin's position as CE-6. This involves the examination of requirements of the petitioner's position, as well as the standards for the CE-6 classification. This is essentially a question of law. In West Bend Education Ass'n v. WERC, 121 Wis. 2d 1, 12, 357 N.W. 2d 534(1984), the court noted that there are various degrees of authoritative weight which may be given to an agency's interpretation a application of law, depending on the circumstances. When, as is the case here, the decision involves the specialized expertise of the agency, this deference should be great. This Court is not in a position to secondguess the commission's decisions as long as they are well reasoned and there is evidence in the record to support them.

A review of the commission's decision reveals that it was carefully considered, is well reasoned and is supported by substantial evidence in the record. There is a great deal of evidence in the record that suggests that Pamperin's position involves research and planning on matters requiring engineering expertise.

The definition of the Civil Engineer 6-Highways classification is,

"Civil Engineer 6 - Highways (SR1-17)

"This is highly technical and/or supervisory work of a professional nature in transportation engineering. Employees in this class are responsible for a program area and may report to the District Engineer or Section Chief. Supervision is normally exercised over a staff of professional, technical and clerical employees. Work is reviewed through conferences and the analysis of reports to determine the effectiveness of activities and adherence to established policies and standards."

The definition of Civil Engineer 7 is,

"Civil Engineer 7 - Transportation (SR1-18)

This is administrative and technical supervisory engineering work of a professional nature in the planning, design, construction, maintenance and operation of highways, structures and other transportation facilities. An employe in this class is responsible for the planning and technical supervision of a major engineering activity within a district such as construction, design, planning, maintenance or traffic; or serves as assistant in a specialized area within the central office to the state such as bridge, road design, construction, maintenance, materials or traffic; or performs duties of equal complexity. Emphasis is placed upon professional leadership and ability to advise district personnel, and outside public and private officials and organizations concerned with the specific program involved. Supervision is exercised over a staff of professional, technical and clerical employes. Work is reviewed through conferences and the analysis of reports to determine the effectiveness of activities and adherence to established policies and standards."

A list of representative CE-6 positions includes the position of Highway Planning Research Coordinator. The duties of this position are

"Administers the statistical and office service units in the Division of Planning, coordinates all planning, research and highway statistical activities."

The commission found that this position was very similar to the petitioner's position and based their classification on this similarity.

The commission commented,

"Since an examination of the entire CE-Transportation position standard indicates that the term 'planning' includes research elements, it may be said that in the

"most general sense the aforesaid definition (of CE-7) describes the appellant's position. However, the close resemblance between the appellant's position and the CE-6 representative Planning -Highway Planning Research Coordinator position dictates placement of the appellant's position at that level."

The summary of the petitioner's job duties as well as the testimony in the record shows that his job involves the collation of data regarding the Wisconsin highway system as a whole. This data is then used to aid in the planning and construction of state and local highways and the allocation of funds to pay for this construction. The description of the CE-7 positions seems to involve more direct participation in individual projects or more specialized research. Pamperin's position does seem to have duties very similar to those of the Highway Planning Research Coordinator position. Therefore, the Court concludes that the decision of the Personnel Commission classifying Pamperin's position as a CE-6 level position must be affirmed. We say this because there is evidence in the record to support such a determination which in our view is clearly reasonable. Counsel for the commission may prepare a formal order of affirmance, copy of which should be submitted to the petitioner before submission to the Court for signature

Dated October 30, 1985.

BY THE COURT:


Circuit Judge