

STATE OF WISCONSIN

CIRCUIT COURT

DANE COUNTY

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WISCONSIN DEPARTMENT OF
EMPLOYMENT RELATIONS,

APR 14 1988

Petitioner, **Personnel** MEMORANDUM DECISION
Commission

vs.

WISCONSIN PERSONNEL COMMISSION,

Respondent

Case No. 85-CV-5383

BEFORE HON. HOWARD LATTON, RESERVE CIRCUIT JUDGE

Petitioner Department of Employment Relations
(Department) appeals a decision of the Wisconsin Personnel
Commission (Commission). For the reasons set forth below, the
Court reverses the decision of the Commission.

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FACTS

OFFICE OF
GENERAL COUNSEL

In 1984, the Department completed a personnel manage-
ment survey of the enforcement and compliance occupational
category. The position classifications of Motor Vehicle
Inspectors 1 and 2 were examined in the survey. As a result
of that survey, the Department abolished the MVI classifica-
tion series and established a new series --that of State
Patrol Inspector (SPI). The Department implemented the survey
on August 22, 1984. Those individuals who were previously
MVI 2's became SPI 2's. Those individuals who were hired
after November, 1983 as MVI 1's became SPI 1's. This case

involves the reallocation of those individuals occupying MVI 1 positions who were hired before November of 1983. The Department reallocated all such positions to the SPI 2 classification.

The Department of Transportation and several affected individuals appealed that reallocation to the Commission. The Commission reversed a proposed decision and order by the hearing examiner and ordered the Department to reallocate the positions to the SPI 1 classification. The Department then filed this appeal.

In order to consider the Commission's decision, it is necessary to set forth the position standard applicable to this case, a standard approved by the Department's Secretary.

-----The pertinent language follows.-----

"I. INTRODUCTION

"A. Purpose and Use of This Position Standard

This position standard is the basic authority for making classification decisions relative to present and future positions performing motor carrier law enforcement duties. This position standard will not specifically identify every eventuality or combination of duties and responsibilities of positions that currently exist or those that result from changing program emphasis in the future. Rather, it is designed to serve as a framework for classification decision making in this occupational area.

"B. Inclusions

This series encompasses positions performing technical work in the enforcement of State motor carrier laws and regulations. Duties include patrolling highways and operating State truck weighing stations for the purpose of detecting violations of motor carrier laws, inspecting school buses, trucks, and other motor vehicles for compliance with motor vehicle

"safety equipment laws and regulations, making arrests for violations of motor carrier laws and regulations, investigating to locate persons not responding to bad check payment inquiries, confiscating driver licenses and plates, identifying vehicles through locating confidential vehicle identification numbers, and investigating the facilities and operations of motor vehicle and salvage dealers.

* * * *

- "D. Entrance and Progression Through This Series
Employees typically enter this series by competitive examination for Enforcement Cadet, and after successful completion of a training program at the State Patrol Academy, are certified to positions at the State Patrol Inspector 1 level. Employees advance to the State Patrol Inspector 2 level through reclassification. Employees at the 2 level assume lead work and investigatory responsibilities.

* * * *

"II. CLASS CONCEPTS AND REPRESENTATIVE POSITIONS
STATE PATROL INSPECTOR-1

This is entry level motor carrier law and regulation enforcement work under the close supervision of a State Patrol Inspector Supervisor or State Patrol Sergeant. Positions operate State fixed scale or portable scale units for the purpose of detecting violations of motor carrier laws and regulations and inspect school buses, trucks, and other motor vehicles and operators for maintenance and compliance with safety equipment regulations.

STATE PATROL INSPECTOR 2

This is objective level motor carrier law and regulation enforcement work under the general supervision of a State Patrol Inspector Supervisor or State Patrol Sergeant. Positions operate State fixed scale or portable scale units for the purpose of detecting violations of motor carrier laws and regulations and inspect school buses, trucks, and other motor vehicles and operators for maintenance and compliance with safety equipment regulations. Positions may also train lower level inspectors.

"III QUALIFICATIONS

The qualifications required for these classification levels will be determined on a position-by-position basis at the time of recruitment. Such determinations will be made based on an analysis of the goals and worker activities performed and by an identification of the education, training, work or other life experience which would provide reasonable assurance that the knowledge and skill required upon appointment have been acquired."

The Commission concluded that the term "investigatory responsibilities", as used in Section I., D., of the standard "refers to certain specific and relatively complex investigations in which the appellants have no experience or training." The Commission's decision and order indicates that this is the only skill or qualification at issue in this case. The Commission interpreted the position standard to require individuals classified as SPI 2's to possess, upon appointment, the training or experience necessary to assume these investigatory responsibilities.

DECISION

Section 230.09, Stats., sets forth the authority of the Secretary to establish class specifications. That section provides, in pertinent part:

"(1) The secretary shall ascertain and record the duties, responsibilities and authorities of, and establish grade levels and classifications for, all positions in the classified service. He or she shall use job evaluation methods which in his or her judgment are appropriate to the class or occupational groups. Each classification shall be established to include as many positions as are reasonable and practicable.

"(2) (a) After consultation with the appointing authorities, the secretary shall allocate each position in the classified service to an appropriate class on the basis of its duties, authority, responsibilities or other factors recognized in the job evaluation process. The secretary may reclassify or reallocate positions on the same basis.

"(am) The secretary shall maintain and improve the classification plan to meet the needs of the service, using methods and techniques which may include personnel management surveys, individual position reviews, occupational group classification surveys, or other appropriate methods of position review. Such reviews may be initiated by the secretary after taking into consideration the recommendations of the appointing authority, or at his or her own discretion. The secretary shall establish, modify or abolish classifications as the needs of the service require.

"(b) To accommodate and effectuate the continuing changes in the classification plan as a result of the classification survey program and otherwise, the secretary shall, upon initial establishment of a classification, assign that class to the appropriate pay rate or range.... The secretary shall apply the principle of equal pay for work of equivalent skills and responsibilities when assigning a classification to a pay range. The secretary shall give notice to appointing authorities to permit them to make recommendations before final action is taken on any such assignment or reassignment of classes."

It is clear that the Commission has the authority to review the decision of the Secretary in this case. Section 230.44 (1) (b), Stats., allows for appeals of decisions made or delegated by the Secretary. In its decision, the Commission indicated that its focus was on "the position standards of the new classification rather than on the standard position descriptions that have been developed to describe duties actually assigned by management." The position standard indicates that "Employees at the 2 level assume...investigatory responsibilities." The Commission held that veteran MVI 1's lacked the training or experience necessary to assume those responsibilities. In

light of the actual wording in the position descriptions for SPI 1 and 2, however, the Commission's reliance on the position standard is misplaced. The Commission refers to the SPI position description twice in its opinion. The pertinent passage follows:

"There is no dispute that the appellants possess the knowledge and skill to perform leadwork, train lower level inspectors, operate scales and conduct inspections. The record also shows that the appellants have knowledge and skill in conducting certain investigations, even though they lack knowledge and skill in performing the types of investigations identified within Goal G the SPI 2 standard position description."
(emphasis in original)

Goal G in each position description indicates that the SPI 1's and 2's both assume investigatory responsibilities. SPI 2's are to conduct investigations. SPI 1's are to assist, when required, with investigations. This authority involves 10% of the time of an SPI 2 and 5% of the time of an SPI 1. However, the investigatory work itself, as described in Goal G of each position description, is precisely the same for these two classifications. The Commission has failed to reconcile this similarity in the nature of the investigatory work involved at each level with the pertinent language in the position standard. The only distinction apparent to this Court, relative to investigatory responsibilities at these two levels, is that SPI 2's assume a leadwork role and devote an minor amount of additional time to the task. Moreover, it is undisputed that veteran MVI 1's possess the knowledge and skill to perform leadwork. The absence of any

distinction between the nature of investigatory responsibilities at these two levels diminishes considerably the value of the language in the position standard, indicating that SPI 2's assume investigatory responsibilities.

Previous decisions of this Circuit Court indicate that the Commission cannot rewrite a position standard once it has been approved by the Secretary. Zhe, et al. v. Personnel Commission, Dane County Circuit Court, Case No. 81-CV-6492, Judge Robert Pekowsky, November 2, 1982. Division of Personnel v. Personnel Commission, et al., Dane County Circuit Court, Case No. 81-CV-5798, Judge William Eich, November 8, 1983. The Commission concedes in its brief that it has no authority to rewrite position standards that have been approved by the Secretary.

The "Class Concepts and Representative Positions" section of the standard indicates that SPI 1 is an entry level position requiring close supervision. SPI 2, on the other hand, is an objective level position involving general supervision. The undisputed findings of fact in this case indicate that none of the affected individuals is an entry level employe. All of the veteran MVI 1's have at least two years of experience. Some of these employes have as much as eighteen years of experience. Thirty-five of the veteran MVI 1's have been so employed since 1971 or before. By reallocating such individuals to the SPI 1 category, the Commission effectively voided the language in the "Class Concepts and Representative Positions" section of the standard. Such an action is beyond

the scope of the Commission's authority and must be reversed.

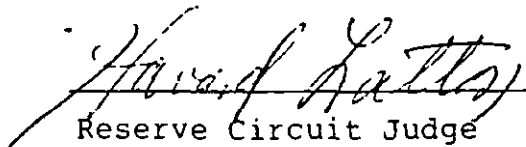
Sec. 227.20(8), Stats., provides, in pertinent part:

"The Court shall reverse or remand the case to the agency if it finds that the agency's exercise of discretion is outside the range of discretion delegated to the agency by law;"

Counsel for the petitioner may draft the appropriate order.

Dated July 9, 1986.

BY THE COURT:


Reserve Circuit Judge