

affirming Lulloff v. D&E, 90-0347-PC, 4/19/94;
affirmed by Lulloff v. Wis. Pers. Comm.,
Dane County Circuit Court, 96-2189, 1/8/98

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**COURT OF APPEALS
DECISION
DATED AND FILED**

NOTICE

PERSONNEL COMMISSION

January 8, 1998

Marilyn L. Graves
Clerk, Court of Appeals
of Wisconsin

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

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See § 808.10 and RULE 809.62, STATS.

No. 96-2189

STATE OF WISCONSIN

IN COURT OF APPEALS
DISTRICT IV

ALAN R. LULLOFF,

PETITIONER-APPELLANT,

v.

WISCONSIN PERSONNEL COMMISSION,

RESPONDENT-RESPONDENT.

JAN 21 1998

APPEAL from an order of the circuit court for Dane County:
JACK F. AULIK, Judge. *Affirmed.*

Before Eich, C.J., Dykman, P.J., and Roggensack, J.

PER CURIAM. Alan Lulloff, an engineer with the Wisconsin Department of Natural Resources, appeals from an order of the circuit court affirming a decision of the Wisconsin Personnel Commission. We affirm because

substantial evidence exists in the record to support the commission's factual findings and we grant "great-weight" deference to the commission's legal analysis.

The commission conducted a formal appeal hearing in which Lulloff argued that his position should be classified as an Advanced-2 engineer rather than Advanced-1, as an earlier classification study had concluded. A proposed decision and order was issued, which the commission adopted. Lulloff appealed and the circuit court affirmed the commission's decision.

We review the decision of the commission, not the circuit court. See *Sterlingworth Condominium Ass'n v. DNR*, 205 Wis.2d 710, 720, 556 N.W.2d 791, 794 (Ct. App. 1996). When considering whether the application of a statute embraces a set of factual circumstances, we face a mixed question of law and fact. *Michels Pipeline Construction, Inc. v. LIRC*, 197 Wis.2d 927, 931, 541 N.W.2d 241, 243 (Ct. App. 1995). An agency's findings of fact are conclusive if supported by substantial evidence in the record. Section 227.57(6), STATS. Legal conclusions drawn by the agency from its findings of fact present a question of law subject to independent judicial review. *Wehr Steel Co. v. DILHR*, 106 Wis.2d 111, 117, 315 N.W.2d 357, 361 (1982). Nevertheless, we do not substitute our legal analysis for that of the agency if the agency has experience in interpreting its own regulations.

Specifically, great-weight deference is granted to an agency's conclusions of law when: (1) the legislature charged the agency to administer the statute; (2) the agency's interpretation is long-standing; (3) "the agency employed its expertise or specialized knowledge in forming the interpretation"; and (4) "the agency's interpretation will provide uniformity and consistency in the application of the statute." *UFE Inc. v. LIRC*, 201 Wis.2d 274, 284, 548 N.W.2d 57, 61 (1996)

(quoting *Harnischfeger Corp. v. LIRC*, 196 Wis.2d 650, 660, 539 N.W.2d 98, 102 (1995)). Here, we conclude that the commission's legal analysis is due great-weight deference because it has been charged with administering the relevant statutory classification scheme and has been interpreting and applying the applicable statutes for a substantial period of time.¹

This appeal turns on whether Lulloff's duties and responsibilities qualify him as an Advanced-2 engineer rather than an Advanced-1 engineer, as he is currently classified. As the agency charged with making the determination, the commission is required to base position classifications on the nature of the work required, and to classify positions accordingly. Section 230.09(1) and (2)(a), STATS. The commission contends, and Lulloff does not dispute, that the scope of his duties presents an issue of fact. The question of what classification his duties entitle him to is one where judgment must be exercised to determine the "best fit." As we noted above, that is a mixed question of law and fact to which we will accord great weight.

The commission determined that Lulloff met only two of the seven criteria necessary to be classified as an Advanced-2 engineer.² Although Lulloff

¹ See, e.g., *Department of Employment Relations v. Wisconsin Personnel Comm'n (Ralph Doll)*, No. 79-CV-3860 (Dane County Cir. Ct., Sept. 10, 1980)

² The seven elements of the Advanced-2 category are

1. Work involves difficult, complex professional water resource engineering.
2. Employee performs the most complex engineering reviews for the assigned area
3. Work assigned is typically in uncharted areas with essentially no precedents for guidance

(continued)

disputes the outcome, he concedes that the scope of his duties is a matter of fact, and we are satisfied that substantial evidence in the record supports the commission's findings in this regard. And while Lulloff disputes the methodology the commission used to classify his job, he raised the same arguments before the commission and they were rejected based on a comparison of his position to positions occupied by other engineers in state service.³ Such a comparative analysis involves mixed questions of fact and law within the commission's area of responsibility and expertise and is thus entitled to great deference by the courts. The commission's comparative analysis was reasonable and we therefore uphold it.

By the Court.—Order affirmed.

This opinion will not be published. See RULE 809.23(1)(b)5, STATS.

4 Employee typically provides direction to other engineers assigned to the project.

5 Work involves the development of policies, standards, procedure development, evaluation and administration

6 Employee functions as the chief technical consultant

7 Employee is the delegated authority to make final engineering decisions.

The commission found that Lulloff met the first and last of these criteria, but not the other five

³ The commission's most direct comparison was between duties discharged by Richard Wedepohl, a DNR engineer who met the minimum qualifications for an Advanced-2 position, and Lulloff. The commission chose this comparison because it viewed Wedepohl's position as meeting the minimum standards for classification as an Advanced-2 engineer. The commission found that Wedepohl had greater responsibility in a number of areas, including a wider array of cross-program duties