

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

LEON S. SCOTT, Appellant,

vs.

**SECRETARY, DEPARTMENT OF CORRECTIONS &
SECRETARY, DEPARTMENT OF EMPLOYMENT RELATIONS**, Respondents.

Case 604
No. 62887
PA(der)-65

Decision No. 30767

Ruling on Motion for Summary Judgment

Appearances:

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Julie Kane, Office of Legal Counsel, Department of Corrections, P.O. Box 7925, Madison, WI 53707-7925, appeared for Respondents.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

This matter is before the Commission on Respondents' motion for summary judgment. The appeal arises from the decision not to reclassify the Appellant's position. The Personnel Commission established the issue in a ruling dated October 31, 2002, and it reads as follows:

Whether Respondents' decision to deny Appellant's request to reclassify his position from Maintenance Mechanic 3 to Heating, Ventilating, Air Conditioning (HVAC) and/or Refrigeration Specialist [HVAC Specialist] was correct.

After the motion for summary judgment was filed but before it could be ruled upon, the Personnel Commission was abolished pursuant to 2003 Wis. Act 33, and the authority over this matter was transferred to this agency. The same legislation reorganized the executive branch so that the former Secretary of the Department of Employment Relations is now the Director of the Office of State Employment Relations.

Dec. No. 30767

FINDINGS OF FACT

1. Leon Scott, the Appellant herein, is employed at the Black River Correctional Center operated by respondent Department of Corrections (DOC).
2. On or about October 20, 2000, Appellant's request to reclassify his position from Maintenance Mechanic 3 to HVAC Specialist was received by DOC's Bureau of Personnel and Human Resources. October of 2000 is the approximate effective date for the transaction in question.
3. Appellant's request for reclassification was denied on May 24, 2002.
4. Appellant has no subordinate Maintenance Mechanics, but as of 2002, he had four full-time inmate helpers and an additional two inmate helpers during the summer.
5. The relevant portions of Appellant's January 2002 position description (PD) read as follows:

POSITION SUMMARY

Under the general direction of the Superintendent as well as the technical direction of the Superintendent of Buildings and Grounds [Appellant] is responsible for the overall maintenance duties of Black River Center. Installs, repairs and maintains the Center electrical, plumbing, mechanical, water and sewage systems. Maintains preventative maintenance records on buildings, vehicles and equipment. Maintains records, keeps inventories and purchases maintenance materials. Install, maintain, modify and remodel heating, ventilating, refrigeration and air conditioning (HVAC) control systems. Monitor and control heating, air conditioning and water systems with the use of Building Automation Control Computer. Trains and supervises inmate work crews and performs other duties as required.

GOALS

- 40% A. Maintain, modify and remodel heating, ventilating and air conditioning control systems (Pneumatic, electric & electronic), install, repair and maintain Center mechanical equipment.
- 20% B. Supervising, instructing, planning and directing inmate work crew.
- 10% C. Monitor and control heating, air conditioning and water systems using computer system.
- 10% D. Coordination and project planning for HVAC projects, construction, expansion or renovation of plumbing, electric, water supply, waste water and the physical structures of the Center.
- 10% E. Repair and maintain and expand Center's physical structure.
- 10% F. Miscellaneous Duties.

6. The relevant portions of the Maintenance Mechanic 3 class specification read as follows:

DEFINITIONS

MAINTENANCE MECHANIC 3

This is advanced level mechanical maintenance and repair work. Employees in this class operate, maintain and make repairs on electrical, plumbing, heating, refrigeration, air conditioning and other mechanical systems and apparatus commonly used in office and institutional buildings and building complexes. There are five general allocation patterns for this level . . . 4) Area Maintenance – employees who are independently responsible for an entire mechanical maintenance operation in an institution, large state office building, a specific assigned area of a complex operation or a fish hatchery. . . . For all allocations work is normally performed under the general supervision of a maintenance supervisor, superintendent of buildings and grounds, or an administrator.

III. EXAMPLES OF WORK PERFORMED

Maintenance Mechanic 3

- Inspect, repair and maintain commercial HVAC equipment including boilers, chillers and their control units.
- Maintains and repairs refrigeration and fuel storage units, including pumps and valves.
- Inspect, repair and maintain pumps, sludge rakes, chlorinators and sewage disposal equipment and their controls.
- Install and repair air conditioners and climate control devices.
- Monitor computerized environmental control center making adjustments as needed and/or dispatching other mechanics, building trades or other professionals as required.
- Maintain and replace electrical units such as motors switches and outlets.
- Rebuild pumps and compressors.
- Install and repair kitchen, laundry equipment and appliances.
- Repair, enclose, encapsulate or remove asbestos-containing material.
- Function as a leadworker to other maintenance mechanics.
- Requisition supplies and recommend equipment for purchase.
- Inspect, maintain and repair wells, pumps and water pressure and distribution systems.

7. The relevant portions of the HVAC Specialist class specification read as follows:

B. Inclusions

This classification encompasses positions which function as system experts in the HVAC and/or refrigeration area. These positions *must spend a significant portion of time (typically 90% or more) performing advanced work on HVAC and/or refrigeration equipment and systems*. This classification is limited to only those few positions which are specifically assigned to perform advanced systems setup, monitoring, adjustment and control; troubleshooting, repair and projects; and would typically guide Maintenance Mechanics in the maintenance and repair of sophisticated HVAC and/or refrigeration equipment systems. The more routine adjustment, maintenance and repair to the systems is typically performed by positions allocated to the Maintenance Mechanics series, however, some routine work may be done by these types of positions as an incidental portion of their primary function as systems experts.

DEFINITION

This is advanced level HVAC and/or refrigeration work performed under minimal supervision. Employees in this class troubleshoot, repair, adjust, modify and remodel sophisticated HVAC and/or refrigeration control systems (pneumatic, electric and electronic) and related mechanical and electronic equipment. These positions are responsible for the most specialized and technically advanced environmental controls and typically lead Maintenance Mechanics in the more routine maintenance and repair of the systems or perform this work incidental to their primary function as the systems expert. These controls are used to balance elements such as outside vs. inside temperature, humidity and air velocity, taking into consideration factors such as time of day usage, system capabilities and energy efficiency. In addition, these employees may be responsible for the design, development, operation and ongoing maintenance of a computerized energy management system used to monitor and control heating and air conditioning systems and report and make recommendations on energy conservation procedures, controls and activities.

Representative Positions:

University of Wisconsin River Falls

Acts as a consultant to contractors and engineers when changes or additions are being made to the HVAC system. Operates, repairs and performs preventive maintenance on all pneumatic controls including installation of new controls on remodeling projects and energy projects. This includes reviewing specifications, designing systems, setting up reset schedules for more efficient systems, and providing data reports to provide a comfortable environment. Programs and operates the campus energy management computer.

University of Wisconsin Hospital and Clinics
Installs, programs and modifies computerized digital control systems. Troubleshoots, edits, assembles adjusts, modifies and loads control strategies to efficiently manage HVAC units, chillers, towers, pumps and heat exchangers. Troubleshoots and replaces faulty electronic and pneumatic hardware. Recommends and sets up programs schedules for HVAC equipment and lighting to conserve energy. Trains operators on workstation procedures used to monitor and control the facility. (Emphasis added).

8. Appellant does not “spend a significant portion of time (typically 90% or more) performing advanced work on HVAC and/or refrigeration equipment and systems.”

CONCLUSIONS OF LAW

1. This matter is properly before the Commission pursuant to Sec. 230.44(1)(b), Stats.
2. Respondent has the burden to show that there are no genuine issues of material fact and that it is entitled, as a matter of law, to judgment in its favor.
3. Respondent has satisfied its burden.

ORDER

Respondent’s motion for summary judgment is granted and this appeal is dismissed.

Given under our hands and seal at the City of Madison, Wisconsin, this 15th day of January, 2004.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Judith Neumann /s/

Judith Neumann, Chair

Paul Gordon /s/

Paul Gordon, Commissioner

Susan J. M. Bauman /s/

Susan J. M. Bauman, Commissioner

**MEMORANDUM ACCOMPANYING FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER**

The Commission may summarily decide a case when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. *BALELE V. WIS. PERS. COMM.*, 223 WIS.2D 739, 745-748, 589 N.W.2D 418 (CT. APP. 1998). Generally speaking, the following guidelines apply. The moving party has the burden to establish the absence of any material disputed facts based on the following principles: a) if there are disputed facts, but they would not affect the final determination, they are immaterial and insufficient to defeat the motion; b) inferences to be drawn from the underlying facts contained in the moving party's material should be viewed in the light most favorable to the party opposing the motion; and c) doubts as to the existence of a genuine issue of material fact should be resolved against the party moving for summary judgment. See *GRAMS V. BOSS*, 97 WIS.2D 332, 338-9, 294 N.W.2D 473 (1980) and *BELELE V. DOT*, 00-0044-PC-ER, 10/23/01. The non-moving party may not rest upon mere allegations, mere denials or speculation to dispute a fact properly supported by the moving party's submissions. *BALELE, ID.*, citing *MOULAS V. PBC PROD.*, 213 WIS.2D 406, 410-11, 570 N.W.2D 739 (CT. APP. 1997). If the non-moving party has the ultimate burden of proof on the claim in question, that ultimate burden remains with that party in the context of the summary judgment motion. *BALELE, ID.*, CITING *TRANSPORTATION INS. CO. V. HUNTZIGER CONST. CO.*, 179 WIS.2D 281, 290-92, 507 N.W.2D 136 (CT. APP. 1993).

The Commission's predecessor agency, the Personnel Commission, has determined that it is appropriate to apply the above guidelines in a flexible manner, after considering at least the following factors that are relevant to resolution of a matter filed under Sec. 230.44, Stats., (*BALELE, ID.*, PP. 18-20):

1. *Whether the factual issues raised by the motion are inherently more or less susceptible to evaluation on a dispositive motion.* Subjective intent is typically difficult to resolve without a hearing whereas legal issues based on undisputed or historical facts typically could be resolved without the need for a hearing.
2. *Whether a particular Appellant could be expected to have difficulty responding to a dispositive motion.* An unrepresented Appellant unfamiliar with the process in this forum should not be expected to know the law and procedures as well as an Appellant either represented by counsel or appearing *pro se* but with extensive experience litigating in this forum.
3. *Whether the Appellant could be expected to encounter difficulty obtaining the evidence needed to oppose the motion.* An unrepresented Appellant who either has had no opportunity for discovery or who could not be expected to use the discovery process, is unable to respond effectively to an assertion by Respondent for which the facts and related documents are solely in Respondent's possession.

4. *Whether the Appellant has engaged in an extensive pattern of repetitive and/or predominately frivolous litigation.* If this situation exists it suggests that use of a summary procedure to evaluate his/her claims is warranted before requiring the expenditure of resources required for hearing.

The Commission now turns to applying these factors to this case. The present motion does not focus on subjective intent and instead relies upon undisputed facts. The Appellant knows what responsibilities have been assigned to him and, to the extent determination of the motion relies on the nature of the Appellant's responsibilities, the Appellant would be able to identify any areas of responsibility that are in dispute. The Appellant is represented by an attorney, although Appellant himself filed Appellant's materials relating to Respondent's motion. There has been no showing that Appellant has engaged in an extensive pattern of repetitive and/or predominately frivolous litigation.

Given the circumstances, the Commission concludes that Appellant should be held to the requirement that, in responding to the motion for summary judgment, he demonstrate there are genuine issues of disputed facts, and that he is entitled to a hearing on his claims. However, in analyzing Appellant's showing, appropriate procedural consideration must be given to the fact that he prepared the response to the respondent's motion. Thus, although Appellant filed no affidavits in opposition to the present motion, his assertions in the other documents he submitted will be considered.

There are somewhat different position descriptions for the Appellant's position dated 1996, 2001 and 2002. The 1996 PD is signed by the Appellant, his supervisor and the personnel manager, while the two later PDs were not signed by the personnel manager. There is nothing indicating conclusively which of these position descriptions best describes the Appellant's position as of October of 2000, which was the effective date of the decision being appealed. However, the materials in the case file include a statement by the Appellant dated September 20, 2001, that his PD was not accurate/complete. For purposes of this ruling, the Commission relies on the 2002 PD because it is the most favorable to the Appellant's case. The Appellant submitted numerous documents relating to three large projects that began after the effective date for his reclassification request. Even though there is no explicit statement by Appellant that he was performing comparable duties as of October of 2000, the Commission will assume that he was doing so.

Respondent contends that the Appellant's duties, as reflected in his January 16, 2002 position description, are clearly identified by the Maintenance Mechanic 3 classification rather than the HVAC Specialist class.

The Personnel Commission (PC) has issued a number of decisions relating to and interpreting the HVAC Specialist specification.

1. In *PETERS V. DER*, 92-0159-PC, 2/3/94, the Appellant appealed the decision to reallocate his position to Maintenance Mechanic 3 rather than to HVAC Specialist. Mr. Peters was “solely responsible for the environmental condition” for the Bayfield Fish Hatchery, was required to reside on hatchery grounds and was “responsible for major repairs, modifying, remodeling and rebuilding HVAC systems.” The PC affirmed the decision to reallocate Mr. Peters’ position to the Maintenance Mechanic 3 level, and noted:

The HVAC position standard . . . specifically states that to qualify for this classification, “positions must spend a significant portion of time (typically 90% or more) performing advanced work on HVAC and/or refrigeration equipment and systems.” (emphasis added) The proposed decision does not reach the conclusion that appellant’s position is at the 90% level in this regard, and, considering the range of more routine-type work reflected in Appellant’s [position] description and in the hearing record, it clearly is not at the 90% level. Therefore, while some of Appellant’s work is advanced enough to be considered at the HVAC Specialist level, his position does not meet the requirements set forth in the position standard. 1/

1/ The PC also offered the following observation as dictum:

The record reflects that Appellant’s position performs a good deal of work that is above and beyond that normally associated with the MM 3 classification, and in some respects, appears to be rather unique due to the nature of the hatchery and Appellant’s role occupying the sole position in the HVAC field at that facility. While this position necessarily is responsible for a good deal of work at the MM3 level which prevents it from meeting the criteria for classification as an HVAC Specialist, the Commission suggests that other approaches be explored that would permit the classification recognition of the duties of the position that transcend the MM 3 level.

This dictum applies to the present case for similar reasons.

2. In *OLSON ET AL. V. DER*, 92-0071-PC, etc., 9/9/94, the PC rejected the Appellants’ argument that their work involving routine maintenance and upkeep should be counted toward the “typically 90% or more” provision in the HVAC Specialist specifications. The Appellants were each independently responsible for certain buildings on the University of Wisconsin-Whitewater campus, including all aspects of the operation of the machines in those buildings which were primarily large, complex chillers and other commercial air conditioning equipment with primarily pneumatic controls.

3. In *BURNSON v. DER*, 92-0096, 0847-PC, 10/24/94, the record established that appellant performed HVAC work 55-60% of his time and the PC noted:

Mr. Burnson would prefer that the 90% figure used in the HVAC/refrigeration class specifications were lowered to include his level of involvement with HVAC/refrigeration systems (55-60%). The Commission, however, lacks authority to rewrite class specifications. (Citations omitted).

The Appellant's 2002 position description shows that he is "responsible for the overall maintenance duties of Black River Center" and that his responsibilities include "the electrical, plumbing, mechanical, water and sewage systems" rather than just the HVAC and refrigeration systems at that facility. This information is confirmed in Appellant's letter of appeal filed on June 25, 2002, where he wrote, in part:

[My] position is responsible for HVAC AND Automotive AND Mechanical AND Inmate Supervision AND Inmate Training AND Electrical AND Plumbing AND Project Coordination AND Purchasing AND Refrigeration Specialist AND all those other tasks which have been enumerated repeatedly. They are the sole responsibility of this position and do not have the safety net of specialized technicians or mechanics. The position is a stand-alone job requiring the ability to shift areas of expertise on a daily if not hourly basis and perform in a professional manner. Further, no other Maintenance Mechanic 3 positions maintain an office and are responsible for all paperwork and records, to include accountability for purchasing, in the Maintenance area. (Emphasis in original).

The class specifications for HVAC Specialist class require that someone in that classification spend a significant portion of time ("typically 90% or more") performing advanced work on HVAC and/or refrigeration equipment and systems. In other words, as confirmed by the previous decisions of the Personnel Commission interpreting these specifications, it is not just 90% or more of HVAC work, it is 90% or more of *advanced* HVAC and/or refrigeration work.

While the Appellant spends some of his time monitoring, adjusting, repairing and even installing HVAC and refrigeration systems at the Black River Center, his responsibilities are much broader than the HVAC and/or refrigeration specialty described in the HVAC Specialist specifications. Appellant has responsibility for monitoring, adjusting, repairing and even installing "electrical, plumbing, mechanical, water and sewage systems." His responsibilities fall within the language of allocation 4) of the Maintenance Mechanic 3 definition, but not the HVAC Specialist classification. The percentages of time set forth in his position description

are inconsistent with the “usually 90% or more” language which is a requirement for classification at the HVAC Specialist classification. The Commission cannot rewrite the HVAC Specialist classification specification to allow the 90% figure to refer to complex work involving *any* mechanical system. ZHE ET AL. V. DHSS & DP, 80-285-PC, ETC., 11.19/81; aff’d by Dane County Circuit Court, ZHE ET AL. V. PERS. COMM., 81-CV-6492, 11/2/82. Given the express limitations of that classification as well as the reference in the Maintenance Mechanic 3 definition to positions “independently responsible for an entire mechanical maintenance operation in an institution,” summary judgment dismissing the Appellant’s request to reclassify his position as an HVAC Specialist is appropriate.

Dated at Madison, Wisconsin, this 15th day of January, 2004.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Judith Neumann /s/

Judith Neumann, Chair

Paul Gordon /s/

Paul Gordon, Commissioner

Susan J. M. Bauman /s/

Susan J. M. Bauman, Commissioner

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