

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

DENNIS WINCHESTER, Appellant,

vs.

**President, UNIVERSITY OF WISCONSIN SYSTEM, and
Director, OFFICE OF STATE EMPLOYMENT RELATIONS**, Respondents.

Case 548
No. 62767
PA(der)-10

Decision No. 31065-A

Appearances:

Dennis Winchester, 2133 North Prospect Avenue, Milwaukee, Wisconsin 53202, appearing on his own behalf.

Lori L. Fuller, Human Resource Specialist, UW System Administration, Office of Human Resources, 780 Regent Street, P.O. Box 8010, Madison, Wisconsin 53708-8010, appearing on behalf of the Respondents.

DECISION AND ORDER

This matter is before the Wisconsin Employment Relations Commission on an appeal of Respondents' decision to reallocate Appellant's position from Offset Press Operator – Lead to Offset Press Operator, effective May 18, 2003. The case was filed with the Wisconsin Personnel Commission (PC) on July 10, 2003. The PC identified the Department of Employment Relations (DER) as the sole Respondent. While the case was pending, the PC was abolished pursuant to 2003 Wis. Act 33, effective July 26, 2003, and the authority for processing the matter was transferred to the Wisconsin Employment Relations Commission. The same legislation reorganized the executive branch so that the position of the Secretary of DER became the Director of the Office of State Employment Relations (OSER). On November 5, 2003, OSER informed the Commission that the appeal arose from an action delegated by OSER to the University of Wisconsin System.

A hearing on the matter was in held in Milwaukee, Wisconsin on April 9, 2004 before Hearing Examiner Edmond J. Bielarczyk, Jr., a member of the Commission's staff, upon the following issues:

Is the Appellant properly classified as an Offset Press Operator? If not, is the Offset Press Operator – Leadworker the proper classification?

The Hearing Examiner received the final post-hearing written argument on May 13, 2004.

For the reasons set forth below, it is the Commission's decision that the Appellant's position is better described by the Offset Press Operator classification. The decision is premised on the statutes and rules that existed at the time the appeal was filed and all quoted provisions are those in existence prior to the legislative changes in July 2003 unless otherwise noted.

On June 21, 1999, Dennis Winchester was hired by the University of Wisconsin-Milwaukee (UW-M) as an Offset Press Operator – 3 (OPO 3) in its Kenilworth print shop. At that time, the OPO 3 classification included the following definition:

This is leadwork in a large offset press operation. Under limited supervision employees in this class function as a leadworker in a large service unit engaged in production basis printing operations. In addition employees perform some of the more advanced work in the operation adjustment and maintenance of lithographic (offset) presses. Work is performed with considerable independence, with a large degree of initiative and judgment required in applying procedures and instructions to a wide variety and volume of work.

At the time of his hire, Mr. Winchester was one of four employees of the University of Wisconsin – Milwaukee Printing Services with the OPO 3 classification. His Position Description included the following language:

Position Summary:

This position, under limited supervision, operates offset presses and related production equipment in the Kenilworth shop. Assists in Mitchell Copy Center as needed. Printing and related production is of the highest quality. This job includes mixing colored inks, printing on a wide variety of papers ranging from cover weight to light weight bond, and printing complex images and halftones.

Time %

Goals and Activities

- | | |
|------------|--|
| 90% | A. Produce high quality printed materials |
| 5% | B. Temporary assistance at Mitchell Hall Copy Center |
| 5% | C. Back up support for lead worker/supervisor during extended absences. |
- C1. Assist Production Manager as assigned in daily operation of shop. This is to exclude all administrative responsibilities.
 - C2. Assist in review of new equipment and processes related to shop.

In its “Glossary of Human Resource Terms as Used by the Division of Compensation and Labor Relations” issued in March 2002, DER defined “lead worker” as follows:

An employee whose assigned duties include training, assisting, guiding, instructing, and assigning and reviewing the work to one or more employees in the work unit. Lead workers do not have supervisory authority as defined under *s. 111.81(19)*, *Wis. Stats.* which include hiring, disciplining, and firing an employee. (Emphasis in original).

While his position description refers to providing “back up support” during extended absences of the “leadworker/supervisor,” Winchester has not been assigned any lead worker responsibilities or duties during his entire tenure with University of Wisconsin – Milwaukee Printing Services.

On May 18, 2003, as the result of a classification survey, DER abolished the OPO 1 through 3 classification series and replaced it with two classifications, Offset Press Operator and Offset Press Operator – Lead. On June 6, 2003 Winchester was initially notified that his position had been reallocated to the new Offset Press Operator – Lead classification. However, in materials dated June 9, 2003, Respondents informed Winchester that his position had actually been reallocated, effective May 18, 2003, to the classification of Offset Press Operator. He subsequently filed this appeal.

As of May 18, 2003, the Offset Press Operator classification series includes two class levels and the following definitions:

OFFSET PRESS OPERATOR

Positions in this classification function under close progressing to general supervision and perform the full range of duties required to operate an offset press. Positions operate, set-up, adjust and maintain offset press equipment and perform other related tasks for a wide variety of printed material that may require utilizing half tones, close registration and multi-color work. When necessary positions prepare offset plates for printing and operate, set-up and maintain bindery equipment.

OFFSET PRESS OPERATOR-LEAD

Under general supervision, positions perform work similar to the Offset Print Operator but are differentiated by their responsibility for overseeing the daily operations of an offset shop. These positions are the single position within an offset press shop that is responsible for coordinating and monitoring all offset press work. In large, multi-shift press shops, there may be one lead position

assigned to each shift. Work is performed under general supervision. Positions ensure instructions are clear, assign work, monitor quality and ensure proper maintenance of equipment. Positions have responsibility on a continuing basis for scheduling, training, assigning and monitoring the work of classified, limited-term, or student assistants.

The duties assigned to Mr. Winchester's position are accurately described by the Offset Press Operator classification that became effective on May 18, 2003.

The majority of Mr. Winchester's duties involve the operation of offset press equipment. He has not been assigned the responsibility to oversee the daily operations of the Kenilworth shop, nor does he have continuing responsibility to schedule, train, assign or monitor the work of other employees in the shop.

ORDER

Respondents' decision to reallocate Appellant's position to Offset Press Operator rather than Offset Press Operator – Lead is affirmed and this appeal is dismissed.

Given under our hands and seal at the City of Madison, Wisconsin, this 21st day of October, 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

Parties:

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Office of State Employment Relations
& University of Wisconsin System (Winchester)

MEMORANDUM ACCOMPANYING DECISION AND ORDER

The question raised by this appeal is whether as of May 18, 2003, the effective date of the new classification structure, Mr. Winchester's assigned responsibilities were more accurately described by the Offset Press Operator or the Offset Press Operator – Lead classification.

The Commission's jurisdiction over this matter is premised on Sec. 230.44(1)(b), Stats., which grants the Commission the authority to review certain decisions of the Secretary of DER (now the Director of OSER) or delegated by the Secretary (Director). This includes decisions made pursuant to Sec. 230.09(2)(a), Stats., to reallocate individual positions in order to implement a classification survey that creates a new classification structure. The term "reallocation" is defined in Sec. ER 3.01(2), WIS. ADM. CODE, as follows:

"Reallocation" means the assignment of a position to a different class by the secretary as provided in s. 230.09(2), Stats., based upon:

- (a) A change in concept of the class or series;
- (b) The creation of new classes;
- (c) The abolishment of existing classes;
- (d) A change in the pay range of the class;
- (e) The correction of an error in the previous assignment of a position;
- (f) A logical change in the duties and responsibilities of a position; or
- (g) A permanent change in the level of accountability of a position such as that resulting from a reorganization when the change in level of accountability is the determinant factor for the change in classification.

In the instant appeal, Respondents simultaneously abolished the OPO 1 through 3 classification series and replaced it with the new classifications of Offset Press Operator and Offset Press Operator – Lead, effective May 18, 2003.

The two new classifications are differentiated on the basis of leadwork responsibilities. In order for a position to be properly classified at the Offset Press Operator – Lead level, it must be assigned responsibility for overseeing the daily operations of an offset print shop, including such tasks as scheduling, training and assigning the work of other shift employees in the work unit. Mr. Winchester acknowledges that he operates offset presses but did not have lead work responsibilities as of May 18, 2003, the effective date of Respondent’s decision.

On June 6, 2003, Respondents initially informed Winchester that his position would be reallocated to the Offset Press Operator – Lead class. This notice was based on the incorrect assumption that because the position had previously been classified at the OPO 3 level, Winchester was performing lead work.

It wasn’t until after the June 6th notice had been issued that Respondents realized the position was not assigned any leadworker duties. At that point, and as reflected in the materials dated June 9th, Respondents effectively rescinded the June 6th notice and reallocated Winchester’s position to the new Offset Press Operator class, effective May 18th.

One consequence of the June 9th action to reallocate Winchester’s position from OPO 3 to Offset Press Operator – Lead was to reduce his hourly rate of pay. While a change in pay rate may be a consequence of a reallocation decision, the Commission lacks jurisdiction to review it. DER (ALLEN), DEC. NO. 30772 (WERC, 1/04).

Mr. Winchester has also characterized his case as an appeal from a decision to deny his promotion:

The question is not whether or not I function as a leadworker. On June 6, 2003, I became an Offset Press Operator – Lead pay grade 10 through a contract negotiated between AFSCME and the Wisconsin state government. On June 9, 2003, UWM’s department of Human Resources took that promotion away from me. The question is: Why was I denied this promotion? This action took a conscious effort and a willful endeavor. The deliberate and intentional denial of my reallocation is extraordinary and without precedent.

“Promotion” refers to the movement of an employee from one position to a different position. Sec. ER 1.02(36), Wis. Adm. Code, and Ch. ER-MRS 14, Wis. Adm. Code. Mr. Winchester did not move from one position to another. The reallocation simply placed his position into a different classification.

Mr. Winchester’s argument can also be interpreted to include the contention that AFSCME and the State had specifically agreed to reallocate his position to the Offset Press Operator – Lead classification. However, the employee seeking to overturn a classification

decision has the burden of proof, OSER (RICE), DEC. No. 31093 (WERC, 10/04), and Mr. Winchester has failed to supply evidence supporting his contention. 1/

1/ The Commission has revised this paragraph from the Proposed Decision of the Examiner to reflect the record and eliminate unnecessary analysis.

Winchester's position is responsible for operating offset presses and related equipment but has no leadwork responsibilities. In order for his position to be properly classified at the Offset Press Operator – Lead level, Mr. Winchester would have to be performing lead work.

Dated at Madison, Wisconsin this 21st day of October, 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