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CIRCUIT COURT
DANE COUNTY, WI
2018CV003132

BY THE COURT:

DATE SIGNED: June 5, 2019

Electronically signed by Rhonda L. Lanford
Circuit Court Judge

STATE OF WISCONSIN

CIRCUIT COURT
BRANCH 16

DANE COUNTY

DANIEL H. WILLIAMS,

Petitioner,

V.

Case No.: 18 CV 3132

WISCONSIN EMPLOYMENT
RELATIONS COMMISSION,

RE: [WERC Dec. No. 37772]

Respondent.

DECISION AND ORDER

Petitioner Daniel Williams seeks judicial review of a decision of the Wisconsin Employment Relations Commission (WERC) pursuant to Wis. Stat. § 227.52. Petitioner appeals WERC’s determination that it lacked jurisdiction to hear petitioner’s appeal that he was improperly removed from his unclassified position as executive director and that the salary he was provided in his restored classified service position was insufficient. Based on the briefs, and for the reasons set forth below, WERC’s decision is affirmed.

FACTS

In 1988 Williams began working as an investigator, a classified service position, for the Department of Regulation and Licensing (DRL). Williams held this job until February 2011, when he was appointed to Bureau Director, an unclassified service position, in the Division of Board Services. His appointment letter stated that the position was unclassified and that he would serve at the pleasure of the DRL secretary. Upon receiving the promotion, Williams filed a written request for leave from his classified service position in accordance with Wis. Stat. § 230.33(1m).

In June 2011, DRL and parts of the Department of Commerce were combined to form DSPS. As a result of this merger, Williams' unclassified bureau director position became the unclassified position of executive director in the Division of Policy Development. Williams served in this position for the next seven years with positive performance evaluations.

On July 25, 2018, Williams was informed by DSPS that he was being removed from his unclassified position of executive director and being restored to his former classified service position. This demotion resulted in a salary loss of about \$17,000 per year. In August 2018, Williams filed a grievance with DSPS. However, DSPS denied the grievance because unlike classified employees, unclassified employees did not have to be fired for just cause so there was no relevant grievance.

In September 2018, Williams appealed to WERC. Williams argued unclassified employees could not be removed without just cause, it was improper to label an executive director as an unclassified service employee, he was not treated like an unclassified

service employee, similarly situated executive directors were considered classified service employees, and the pay rate at which he was restored to his previous classified service position was not fair because a less experienced investigator was making more. In November 2018, WERC granted DSPS's motion to dismiss Williams' appeal because the commission lacked jurisdiction. Williams now seeks judicial review of WERC's decision to dismiss his appeal.

STANDARD OF REVIEW

Administrative decisions that adversely affect the substantial interests of any person are subject to judicial review. Wis. Stat. § 227.52. The review is limited to the record. Wis. Stat. § 227.57(1). According to Wis. Stat. § 227.57(5) "The court shall set aside or modify the agency action if the court 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 law." Determining whether an agency has the power to hear an appeal is a question of law. *Kriska v. Wisconsin Employment Relations Comm'n*, 2008 WI App 13, ¶ 7. The court will independently review an agency's interpretation of a statute while giving "'due weight' to the experience, technical competence, and specialized knowledge of the administrative agency." *Tetra Tech EC, Inc. v. Wisc. Dep't of Revenue*, 2018 WI 75, ¶ 108.

Decision and Order

The issue in this appeal is whether WERC erred in determining that it lacked jurisdiction to hear an appeal concerning DRL's termination of Williams from his

executive director position. Williams argues WERC has jurisdiction over his appeal because he was not actually an unclassified employee. Additionally, Williams argues that even if the court determines he was an unclassified service employee, WERC still has jurisdiction because the Wisconsin Statutes make clear that employees should be hired and demoted on the basis of merit. Meanwhile, WERC claims that it is not given the explicit or implicit authority to review the termination of an unclassified employee because the statutes only require classified service employees be terminated for just cause, not unclassified service employees.

Administrative agencies only have powers expressly granted to them. *Ass'n of State Prosecutors v. WERC*, 2018 WI 17, ¶ 37. The purpose of statutory interpretation is to determine the intent of the legislature. *Kriska v. Wisconsin Employment Relations Comm'n*, 2008 WI App 13, ¶ 7. In order to determine legislative intent, we must first look to the plain language of the statute. *Id.*

Wisconsin State service positions are divided into classified and unclassified positions. Unclassified service positions are those held by the state officers and employees identified in Wis. Stat. § 230.08(2), including “[n]ot more than 5 bureau directors in [DSPS],” *See* Wis. Stat. § 230.08(2)(v). Classified service positions include all positions not included in the unclassified service. *See*, Wis. Stat. § 230.08(3). It is the general policy of the state to retain employees on the basis of the adequacy of their performance. *See* Wis. Stat. § 230.01(2)(bp). The administrator is tasked with establishing different levels and classifications for all positions in the classified service and including in each classification all positions that are comparable with respect to

authority and job duties. Wis. Stat. § 203.09(1). Employees who have “permanent status in class” in the classified service may be removed or demoted from a classified service position only for just cause, Wis. Stat. § 230.34(1)(a), and may appeal such removal or demotion to WERC, Wis. Stat. § 230.44(1)(c). WERC is explicitly given jurisdiction over such appeal. *See*, Wis. Stat. § 230.45(1)(a).

The WERC did not have jurisdiction to review Williams’ termination because he was not a classified employee. Williams attempts to argue that the policy of the State to “retain employees on the basis of the adequacy of their performance” means he can only be fired for just cause. *See* Wis. Stat. § 230.01(2)(bp). According to Williams, the statute applies to him as an unclassified employee because it uses the word employees, instead of limiting it to classified employees. While it is true that this general policy would apply to him, it is incorrect that it means he can only be fired for just cause. It is a general rule of statutory interpretation that when a general and specific statute relate to the same subject, the specific clause trumps the general clause. *Martineau v. State Conservation Comm'n*, 46 Wis. 2d 443, 449 (1970). Wis. Stat. § 230.44(1)(C) states that an employee who has permanent status in class, a classified employee, may appeal a demotion to the commission if alleging the decision was not based on just cause. The fact that classified employees are directly mentioned makes it more specific than the general state policy cited by Williams. Thus, the more specific statute must control. Since classified employees were explicitly singled out as being able to appeal terminations that are not for “just cause,” it follows that unclassified employees are not granted the same protection. If the legislature meant to allow WERC to review all just cause arguments they would not

have limited the right to appeal to classified service employees. The WERC did not have jurisdiction to hear Williams' appeal.

Next, Williams argues that he was improperly classified as an unclassified employee. He admits that a bureau director is listed in the statute as an unclassified service position, but he argues that since he was shortly changed to an executive director role, which is not listed as an unclassified position, he should be in a classified position. Williams says he could not have been a bureau director because his department is not split into bureaus and because his roles and responsibilities were not those held by a bureau director. Unfortunately, WERC does not have jurisdiction over these claims either. There is no statute section giving the WERC authority to hear claims over whether an employee was properly classified. However, even if there were, Williams' claim would still be insufficient because he fails to cite any statutory evidence supporting his definition of a bureau director. The statute's only requirement for a position to be unclassified is for it to be listed in the statute. Thus, Williams' argument that he cannot be a bureau director because of his roles and responsibilities, or lack thereof, fails because there are no defined roles in the statute. Furthermore, it is well within a department's rights to give an employee a different working title than their statutory title. The paperwork explaining the roles of an executive director explicitly identifies the position as a bureau director for pay scale purposes. *See*, R. at 65. Therefore, it is clear the department intended the change from bureau director to executive director to be a working title change only.

Williams also made an equal protection argument claiming there was no rational basis for the department to treat him as an unclassified employee while other executive directors were treated as classified employees. Again, this argument was properly denied by the WERC because they lack jurisdiction to hear appeals concerning whether an employee was properly classified. Williams asks this court to take up the question but his argument is not adequately developed and there is not enough evidence in the record to address the issue.

Finally, Williams argues that his reinstatement pay was improper because a younger investigator was making more than him. Again, WERC does not have jurisdiction to hear this claim. There is no statutory authority for WERC to have jurisdiction over pay scale disagreements. Furthermore, Wis. Stat. 230.33(1m) only requires that the person who had previously obtained permanent status in class be reinstated into their former or equivalent position. Williams does not contend that this section was violated. Similarly, the WERC determined that Williams' pay rate was properly adjusted under Wis. Stat. 230.12. *See* R. 63. Williams fails to present evidence that the adjustment was statutorily improper. Instead, Williams hints at an age discrimination claim simply because a younger investigator is making more than him. Even if WERC could address the claim, Williams has not presented sufficient evidence to succeed on an age discrimination claim.

CONCLUSION

Based on the reasons set forth above, WERC's decision is affirmed.

