STATE OF MICHIGAN
IN THE 30TH JUDICIAL CIRCUIT FOR INGHAM COUNTY

WILLIAM HENDERSON, ET AL.,

Appellants,

v

MICHIGAN CIVIL SERVICE COMMISSION and MICHIGAN DEPARTMENT OF CORRECTIONS,

Appellees.

OPINION AND ORDER

CASE NO. 15-645-AA

HON. WILLIAM E. COLLETTE

At a session of said Court
held in the city of Mason, county of Ingham,
this 14th Day of March, 2016.

PRESENT: HON. WILLIAM E. COLLETTE

This matter comes before the Court from Appellants' appeal from a Michigan Civil Service Commission (the Commission) decision affirming the position classification of 2,472 employees of the Michigan Department of Corrections (MDOC). This Court, being fully apprised of the premises, REVERSES the Commission's final decision to deny leave to appeal, grants leave to appeal, REVERSES the Technical Review Decision, and finds that the 2,415 former Resident Unit Officers are properly classified as Resident Unit Officers, and that the 57 former Corrections Medical Unit Officers are properly classified as Corrections Medical Unit Officers.

FACTS

On April 1, 2012, the MDOC abolished approximately 2, 415 Resident Unit Officer (RUOs) positions and 57 Corrections Medical Unit Officer (CMUOs) positions. The individuals in those positions were 'bumped,' according to their employee preference rights, into newly

created and corresponding Corrections Officer (COs) and Corrections Medical Officer (CMOs) positions. None of these individuals changed job duties in any way. All of these individuals took a pay cut. A grievance regarding the classification of the newly created positions was filed by the Michigan Corrections Organization (MCO), the union representing these positions, on behalf of the affected individuals. In response, the Civil Service Department of Classifications, Selections, and Compensation (OCSC) began a classification study to look into whether the newly created positions were correctly classified.

In June of 2013, the Civil Service Department issued its findings on the OCSC study, which concluded that the newly created positions were properly classified at the lower level of CO and CMO. On October 4, 2013, the MCO filed a Technical Classification Complaint, arguing the conclusions of the study were erroneous. A Technical Review Decision was issued on July 25, 2014 which essentially affirmed the findings of the OCSC study and dismissed the Technical Classification Complaint. The MCO subsequently filed an application for leave to appeal to the Employment Relations Board (ERB) and a motion to accept new evidence regarding Corrections' mental health care; the ERB recommended that the Commission deny leave to appeal. On June 12, 2015, the Commission issued a final decision denying the application for leave to appeal. The MCO subsequently filed a claim of appeal in this Court on August 7, 2015.

STANDARD OF REVIEW

Article VI, Section 28 of the Michigan Constitution reads:

> All final decisions, findings, rulings, and orders of any administrative officer or agency existing under the constitutions or by law, which are judicial or quasi-judicial and affect private rights or licenses, shall be subject to direct review by the courts as provided by law. This review shall include, as a minimum, the determination whether such final decisions, findings, rulings, and orders are authorized by law, and, in cases in which

> a hearing is required, whether the same are supported by competent, material, and substantial evidence on the whole record.

Defendants argue that because a hearing was not required in this case, this Court's review is limited to a determination of whether the Commission's final decision was authorized by law. However, this Court notes that Article VI, Section 8 requires such a determination as a *minimum* standard of review. *Viculin v Dept of Civil Service*, 386 Mich 375, 392; 192 NW2d 449 (1971) examined the issue of the standard of review and found that the competent, material, and substantial standard of review was to be applied to final decisions of the Commission, without differentiating on the issue of whether a hearing was being held. Furthermore, the Commission itself sent the Appellants in this case a notice stating that the decision is subject to review under MCR 7.117 and MCL 24.301-24.306; the standards of review contained in MCL 24.306 were included in the Commission's notice. Therefore the standard of review requires this Court to ascertain whether the Commission's final decision was authorized by law, whether it was arbitrary and capricious, and whether it was supported by competent, material, and substantial evidence on the whole record.

ANALYSIS

It is clear under the Michigan Constitution that appointing authorities, such as the MDOC, have the authority to create or abolish positions without the approval of the Civil Service Department, but only if the reason for the creation or abolishment is for reasons of administrative efficiency. Const. 1963, Art 11, Sect 5. Furthermore, the Civil Service Department itself is charged with classifying all positions in the classified service according to their duties and responsibilities. Id. To ensure that positions are properly classified, every position is subject to periodic review. CS Rule 4-2.

Interestingly, the Civil Service Department did not participate in a review of the RUO and

CMUO positions in an attempt to re-classify them as COs and CMOs under the Civil Service Rules; instead, the MDOC abolished the RUO and CMUO positions, bumped all of those employees into newly created CO and CMO positions, and only when a grievance was filed did the Classification Office became involved to determine whether the "newly created" positions were appropriately classified. The Appellees attempt to characterize this abolishment and creation as a "restructuring" of its operations, but fails to point to any evidence that the operations of the MDOC were in any way changed by these abolishments and creations except that the job titles and compensation rates of these positions were changed. The former RUOs and CMOs work in the housing units and perform the same tasks they have always performed; their jobs have not changed. Appellees do not argue that the former RUOs and CMOs jobs have changed, but rather, that the RUO and position classification, which was affirmed several times over thirty years, and the CMO position classification, which had been affirmed several times over twenty years, had always been wrong. This Court does not accept the argument that these abolishments and position creations constituted an operational restructuring where no actual restructuring appears to have occurred.

a. Was the determination that former RUOs were appropriately classified as COs arbitrary and capricious or unsupported by competent, material, and substantial evidence on the record?

Appellants argue that the former RUOs should have remained classified as RUOs because they performed the same duties prior to the position abolishments as they do now, after the position abolishments and movement into new positions as COs. The RUO classification, created in the 1980s, had been reassessed for classification reviews by the Civil Service Department in 1983, 1996, and 2006, all of which affirmed that the positions were properly classified as RUOs. The primary difference that the TRO relied upon between the RUO positions

and the CO positions appears to be whether the position participates as part of a rehabilitative treatment team. The 2006 job specification for an RUO included "implementing individualized treatment programs intended to modify undesirable behaviors of prisoners," and listed as the first example of work, that the position "participates as a member of a treatment team in determining the classification, reclassification, parole eligibility, counseling needed by clients, minor disciplinary procedures, and treatment programs for each resident in the housing unit."

The classification study conducted by the Department of Civil Service asked the MDOC and the employees interviewed whether the former RUOs were part of a treatment team. "Treatment team" was not defined, specified, or described to the employees interviewed, and their responses to questions indicated that most of the former RUOs who said they were not part of a treatment team understood the term "treatment team" to refer to physical or mental health treatment teams, rather than rehabilitative treatment teams. Exhibit 28. The supervisors of the former RUOs almost all identified the RUOs as part of a treatment team. Exhibit 30. The supervisors also noted that the RUO positions were generally more stressful and dangerous than other positions in the prisons, and the vast majority expressed support for the higher RUO classification over the CO classification because the difficulty of the job is higher and because the former RUOs do different and additional work as compared to the COs. The RUOs and now, the former RUOs classified as COs, also prepare reports, including parole eligibility reports, housing unit treatment reports, and program reports. Other COs do not prepare these reports. The former RUOs do not participate in rotations with other COs. The former RUOs do not work in the yard, or in food service, or in programs, or in gyms, or in other assignments traditionally performed by COs and not performed by RUOs.

The results of the classification study appear to have showed, at best, that the questions

posed by the study to former RUOs were flawed in regards to the treatment teams, and that the MDOC's statements regarding the involvement of the RUOs in treatment teams were contradicted by those former RUOs who appeared to have understood the concept of a rehabilitative treatment team and by the vast majority of the former RUOs' supervisors. The TRO relied on flawed and inconclusive findings supported by MDOC statements, and while the MDOC's statements could and should have been taken into account, the contradictions between these statements and the confusing results of the classification study, which appears to have purposefully clouded the issue of what a treatment team is and who was considered part of it, cannot be held to provide competent, supported, or material evidence on the whole record. The TRO's decision to rely on interpretations that favor the MDOC despite the contradictory reports from former RUOs and their supervisors is simply an exercise of will in an attempt to support the MDOC's effective reclassification of the RUO positions without the involvement from Civil Service Department or their representing union, and therefore this Court finds that the Technical Review Decision that the former RUOs were appropriately classified as COs to be arbitrary and capricious as well as unsupported by any competent, material, and substantial evidence.

b. Was the determination that former CMUOs were appropriately classified as CMOs arbitrary and capricious or unsupported by competent, material, and substantial evidence on the record?

The classification study undertaken with regards to the former CMUOs that had been reclassified as CMOs was even more flawed, because although desk audit interviews with the former CMUOs were taken, their responses were apparently not entered, and so the classification study came to its conclusion based solely on job specifications, rather than any reports from former CMUOs or their supervisors. The responses to the desk audit interviews, which were later supplied to the MCO and the TRO, showed that all of the former CMUOs interviewed described

supplied to the MCO and the TRO, showed that all of the former CMUOs interviewed described themselves as participating in the treatment teams as well as performing the duties set forth in the job specification for the CMUO.

However, the TRO determined that the former CMUOs were properly classified as CMOs because the classification study concluded that the CMUO position required more direct and specialized care than the former CMUOs were giving, based on a selective position requirement that did not apply to all CMUOs.[1] The TRO held that "[i]f the position's work does not meet the job description, the job duties of that specification are not applicable to the specific position being reviewed." The TRO found that the job duties of the CMUO position were not applicable to review of the former CMUO positions because CMUO position "calls for a higher order of involvement in the provision of direct therapeutic or specialized health care" than is provided for in the job duties listed in the description. This conclusion is clearly an arbitrary and capricious determination. Furthermore, there is no evidence to support a conclusion that the former CMUOs were not participating in the work required of the CMUO position. The TRO even notes that the former CMUOs described themselves as part of a treatment team and as completing the tasks laid out in the job description. Therefore the decision that the former CMUOs were performing only the work of the CMO was arbitrary and capricious and was not supported by competent, material, and substantial evidence on the record.

[1] The position description the classification study relied upon included a job specification that only applied to CMUOs at the Duane Waters Correctional Facility, which essentially amounted to a requirement that CMUOs be able to drive ambulances and provide emergency care. This was a selective position requirement that did not apply to all CMUOs, and the CMUO positions to which this requirement did apply were not abolished.

THEREFORE IT IS ORDERED that the final decision of the Civil Service Commission is REVERSED.

IT IS ALSO ORDERED that the Technical Review Decision issued by the Office of Technical Complaints is REVERSED. The 2,415 former Resident Unit Officers are properly classified as Resident Unit Officers. The 57 former Corrections Medical Unit Officers are properly classified as Corrections Medical Unit Officers.

In compliance with MCR 2.602(A)(3), this Court finds that this decision resolves the last pending claim and closes the case.

Hon. William E. Collette
Circuit Court Judge

PROOF OF SERVICE

I hereby certify that I mailed a copy of the above ORDER which each attorney of record, or upon the parties, by placing the true copy in a sealed envelope, addressed to each, with full postage prepaid and placing said envelope in the United States mail at Mason, Michigan, on March 14, 2016.

Kacie Smith
Law Clerk