IN THE COURT OF APPEALS OF IOWA

No. 0-736 / 90-1011

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MICHAEL E. ABEL, STEVEN C. BELL, WILLIAM T. BIRD, MYRON G. BREWER, DALE H. BRUMM, DONALD R. CARRIER, DONALD S. DELONG, GARY DUSENBERRY, JAMES P. FARNSWORTH, GERALD L. GALLIART, ROBERT J. GLENN, GALE G. GORANSON JR., JERRY M. HILL, KEN HYMAN, WESLEY M. JONES, JOHN W. LAMBERTZ, TERRY A. MANNING, SCOT MICHELSON, GARY D. POEN, JERRY A. REISINGER, ROBERT E. SEITZ, LARRY M. ALDRIDGE, ROCHELLE R. ANEWEER, CHARLES W. BUZZARD, GARY G. FELL, DEAN HALL, DAVID R. HEBRANK, KIRK L. IRWIN, RONALD L. JONES, RICHARD L. KADUCE, LARRY L. KENYON, JAMES KEITH LAWSON, LARRY L. LOCK, JAMES PAUL MCELDOON JR., WILLIAM L. MISHLER, LARRY D. MOFFETT, BERNARD J. PETERSEN, DONALD D. PUDWILL, JOHN P. RIPPERGER, JAMES M. SANDHOLDT, ROBERT W. SCHAUT, ROBERT E. SCHIERBAUM, DAVID L. STOEVER, WARREN D. STRAIT, LARRY T. VAN HORN, and RONALD F. WILLIAMS,

Appellants,

vs.

IOWA DEPARTMENT OF PERSONNEL,

Appellee.

Appeal from the Iowa District Court for Polk County, Richard A. Strickler, Judge.

Park rangers appeal a judgment affirming a decision of the Iowa Department of Personnel's Classification Appeal Committee which denied their request to have their positions as Park Ranger II and Park Ranger III reclassified as Public Service Executive I. **REVERSED AND REMANDED WITH DIRECTIONS.**

Charles E. Gribble of Sayre & Gribble, P.C., Des Moines, for appellants.

Bonnie J. Campbell, Attorney General, and Theresa O'Connell Weeg, Assistant Attorney General, for appellee.

Heard by Oxberger, C.J., and Schlegel and Sackett, JJ.

SCHLEGEL, J.

Park rangers appeal a judgment affirming a decision of the Iowa Department of Personnel's Classification Appeal Committee. The committee denied the rangers' request to have their positions as Park Ranger 2 and Park Ranger 3 reclassified as Public Service Executive 1. We reverse and remand with directions.

I. Appellants are forty-six park rangers employed by the Iowa Department of Natural Resources. Twenty of the appellants hold positions classified as Park Ranger 2 (PR2) and twenty-six as Park Ranger 3 (PR3). Persons employed as PR2 and PR3 are in pay grade 26. Each of them is responsible for running one of Iowa's parks, which range from 100 to 500 acres.

Appellants seek a change in their classification within the executive branch. They claim that their functions are commensurate with those of the Public Service Executive 1 (PSE1) class. Persons classified as PSE1 are in pay grade 29. The six park district supervisors, who supervise the park rangers, are classified as Public Service Executive 2 and are in pay grade 32.

We considered this case previously in Abel v. Department of Personnel, 445 N.W.2d 385 (Iowa App. 1989) [hereinafter Abel I]. There we held it unnecessary to reach the merits because the committee had failed to make findings of fact and conclusions of law sufficient for judicial review. Id.; see Iowa Code § 17A.16(1) (1987)

(requiring written findings of fact and conclusions of law); see also Brown v. PERB, 345 N.W.2d 88, 93 (Iowa 1984) (same). We further noted that the pertinent rule governing classification appeals such as this is found in 581 Iowa Administrative Code section 3.3(3) (1987). That rule required the agency to consider "the position's duties and responsibilities, and its relationship to other positions in the classes" when it determines the class to which a position will be assigned. See Abel I, 445 N.W.2d at 387.

In our previous review, we found that "[n]o meaningful comparison was made in any of the three proceedings which took place within the agency." Id. We noted that the record was based upon "conclusory statements that [park rangers'] positions did not classify as Public Service Executive I." Id. We vacated the judgment of the district court and remanded the action to the agency. Id.

We now have before us substantially the same record that we rejected as inadequate, supplemented only by the transcript of a hearing before the classification appeal committee, the committee's decision, and the district court's decision on judicial review. On remand the committee again denied the park rangers' classification appeal. The committee's written decision recites the basic functions of employees in each classification.

It appears from the committee's findings that both PR2 and PR3 classes and the PSE1 class share the following characteristics: (1) employee supervision, coordination,

and relations; (2) project planning; and (3) project coordination and supervision. All three classes must have (4) technical expertise and ability to carry out the necessary technical operations of a project; however, the committee states, "[I]f program and technical functions are predominate [sic] and supervisory/managerial skills are 'secondary' in importance, classification in the PSE series is not appropriate." Unlike PSE1, the PR2 and PR3 classes (5) are peace officers and (6) may expend substantial amounts of money without authorization. With little elaboration, the district court, on judicial review, rejected the park rangers' appeal.

The rangers assign three errors for our consideration. First, they contend that the committee's decision is not supported by substantial evidence. Second, they contend that the committee's decision is arbitrary, capricious, and an abuse of discretion. Third, they contend that the committee's decision is in violation of agency rules requiring conclusions drawn to be supported by the facts.

We review for errors of law. Henry v. Iowa Dep't of Transp., 426 N.W.2d 383, 385 (Iowa 1988). In so doing, we apply the standards of Iowa Code section 17A.19(8). Jackson County Pub. Hosp. v. PERB, 280 N.W.2d 426, 429-30 (Iowa 1979). The two basic issues here are: (1) whether the evidence supports a finding that the park ranger positions are more technically oriented than supervisory or managerially oriented; (2) whether the evidence supports a

finding that the supervisory and managerial functions performed by park rangers are not of similar type and quality as those performed by a PSE1; and (3) if the supervisory and managerial functions of park rangers are of a similar type and quality as PSE1, whether the park rangers logically may be excluded from the PSE1 class because they also perform technical operations.

II. The park rangers' first and third assignments of error are essentially the same inasmuch as they challenge the agency's conclusions as being unsupported by substantial evidence, and we will consider them together. Iowa Code section 17A.19(8)(f) provides that we may provide appropriate relief to a petitioner whose substantial rights have been prejudiced because an agency action is, "[i]n a contested case, unsupported by substantial evidence in the record made before the agency when that record is viewed as a whole." Evidence is substantial to support an agency's decision when a reasonable person would find it adequate to reach a conclusion. Eaton v. Iowa Dep't of Job Serv., 376 N.W.2d 915, 917 (Iowa App. 1985). The question is not whether the evidence might support a different finding but whether the evidence supports the findings actually made. Henry v. Iowa Dep't of Job Serv., 391 N.W.2d 731, 734 (Iowa App. 1986). The fact that two inconsistent conclusions can be drawn from the evidence does not mean that one of those conclusions is unsupported by substantial evidence. Id.

We find no substantial evidence in the record to support the findings of the personnel department. Despite its holding hearings and reissuing a decision, we still have nothing in the record but conclusory statements which we have already once rejected. The agency heard much evidence from the park rangers on the technical, supervisory, and managerial functions they perform. Yet, in the face of overwhelming evidence showing that the park rangers perform the same budgetary, managerial, and supervisory functions as a PSE1, and more, there is not a shred of new evidence in the record showing how or why the managerial and supervisory functions of PR2 and PR3 classes differ from the PSE1 class. The State offers us only post hoc rationalizations based upon the same conclusory statements previously made by the agency. See Welch v. Iowa Dep't of Empl. Servs., 421 N.W.2d 150, 152 (Iowa App. 1988) (likening such rationalizations to a failure to pursue same theory on appeal as before original tribunal); see also, e.g., Citizens to Preserve Overton Park v. Volpe, 401 U.S. 402, 419 (1971); Motor Vehicle Mfgrs. v. State Farm Mut., 463 U.S. 29, 50 (1983).

In the absence of anything but conclusory statements by the agency, the evidence upon which it bases its findings of fact and conclusions of law cannot be said to be "substantial." A reasonable person would not accept a record composed entirely of conclusory statements as "adequate to reach a conclusion." See Mount Pleasant v.

PERB, 343 N.W.2d 472, 476-77 (Iowa 1984). We are powerless to affirm a decision for which there is no substantial evidence in support of the agency decision. Iowa Code § 17A.19(8)(f).

III. Iowa Code section 17A.19(8)(g) provides that we may provide appropriate relief when the substantial rights of a petitioner have been prejudiced because an agency action is, "[u]nreasonable, arbitrary or capricious or characterized by an abuse of discretion or a clearly unwarranted exercise of discretion." An action unreasonable, arbitrary, and capricious if it lacks rational basis, see Board of Dirs. v. County Bd. of Ed., 260 Iowa 719, 724-25, 150 N.W.2d 637, 640 (1967), or is "without regard to the law or consideration of the facts of the case." Norland v. Iowa Dep't of Job Serv., 412 N.W.2d 904, 912 (Iowa 1987).

Although we believe our finding above is sufficient to dispose of this case, we also find the agency's action here violated Iowa Code section 17A.19(8)(g). Given the overwhelming record evidence that the park rangers perform the same functions as a PSE1, the agency's logic is less than compelling. The agency has said that because park rangers actually carry out technical, hands-on operations in addition to supervisory and managerial operations, they should be in a different, lower-paid classification. We can make no sense of this.

By statute the agency is to create classifications and assign positions "based upon duties performed and responsibilities assumed, so that the same qualifications may reasonably be required for and the same schedule of pay may be equitably applied to all positions in the same class." Iowa Code § 19A.9(1) (1989). Given the evidence, the agency's conclusion cannot logically flow from this. Moreover, despite this legislative directive, we find nothing in the agency's rules or its decisions in this matter demonstrating reasons or standards upon which the proffered conclusions might be based.

On remand, the agency has provided only generalities and conclusions which it has denominated "findings of fact" and "conclusions of law," but it continues to ignore the purpose of such an exercise. As we pointed out once before, "[c]learly, the parties, the district court, and the appellate court, are entitled to the reasons" through which the agency reached its conclusions. Abel, 443 N.W.2d at 387 (citing Brown v. PERB, 345 N.W.2d 88, 93 (Iowa 1984); Johnston v. Iowa Real Estate Comm., 344 N.W.2d 236, 238 (Iowa 1984)). Instead, the record we review has form but no substance. We conclude, therefore, that the agency action is unreasonable, arbitrary, and capricious.

IV. Having determined that the agency action was not supported by substantial evidence, see Iowa Code § 17A.19(8)(f), and was unreasonable, arbitrary, and capricious, see Iowa Code § 17A.19(8)(g), we must reverse

the judgment of the district court and the decision of the Department of Personnel. We remand to the department with instructions that the department reclassify the present Park Ranger 2 and 3 classes as Public Service Executive I.

REVERSED AND REMANDED WITH DIRECTIONS.

Oxberger, C.J., concurs; Sackett, J., dissents.

SACKETT, J. (dissenting)

I dissent. I would affirm the trial court and the agency.