

STATE OF WISCONSIN

STATE PERSONNEL BOARD

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 TOYA M. MCCOSH, ET AL.,
 Appellants,
 v.
 DEPUTY DIRECTOR, STATE BUREAU OF
 PERSONNEL,
 Respondent.
 Case No. 75-220
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OFFICIAL

OPINION AND ORDER

Before: James R. Morgan, Calvin Hessert and Dana Warren, Board Members.

NATURE OF THE CASE

This appeal, filed pursuant to s. 16.05(1)(f), Wis. Stats., objects to the reallocation of the three appellants' positions to the job service 5 rather than the job service 6 level. One of the original appellants, Toya M. McCosh, has withdrawn her appeal.

FINDINGS OF FACT

WIN is a federally sponsored, state run program with a complete manpower delivery system designed to obtain appropriate jobs for AFDC recipients. Since its inception, the scope of the WIN program has expanded significantly with major changes occurring in 1971 and 1975. Each of the appellants is a WIN State Supervisor with complete responsibility for providing functional supervision of the WIN program in one of six regional areas within Wisconsin. The appellants' functional supervision consists primarily of providing advisory support and monitoring and evaluating the operation of all WIN program activities within their respective regional areas. Major duties include interpreting and implementing WIN regulations and policies, monitoring activities to ensure compliance with established guidelines, evaluating program success, training staff and coordinating regional WIN

Activities with the Department of Health & Social Services and local agencies.

The appellants do not have line authority. They do not hire, fire, issue orders or directly supervise the personnel responsible for the actual operation of the WIN field offices. If differences concerning the interpretation of WIN policies or regulations occur between the appellants and the field staff, the conflict is resolved through the superiors of the individuals involved.

During 1974 and 1975 at Department of Industry, Labor and Human Relations' (DILHR) request, the Bureau of Personnel conducted a survey of 1200 positions in DILHR's Job Service Division. The survey produced new position standards which reflected to some extent the changed functions of many positions resulting from a reorganization with DILHR. Effective October 26, 1975, those standards created a Job Service Specialist series to which the appellants' positions were reallocated at the Job Service Specialist 5 (JSS5) level. Appellants' positions were regarded as typical JSS5 positions and were listed as representative or "benchmark" positions to which other positions could be compared for position classification purposes. (See Respondent's Exhibit 4, p. 7 under Area WIN Program Specialists.)

The definition section for JSS6 provides:

"This is highly responsible professional job service work in the Department of Industry, Labor and Human Relations. Positions allocated to this class are located in the Administrative Office and are responsible for planning, monitoring, and evaluating a large, complex, statewide job service program carried out at the field office level. Frequent, difficult, and unprecedented policy interpretation; and program decisions which have a significant impact on overall Field Office job service activities are typical at this level. Leadwork may be a responsibility of positions at this level. Work is performed under general administrative supervision of a Bureau Director." (Respondent's Exhibit 4, p. 7.)

The comparable JSS5 provision provides:

"This is very responsible and advanced professional work in the direction of job service program activities of the Department of Industry, Labor and Human Relations. Positions allocated to this class are typically located in the administrative office and are responsible for planning, monitoring, and evaluating . . . 2) a major segment of the total job service program on an area-wide basis. . . . Work is performed under general administrative supervision."

Both the JSS5 and JSS6 levels plan, monitor and evaluate job service programs but a JSS6's activities are on a statewide basis whereas the appellants and other JSS5s operate on a regional area basis.

Contained in the position standards is a list of seven general classification factors designed to draw out specific differences in the duties, responsibility and authority of positions within the Job Service Specialist series classification. Of those seven classification factors, the following six are relevant:

- "1) Organizational status as it relates to level of responsibility.
- 2) Availability and applicability of established job service guidelines, procedures, precedents, and legal interpretations.
- 3) Potential impact of policy and/or program decisions on claimants, employers, job seekers, and overall Division operations.
- 4) Degree of internal and external coordination and cooperation required.
- 5) Availability of other staff (either within the Division or at the regional office) whose authority it is to make the most difficult and unprecedented program decisions or legal interpretations.
- 6) Complexity of employment services or unemployment compensation work."
(Respondent's Exhibit 4, p.2.)

Application of these six factors to the appellants' positions results in the following findings:

1) The appellants report to their Bureau Director, as do JSS6s, but the appellants do not carry a comparable level of statewide responsibility since they deal only with their own regional area.

2) The appellants have available and operate within the broad dictates of existing guidelines, procedures, precedents and legal interpretations whereas JSS6s are frequently without such guidance.

3) The impact of appellants' policy decisions is limited to their own regional areas unlike JSS6 decisions which often have statewide impact.

4) The appellants coordinate job service activities with other agencies only on a regional basis. JSS6s coordinate activities throughout the state or,

as with the CETA Prime Sponsor Contract Specialist, coordinate regional activities where funding and the actual existence of the program depends on proper coordination and cooperation.

5) The appellants unlike JSS6s do not normally make the most difficult and unprecedented program decisions or legal interpretations. Instead those decisions are made by experts on the administrative staff.

6) The appellants' work is complex since they deal with the full range of WIN services.

CONCLUSIONS OF LAW

The classification factors demonstrate that the duties, authority and responsibility of the appellant's positions is in most instances less than for a JSS6. We reject, therefore, the appellants' contention that they should have been reallocated to JSS6.

It is further concluded that, although the director's placement of the benchmark positions here considered is concluded to be appropriate, the board has the authority to review such actions of the director. Section 16.07(1), Wis. Stats., requires the director to establish classifications which "include positions which are substantially similar in respect to authority, responsibility and nature of work required." This statute provides the basis for analysis of classification actions reviewed by the board pursuant to s. 16.05(1)(f), Wis. Stats. If the director were to establish in position standards a benchmark position which did not meet the test, that action would be contrary to statute and should be rejected on an appeal pursuant to s. 16.05(1)(f), Wis. Stats. While it is true that the board is required to, and did, approve these standards prior to their effectuation, that action, taken in the board's legislative capacity, does not prevent the board's review of the same standards in a later proceeding in a contested case before the board in its adjudicative

capacity. See, e.g., Ryczek v. Wettengel, Wis. Pers. Bd. 73-26 (7/3/74):

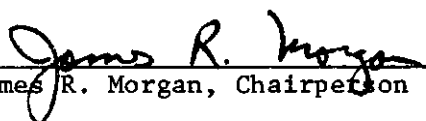
"Section 16.07(1), Wis. Stats., provides that 'the director shall . . . establish grade levels and classifications . . . subject to the approval of the board.' The board only has a negative control over the director's action at that point. The board does not act, it only approves or rejects the action of the director. If the director's action is approved, it is no less his action. It becomes subject to section 16.05(1)(f), Wis. Stats., which provides that interested parties may appeal actions of the board. That section makes no express exception of director actions which were subject to approval by the board." page 4.

ORDER

It is hereby ordered that respondent's actions are affirmed and this appeal is dismissed.

Dated: 12-12, 1977.

STATE PERSONNEL BOARD


James R. Morgan, Chairperson