

STATE OF WISCONSIN

PERSONNEL COMMISSION

ROLAND K. BERGER, and
THOMAS HANSEN,

Appellants,

v.

SECRETARY, DEPARTMENT OF REVENUE and
DEPUTY DIRECTOR, BUREAU OF PERSONNEL,

Respondents.

Case No. 77-217

Case No. 77-218

OPINION AND ORDER

Before:

NATURE OF THE CASE

This appeal--filed pursuant to Wis. Stats. s. 16.05(1)(f)--objects to the respondents' denial of the appellants' reclassification requests.

FINDINGS OF FACT

1. The appellants are employed in Tax Representative 1 (TR 1) positions by the Wisconsin Department of Revenue (DOR). They work in the Registration Section of the Central Compliance Office.

2. The appellants requested reclassification to the Tax Representative 2 (TR 2) level on November 8, 1976. These requests were received by the DOR personnel office on December 10, 1976. The requests were denied on August 18, 1977.

3. Appellant Berger's duties involve working with the public in various phases of sales and withholding tax compliance. His specific duties include the following:

A. He responds to public inquiries regarding the general sales and withholding taxes and the compliance therewith.

- B. He reviews sales and withholding tax registration applications for completeness and accuracy. Taxpayers are contacted by phone or mail if more information is needed for this review.
- C. He provides taxpayer assistance.
- D. He works on special projects. These projects vary in detail and duration. Examples of projects during the two years prior to the reclassification request are (1) a bingo project which involved reviewing and auditing bingo sales tax returns as well as responding to inquiries regarding this tax, (2) a withholding tax project which involved collecting and processing withholding tax payments from non-registered taxpayers, (3) a motel chain tax registration project, and (4) a direct sales organization tax registration project.
- E. He initiates field referrals when information cannot be gathered centrally.
- F. He reviews sales and withholding files for completeness and accuracy of returns and for general compliance.
- G. He answers questions from other tax representatives on those areas he has specialized in.

4. Appellant Hansen's primary duties and responsibilities involve work in three areas of specialization: out-of-state contractors, concessionaires, and certificates of exempt status. With regard to out-of-state contractors, the appellant's duties include identifying these contractors; obtaining, waiving, or releasing bonds; reviewing returns for accuracy and completeness; and answering inquiries. His work with certificates of exempt status involves making final determinations as to the granting of these certificates after reviewing articles of incorporation, IRS determinations on the matter, and

department files. In his concessionaire work, the appellant reviews tax payments for accuracy and requests additional payments when necessary. The appellant also reviews and approves registration for sales, withholding, use, and consumer use taxes; provides taxpayer assistance; answers inquiries from the public regarding his billings and areas of special knowledge; answers inquiries from other tax representatives regarding his areas of specialization; works on special projects; makes referrals to representatives in the field when further work is necessary which cannot be completed at the central level; issues assessments for late and incorrect returns; and pursues those who fail to file returns.

5. The TR 1 position description defines work at this level as full performance tax compliance work when the positions involved are located at the central office. These positions concentrate in some detail on specific limited areas of statewide tax compliance work and are under limited supervision.

6. The TR 2 position standard defines work at this level as complex work or as lead work in tax compliance when the positions involved are located at the central office. Positions are designated at this level either because of the performance of more complex work involving a higher degree of knowledge and more independence of action or because of the performance of lead work over other tax representatives and tax representative assistants. Supervision is general in nature.

7. The appellants do not assign work to, or guide and review the work of, other tax representatives.

8. The appellants' reclassification requests were denied by the personnel unit of DOR. A representative of the unit interviewed the appellants, spoke with their supervisor, examined various position descriptions and class specifications, and reviewed a 1975 tax compliance position survey which

had placed the positions at the TR 1 level. The basis of the denial was that there had allegedly been no significant changes since the 1975 survey which would merit a reclassification and that the appellants' positions were properly classified in relation to other positions in the department. This decision was later reviewed and affirmed by the Bureau of Personnel.

CONCLUSIONS OF LAW

1. The Board has jurisdiction over this appeal pursuant to s. 16.05(1)(f), Wis. Stats.
2. The burden of proof is on the appellants to show to a reasonable certainty, by the greater weight of the credible evidence, that their positions should be reclassified at the level they allege and that the respondents were incorrect in refusing to reclassify them at that level. See, Reinke v. Personnel Board, 53 Wis. 2d 123 (1971); Ryczek v. Wettengel, 73-26 (7/3/74); Lyons v. Wettengel, 73-36 (11/20/74); Alderden v. Wettengel, 73-87 (6/2/75).
3. The appellants have not met this burden. They have not established that the Tax Representative 2 classification is proper for their positions or that the respondents were incorrect in refusing to reclassify them at that level.
4. The Director's action must be affirmed.

OPINION

The appellants have the burden of showing to a reasonable certainty that their positions should be classified at the TR 2 level. They have the burden of showing that their duties and responsibilities are most properly identified with the criteria set forth in the TR 2 position standard and with the duties and responsibilities of other TR 2 positions. While the appellants have successfully shown some level of correlation between their duties and responsibilities and those associated with the TR 2 level, they have not

succeeded in adequately establishing that the complexity of their work is sufficient to justify the requested reclassification.

A review of the appropriate position standards shows that work at the TR 2 level is distinguished from that at the TR 1 level by the performance of lead work over other tax representatives or by the performance of more complex work involving a higher degree of knowledge and more independence of action at that TR 2 level. This distinction is clearly stated in the class definitions provided in the position standards and is highlighted and emphasized in the listing of examples of work which is contained in the standards.¹

The appellants have not adequately proven that their positions merit the TR 2 level on the basis of this distinction. They have not shown that they perform lead work over other tax representatives.² Nor have they adequately shown that their work is more complex than normal TR 1 work or that it is equal in complexity to normal TR 2 level work. Although there is evidence indicating that the appellants' work is complex in some ways, this evidence is not sufficient to outweigh other evidence indicating that this level of complexity is less than that associated with the TR 2 level. Thus, the appellants have failed to successfully carry their burden of proof.

It is noted that the appellants work with a fair amount of independence and that they work on special tax compliance projects. While these factors are suggestive of TR 2 level duties and responsibilities, they do not by themselves qualify the appellants' positions for that level of classification. The existence of these factors does, however, suggest commendable performance by the appellants.

¹ In fact, most of the items listed as examples of work performed on the TR 2 standard are also covered by the TR 1 standard. The primary difference is that the items on the TR 2 standard are modified by words such as "more complex," "more difficult," and "more specialized." There are also a few items on the TR 2 list that are not covered on the TR 1 list. Examples would be items such as lead work and special project work.

² A lead worker would perform duties such as assigning, guiding and reviewing the work of others. As is stated in fact #7, the appellants do not function in this capacity in regard to other tax representatives.

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The appellants assert that the class specifications are inaccurate in distinguishing between field and central office tax representatives. Even if it is assumed that the issue is properly before the Board in this appeal, the appellants still have not met their burden of proof as to this matter. Similarly, challenges to the respondents use of a 1975 tax compliance position survey in determining the propriety of the requested reclassification are also rejected. The appellants have not shown that survey to be inaccurate.

ORDER

IT IS HEREBY ORDERED that the action of the respondents is affirmed and this appeal is dismissed.

Dated: Jan. 22, 1980

STATE PERSONNEL COMMISSION

Charlotte M. Higbee

Charlotte M. Higbee
Commissioner