

STATE OF WISCONSIN

PERSONNEL COMMISSION

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DAVID WING,  
                                 Appellant,

v.

Administrator, DIVISION OF  
 PERSONNEL,  
                                 Respondent.

Case No. 77-63

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DECISION  
 AND  
 ORDER

NATURE OF THE CASE

This is an appeal of a reallocation. Following an objection to subject matter jurisdiction on the ground that the appeal was not timely filed, a hearing was held on that issue and an order was entered on May 26, 1978, overruling that objection. On October 27, 1978, the Commission entered a prehearing order, which concluded, among other things, that the only issue presented by the appeal was the "correctness of the Director's decision to reallocate the appellant's position based on the duties and responsibilities of that position immediately prior to the effective date of the decision," and that since the decision under review was that of the director, the president, UW-System (appointing authority) was not an appropriate party.

FINDINGS OF FACT

1. At all relevant times the appellant has been employed in the classified civil service at UW-Stout.

2. As a result of a personnel management survey, the appellant's position was reallocated from Administrative Budget and Management Analyst (PR 1-08) to Budget and Management Analyst 4 (PR 1-06), (subsequently redesignated PR 1-14), effective November 8, 1976.

3. As a result of this transaction, appellant's salary was "red-circled" in accordance with §Pers. 5.03(3), Wis. Adm. Code.

4. The position standard for the Budget and Management Analyst series (Respondent's Exhibit 1) contain the following definitions with respect to:

A. Budget and Management Analyst 1-4:

"These four levels identify budget and management analysis work ranging from the entry level to the basic objective level. The 1 level is the basic entry level. The 2 and 3 levels are both entry and progression levels for employees who do not possess the qualifications which typically would indicate they could function with the degree to accountability and level of responsibility associated with the basic objective level. The 4 level is the basic objective level for positions in most agencies. The individual types of tasks or duties performed at all four levels are substantially the same. Differences in position allocation are based primarily on the complexity of the tasks and the level of accountability or responsibility assigned to the position as measured by the amount and type of supervision and direction received and authority assigned. Work performed at the objective (full performance) level is under general supervision."

B. Budget and Management Analyst 5:

"This is advanced professional budget and management analysis work. Positions allocated to this level function as: 1) a senior analyst in an operating agency's budget and management analysis program, responsible for a significant program segment which in and of itself is characterized as medium sized; 2) the program head of a small agency budget and management analysis program; or 3) a senior analyst in the Executive Services Division of the Department of Administration, responsible for a variety of budget policy or management analysis studies which cross departmental or major program lines. Work at this level is performed under general supervision."

C. Budget and Management Analyst 6:

"This is advanced professional and lead budget and management analysis work. Positions allocated to this level function either as: 1) a lead analyst in an operating agency's budget and management analysis program, responsible for a significant program segment which in and of itself characterized as large; or 2) a lead analyst on a budget or management analysis team in the Executive Services Division of the Department of Administration, responsible for conducting the teams most complex budget policy or management analysis studies. Work at this level is performed very independently under the general direction of the program director or team leader."

5. During 1976, prior to the reallocation, the appellant was employed in a position with the working title of Director of Budget Management and Analysis.

6. The appellant was supervised by the Executive Director of University Planning, William Crothers, who in turn reported to the Assistant Chancellor of Administrative Services, Wesley Sommers, who headed the Administrative Services Division.

7. During 1976, prior to the reallocation, the duties and responsibilities of appellant's position were substantially as follows:

A. The appellant directed the annual budget preparation for UW-Stout.

B. He was not responsible for preparation of the biennial budget, which was the responsibility of Valerie Hanson, but he did have the responsibility, in connection with the "auxiliary" budget, for submission directly to Central Administration (UW System) of all auxiliary budget items, and submission of the five-year auxiliary budget.

(1) The University budget consisted of three parts: general purpose revenue, which were funds from the state; auxiliary funds, which are generated by housing charges, food service revenue, etc.; and extramural or grant funds.

(2) The auxiliary budget was on a five-year cycle.

(3) The auxiliary budget was subject to more specific guidelines from Central Administration than the general purpose revenue budget.

C. He provided price budget analysis to the University, the Chancellor's Budget Advisory Committee (BAC), and served as an ex-officio member of the Committee.

D. The appellant was responsible for verifying, analyzing, and summarizing all unit budget submissions to ensure compliance with the UW System, external, or university established policies and procedures.

E. The appellant directed systems development related to budget preparation and analysis.

F. The appellant was responsible for identifying all sources of revenue available for budgeting from general purpose revenues, program revenue, gifts, grants and contracts, and for the proper utilization of these sources.

G. He provided budgetary analysis and advice to the BAC and also to various deans, department chairpersons, etc.

H. He was responsible for the development and maintenance of financial working papers and other reference materials, except those relating to the biennial budget process which were the responsibility of Valerie Hanson.

I. He directed financial analyses on the operations of the University to find where savings could be made and where more effective methods of operation could be achieved.

J. He was responsible for providing financial expertise in developing computerized simulation models which could be used to develop the long-range plan and the biennial budget.

K. He recommended policy or program alternatives to Mr. Crothers that were intended to meet the needs of the total University, and on occasion made such recommendations directly to the BAC and others without going through Mr. Crothers. Mr. Crothers told the appellant in December, 1976, that henceforth all such recommendations were to go to him initially.

L. He directed the collection, coordination, and publishing of all the University internal and external cost/rate schedules that would be used in the annual budget preparation.

M. He was responsible for complying with the necessary internal and external requests for data related to finance as required through Mr. Crothers, or, in some cases, directly.

8. Central Administration during the period in question provided policy and procedure guidelines concerning the budget process to the campuses, including UW-Stout.

9. Mr. Crothers had meetings with the appellant to review his activities, but these meetings were infrequent.

10. Mr. Crothers provided direction to the appellant with respect to the priority of various projects under consideration.

11. As a result of the aforesaid personnel survey, the position of Budget Officer at UW-LaCrosse was reallocated to the Budget and Management Analyst 4 level.

12. The aforesaid position reports to the Assistant Chancellor. Among other things, this position is responsible for the preparation of both the annual and biennial budgets, the terminal input of all budget data to central administration, and, in general, serves as the budget expert for that campus.

13. The factual basis with respect to the duties and responsibilities of appellant's position that was used by the respondent in making the re-allocation decision was supplied by the UW-Stout personnel office.

14. The aforesaid factual information was substantially correct.

15. The appellant's position as it existed in 1976 prior to the effective date of its reallocation was better described in the position standard by Budget and Management Analyst 4 than by Budget and Management Analyst 5 or 6.

CONCLUSIONS OF LAW

1. This case is appropriately before the Commission pursuant to §16.05(1)(f), Wis. Stats. (1975), and Sec. 129, Chapter 196, Laws of 1977.

2. The Commission cannot consider issues additional to that issue set forth in the prehearing order dated October 27, 1978, i.e.: "Whether the reallocation by the Director of appellant's position from Administrative Budget and Management Analyst 5 to Budget and Management Analyst 4 was correct or incorrect on the basis of the duties and responsibilities of that position immediately prior to the effective date of the reallocation...."

3. The Commission lacks the authority to hear a challenge to the process used to develop changes in the classification system, prior to their submission to the Personnel Board.

4. The burden of proof is on the appellant.

5. The appellant has not sustained his burden of proof.

6. The reallocation by the director of appellant's position from Administrative Budget and Management Analyst 5 to Budget and Management Analyst 4 was correct.

OPINION

The issue for hearing was limited and defined by the Commission's order of October 27, 1978, following arguments by the parties as to the proper scope of the hearing. The Commission must limit its consideration to the issue so noticed. See General Electric Co. v. Wis-

consin Employment Relations Board, 3 Wis. 2d 227, 241, 88 N.W. 2d 691 (1958); Wisconsin Telephone Co. v. DILHR, 62 Wis. 2d 345, 354-360, 228 N.W. 2d 649 (1975); Chicago, M. St. P. & D.R.R. Co. v. DILHR, 62 Wis. 2d 392, 399, 215 N.W. 2d 443 (1974): "Findings and recommendations of the department resulting from said hearing must not be broader than that specified in the notice of hearing."

In a posthearing brief filed September 8, 1980, the appellant argues, beginning at page 12, that the respondent "failed to legally carry out his duties in establishing classifications and grade levels involved in the budget and management analysis series" by failing to send notice to the appointing authority before the final action on reassignment of classes, contrary to §16.07(2)(b), Wis. Stats. (1975), failing to audit the appellant's or other similar positions in the UW-System, and failing to give the UW system an opportunity to review copies of the new specifications while they were in the draft stage, resulting in the creation of a job series which allegedly made it impossible for a management person at a university system campus to qualify for classification at the Budget and Management Analysis 5 or 6 level.

These actions or omissions occurred in the process whereby the position standards were developed, and prior to their approval by the Personnel Board, at which point they became operative, see §16.07(2)(a), Wis. Stats. (1975). It is only after the standards are approved that specific positions, such as the appellant's, can be reallocated. The issue for hearing was a classification decision. It encompasses the



question of whether the respondent correctly analyzed the duties and responsibilities of appellant's position utilizing the criteria set forth in the position standards. The issue cannot properly be interpreted to have provided adequate notice that the appellant intended a collateral attack on the developmental process which lead to the enactment of the position standards.

Beyond the question of notice, these arguments raise a basic jurisdictional issue. The Commission held in Ziegler & Hilton v. DP, Case Nos. 80-34-PC, 79-358-PC (12/8/80), that it lacked the authority to consider an issue as to whether certain position standards were "incorrect" because they did not contain "administrative elements." The Commission expressed the opinion that the statutory scheme which included review of proposed position standards by the Personnel Board prior to effectuation was inconsistent with review by the Commission of the standards themselves in an appeal of a specific personnel transaction following the effectuation of the standards.

Similar reasons lead to the conclusion that the Commission cannot hear the issues the appellant now seeks to raise. The Personnel Board had the specific authority to review changes in the classification system; here, new position standards. Questions of the nature raised by the appellant are the kind that properly would be considered by the Board in deciding whether to approve the proposed standards. The Board's specific review function under §16.07(2)(b), Stats. (1975), controls over the more general appellate authority set forth in §16.05(1)(f).

See, generally, 73 Am Jur 2d Statutes §257:

"Where there is in the same statute a specific provision, and also a general one which in its most comprehensive sense would include matters embraced in the former, the particular provision must control, and the general provision must be taken to affect only such cases within its general language as are not within the provisions of the particular provision...."

The appellant further argues at page 13A of his brief that the appointing authority failed to notify him that various changes in his duties and responsibilities which had been effected might affect the classification of his position, thereby violating §16.07(2)(c), Stats. This argument is outside the scope of the noticed issue and cannot be considered by the Commission.

The appellant also argues that certain University officials reduced the appellant's duties and responsibilities as a means of effectively demoting him. The Commission specifically determined in its order of October 27, 1978, that this area was outside the scope of the appeal:

"It is clear from these statutes [§16.05(7)(1), (2)(a), (b)] that the framework for the civil service provided by the legislature calls for the appointing authorities to assign decisions based on an evaluation of those duties. The appellant alleges that certain duties were removed from his position by the appointing authority as part of an effort by that authority to discipline him. The Commission on this appeal is reviewing a decision of the Director regarding the appropriate classification of a position based, in large part, on the duties and responsibilities assigned to that position. It is not appropriate for either the Director or the Commission, on review of the Director's decision, to delve into the soundness or motivation of the decisions that were made by the appointing authority to assign or reassign duties. Such an inquiry would be inconsistent with the statutory framework discussed above.

It may be that an employe would have had the right to appeal action by the appointing authority reassigning the duties of his or her position....However, such inquiry need not detain us because these

questions are not presented by this appeal. The point is that if action by the appointing authority assigning or reassigning duties is reviewable, it would be reviewable in that manner and not in the context of this appeal of a classification decision of the Director who acts on the basis of the clear statutory delineation of authority set forth above."

An additional argument which is outside the scope of the noticed issue is that the University and the respondent failed to comply with §Pers. 5.03(3)(h), Wis. Adm. Code, as it made no effort to restore the appellant "to a position commensurate to his...former status," following the downward reallocation of his position and the red circling of his pay. This is not part of the issue of whether the reallocation of appellant's position was correct or incorrect on the basis of his duties and responsibilities as they existed at the time.

The appellant argues that due to conflicts at UW-Stout involving him and certain administrators, the campus provided the Bureau of Personnel with "insufficient, incomplete, and misleading information" regarding his job, and that this resulted in an incorrect reallocation decision.

The record does not support this contention. The information conveyed to Mr. Braunhut at the State Division of Personnel was essentially accurate. Furthermore, Mr. Braunhut testified that in his opinion the position was correctly classified based on the testimony presented at the hearing, and that it was very highly unlikely that any budget director at a system campus could have been classified a Budget and Management Analyst 5 or 6. In any event, the appellant was entitled to and received a de novo hearing before the Commission where he had the

opportunity to present evidence regarding his job. The hearing was not limited to a review of the factual material actually used by the respondent in the reallocation decision.

With respect to the question of the proper classification level of this position, the position standards for Budget and Management Analyst 5 refer to three types of jobs.

The appellant's position clearly is not "2) the program head of a small agency budget and management analysis program...." Further, it is not comparable to such a position, because a campus budget position such as the appellant's operates under guidelines established by central administration. It does not have the independent responsibility for a budget program such as would be associated with the budget director for an independent, albeit small, agency.

The appellant's position is not, nor is it comparable to, "3) a senior analyst in the budget services division of the Department of Administration, responsible for a variety of budget policy or management analysis studies which cross departmental or major program lines." This work is unique to the role of the DOA budget services division in performing the budget administration function for the governor.

The appellant's position also is not and does not compare to "1) a senior analyst in an operating agency's budget and management analysis program, responsible for a significant program segment which in and of itself is characterized as medium sized...." (emphasis added) "Management analysis" is defined in the Position Standard, Respondent's

Exhibit 1, paragraph I.B., as follows:

"B. Management Analysis - This function is intended to encompass program assessment, legislative analysis, administrative analysis, and organizational analysis activities which include: 1) the evaluation of existing program policies and practices to determine their effectiveness in implementing program objectives; 2) the evaluation of program objectives to determine their effectiveness in meeting legislative intent; 3) the evaluation of existing or proposed legislation to determine its affect on agency programs and objectives; 4) the development of alternative program objectives and/or policies and practices which will more effectively and efficiently meet the needs of the public or agency served; 5) the drafting of legislative proposals necessary to implement agency program policy objectives; and 6) the evaluation of existing organization structures to determine what changes, if any, are necessary to insure the most effective and efficient delivery of services necessary to meet new or existing program objectives."

The appellant's position does not include these kinds of duties and responsibilities, nor is he a "senior" analyst leading the work of other analysts.

A frequently used tool of classification analysis is the comparison of similar positions. In this case the respondent compared Mr. Wing's position to a similar position at UW-LaCrosse. The LaCrosse position had even more extensive duties and responsibilities than the appellant's position, but still was only reallocated to Budget and Management Analyst 4, the same as appellant's. This comparison reinforces the conclusion drawn from the language of the position standard that the appellant's position should not have been reallocated to the 5 level.

With respect to the Budget and Management Analyst 6 level, the appellant's position does not fit this definition either. The appellant's position functions as neither:

"1) a lead analyst in an operating agency's budget and management analysis program, responsible for a significant program segment which in and of itself is characterized as large; or 2) a lead analyst on a budget or management analysis team in the Executive Services Division of the Department of Administration, responsible for conducting the team's most complex budget policy or management analysis studies."

Finally, it should be noted that at the hearing a ruling was reserved on the admissibility of Respondent's Deposition Exhibit 11, pending consideration of the Crothers deposition which the parties submitted by stipulation. Respondent's Deposition Exhibit 11 has been received, subject to the caveat expressed in the transcript at p. 380 that it was not offered for the truth of the matters asserted therein by the "Academic Deans."

ORDER

The action of the respondent is affirmed and this appeal is dismissed.

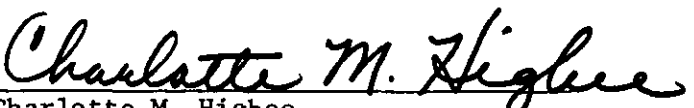
Dated June 11, 1981


STATE PERSONNEL COMMISSION

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\* Commissioner Murphy did not participate in the consideration or decision of this case due to his employment with the University during part of the period when this case was pending.