

STATE OF WISCONSIN

PERSONNEL COMMISSION

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 RUSSELL MARX, *
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 Appellant, *
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 v. *
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 Administrator, DIVISION OF *
 PERSONNEL, *
 *
 Respondent. *
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 Case No. 78-138-PC *
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DECISION
 AND
 ORDER

NATURE OF THE CASE

This appeal was filed as the result of a personnel management survey and the subsequent reallocation of the appellant's position from Seed Laboratory Supervisor (PR 1-12) to Agricultural Supervisor 1 (PR 1-12), effective July 2, 1978. Hearing was held before Charlotte M. Higbee, Commissioner, on the issue of whether or not the reallocation of the appellant's position to Agricultural Supervisor 1 (Ag. Supv. 1) was correct, with the sub-issue of whether either Ag. Supv. 2 (PR 1-13) or Ag. Supv. 3 (PR 1-14) was the appropriate classification for his position.

FINDINGS OF FACT

1. The appellant, Russell K. Marx, had worked as the chief of the Seed Section, Bureau of Special Services, Plant Industry Division, of the Wisconsin Department of Agriculture, Trade, and Consumer Protection (DOATCP) for approximately six years, since late 1971; his civil service classification was Seed Laboratory Supervisor (PR 1-12).

2. As the result of a personnel management survey, a new Agricultural Supervisor series was adopted on June 27, 1978, and Marx's classification of Seed Laboratory Supervisor was abolished. On July 31, 1978, Marx's position was reallocated to Ag. Supv. 1 (also PR 1-12), effective July 2, 1978.

3. At the time of the reallocation, Marx's duties included (1) supervision of the department's Seed Laboratory staff of 2-1/2 full-time and 2 to 3 limited-term employes (50% of his time) and (2) administration and implementation of the enforcement of the Wisconsin Seed Law (§§94.38 - 94.46, Wis. Stats.), directing a field staff of ten, also 50% of his time. (Respondent's Exhibit 8) Marx was not the line supervisor of the field inspectors but directed their activities as related to the seed program.

4. Marx had been supervisor of the Seed Lab for 10 or 11 years prior to 1978. His duties changed after September, 1971, when he was given responsibility for the enforcement of the Wisconsin Seed Law, which previously had been the responsibility of his supervisor, Dwight D. Forsyth, Director of the Bureau of Special Services (PR 1-15).

5. Before he became Bureau Director in 1969, Forsyth at one time had been chief of the seed section at the equivalent of PR 1-14, responsible for both the enforcement of the seed laws and supervising the laboratory staff.

6. In 1972 Marx spent 15% of his time on enforcement. Gradually more enforcement responsibilities were added; and by April of 1978, Marx spent 50% or more of his time on enforcement, including statewide enforcement of

both the Wisconsin Seed Law and federal seed programs. He reported directly to the Bureau Director.

7. Enforcement activities performed by the appellant or for which he is responsible include:

a. Initiation of a letter regarding the violation if a seed sample is out of tolerance or mislabeled, with a request for appropriate disposition, such as grinding up for feed, returning seed to wholesaler, etc.

b. If the infraction is serious, request for a "stop sale" by the inspector, with a follow-up check.

c. Request for an informal hearing in cases where a company has had two or more seriously mislabeled samples in order to determine the cause of the problem and obtain voluntary compliance. Marx's supervisor, the Bureau Chief, also participates in these conferences, which occur infrequently.

d. Issuance of annual seed licenses (about 1100). Marx himself becomes involved if the correct fee is not submitted, if a seller is not licensed, or if the seller claims exemption, in which case he requests a field inspector to run a check and/or issues a stop sale order.

e. Enforcement of the federal seed law in cooperation with the U.S. Department of Agriculture, including the plant variety provisions which require that all seed that is variety-protected must be certified.

f. Inspection of medicated feed mills, pursuant to an agreement with the U.S. Food and Drug Administration. (At the time this program was initiated, Forsyth had this responsibility as the Wisconsin DOATCP "seed expert"; Marx is now that expert.)

8. If the test to be run on the sample is complicated, such as on coated seeds and pre-inoculated legumes, the sample is sent to the lab in the Bureau of Plant Protection for analysis; however, Marx is still responsible for the enforcement activities as with other seeds (notification that mislabeled and corrective action taken, seed taken back or tag taken off, etc.).

9. Twenty-five percent of the official samples require some type of enforcement; and four percent are serious, usually resulting in a stop sale.

10. In addition to his line supervision of the Seed Lab staff, Marx is the program supervisor of the Seed, Feed and Fertilizer field inspectors, responsible for their training and planning and coordinating their work as related to seed law enforcement.

11. The impact of Marx's job duties is largely economic, involving 150 million dollars in seed sales. However, in the case of seeds treated with fungicide or insecticide [see §94.39(4), Stats.] there is a health and safety hazard for both humans and animals.

12. At the time of the reallocation of Marx's position, the supervisor of the White Pine Blister Rust Control program was classified as an Ag. Supv. 3; it was not a multi-faceted program. It is now a part

of a multifaceted program, also headed by an Ag. Supv. 3, including barberry bush eradication, weather modulation regulation, with between 5 and 10 permanent employees. The impact of all of these programs is largely economic; they have little or no impact on health or safety.

13. The supervisors of the field investigation programs for the Meat Inspection and Animal Health divisions, both of whom are Ag. Supv. 3's, have no lab duties or responsibilities. There is liaison with the lab in the submission for analysis of samples taken by inspectors. These programs have substantial impact on the health and safety of both humans and animals.

14. There is no other supervisor in DOATCP with a mix of enforcement, supervisor, and lab duties and responsibilities like Marx.

15. The DOATCP personnel director audited Marx's position in 1972, 1973, and 1976 at the request of the Division Administrator, each time determining that Marx's position was properly classified.

16. Prior to the 1978 survey, there was no other classification which could have been assigned to Marx's position; Seed Lab Supervisor was the "best fit."

17. The Division of Personnel conducted a desk audit of his position based on his position description and other materials including those gathered during the survey. In Marx, 1978, the Department personnel director discussed the substance of his job with both Marx and his first and second-line supervisors, resulting in the development of the new position description on which the reallocation was based.

18. The Division of Personnel considers the definition portion the most important part of the class specifications in determining the correct classification, particularly the last sentence concerning supervision. Although the Agricultural Supervisor series makes no reference to health and safety, economic impact, or the number and type of employes supervised, the Division also considers these factors along with the scope and complexity of the duties and responsibilities.

19. The Ag. Supv. 1 definition describes half of Marx's job responsibilities, namely "the testing, grading and quality control of grains, feeds, and seeds in a laboratory setting." It includes some but not all of his enforcement activities and makes no reference to his direction of the field inspectors or his duties relating to the federal seed act. Marx performs all the examples of work listed in the Ag. Supv. 1 specifications except the fourth, tenth, and eleventh. The last example partially identifies his job. (Respondent's Exhibit 5)

20. Marx's job duties do not fit the definition of the Ag. Supv. 2 (PR 1-13), although he does perform some of the examples of work performed. (Respondent's Exhibit 6)

21. Marx's job duties at the time of the reallocation are most nearly described by the definition of Ag. Supv. 3. He functioned as a section chief and was the head of the department's state-wide seed program, with both laboratory and enforcement responsibilities. He reported directly to the Bureau Director for administrative purposes only, and he performed most if not all of the examples of work performed. (Respondent's Exhibit 7) He was regarded by his superiors as the department's seed expert.

CONCLUSIONS OF LAW

1. The Personnel Commission has jurisdiction over this matter pursuant to §230.44(1)(a), Wis. Stats.
2. The burden of proof is on the appellant to establish by the greater weight of credible evidence that the decision of the administrator was incorrect and that his position should have been reallocated to either Agricultural Supervisor 2 or 3 rather than Agricultural Supervisor 1.
3. The appellant has met his burden of proof.
4. The decision of the respondent in reallocating the position to Agricultural Supervisor 1 was incorrect.
5. The correct classification for appellant's position is Agricultural Supervisor 3.

OPINION

As stated by respondent's witness, a senior classification analyst in the Division of Personnel, the job duties in any given position frequently overlap different levels of a job series. In some cases the position combines different types of job duties and it is necessary to pick the most appropriate classification rather than the only classification for the position.

The predecessor Personnel Board made the same observation in Kailin v. Weaver and Wettengel, 73-124-PB (11/28/75):

"Personnel classifications is not an exact science. In appeals of reclassification denials, it is usually the case that the employe's duties and responsibilities overlap in some respects both of the class specifications in question. The employe is not entitled to reclassification because some aspects of his work fall within the higher class. Resolution

of the question involves a weighing of the specifications and the actual work performed to determine which classification best fits the position. An exact fit is very rarely possible."

In the case of Mr. Marx's position, it is readily apparent that the Agricultural Supervisor 2 classification is not appropriate. The position is defined as supervision of a field inspection/investigation program. Employees in this class are responsible in a geographic area for a variety of inspection programs, and the examples of work performed are limited to field supervision.

If Mr. Marx continued to function as he had in 1972 or at other times prior to the survey, his position would have been well within the definition of Agricultural Supervisor 1:

"Supervise the activities of the State Seed Laboratory including the direction of seed analysts performing purity analysis and germination tests, provision of technical information and advice to the seed industry and the public relative to seed analysis and testing programs, the issuance warning notices and stop sale orders for non-compliance with the Wisconsin Seed Law, the analysis of the results of pre-inoculated seed tests, and the supervision of the issuing of seed labelers' licenses." (Respondent's Exhibit 5)

It was apparent from his testimony that the department's personnel director continued to perceive Marx solely as the supervisor of the Seed Lab, a classification based on 1963 specifications, despite the fact that a new position description (Respondent's Exhibit 8) had been developed in the course of the survey, which he had approved and signed. The result was a failure to take into consideration the expansion of his duties over the years to include supervision of the entire seed program, statewide, involving a wide range of enforcement and liaison responsibilities.

At the time of the reallocation, supervision of the statewide White Pine Blister Rust Program was classified as Ag. Supv. 3. That program is now a single aspect of a larger multi-faceted disease control program supervised by an Ag. Supv. 3. As pointed out repeatedly by respondent, anything occurring after July 31, 1978, is irrelevant to the determination of this case. On that date Mr. Marx's duties and responsibilities were comparable to those of the White Pine Blister Rust supervisor as set forth in the Ag. Supv. 3 specifications.

Respondent questioned whether Marx's job duties and responsibilities constituted enforcement. Webster's New Collegiate Dictionary defines enforce as "to carry out effectively," as to enforce laws. Black's Law Dictionary defines enforcement as "the act of putting something such as a law into effect; the execution of a law; the carrying out of a mandate or command." That's precisely what Mr. Marx did. His enforcement responsibilities are not diminished by the fact that the Bureau Director and/or department legal counsel were involved on the 2 or 3 occasions when it was necessary to escalate a matter to the informal hearing stage.

Mr. Marx did function as a section chief, per the Ag. Supv. 3 definition (Respondent's Exhibit 7). His position description and the attached supervisory analysis form (Respondent's Exhibit 8) established that his

"...work involves providing administrative direction in the assigned program areas, supervising all program staff, evaluating staff and program activities for appropriateness and efficiency, developing necessary operating policies and procedures, and providing assistance to higher level managers relative to overall program administration. Limited administrative supervision is received from higher level personnel in the form of periodic conferences and the review of reports and related sources of information on program activities,"

as set forth in the definition of the Agricultural Supervisor 3 (Respondent's Exhibit 7).

Marx's position was unique in the department. Classification is complicated by the fact that he was the line supervisor of a relatively small laboratory staff and program supervisor, as relates to state and federal seed laws, of ten field inspectors. Respondent's emphasis on the level and numbers of employees supervised and the scope and complexity of their duties in denying his reclassification fails to take this into consideration.

As regards the relative importance of economic impact vs. health and safety, there are no established classification criteria other than respondent's assertion that greater weight is given to health and safety factors in determining whether or not a position is at the Ag. Supv. 3 level. Marx's position had impact in both areas (Finding 11); furthermore, when the White Pine Blister Rust position was classified as an Ag. Supv. 3, the program had economic impact only. By respondent's own standards, Mr. Marx is the head of a statewide plant industry program which qualifies his position for classification at the Agricultural Supervisor 3 level.

ORDER

IT IS HEREBY ORDERED that the decision and action of respondent in reallocating the appellant's position to Agricultural Supervisor 1 are modified and this matter is remanded to the administrator for action in accordance with this decision, pursuant to §230.44(4)(c). The effective

Marx v. DP
Case No. 78-138-PC
Page 11

date of reclassification shall be the date of the original reallocation
action, July 2, 1978.

Dated Oct. 1, 1981

STATE PERSONNEL COMMISSION

Gordon H. Brehm
Gordon H. Brehm *KMS*
Chairperson

Charlotte M. Higbee
Charlotte M. Higbee *CH*
Commissioner

CMH:mew

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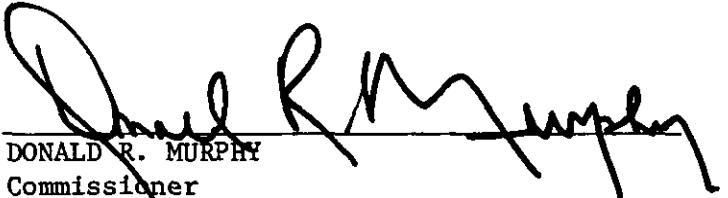
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DISSENTING OPINION

Position reallocation decisions resulting from surveys are based upon an analysis of a cross-section of a given position at that point in time. Facts concerning prior duties or changes in duties have no bearing on the decision. Similarly, in the instant case, the duties actually performed by the appellant coupled with applicable classification specifications should be the primary determining factors in deciding the case. At the time of the survey, as acknowledged by the majority, the appellant utilized the majority of his time supervising a department seed laboratory and enforcing state seed laws. These responsibilities are well within the classification specification definition of an Agriculture Supervisor 1. Respondent's decision should be affirmed.

Dated: Oct. 13, 1981

STATE PERSONNEL COMMISSION



DONALD R. MURPHY
Commissioner