

STATE OF WISCONSIN

PERSONNEL COMMISSION

\* \* \* \* \*  
 \*  
 RONALD E. ROMANSKI,  
 \*  
 Appellant,  
 \*  
 v. \*  
 \*  
 DEPARTMENT OF REVENUE,  
 \*  
 Respondent. \*  
 \*  
 Case No. 78-155-PC \*  
 \*  
 \* \* \* \* \*

DECISION  
AND  
ORDER

NATURE OF THE CASE

This case, filed pursuant to §230.45(1)(c), Stats., is an appeal from the third step disposition of an employe grievance filed by the appellant on July 26, 1978. The appellant, in his grievance objected to the merit rating and merit increase awarded him for the period ended June 30, 1978, and sought to have his performance reviewed and compared with that of other tax representatives who received higher ratings. He also asked that procedures for determining merit raises be modified. After having been denied previously at the first and second steps, the grievance was denied without comment at the third step on September 1, 1978. It is this third step decision which is the subject of appellant's September 8, 1978, appeal to the commission. The matter was heard by Joseph W. Wiley, Chairperson of the commission on January 10, 1979.

FINDINGS OF FACT

1. Appellant is a tax representative 3, employed by the respondent in its field office in West Bend, Wisconsin. That office is a part of the Milwaukee District, one of four revenue districts which comprise the State of Wisconsin.

2. Each revenue district is headed by a district supervisor and has responsibility for state tax compliance in a certain number of Wisconsin counties. The revenue districts in Eau Claire, Madison, and Appleton have approximately 15 tax representatives each, while the Milwaukee district has approximately 50 tax representatives.

3. In all districts except Milwaukee, the district supervisor is the immediate supervisor of the tax representatives in the district. In Milwaukee, the district supervisor is the immediate supervisor of three field compliance supervisors and each of them supervises a "group" or "unit" of approximately 15 tax representatives.

4. Most tax representatives work out of the district offices where their supervisors' offices are. Appellant, however, works in a field office and normally sees the supervisor only during the supervisor's once monthly visits to the field office.

5. Besides the monthly visits, appellant may have "5 or 6 contacts" by telephone from his supervisor, but generally requires little or no day-to-day supervision.

6. Appellant's work (tax collections and other compliance assignments) is assigned directly by central staff in Madison or is self generated, and, when completed, assignments are sent directly to central staff without going through the district office. If the work is not satisfactory it is returned directly to the tax representative for correction.

7. The group supervisor monitors appellant's production during the monthly visits by reviewing copies of the reports which have already been sent to central office. There could be up to six weeks elapsed time between the date the assignment is completed and the date of the

supervisor's review.

8. Under the present system for merit raise evaluations, each immediate supervisor (the unit supervisor in Milwaukee district; the district supervisor elsewhere) evaluates tax representatives by using the four categories found on the Discretionary Performance Award Reports. The procedure currently in use calls for each employe to be rated either "superior," "consistently meets requirements," "needs improvement," or "unsatisfactory." A descriptive paragraph is provided which gives the standards for each category.

9. A supervisor does not collaborate with other supervisors in making evaluations, and awards ratings without reference to how other supervisor's may have rated their employes.

10. Each unit may have had the full range of ratings within its group; i.e., so many "superior," so many "consistently meets job requirements" etc., but because of the autonomy the supervisors exercise, "superior" means: superior to others in one's own group. Normally only one or two persons in any group are rated "superior."

11. Because there is wide variance in compliance difficulty from one territorial assignment to another and a variance in compliance emphasis from one supervisor to another<sup>1</sup> there is a concomitant variance among like-rated employes statewide. For example, a "superior" employe in one group might be rated lower if his performance were judged by the supervisor of a different group.

12. In his grievance the appellant has objected to his June 30, 1978,

---

<sup>1</sup>One supervisor may tend to highly reward collections while others may emphasize liabilities established, assigned tasks, garnishments, self-initiated audits or some other aspect of the employe's performance.

merit rating and has stated further:

"I also object to being rated with a small group, and feel that not only should all field tax representatives in the Milwaukee district be rated together, but all tax representatives in the field should be compared statewide."

13. The relief the appellant seeks is:

"A review and comparison of my work against all department of revenue tax representatives in the field doing the same type of work, who have received a superior merit rating."

14. The following reasons were given by the respondent for denying the relief sought:

STEP I

"I can find no basis for a superior rating."

STEP II

"The present merit rating system requires that each supervisor, at each level including the unit level, rate the employees for which he/she is directly responsible. It does not permit such supervisor to compare the performance of employees in such unit to other units or on an overall state-wide basis. Such comparisons are not possible because of differences in work assignments given tax representatives.

The unit supervisor has evaluated your performance as above average but not superior. The merit rating system does not provide for a rating which is 'above average' but 'not superior.'

Based on my review of the factors utilized by your supervisor in arriving at your merit evaluation and the forgoing I am unable to grant the relief you are requesting."

15. The pertinent guidelines for employee evaluations are found on the back of the Discretionary Performance Award Report:

"Consult the following criteria in determining which performance category is appropriate for this employee. Consider the employee's overall performance during the entire past year. Your rating on this form should not be inconsistent with evaluations of the employee's performance that you have made under the department's annual Employee Performance Evaluation system ...."

#### SUPERIOR

"This category is to be used only for those few employees who distinguish themselves on a continuing basis. Employees consistently put forth extra effort and achieve positive results. Employees rated at this level display an uncommon expertise and originality in regularly completing tasks which exceed what is normally expected or required at the classification level of the employee. The employee is highly skilled in eliciting the cooperation of those with whom he/she deals. In all, the employee must have consistently demonstrated a high level of occupational maturity and considerable accomplishment."

#### CONSISTENTLY MEETS JOB REQUIREMENTS

"Employees at this level perform the duties of their position as defined by the classification specifications and their position description. In so doing, they demonstrate a steady performance of good quality and exhibit growth in assuming responsibility and broadening of their skills. They maintain a positive attitude about their job and conduct themselves in a mature manner when dealing with those around them." (Commission's Exhibit #2)

#### OPINION

In denying the appellant's grievance, the respondent has replied at step I that there is "no basis for a superior rating." This is not entirely responsive to the appellant's grievance. While he has indicated that he objects to his merit raise, and the rating upon which it is based, it is clear that the relief he is seeking is a review which would compare his performance to that of higher rated tax representatives statewide.

The step II disposition is responsive, but is inaccurate in its contention that the present merit rating system "does not permit" comparisons of his performance to that of employees in other units, and in its assertion that "such comparisons are not possible because of differences in work assignments given tax representatives." (Underscoring added). The commission finds nothing in the Statutes or the Wisconsin

Administrative Code that would provide basis for such an emphatic claim that district-wide, or state-wide comparisons are proscribed. The applicable law, §230.37(1), Stats., [amended and renumbered from §16.32(1) in 1977] provides:

"In cooperation with appointing authorities the secretary [of the Department of Employee Relations] shall establish a uniform employee evaluation program to provide a continuing record of employee development and, when applicable, to serve as a basis for decision making on employee pay increases and decreases, potential for promotion, order for layoff and for other pertinent personnel actions ...."

Section Pers. 20.08, WAC provides:

"In accordance with standards and procedures established by the director as provided under Section 16.32(1), Wis. Stats., each appointing authority subject to the approval of the director shall establish an employee performance evaluation and development program directed at motivating and assisting state employes to furnish state services to the public as fairly, efficiently and effectively as possible. The program shall provide for a written performance evaluation to be developed and discussed by the appointing authority for and with each classified employe in a permanent position at least once each year."

Under the provisions of 20.08, WAC, the respondent has developed its own procedures for employe evaluations but nothing in these procedures supports the "does not permit" and "not possible" conclusions in the step II response to this grievance. It might be accurate to say that the rating system "does not require" statewide comparisons, or that such comparisons are "not convenient." But neither of these conclusions would be a satisfactory answer to appellant's assertion that evaluations based on groupwide comparisons are not equitable nor the corollary inference that they are not "uniform" as mandated by §230.37(1), Stats. The respondent attempted to show through testimony at the hearing that case loads and territories are so diverse that comparison of merit awards on a state-wide basis would be impossible. These arguments were not

persuasive. If diversity of caseload and territory were a barrier to comparative evaluations then evaluations even within a group would be precluded. In appellant's own group for instance, his workload and territory vary greatly from that of some others who are stationed in the district office and work exclusively in the inner city of Milwaukee. Nevertheless, his supervisor makes evaluations by simply taking into account the difference in the degree of difficulty of the territory and workload.

The word "uniform" is not defined in the statute and the commission could find no statutory history, or personnel board or commission cases to rely on in formulating a definition; but there seems to be little question that "uniform" in this instance would mean "the same statewide."<sup>2</sup>

The respondent has issued criteria which are used statewide but the evidence in this case discloses that the criteria are interpreted variously from unit to unit or district to district within the state. In fact, the respondent's own testimony corroborated the appellant's contentions that the supervisors are not uniform in how they apply the rating criteria, and do not collaborate with each other to determine that their standards for placing employes at the various levels are consistent (see findings 9 and 11, above).

The commission does not suggest that unit supervisors' failure to collaborate on how the rating criteria must be interpreted necessarily

---

<sup>2</sup>Webster's New World Dictionary, second college edition (1972), gives the following among its definitions for the adjective "uniform": a) always the same; not varying or changing in form, rate, degree, manner, etc.; constant [a uniform speed] b) identical throughout a state, country, etc. [a uniform wage].

results in inequity in the distribution of ratings and merit money; but it is apparent that the respondent cannot properly deny the appellant's contentions without conducting just such a review as has been requested. If inequities are found the respondent must remedy them in accordance with its findings in the review.

CONCLUSIONS OF LAW

1. The commission has jurisdiction over the subject matter in this case pursuant to §230.45(1)(c), Stats.

2. The standard of judgment is whether or not the respondent employe evaluation system for tax representatives is "uniform" within the meaning of §230.37(1), Stats.

3. "Uniform" in the context of this case means consistent interpretation and application throughout the state.

3. The burden of proving by the greater weight of credible evidence that evaluation system was not "uniform" was on the appellant and he has sustained that burden.

5. The findings in this case support a conclusion that respondent should have granted the appellant the relief requested in his grievance of July 26, 1978, and determined whether the non-uniform interpretation and application of the evaluation system resulted in an improper rating and merit award to the appellant.



ORDER

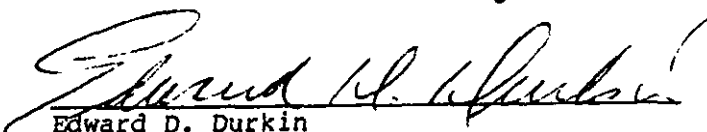
IT IS HEREBY ORDERED that the respondent's decision in this grievance is REJECTED and the matter is remanded to the respondent for action in accordance with this decision.

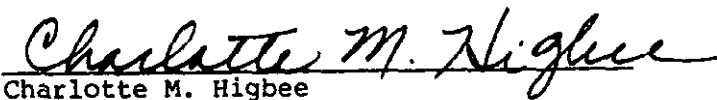
Dated: \_\_\_\_\_

*April 19,* 1979.

STATE PERSONNEL COMMISSION

  
\_\_\_\_\_  
Joseph W. Wiley  
Chairperson

  
\_\_\_\_\_  
Edward D. Durkin  
Commissioner

  
\_\_\_\_\_  
Charlotte M. Higbee  
Commissioner

JWW:jmg

3/9/79