

third sentence the words "considered for" are inserted before review. These changes are based on a review of the exhibits.

In paragraph five, Mr. Rielly's job title is corrected to "administrator of the administrative division" and in the last sentence the word largest is changed to large. These changes are based on a review of the testimony by Mr. Reilly.

The Commission adopts and incorporates by reference the Conclusions of Law contained in the Proposed Decision. The Commission adopts and incorporates by reference the opinion contained in the Proposed Decision with the following addition in response to the respondent's objections.

The respondent in its brief tries to build a "straw man" and then blow it over with a puff. Included in their statement under Conclusions of Law is the following quote.

"While 'getting work done properly' is a part of supervision, it is certainly not the factor which determines whether a position is supervisory, or if supervisory, at what level it should be. It is not identified in the definition of 'supervisor' in §111.81(19), Wis. Stats."

There is no question in this case whether the present position of appellant, i.e. Management Information Supervisor 5 is supervisory, nor is there any question as to whether the position appellant feels he should be classified in is supervisory, i.e. Management Information Supervisor 6. Any reference to §111.81(19), Wis. Stats., the law that defines who a supervisor is, not what he or she does, is irrelevant and has absolutely no bearing on this case. The appellant is a supervisor and the position he seeks to be reclassified is supervisory also.

The question raised in this case hinges on whether the LTE's are being supervised, and in looking to Commission's Exhibit No. 2, the answer is clear. Using this information from the Personnel Division, we need only to compare the relationship between appellant's position and those of the LTE's found working in his department.

We find appellant's supervisory responsibilities and those found in Exhibit No. 2 to be similar in the hiring, discharging, disciplining, and training of LTE's. We find appellant's position makes LTE assignments but most importantly, we find appellant responsible for "the majority of his time implementing the administrative needs of the unit and reviewing the employe output." (emphasis added)

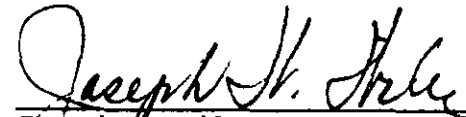
Respondent's brief also attempts to twist Nunnellee v. Knoll (Personnel Board Case No. 75-77) in order to prove a point. There was no question in Nunnellee as to whether appellant in that case was a lead worker. One only has to read the issues of the case to determine that. The important aspect in that case, the "respondent attempted to distinguish the appellant's position by the argument that the terminology of the specifications for Cashier 2 'guiding the activities of lower level cashiers,'" applies neither to student help nor assistant cashiers, but only to permanent employes classified as Cashier 1.

This is the same type of argument that respondent in this case raises. The answer by the Personnel Board in Nunnellee is exactly on point in this instant case. That "distinction clashes with the very plain language of the specifications." Trying to insert permanent employes into the criteria or definition of an "analyst" is inconsistent

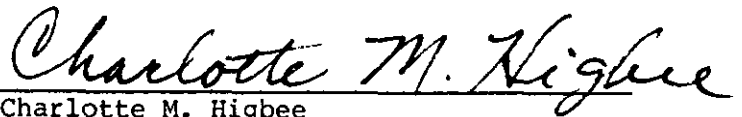
with the very same specifications that the Commission must look to
to make its decision.

The Commission adopts and incorporates by reference the Order
contained in the Proposed Decision.

Dated: June 29, 1979. STATE PERSONNEL COMMISSION



Joseph W. Wiley
Chairperson



Charlotte M. Higbee
Commissioner

EDD:jmg

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and Data Processing, Respondent's Exhibit No. 2). That is the same criteria as used in 1977. It is considered major if there are more than 14.

4. "Data Processing Systems Analysis" and "Programming" units are considered large with 6 - 11 professionals and considered major with 12. These same guidelines point out that "that criteria is set forth as guides and should not be construed as absolute."

5. Mr. Rielly, appellant's supervisor, DILHR Personnel, and the Manager of Systems & Data Processing supervisor, supports reclassification to MIS 6. They feel this job is comparable to others in the department doing just slightly different work, and because of the position's importance to the Job Service Division of the department. The major part of the responsibility of the appellant's staff is the development and design of the Job Service On Line Placement System. This has been implemented in the 4 largest offices in the state and has drawn interest from agencies in other states.

7. The appellant supervises an average of 10 to 11 permanent professionals in the office. L.T.E. professionals vary from 1 to 5. The nature of the work projects are such that L.T.E.'s are used and will be used in the future.

8. An audit was made of the appellant's position in 1978. On September 19, 1978, the respondent issued a memo denying the reclassification request.

9. The reason stated for the denial was that the appellant supervised approximately the same size staff that he did in 1977 and that his area of responsibility and level of complexity have also remained relatively constant. The memo also included the statement that "a logical

and gradual change to the duties and responsibilities of a position ... have not occurred with this position."

10. The respondent did make a thorough investigation of the appellant's position including its complexity and believes the system to be complex. It is felt that the complexity factor did not overcome the primary reason for denial, that being the size of the unit.

11. The respondent used only permanent positions in determining the unit size, relying primarily on s. 111.81, Wis. Stats.

12. The guidelines set forth by the Department of Administration, February 1978, for Systems & Data Processing position allocations include: size of unit, types of projects and applications assigned to or conducted by the unit, and the effect and scope of responsibility of the unit. The guidelines do not refer to permanent employees.

13. Organization charts containing the amount of positions funded and people on board in the unit appellant supervises are put out periodically. Three were put out during the period between the appellant's last audit and the denial of September 19, 1978.

14. Other somewhat similar positions are classified higher than the guidelines and others are classified as called for in the guidelines.

15. The appellant filed this appeal with the Commission on October 13, 1978.

CONCLUSIONS OF LAW

1. This case is properly before the Commission pursuant to s. 230.44(1)(a), Wis. Stats.

2. The burden of proof is on the appellant.

3. The appellant has met that burden and has proven to a reasonable

certainty by the greater weight of the credible evidence that the respondent erred in denying the request for reclassification of the appellant's position to Management Information Supervisor 6.

4. The appellant is entitled to reclassification with an effective date of October 13, 1978.

OPINION

The primary reason for denial of the appellant's reclassification was the size of the unit that appellant supervises. In the "Systems & Programming" division, the dividing line is 14 - 15 employes supervised. The appellant supervised or was funded to supervise 15 employes during most of the year previous to his audit. An average of 10 employes, however, were permanent employes. (At present, there are 12 permanent employes.) The other employes were L.T.E.'s.

Part of the issue in this case is determined by what value the L.T.E.'s have in determining the unit size. The guidelines do not address L.T.E.'s, and their role in determining the unit size. Mr. Isaccson, when making his audit, did not use them and the respondent placed much testimony into the record as to why they should not be used. Much of that testimony related to how L.T.E.'s were different from other employes. The Commission disagrees with the respondent's contention that L.T.E.'s should not be used for three basic reasons. In Nunnlee v. Knoll, Wis. Pers. Bd. Case No. 75-77, student workers were counted towards the amount of employes supervised. In Western Casualty and Surety Co. v. Southwestern Bell Co., 396F 2d 351, 354 (8th Cir 1968), we find:

"The court held that general supervision as used in the policy did not mean the supervision of the method, manner and/or means of employed by the independent contractor,

but rather means supervision to the extent necessary to see that the work was done in accordance with the contract and specifications"

We also find the guidelines speak to neither L.T.E.'s nor permanent employes, but speak to "analysts" (page 4). This is the same term used by the respondent in their denial of the appellant's earlier request, October 20, 1977.

Therefore, the Commission finds that L.T.E.'s must be counted in determining the unit size. The respondent's large reliance on the disciplinary nature of supervision to differentiate L.T.E.'s is contrary to the thinking in Western Casualty as it is in Jensen v. U.W. & Div. of Pers., Personnel Commission Case No. 78-84-PC. Getting work done properly is the key to supervision and should be given the primary weight in all cases in determining if a position in fact supervises, particularly in the technical area such as is presented by this case. Based on these reasons, the appellant supervised between 13 and 16 people during the period preceding the audit.

However, unit size is not conclusive to the determination of whether a position is properly classified as a Management Information Supervisor 5 or 6. Since the denial was based primarily on the size of the unit, and the size of the appellant's unit is borderline between being large or major, other factors in this case have to be given more weight by the Commission.

One of the other factors the guidelines require taking into account is the complexity of the duties of the employes that the appellant supervises. Here, both parties agree that those duties are of a complex nature, and in fact some of the most complex for computer analysts in that division of DILHR.

A third factor called for in the guidelines is the effect and scope of responsibility of the unit. Here, the new concepts of comparing people with data on computers, rather than the former way of doing this with paper indicates that the appellant's unit is breaking new ground. This system, developed by the appellant's unit, has been adopted by three major employment areas in Wisconsin and has drawn interest of agencies from areas outside of Wisconsin.

One other issue to be determined by the Commission is whether there was a logical or gradual change in the duties and responsibilities of the appellant's position. The respondent contends that there has been none between the audit of 1977 and that of 1978.

The Commission rejects the contention that the period of time between audits was the correct period. The time period referred to in the Wisconsin Administrative Code, Pers 3.02(4)(a), must be considered from the date of the appellant's appointment or reclassification as MIS 5, not the period between audits.

The record in this case indicates that at the time of denial in 1977, the appellant supervised 10 programmer analysts (Respondent's Exhibit No. 1). The record indicates that the appellant was supervising 11 in February 1978, 15 in May 1978, and 13.25 in September of 1978. It is clear from the record that there has been a logical and gradual change in the number of analysts that the appellant supervises.

If the guidelines were interpreted to be absolute in determining the unit size, then the appellant's unit would fall into the borderline between large and major, sometimes large, sometimes major. With regard to unit size, however, the guidelines are not absolute, as previously stated, and

other factors must be given strong consideration. In both other factors, types of projects and effect and scope of responsibility of the unit, here is strong weight in favor of an MIS 6 classification.

Based on the record, when compared to the criteria found in the Personnel Management Survey - Systems Data Processing, 1969, the appellant's position appears better placed in MIS 6. Additionally, when consideration is given to the expertise and judgment of the appellant's own supervisor and the Personnel department of DILHR, the Commission is persuaded to place the appellant's position in MIS 6.

ORDER

The action of the respondent denying the request for reclassification of the appellant's position to Management Information Supervisor 6 is modified, and this matter is remanded to the respondent for action in accordance with this decision.

Dated: _____, 1979. State Personnel Commission

Joseph W. Wiley
Commission Chairperon

Edward D. Durkin
Commissioner

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3/16/79

Charlotte M. Higbee
Commissioner