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 JOHN BISCHHEL,
 Appellant,
 v.
 DEPUTY DIRECTOR, Bureau of Personnel,
 Respondent.
 Case No. 78-24
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OFFICIAL

OPINION AND ORDER

Before: James R. Morgan, Dana Warren, Calvin Hessert, Board Members.

NATURE OF THE CASE

This appeal—filed pursuant to Wis. Stats., s. 16.05(1)(f)—concerns the classification designated for the appellant's position when that position moved from an unclassified to a classified state service status.

FINDINGS OF FACT

1. The appellant was employed in an unclassified position in the Governor's Manpower Planning Office.
2. On November 6, 1977, the appellant's position became a classified state service position in the Bureau of Management; Division of Manpower Services; Department of Industry, Labor and Human Relations. This change in status was prompted by a federal directive.
3. The appellant was allowed to transfer with his position without participating in a competitive examination.¹

1. See Wis. Stats., s. 16.11 (1975).

4. The appellant's position was classified as Administrative Assistant 5 (AA5).

5. The appellant's duties and responsibilities include the direct administration of three grant programs on a statewide basis as well as the more general responsibility for approximately two hundred additional grants. The appellant's position description accurately gives the following overview of his duties and responsibilities:

- 90% A. Management of CETA Titles I, III and 5% VTAE grants in the 49 counties in the Balance of State Prime Sponsor District to insure that funds are expended and people trained in accordance to the CETA regulations of the Department of Labor and guidelines and policies of the Balance of State Council.
- (55%) A1. Supervise and direct the Title I activities of seven Regional Coordinators to assure the implementation of programs are within DOL guidelines.
- (10%) A2. Direct and coordinate the development of policies and procedures for program operators.
- A3. Provide technical assistance to other Prime Sponsors in Title I grant preparation when requested.
- A4. Maintain acceptable levels of expenditures by monitoring Regional Coordinators' monthly reports, financial reports, and propose corrective action when programs deviate significantly from Program Operating Plan. (15% deviation).
- A5. Prepare monthly reports for the Executive Director, Deputy Director, Administrator, and the BOS Council that reflects the Title I position (allocation of planned expenditures and number of participants vis-a-vis actual expenditures and participants, areas of over or under planned activities, problems and potential problems, goals being achieved or not, etc.)
- A6. Receive and approve for signature all Title I contracts developed by Regional Coordinators.
- A7. In the absence of the Administrator and PSE Manager, function in the Administrator's stead.
- A8. Update the Division staff on all Title I DOL CETA letters.
- A9. When required, structure the informal hearing process for all Title I complaints and monitor the complaint and appeal process for timely resolutions.
- A10. Respond to request for special reports, data, committee or task force representatives.

- A11. Direct follow-up activities on Audit Reports.
- A12. Supervise all Title I financial monthly reporting from contractors so that no more than 2% of the contractors are reporting late.

- 10% B. Development of a comprehensive annual plan for CETA Titles I, III and 5% VTAE which addresses the needs of the low income and economically disadvantaged in the 49 Balance of State Counties.
 - B1. Coordinate, direct, and prepare Titles I, III and Governor's Special Grants.
 - B2. Prepare, submit, and interact with DOL on all grant modifications.
 - B3. Participate on a periodic basis in AMPB meetings.
 - B4. Provide technical assistance to Regional Coordinators and AMPB's Annual Planning.
 - B5. Assist the Administrator in program policy development and program problem resolution.
 - B6. Develop and provide recommendations for the SMC consideration on Title I goals, programs, and policies.

These duties and responsibilities also include the direct supervision of three central office positions,² the general guidance of six regional personnel in some portions of their work, the formulation of an annual preapplication for Department of Labor grants, the identification of priority groups to be served on a statewide basis, the interpretation of federal regulations and guidelines, the formulation of final recommendations on regional budget requests, the rendering of policy decisions on types and parameters of programs, and the reallocation of program funds when regional units fail to correct excessive deviations from acceptable expenditure levels.

6. The supervision of the appellant is very general in nature. After he and his supervisor agree upon overall goals, the appellant establishes his own means of achieving those goals.

7. The AA5 position standard describes that classification level in the following manner:

2. Only one of these positions is a full-time permanent position.

Definition:

This is responsible line administrative and/or professional staff assistance work in a large state agency. Employees in this class direct an important function of the department and/or provide staff services in management areas such as accounting, purchasing, personnel or budget preparation. Employees may be responsible for supervising a staff of technical, semi-professional or professional employees in directing the assigned program. Employees have a great deal of latitude in areas of decision making and initiating action within a broad framework of laws and rules. Work is evaluated by administrative superiors through conferences, personal observations and reports.

Examples of Work Performed:

Plans, organizes, and supervises the work of technical, semi-professional, or professional personnel; reviews and analyzes operating procedures; evaluates program and installs improvements.

Directs the administrative services of a moderate sized department or specialized services of a major department such as budgeting, accounting, personnel and purchasing.

Performs a wide variety of top level staff assignments in many broad areas for the head of a major department, often acting with full authority of a director or commission.

Directs a function or program of a department which may involve the supervision of technical or professional personnel and the responsibility for law enforcement or for program review of other agencies functions in a specialized area.

Conducts responsible statistical, financial, program and other research; recommends program improvements or changes in program direction or emphasis.

Represents the department in important public relations work involving program promotion, coordination and cooperation of other private and governmental agencies, and public appearances.

Performs related work as required.

8. The Administrative Officer 1 (AO1) position description describes work at this level in the following manner:

Definition:

This is responsible and difficult administrative and/or advanced staff assistance work in a major state agency. Employees in this class are responsible for directing important phases of the department's program and/or for providing staff services in a

variety of management areas. Work may involve assisting in the formulation of the agency's policies, the preparation of the budget, responsibility for fiscal management, physical plant, operating procedures, personnel and other management functions. Employees supervise a staff of technical and/or professional assistants and have a wide latitude for planning and decision making guided by laws, rules and departmental policy. Direction received is of a broad and general nature and the work is reviewed by administrative supervisors through reports and conferences.

Examples of Work Performed:

Acts as principle staff advisor to department director on matters of administrative management, legislative proposals, program development, program effectiveness and related matters. Directs departmental administrative services, including budgeting, fiscal management, purchasing, personnel management and property management.

Assumes responsibility for determining need and seeing that difficult and complex studies or surveys to improve administrative management are carried out, such as time and motion, space and equipment utilization, cost accounting, etc.

Acts as departmental representative in difficult and potentially controversial contacts with representatives of other organizations, legislative officials, and the general public. Performs related work as required.

CONCLUSIONS OF LAW

1. The Board has jurisdiction over this appeal pursuant to Wis. Stats., s. 16.05(1)(f).

Besse and Bischel v. Deputy Director, Bureau of Personnel;
78-23, 78-24; 4/11/78 (Interim Opinion and Order in this case).

2. The burden of proof is on the appellant to show to a reasonable

certainty, by the greater weight of the credible evidence, that the respondent was incorrect in classifying the appellant's position at the AA5 level.

Reinke v. Personnel Board, 53 Wis. 2d 123 (1971).
Ryczek v. Wettengel, 73-26, 7/2/74.
Lyons v. Wettengel, 73-36, 11/20/74.

3. The appellant has not carried his burden of proof. He has not shown the classification action of the respondent to be incorrect.
4. The action of the respondent must be affirmed.

OPINION

In his appeal, the appellant asserts that the designation of his position at the AA5 level upon entrance into the classified service was improper. He contends that the A01 classification level is more appropriate for his position. For the appellant to prevail on this matter, he must show by the greater weight of the credible evidence that his position involves duties and responsibilities that would be associated with the A01 level than with the AA5 level. The appellant has not, however, succeeded in carrying this burden of proof. He has not sufficiently shown the majority of his work to be reflective of the type of work which is anticipated at the A01 level.

The A01 position standard defines work at this level as responsible and difficult administrative work which involves the direction of important phases of a department's program and the supervision of a staff of professional and/or

technical assistants. In his appeal, the appellant has not established a factual framework regarding the department's overall program that would enable the Board to conclude that the grant programs which he directs are in fact important phases of that overall department program. Nor has the appellant provided a clear factual foundation regarding the level of difficulty of his work. Moreover, the appellant does not supervise more than one full time permanent employe.³

While the appellant does perform responsible administrative work with great latitude in decision making and with limited direction as is indicated on the A01 position description, his position would not be more appropriately classified at the A01 level on this basis since these performance factors are also listed on the AA5 position standard as being descriptive of work at that level. In addition to these similarities between the appellant's position and the description on the AA5 position standard, the record also shows a high level of correlation between the appellant's duties and responsibilities and the examples of work that are listed on that AA5 standard. A similar level of correlation is not present in regard to the examples of work listed on the A01 standard. Furthermore, while the appellant has not shown that he is responsible for important phases of the department's overall program as is required at the A01 level, he has established that he directs an important function of that department as is characteristic at the AA5 level. Finally, the reference to supervisory duties on the AA5 standard only suggests that the position may be responsible for such duties and, as such, does not strongly deviate from the appellant's duties and responsibilities.

3. The remaining two central office employes are not permanent employes. The appellant's guidance of regional personnel is not of such a nature that he could be considered as their supervisor.

Bischel v. Bur. of Pers.
Case No. 78-24
Page Eight

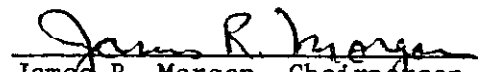
Thus, the record shows a high level of correlation between the appellant's duties and responsibilities and those described on the AA5 position standard. The appellant has not successfully carried his burden of establishing a factual foundation which adequately supports his contention that the A01 classification is more appropriate than the AA5 classification. Consequently, the Board must conclude that the respondent was not incorrect in classifying the appellant's position at the AA5 level.

ORDER

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

Dated: June 16, 1978

STATE PERSONNEL BOARD


James R. Morgan, Chairperson