

STATE OF WISCONSIN

PERSONNEL COMMISSION

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RONALD C. JOHNSON,

Appellant,

v.

THE DIVISION OF PERSONNEL,

Respondent.

Case No. 78-28-PC

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DECISION  
AND  
ORDER

NATURE OF THE CASE

This case, filed pursuant to s. 230.44(1)(a), Stats., involves an appeal from a February 27, 1978, decision of the Personnel Administrator to deny a request for audit of certain positions. The Administrator's decision was appealed to the Commission by letter dated March 22, 1978. A prehearing conference was held on September 28, 1978. At that conference it was agreed by the parties that the issue was whether or not the Administrator's decision not to conduct a survey of the positions in question was correct, and it was expressly understood that the appellants are not seeking specific reclassification actions (see Conference Report dated October 3, 1978). The case was heard by Commissioners Joseph W. Wiley and Charlotte M. Higbee on January 3, 1979.

FINDINGS OF FACT

1. Appellant is an Audit Specialist 4 in the Fiduciary, Inheritance and Gift Tax Bureau of the Department of Revenue. He has been employed by the State for approximately 17 years and has been in his present classification since May 1971.

2. The appellant, on behalf of 87 employees in pay range 11 and 12 in the Fiduciary Inheritance and Gift Tax Bureau and in Central Audit of DOR, requested that Verne Knoll, Acting Deputy Administrator, Division of Personnel, review the classification of auditor and audit specialist positions in these pay ranges because they were not comparable in pay level to federal counterparts.

3. In the letter transmitting the 87 employees' petition (Appellant's Exhibit 1) the appellant stated:

"We believe we are improperly classified, compared to compensation paid by the Internal Revenue Service for similar work. We further believe that there should be advancement recognition in the office for experience (IRS allows 2 steps, State-NONE). The 3 pay range difference between office audit supervisor and office auditor is unjustified. As the entry level is range 11 the journeyman office auditor should not also be range 11. The rate of turnover is terrible and morale is low with no incentive.

"The last survey taken on these positions was in 1966. Many changes have since occurred due to reassignment programs, changes in duties, assignment of work rated at higher classifications, work has become more complicated, many other positions have been reclassified and the pay levels should be comparable with federal, county and surrounding states.

"The memorandum decision of the State Board of Personnel dated August 30, 1967 stated that the Joint Committee ... "did not look at positions or classes or consider job specifications". We did not receive an upgrading afforded other accountants and auditors in other departments."

4. In responding to the appellants' petition, Mr. Knoll addressed two questions: (a) whether the 87 positions were improperly classified; and (b) whether a personnel management survey for the purpose of reallocating the 87 positions to higher pay ranges is appropriate.

5. Mr. Knoll's answer to issue (a) above was that the responsibility for classification decisions in the Auditor and Audit Specialist series

had been delegated to the Secretary of the Department of Revenue and that, the appellants should "seek a classification review" if they felt the positions in question were improperly classified (Appellant's Exhibit 4).

6. Mr. Knoll's answer to issue (b) was that "personnel management surveys typically involve the review of all positions in an occupational area" (emphasis added); that they are conducted on a 12 to 14 year cycle; that the last survey of the fiscal area was completed in April 1971 and no agency had indicated a need for another survey in the near future. It was Mr. Knoll's opinion that a survey involving only selected positions within the fiscal occupational area would be "completely invalid and inequitable." (Appellant's Exhibit 4.)

7. The Personnel Management Survey referred to in finding 6 above involved the following then existing series and specific classes:

Account Clerk  
Account Examiner  
Accountant Assistant 1 - 3  
Accountant 1 - 5  
Auditor Assistant 1 - 3  
Auditor 1 - 9  
Bank Examiner 1 - 5  
Cashier 1 - 3  
Deputy Commissioner - Banks  
Fiscal Officer 1 - 3  
Savings and Loan Examiner 1 - 5  
(Selected Clerical and Administrative Assistant Classes)

In the survey report, the discussion of the nature and scope of the survey included the statement:

"It is the purpose of this survey to develop internal equity between all fiscal positions and to recognize the changes, reflect them in new class specifications, and assign these classes to appropriate salary ranges." (Respondent's Exhibit 4.)

8. Following the 1971 survey a number of allocation changes were

ordered including the abolishment of some series and the creation of others. The Audit Specialist series to which appellant Johnson is now assigned is among the ones which were created.

9. Since the 1971 Fiscal Survey Reallocations a number of substantive changes have taken place which have had an impact upon the duties of auditors and audit specialists. Some of these changes are as follows:

- a. In 1975, Wisconsin tax law was changed such that the Federal definitions of income and deductions no longer applied for current year Wisconsin State tax returns in all instances. The result was that in each new tax year it was necessary for audit personnel to apply a complicated system of adjustments in auditing State tax returns.
- b. In 1976, the prior practice of having each of five units specialize in certain types of audit projects was ended and projects were divided among all audit units and all audit personnel. The result was that auditors and audit specialists had to master a considerable volume of varied procedural instructions as well as the applicable tax law and accounting principles.
- c. In 1977, there was a change in the distribution of inheritance tax cases such that range 12 audit personnel who had been handling estates up to \$200,000 were required to handle estates up to \$400,000 and range 13 personnel who had been handling estates up to \$400,000 were required to handle estates up to \$750,000. The result was that personnel were required to deal with more complex audit problems than before.

10. Appellant Johnson's current position description dated May 24, 1976, (Appellant's Exhibit 5) does not accurately describe his current duties nor reflect all of the changes in responsibility which have occurred since the 1971 survey. However, he has not formally requested a reclassification to determine whether the current duties more appropriately fit under another series or another level within the Audit Specialist series.

11. A review of positions of the type requested by the appellants is a Classification Study in that it involves a small number of classifications in a given occupational area. The Division of Personnel in recent years has avoided classification studies and tended more toward Management Surveys (as defined in finding 6 above) because the latter is more efficient and less likely to result in interdepartmental inconsistencies within an occupational area.

12. In responding to any request for a classification study or Management Survey, the Division of Personnel considers, inter alia, staff time available, impact on other classification series, length of time since the last such review, whether there have been organizational changes, and the schedule of reviews already on the calendar.

13. In denying the appellant's request, the Division of Personnel considered, specifically, the following factors: the agency did not concur with the appellants view that a survey was needed<sup>1</sup>; the Division's

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<sup>1</sup>"It is our opinion that the current classification levels and accompanying pay ranges are appropriate for the level of responsibility of the positions (and the employees in Central Audit) and are comparable to the pay provided by other public employers for the work being performed ... (We are of the opinion that a survey of the Auditor and Audit Specialist classifications will have to be done at some future date. However, we cannot identify any problem areas at this time which require a priority review of this area." (Respondent's Exhibit 3.)

classification surveys staff had a 2-year backlog of such requests and its calendar through July 1979 was already filled with surveys that were scheduled or in process; the positions the appellants were concerned about were not susceptible to review without embracing a number of other fiscal jobs in addition to those referred to by the appellants; the appellants' situation did not appear to deserve a higher priority than the reviews already pending.

#### OPINION

The respondent's authority to conduct reviews of the type the appellants have requested is found in s. 230.09(2)(am), Wis. Stats. 1977:

"The administrator shall maintain and improve the classification plan to meet the needs of the service using methods and techniques which may include personnel management surveys, individual position reviews, occupational group classification surveys, or other appropriate methods of position review. Such reviews may be initiated by the administrator after taking into consideration the recommendations of the appointing authority, or at his own or her own discretion. The administrator shall establish or abolish classifications as the needs of the service require and subject to the approval of the board."

The authority to conduct such reviews is clearly discretionary and, in the opinion of the Commission, the personnel administrator was free to make a decision to deny the request irrespective of the respondent agency's recommendation in the matter. In the instant case, the administrator considered the agency's recommendation and both concurred that a survey was not appropriate. The matter before the Commission is whether or not the respondent, in denying the request for survey abused the discretion conferred by the above-cited statute.

The case narrows down to the consideration of the two salient questions

raised by the administrator and referred to in finding 4 above; whether the facts indicate a need for (a) reclassification or (b) a position review. The Commission need not answer question (a); the parties have declined to request reclassification and have expressly excluded consideration of that remedy from this proceeding.

As to question (b), evidence in the case indicates that the administrator has established well-defined criteria for evaluating requests for surveys, and the criteria have been carefully applied to the fact situation in the appellants' case. The appellant was under burden to show that there was no sound basis for denying the request, but the evidence fell substantially short of sustaining that burden.

There was considerable testimony and documentation to indicate that the appellants' position description (and presumably others like it) may not conform in all respects to the specific job duties performed. However, the Commission did not perceive from this testimony that the inconformities could not be remedied by revising position descriptions or by reviewing the classifications of the various positions. Both such actions could have been handled by the appointing agency. The Commission believes the administrator was correct in denying the request for a survey..

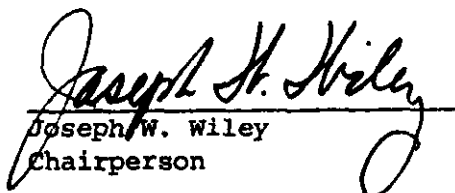
CONCLUSIONS OF LAW

1. The Commission has jurisdiction in this case under s. 230.44(1)(a), Stats.
2. The standard of judgment is whether or not the respondent abused its discretion in denying the appellant's request for a survey of certain positions.
3. The burden was on the appellant to show by a greater weight of credible evidence that the respondent's action was an abuse of discretion.
4. The appellant failed to sustain the burden of proof.

ORDER

IT IS HEREBY ORDERED that the respondent's decision is AFFIRMED and this case is dismissed.

Dated: April 3, 1979.

  
Joseph W. Wiley  
Chairperson

  
Charlotte M. Higbee  
Commissioner

JWW:skv:jmg

4/3/79