
 THEOBALD, et al,
 Appellant,
 v.
 Administrator, DIVISION OF
 PERSONNEL,
 Respondent.
 Case No. 78-82-PC

ORDER

The copy of the Proposed Decision and Order attached hereto is adopted as the final Decision and Order in this matter, subject to the following modifications:

1. That paragraph 18 in the Findings of Fact be modified to read as follows:

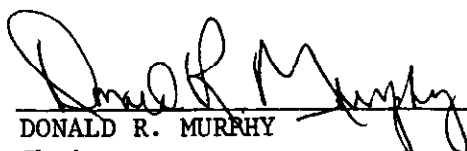
"18. LRB attorneys are not responsible for ruling upon the constitutionality of legislation, nor for determining the policy objectives of legislation prepared for requesters. They are responsible for attempting to assure the constitutionality of legislation and resolution of conflicts with existing law in accordance with controlling interpretations of the law in effect at the time that legislation is prepared. In addition, they may attach drafters' notes which raise legal and other problems presented by a draft, including constitutional issues. The drafter's note may also discuss related issues and suggest alternative solutions to legal and practical problems."

2. That the introductory clause in paragraph 2bb of the Findings of Fact be modified to read as follows:

"b. The major differences between the attorney pay schedule and the pay schedules for non-attorney positions are:"

Dated: Jan 8, 1982

STATE PERSONNEL COMMISSION



 DONALD R. MURPHY
 Chairperson

KMS:ers

R. Rupert Theobald, Jeffery Kuesel, Linda Roberson, Ronald Leonhardt, Karl Gleaves, Fred Nepple, Peter Dykman, Bruce Feustel, Kenna Del Sol, Fred Beatty, 201 N. Capitol, Madison, WI 53702
 Charles Grapentine, 149 E. Wilson St., Madison, WI 53702

STATE OF WISCONSIN

PERSONNEL COMMISSION

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PROPOSED
 DECISION
 AND
 ORDER

NATURE OF THE CASE

This appeal was filed by the Chief of the Legislative Reference Bureau (a non-attorney) and eight Legislative attorneys following the denial of the chief's request that the positions of the bureau's attorneys be reallocated to Attorney 15. The issue noticed for hearing is: To what classification level or levels should attorneys in the Legislative Reference Bureau (LRB) be assigned?

FINDINGS OF FACT

Findings of Fact numbers one through nine were stipulated to by the parties on the first day of hearing.

1. On December 19, 1977 there were 11 attorney positions authorized for the Legislative Reference Bureau. These included one Attorney 13 position (supervisor), 3 Attorney 12 positions (senior legislative attorneys), and 7 Attorney 11 positions (legislative attorneys). Under Chapter 103, Laws of 1977, the bureau was granted one additional Attorney 12 position (senior legislative attorney) effective on July 1, 1978.

2. On December 19, 1977, Dr. H. Rupert Theobald, Chief of the Legislative Reference Bureau, wrote to Verne H. Knoll, then Deputy Director of the Bureau of Personnel, requesting that all attorney positions in the legal section of the bureau be assigned to the Attorney 15 classification and provided supporting reasons for this request. (Appellants' Exhibit 3).

3. On January 24, 1978, the Legislative Reference Bureau submitted to the Bureau of Personnel a legal audit questionnaire, position description for the position of legislative attorney, and agency organization chart. (Appellants' Exhibits 4 and 5).

4. On February 2, 1978, the Legal Review Board held a meeting at which the bureau's request was considered. Present at this meeting were George H. Young, Warren H. Resh and William T. Rieser for the board, Deborah Main for the Bureau of Personnel, and Dr. H. Rupert Theobald, Peter J. Dykman and Linda Roberson for the Legislative Reference Bureau. At the time of the meeting, the Legal Review Board discussed establishing a higher objective level for the attorney positions in the Legislative Reference Bureau.

5. On or about March 17, 1978, Dr. H. Rupert Theobald placed a telephone call to Deborah Main and inquired whether the Legal Review Board had made a recommendation. Dr. Theobald was told by Ms. Main that the recommendation of the board would be to identify the objective level for the legal positions which provide bill drafting services at the Attorney 12, as opposed to the requested level of Attorney 15.

6. On March 21, 1978, Dr. H. Rupert Theobald again wrote to Verne H. Knoll, now acting Deputy Director of the Division of Personnel, informing him that the bureau had learned informally of the recommendation of the Legal Review Board regarding the reclassification request. Dr. Theobald urged that Mr. Knoll nevertheless decide to grant the bureau's original request, and gave supporting reasons. (Appellants' Exhibits 6).

7. On May 9, 1978, the Legal Review Board issued a formal recommendation to Verne H. Knoll which confirmed the earlier informal information and gave supporting reasons. A revised position description was also recommended by the board.

8. On May 15, 1978, Verne H. Knoll wrote to Dr. H. Rupert Theobald quoting the recommendation of the Legal Review Board and indicating that he was acting exactly in accordance with the board's recommendation. The revised position description was attached. (Appellants' Exhibit 7).

9. On June 6, 1978, Dr. H. Rupert Theobald and 7 attorneys of the Legislative Reference Bureau filed this appeal of the administrator's decision with the commission, giving supporting reasons. At this time, 2 other attorneys were on vacation and did not sign the appeal letter but joined in the appeal; 2 attorney positions had become temporarily vacant; and one was not authorized to be filled until July 1, 1978. (Commission's Exhibit 1).

10. LRB attorneys are employed under the classified service of the State of Wisconsin, pursuant to §13.92(2)(a), Stats., and have the same status as attorneys holding classified positions in the executive branch.

Section 230.08(3)(b).

11. The classification of attorneys is the result of a three-part process: (a) a written audit including the Legal Audit Questionnaire (LAQ) (Respondent's Exhibit 4 and 5); (b) comparison of the position with the established allocation pattern that defines all attorney positions in state civil service (Respondent's Exhibit 6); and (c) consultation with the Legal Review Board, a panel of experienced attorneys familiar with all aspects of legal work in state government (Respondent's Exhibit 3).

a. The LAQ is used to identify the legal skills required in the position, the level of those skills and the extent of their application.

b. The allocation chart defines the concept of each attorney position type, and agency location. (Respondent's Exhibit 6). This draft was first established as a result of the 1967 Attorney survey which compared, grouped, and ranked all attorney positions. (Respondent's Exhibit 2). It is updated as positions change and identifies all attorney positions in the classified civil service.

c. The Legal Review Board, originally established under §16.03(3), Stats., now §230.05(3), initially grouped and ranked attorneys based on a comparison of the number and nature of legal skills used in the performance of duties at the objective level of the position. The board considered ten factors, not all of which were applicable to each position, in recommending the level of representative positions. (Respondent's Exhibit 2).

12. Based on the Legal Review Board's recommendations the then Director, Bureau of Personnel, pursuant to §16.07, Stats (now administrator, §230.09, Stats.), established the attorney classification series with five levels, 11 through 15, (Respondent's Exhibit 6). Each successive level requires the application of a greater number of legal skills or their application at a higher level of responsibility.

13. In auditing an attorney position, the Division of Personnel identifies the duties and responsibility -of the position, compares it with the duties and responsibilities of other attorney positions, and then assigns it to its relative classification level based on that comparison.

14. The principal responsibilities of LRB attorneys is to provide bill drafting services to the Legislature upon request. [§13.92(1)(b), Stats.] These services include research of both case and statutory law on the subject of the request and development of a draft which meets the parameters of the request and which is in a form prescribed by law, including a plain language analysis of the original measure, and drafting of revisions and amendments.

15. The framework and components of the draft are formally outlined in the Bill Drafting Manual (Appellant's Exhibit 36) which includes a list of laws which may impact on any subject area (p. 11), guidance on construction of bills (pp. 40-53) including the plain language analysis (pp.49-53) special clauses and provisions (pp. 54-62), amendments (pp. 63-69), and specific types of legislation. The manual is continually updated and addresses a wide range of potential problem areas in drafting.

16. More experienced attorneys also are assigned the writing of summaries of legislation and recent court decisions for the Wisconsin Blue Book (Appellants' Exhibit 35).

17. When the Legislature is not in session, LRB attorneys develop memos on subjects of potential legislation, some fine points of bill drafting (Appellants' Exhibit 25 and 33), or other research assigned by

the Director. These memos are circulated to the entire staff.

18. LRB attorneys are not responsible for the initiation, interpretation, or constitutionality of legislation. However, they may attach drafters' notes which raise legal and other problems presented by the draft, including conflict with existing state or federal law and constitutional issues. The drafter's note may also suggest alternative solutions for legal and practical problems. (Appellants' Exhibit 24 and 29).

19. The initial draft of a bill is subject to the scrutiny of legislative committees, legislative staff attorneys, lobbyists, agency attorneys, the Legislative Council, as well as the legislators themselves, all of whom may raise issues of constitutionality and conflict of laws which can result in correction and/or change in the bill including removal of provisions that the LRB drafter considers necessary.

20. The number of requests for drafts as well as the number of bills has doubled since 1963, at which time there was one permanent LRB attorney; five were employed only during the legislative session. In 1967, at the time of the attorney survey, there were nine LRB attorneys, three permanent and six sessional. Sessional attorneys were used until 1974. At the time of this appeal there were 11 full-time attorneys.

21. The same basic work has continued to be performed over this period of time, although there has been some increase in complexity because of increased state and federal laws and regulations which must be taken into consideration in drafting bills.

22. The LRB attorneys have exclusive use of a visual-display computerized system to research precedent and possible conflicts with existing Wisconsin statutes. The LRB library section provides information from other states.

23. All LRB attorneys, including the Director, have the same attorney position description.

24. The Director serves as chief counsel to the LRB and supervises the other LRB attorneys in addition to performing some of the same functions they do. He makes drafting assignments and assigns specialty areas to each LRB attorney based on the needs of the Legislature and the attorneys' interests and experience with the subject matter.

25. The "senior" LRB attorneys are distinguished by virtue of their tenure and experience, which places them at a higher regrade point within their classification. (See finding 26c). They assist the Director in training the new attorneys and reviewing their work, especially during the first six months of employment. Senior attorneys also work on the budget bill and special projects assigned by the Director.

26. The attorney's pay plan, which reflects the differences in legal skills required by the various attorney positions, is unique.

a. A separate pay schedule was developed for attorneys to provide a system which would contain sufficient compensation flexibility as to permit salary advancement that would insure greater compatibility with the traditional compensation methods used in the private sector. (Respondent's Exhibit 3).

b. The major differences between it and the compensation plan are:

1. Each position is classified in one level (which is the maximum level based on ultimate employe duties and responsibility objectives) as opposed to providing several advancement levels for use in recognizing employe job performance improvement and development.

2. The using of an objective level classification as opposed to a series eliminates the possibility of reclassification salary adjustments.

3. The prime responsibility for pay administration (under reasonable guidelines) has been removed from the Director and Personnel Board and assigned to appointing officers. (Respondent's Exhibit 3).

c. The pay range minimum is the same for all classification levels of attorney positions. Thereafter employes move automatically through their respective pay ranges by regrade points that are based on satisfactory performance and time in grade until reaching the midpoint of the range, at which time the attorney is considered to have reached the objective level of performance for that position. Beyond this point any additional increase, other than adjustment to the entire schedule, is based on merit. The schedule is set up so that Attorneys 11 and 12 reach the midpoint much sooner than Attorneys 15, on the premise that the Attorney 15 position requires a full complement of legal skills. The labor agreement between the state and the Wisconsin State Attorneys Association provides for higher Discretionary Performance Awards at the

higher classification levels. (Appellants' Exhibit 25).

d. The attorney series is one of the highest paid and its pay plan is the only one providing this automatic progression up to the midpoint of the range.

27. None of the LRB attorneys are near the maximum of their respective pay ranges. None who left for positions in other state agencies or in the private sector were close to the maximum within their pay ranges.

28. Attorneys 15 handle more complex legal problems requiring greater skill, and they are more accountable for the results and/or consequences of their work than are the LRB attorneys.

29. The positions of the LRB attorneys are comparable to the other positions allocated to the Attorney 12 level, based on the ten factors considered by the Legal Review Board.

30. The Director's position is comparable to other attorney 13-Supervisor positions and is properly assigned to the Attorney 13 level.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over this appeal pursuant to §230.44(1)(a).

2. The burden of proof is on the appellants to establish by the greater weight of credible evidence that the administrator's decision, regarding the appropriate classification level of the appellants' positions is not correct. Reinke v. P.B., 53 Wis. 2d123 (1971).

3. The appellants have not met their burden of proof.

4. The decision of the administrator to reallocate the LRB attorney positions to the Attorney 12 classification level; retain the "senior" attorney positions at the Attorney 12 classification level with the option for a supervisory add-on at management's discretion; and retain the Director of LRB attorneys at the Attorney 13-Supervisor classification level is correct.

OPINION

The only role of the Commission in this matter is to determine the appropriate classification level of the attorney positions in the Legislative Reference Bureau as of the date of this appeal. The Commission renders no judgment concerning the 1967 attorney survey and the resulting classification standards and allocation pattern, or the attorney compensation plan.

Classification decisions are based on comparison of duties and responsibilities of different positions to determine the extent of similarity regarding the nature and scope of the majority of duties performed. The director of the Bureau of Personnel appropriately relied on the expertise of the Legal Review Board in its recommendation that the LRB attorney positions should be allocated to the 12 level. The three members of the board are experienced attorneys, familiar with the job duties and responsibilities of state attorneys and with the criteria which the legal profession considers in determining the complexity, scope and accountability of an attorney's work. The ten factors which the board applied in making their recommendation are the

same factors applied to the evaluation of all state attorney positions.

Both in its request for reallocation and its appeal, the LRB placed considerable emphasis on the high turnover among LRB attorneys and the need for a higher classification to encourage retention. The Legal Review Board responded to this argument in part by recommending the reallocation of LRB attorneys from the 11 to the 12 level. However retention is not a classification factor; it is a compensation factor and was taken into consideration in the unique pay plan adopted for state attorneys. That plan provides for adjustments through the regrade system to encourage retention at all levels of the attorney classification, and the attorneys' labor agreement provides ranges for merit increases based on those levels. (Finding 26). None of the attorneys who left the LRB were close to the maximum of their range. The fact that several competed successfully for higher level positions in other agencies or entered private sector employment frequently utilizing the specialized knowledge developed by bill drafters, does not support the conclusion that their positions were classified improperly. Nor was any evidence adduced that LRB has a greater problem in retaining experienced attorneys than does any other state agency employing attorneys 11 and 12.

The Commission concludes that the Legislative Reference Bureau attorney positions are properly assigned to the Attorney 12 level and that the Director's position is properly assigned to Attorney 13-Supervisor.

Theobald et al v. DP
78-82-PC
Page Twelve

ORDER

The action of the Administrator is affirmed and this appeal is dismissed.

Dated: _____, 1981.

STATE PERSONNEL COMMISSION

Donald R. Murphy
Chairperson

CMH:jmg

PARTIES

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