

STATE OF WISCONSIN

PERSONNEL COMMISSION

\* \* \* \* \*  
 \*  
 ROBERT ZECHNICH, \*  
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                     Appellant, \*  
 \*  
 v. \*  
 \*  
 Secretary, DEPARTMENT OF \*  
 HEALTH AND SOCIAL SERVICES, \*  
 and Administrator, DIVISION \*  
 OF PERSONNEL, \*  
 \*  
                     Respondent. \*  
 \*  
 Case No. 79-4-PC \*  
 \*  
 \* \* \* \* \*

DECISION  
AND  
ORDER

NATURE OF THE CASE

The issue heard on the merits on October 4 and 5, 1979, before Agnes Rona, Hearing Examiner, is whether the appellant received the correct added pay under Paragraph V C of the Physician Pay Plan (Pay Range 51 of the 1977-78 Classification and Compensation Plan), and if not what should the correct added pay be.

FINDINGS OF FACT

1. Effective November 17, 1977, appellant, Dr. Robert Zechnich, M.D., was appointed to a Physician Management position in the classified service with the State of Wisconsin with a working title of clinical services director and organizational title of section chief, in the Bureau of Mental Health (Bureau) of the Division of Community Services, in the Department of Health and Social Services (DHSS).

2. The primary responsibility of the position is the supervision of three institutions in the Bureau; the method of supervision is by

supervision of the institution superintendents (Respondent's Exhibit 14); some, but not all of the institution superintendents have been and are physicians and are therefore covered under the same pay schedule as appellant.

3. Appellant was assigned to pay range 01-51, Pay Schedule 1, Section D, of the 1977-78 Classification and Compensation Plan (Physician Pay Plan)(Resp. Ex. 4).

4. The administration of the Physician Pay Plan is the responsibility of the administrator of the Division of Personnel and has been delegated to the Bureau of Compensation and Classification within the Division.

5. The Physician Pay Plan contains a basic hourly pay rate for all physician positions in the classified service and also sets out three separate categories of pay add-ons for which a physician may qualify in addition to the basic hourly rate; one of the add-on categories is entitled "Supervision and Responsibility," and contains eight levels of supervision and program responsibility with corresponding gradations of added pay rates; each level has a maximum rate of added pay to be assigned at that level; level one is the lowest and level eight is the highest level of add-on.

6. Appellant was assigned added pay for supervision and responsibility at level four of the add-ons, as a section chief in an agency's central office; deputy bureau directors are assigned to level five and institution superintendents are assigned to level six.

7. The employing agency determines the position responsibilities,

the working title and the organizational reporting status of an employe, as well as the add-on level in the case of a physician; the Division of Personnel, Bureau of Compensation and Classification, reviews the employing agency decisions with respect to the organizational status, base salary and responsibility add-on level of the employe. For Dr. Zechnich, this review included comparison of the information received from the employing agency with the class specifications for all physician positions in the classified service (Resp. Ex. 5); the Division agreed that Dr. Zechnich was a section chief and should therefore be assigned to add-on level four. The discretion to assign the actual add-on rate, not to exceed the maximum rate for a given level, rests with the employing agency. Dr. Zechnich was assigned to the maximum rate in level four, as part of DHSS policy with respect to recruitment of physicians.

8. The class specification for physicians is the framework used to place an individual physician into a particular responsibility add-on level. (i.e., Vol. 2, Tr. 36). The specification lists five factors which "affect the responsibility level" and are used to develop "a responsibility scale to identify the various levels of included positions;" the five factors are: 1) organizational status; 2) structure of the work environment; 3) program scope and complexity; 4) decision-making authority; and 5) policy-setting authority. All five factors must be considered in determining the responsibility level, but the class specification does not state the weight to be given to any of the factors individually or as part of the total evaluation decision.

9. In practice, organizational status is the factor applied by the Bureau of Compensation and Classification to determine a physician's responsibility add-on level within the Physician Pay Plan, so that even if a physician has the actual job responsibility of a bureau director or an institution superintendent but has the organizational reporting status of section chief, then that physician will be entitled only to the add-on pay of a section chief at level four of the supervision and responsibility schedule.

10. The supervision and responsibility add-on schedule, for levels four through seven describes the positions as follows:

4. ... when assigned the responsibility of directing a medical program involving supervision of other Physicians or serving as a Section Chief in an agency's central office.

5. ... when assigned the responsibility of administering an institutional clinical program or serving as Deputy Bureau Director involving the supervision of other Physicians where such supervision relates to the professional practice of medicine as opposed to administrative supervision.

6. ... when assigned the responsibility of an Institution Superintendent.

7. ... when assigned responsibility as Bureau Director.

11. Current class specifications for physicians were developed sometime in 1971, at about the same time as the 1971 Classification and Compensation Plan, including the Physician Pay Plan, was developed (Resp. Ex. 13); the 1971 Physician Pay Plan was the first one to contain a single unified supervision and responsibility add-on schedule and contains the same basic plan structure as the 1977-78 and 1978-79 Plans. The major change in Plans from 1971 to 1979 has been in the dollar amounts involved.

12. From at least 1971 on, and continuing to the present, the

Physician Pay Plan has been interpreted by the Division of Personnel and by its predecessor agency not to permit the assignment of the same responsibility add-on levels for positions with similar responsibilities, but only to permit assignment of organizationally identical positions to the same add-on level. The differences in actual amount of responsibility exercised by organizationally identical positions is to be reflected in the actual add-on amount given within the limits of the assigned level.

13. Prior to the appointment of Dr. Zechnich, the director of the Bureau was responsible for first-line supervision of institution superintendents, although current Bureau Director Dr. William Buzogany, when serving as deputy director, had first-line supervision responsibility for at least one institution.

14. The position of section chief, director of clinical services, is a new organizational position in the Bureau, and appellant is the first person to occupy it. Dr. Zechnich is also the first physician designated as a section chief within the Bureau in a position which is organizationally between an institution superintendent and a bureau director.

15. Dr. Zechnich's responsibilities as section chief are similar to the responsibilities of Mr. Gerald Dymond, director of the Bureau of Developmental Disabilities, in the Division of Community Services in DHSS, with respect to the supervision of institution superintendents within their respective bureaus, and the amount of time spent in the task. Mr. Dymond has greater overall budgetary responsibilities than

Dr. Zechnich, and wider policy formulation responsibilities than appellant, and additional program responsibilities for community programs outside of institutions. (Vol. 1, Tr. 74-75, 80).

16. Both Dr. Zechnich and Mr. Robert Ellsworth, director of the Bureau of Institutions in the Division of Corrections in DHSS, spend about 30% of their time supervising institution superintendents. (Resp. Ex. 14 and App. Ex. 7), but Mr. Ellsworth spends 40% of his time formulating policies for the institutions while Dr. Zechnich spends 40% of his time implementing and coordinating policies for institutions (App. Ex. 7; Resp. Ex. 8, 14).

17. Both Dr. Zechnich and Mr. Darrell A. Kolb, deputy director of the Bureau of Institutions, spend portions of their time supervising superintendents in the institutions operated by their respective Divisions and Bureaus. Mr. Kolb's primary duty is to provide guidance for the adult institutions, but he also spends 20% of his time assuming the administrative responsibilities of the bureau director in the director's absence and 15% of his time coordinating all program services of the Bureau. (App. Ex. 8). Dr. Zechnich does not have these last two types of major responsibilities.

18. Both Dr. Zechnich and the institution superintendents he supervises have some front line responsibilities for taking action when needed; the superintendents have certain statutory authorities by virtue of their positions, which authority is not accorded to their supervisor. Major day-to-day medical decisions are primarily the responsibility of the superintendents although Dr. Zechnich has authority

to overrule some decisions and implement his own decisions in place of those of the superintendents. Dr. Zechnich also has responsibility to oversee and provide annual budgets of the institutions but cannot finally approve them.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction of this appeal pursuant to §230.44(1)(a), and 230.45(1)(a), Wis. Stats., as an appeal from a decision of the Administrator.
2. The burden of persuasion is on appellant to show by the greater weight of credible evidence that respondent incorrectly interpreted and applied the "Supervision and Responsibility" section of the Physician Pay Plan in computing appellant's added pay under that section.
3. The burden of persuasion is on appellant to show by the greater weight of credible evidence the correct level of added pay to which he is entitled under the "Supervision and Responsibility" section of the Physician Pay Plan.
4. Appellant has met his burden of persuasion with respect to showing that the respondent incorrectly interpreted and applied the "Supervision and Responsibility" section of the Physician Pay Plan with respect to appellant's position.
5. Appellant has not met the burden of showing to what level of added pay he is entitled, other than to the level to which he was assigned and which is the basis of his appeal.

OPINION

A. THE PAY PLAN

Respondent argues that the Commission does not have jurisdiction to decide this appeal on the merits because appellant is asking for an amendment of the Physician Pay Plan, an action which the Commission does not have statutory authority to take. Appellant argues that he is only asking the Commission to interpret the language of the Pay Plan as applied to him, an action which does not involve usurpation of a legislative function.

In Holmblad v. Hart, Pers. Bd. 76-229, 2/77, the appellant asked the Personnel Board to decide on the propriety of a salary schedule in which Management Information Specialist and Management Information Specialist-Confidential positions requiring the same training and experience with the same job assignments had different pay incremental and pay maximums assigned to them. The Board held that it did not have plenary review power over the entire Pay Plan once it was approved through the operation of §16.086, Wis. Stats. (now §230.12, Wis. Stats.) The situation in Holmblad was one in which the Board was asked to pass judgment on a pay structure approved by the legislature as part of the compensation plan. Here, appellant only asks the Commission to determine whether the application of the Pay Plan with respect to responsibility add-ons was correct in his case. The administration of the Pay Plan is the responsibility of the administrator of the Division of Personnel under §230.12(1)(a), Wis. Stats. This responsibility has been delegated by the administrator to the Bureau of Classification



and Compensation Surveys. (Vol. 1, Tr. 219). The decision to assign Dr. Zechnich to a particular responsibility add-on level is therefore appealable to this Commission under §230.44(1)(a), and 230.45(1)(a), Wis. Stats.

The relief requested by the appellant is that his position be assigned to a higher responsibility add-on level within the existing Pay Plan. The appellant contends that a comparison of his duties and responsibilities with those of several bureau directors and a deputy bureau director in DHSS shows a substantial equality of responsibilities. He therefore asks to be assigned the responsibility add-on of a bureau director. In the alternative, appellant argues that his level of responsibilities is greater than that of institution superintendents whom he supervises. He therefore asks to be assigned to at least the same add-on level as an institution superintendent. He contends that the equal pay principle stated in §230.09(2)(b), Wis. Stats., mandates such a request.

The threshold question is whether respondent's application of the Pay Plan is correct. The testimony of respondent's witnesses was clear with respect to the way in which the language of the supervision and responsibility add-on section of the Pay Plan has been continuously interpreted in the past. That interpretation requires a physician to be serving in one of the specifically described positions in order to be assigned to the add-on level in which that position appears. (E.g., "service chief," "assistant medical director," "institution superintendent," etc.) No comparability standards have ever been applied to place

physicians into the same add-on level. Neither the language of the Pay Plan nor of the classification specifications specifically requires that this be done. (Resp. Ex. 3, 5). There is a dearth of directory or permissive language in support of either of the parties' positions. There is only the consistent interpretation of the intent of the language by those who developed it. This interpretation is entitled to a certain deference, based on the presumed expertise of the Division of Personnel with respect to the Pay Plan. The deference is nevertheless not a shield against Commission scrutiny of the administration of the Pay Plan once Commission jurisdiction of an appeal is established.

Dr. Zechnich is not the first physician who has received add-on pay at a lower maximum rate than that of some of the persons whom he supervised. His predecessor in supervising at least one of the institution superintendents was an assistant bureau director (now bureau director), Dr. Buzogany. Dr. Buzogany, as assistant bureau director, received a lower maximum add-on rate than an institution superintendent. (Resp. Ex. 3). These are the only two instances of which respondent's witnesses are aware in which a physician supervisor received a lower maximum add-on rate than that assigned to a physician whom he supervised.

The uncontracted testimony of Ms. Jean Dumas, Personnel Specialist 5 with the Bureau of Classification and Compensation of the Division of Personnel, was that the Pay Plan was generally based on the principle that pay rate should reflect the line of authority of a position and that a subordinate should generally be paid less than his or her supervisor. Organizational status is therefore a key indicator for determining the level of responsibility. (Vol. 1, Tr. 54, 60-61). Mr. Glen Blahnik, Director of the

Bureau of Classification and Compensation, agreed with these principles. (Vol. 2, Tr. 22). Ms. Dumas and Mr. Blahnik agreed that if Dr. Zechnich's authority exceeded the authority of institution superintendents, he would be above superintendents for purposes of determining appropriate levels of responsibility. (Vol. 2, Tr. 41, Vol. 1, Tr. 65-67) Finally, they both testified that, regardless of whether Dr. Zechnich's actual responsibilities were greater than those of physician institution superintendents, that the organizational structure reflected in the Pay Plan required that he be assigned a lower add-on maximum than an institution superintendent. (i.e., Vol. 2, Tr. 226-227)

The factors which are considered in determining the level of responsibility of a physician position are set out in the classification specifications for physicians, a document which is the position standard for all classified physician positions with the State of Wisconsin. (Resp. Ex. 5). The specifications reflect an organizational structure in which institution superintendents are supervised by bureau directors. This structure is set out in the section of the specifications entitled "Definitions," in which the various physician positions (staff physician, service chief, medical director, section chief, etc.) are set out in different groupings according to characteristic work performed, nature of supervision, program responsibilities, and other criteria. The descriptions of particular positions are based on the organizational structure in existence in 1971 when the specifications were drafted. The supervision and responsibility add-on levels in the Pay Plan reflect the single organizational system which appears in the specifications.

It is nevertheless not the "Definition" section of the specifications which provides the framework for assigning individual positions to particular add-on levels in the Pay Plan. The section of the specifications entitled "Classification Factors Affecting Responsibility Level" sets out the factors which constitute the framework within which add-on levels are to be assigned. (Finding 8; Vol. 2, Tr. 34).

The organizational structure of a particular agency is not permanently fixed. As shown by the example of Dr. Zechnich's position, agencies can restructure internal organizational structure. Dr. Zechnich is a section chief, a position which has a long history independent of his appointment. His supervisory responsibilities as section chief are new and reflect a different supervision structure than had previously existed in the Bureau of Mental Health. (Find 14; Vol 2, Tr. 32-33, 36). Mr. Blahnik testified that the determining factor in assigning the add-on level for Dr. Zechnich's position was his organizational status as section chief, with little weight given to his actual job responsibilities. (Vol. 2, Tr. 19-20). Mr. Blahnik explained that organizational status "diluted" the weight and effect of appellant's actual job responsibilities which may be greater than that of physician-institution superintendents supervised. The five factors to be considered in determining responsibility add-ons are listed in Finding 8. The effect of organizational status does not in fact "dilute" the effect of the other factors. Rather, it negates their effect completely and results in the type of determination made in the case of Dr. Zechnich. (Vol. 2, Tr. 60). The result is that the organizational structure

reflected on paper, rather than the actual chain of supervision and responsibility in the agency, governs the add-on received by appellant. This is the result which appellant alleges to be in contravention of the equal pay principle set out in §230.09(2)(b), Wis. Stats.

It is not necessary in this case to decide whether the equal pay principle cited by appellant is applicable to this case. The testimony and documentary evidence presented show that the respondent wrongly applied the "Classification Factors" in the class specifications to the interpretation of the Pay Plan.

The Pay Plan language on its face must be applied in light of the intent of the class specifications. The specifications state: "... the development of a responsibility scale to identify the various levels of included positions must utilize general classification factors which affect the responsibility level and can be commonly applied to functionally-different positions." (Resp. Ex. 5) The factors to which the quote refers are the factors set out in Finding 8. Even though the specifications do not assign a weight to each factor, it is clear from the quoted language that all factors must be considered. There is no intent to permit organizational status to negate the effect of the other four factors. It is contrary to logic to list five "appropriate" factors when only one is intended to have any effect. The focus of the language is on a responsibility scale to accommodate responsibility levels in functionally different positions. This can be accomplished only by looking at actual work responsibilities, rather than at the 1971 organizational structure reflected in the "Definition"

section of the specifications. The specifications are the basis for other documents the purpose of which is to implement some aspect of the specifications. The specifications must therefore control the interpretation of secondary documents intended to carry out the intent of the specifications, in the manner specified therein. To this end, the more general language of the specifications governs the more specific language. Therefore, the common denominator governing a particular organizational structure is the classification factors affecting responsibility level. The respondent erred in administering the Pay Plan with respect to appellant according to a rigid organizational structure which was no longer followed in the Bureau of Mental Health at the time appellant was appointed to his position. The respondent failed to apply the principles stated in the class specifications.

#### B. REMEDY

Appellant contends that a comparison of his position with the positions of bureau directors in the Division of Community Services and with physician institution superintendents whom he supervises will persuade the Commission to provide one of the alternative remedies requested. He further contends the suggested comparison should be based on the equal pay principle requirement of "substantial equality" of jobs. The Commission finds that the equal pay principle is not the proper standard to apply in determining what remedy, if any, is available to appellant. The appropriate remedy should be determined by application of the standards used in deciding appeals from reclassification actions.

Whether appellant is entitled to a different pay add-on than he was assigned is to be determined by application of the classification factors set out in the class specifications for physician positions in the state classified service. The appellant did not attack the validity of these factors. The commission has found no reason to reject them, and finds their application appropriate in this case. The equal pay analysis may be appropriately used if the classification factors themselves are under attack, but such is not the case here. In addition to these considerations, the Commission feels that the facts of this case, if decided on an equal pay theory, would raise heretofore unasked questions, the answers to which exceed the scope of the hearing. While the questions may be interesting and valid, they were not raised here and the Commission follows the familiar judicial model of deciding this case by the narrower of two possible approaches.

In a typical reclassification appeal the appellant has the burden to show not only his or her own duties but also to show that these duties are comparable to those of other positions to which they wish to be favorably compared. Appellant called as a witness Mr. Gerald Dymond, Director of the Bureau of Developmental Disabilities in the Division of Community Services, and submitted in evidence the position descriptions of Dr. William Buzogany (App. Ex. 6), Mr. Robert Ellsworth (App. Ex. 7), and Mr. Darrell Kolb (App. Ex. 8), for the purpose of showing comparability of duties and responsibilities. Dr. Buzogany is Dr. Zechnich's supervisor and is director of the Bureau of Mental Health. Mr. Ellsworth is Director of the Bureau of Institutions and

Mr. Kolb is a deputy director of that bureau. As indicated in Findings 15, 16, and 17, the positions of Dr. Zechnich and directors or deputy director of other bureaus differ in organizational status in the program scope and complexity and in decision-making and policy-setting authority. Although the appellant elicited testimony from Mr. Dymond that his duties with respect to institutions were similar to the duties of Dr. Zechnich (Vol 1, Tr. 80), the scope of Mr. Dymond's position goes beyond institutions and involves other program responsibilities and greater budget responsibilities than Dr. Zechnich exercises. With respect to the position descriptions of Mr. Ellsworth and Mr. Kolb, these were offered without testimony and with a stipulation that both of these men are at a higher pay rate than any of the institution superintendents whom they supervise. (Vol 1, Tr. 98-99). Based only on the documents offered and admitted without testimony, the hearing examiner reached the findings that the positions were not comparable.

The only evidence of the duties and responsibilities of institution superintendents was offered through the testimony of Dr. Zechnich. No position descriptions of superintendents were offered. Dr. Zechnich offered Appellant's Exhibits 10A-10E to show examples of areas in which his responsibilities and authority exceeded that of superintendents. There was testimony to the effect that institution superintendents have certain statutory authority which Dr. Zechnich cannot override. This authority was not described. Dr. Zechnich testified that institution superintendents have day-to-day responsibility for major medical decisions. (Vol. 1 Tr. 122-123). He also testified that he had



supervisory responsibility with respect to every institution program. (Vol. Tr. 124-125). The evidence with respect to Dr. Zechnich's position compared to that of institution superintendents indicates that Dr. Zechnich has authority to overrule certain decisions and substitute his judgment for that of the superintendents and that he has exercised this authority in both in administrative and in medical areas. He does have disciplinary authority over the superintendents but not over an institution. He does not have power to hire superintendents. (Vol. 1, Tr. 195-196).

Dr. Zechnich has a higher organizational status than do institution superintendents. In spite of the testimony of Dr. Zechnich, the record does not persuasively indicate that his position exceeds that of an institution superintendent in scope and complexity of programs supervised, including day-to-day decisions, number of staff supervised, development of program philosophy, to cite but a few of the factors considered in the class specification for physicians (Resp. Exh. 5).

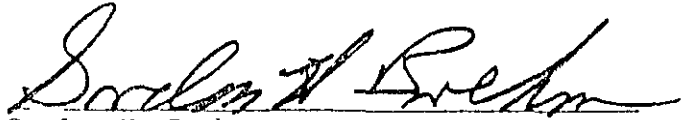
It would be only speculation to decide that Dr. Zechnich's position is comparable to that of an institution superintendent in the responsibilities involved. It is tempting to speculate in this manner because it certainly seems at the very least the positions should be equal. Nevertheless, the burden to show facts which can lead to a legal conclusion is on the appellant and he has not shown sufficient facts to lead to any particular conclusion by the greater weight of credible evidence. The problem here is not one of credibility, but rather a problem of appellant's failure to make his case on uncontroverted facts.

ORDER

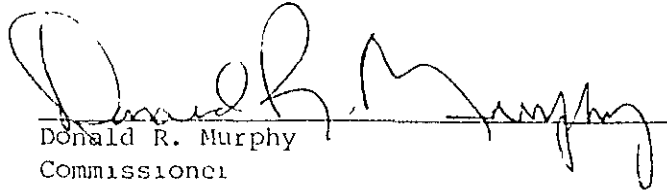
The decision of the administrator is affirmed and this appeal  
is hereby dismissed.

Dated: Sept. 29, 1980.

STATE PERSONNEL COMMISSION



Gordon H. Brehm  
Commissioner



Donald R. Murphy  
Commissioner

Dissent:

Charlotte M. Higbee  
Charlotte M. Higbee  
Chairperson

Commissioner Higbee dissents from that portion of the Decision and Order  
which deals with remedy.

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