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NICHOLAS J. NEHER,
 Appellant,
 v.
 Secretary, DEPARTMENT OF
 AGRICULTURE, TRADE AND
 CONSUMER PROTECTION, and
 Administrator, DIVISION OF
 PERSONNEL,
 Respondents.
 Case No. 80-190-PC

* * * * *

DECISION
 AND
 ORDER

NATURE OF THE CASE

This is an appeal pursuant to §230.44(1)(b), stats., of the denial of a reclassification request.

FINDINGS OF FACT

1. At all relevant times the appellant has been employed in the classified civil service in the Department of Agriculture, Trade and Consumer Protection (DOATCP) in the Plant Industry Division, Bureau of Regulatory Services, as head of the feed, fertilizer and lime programs.

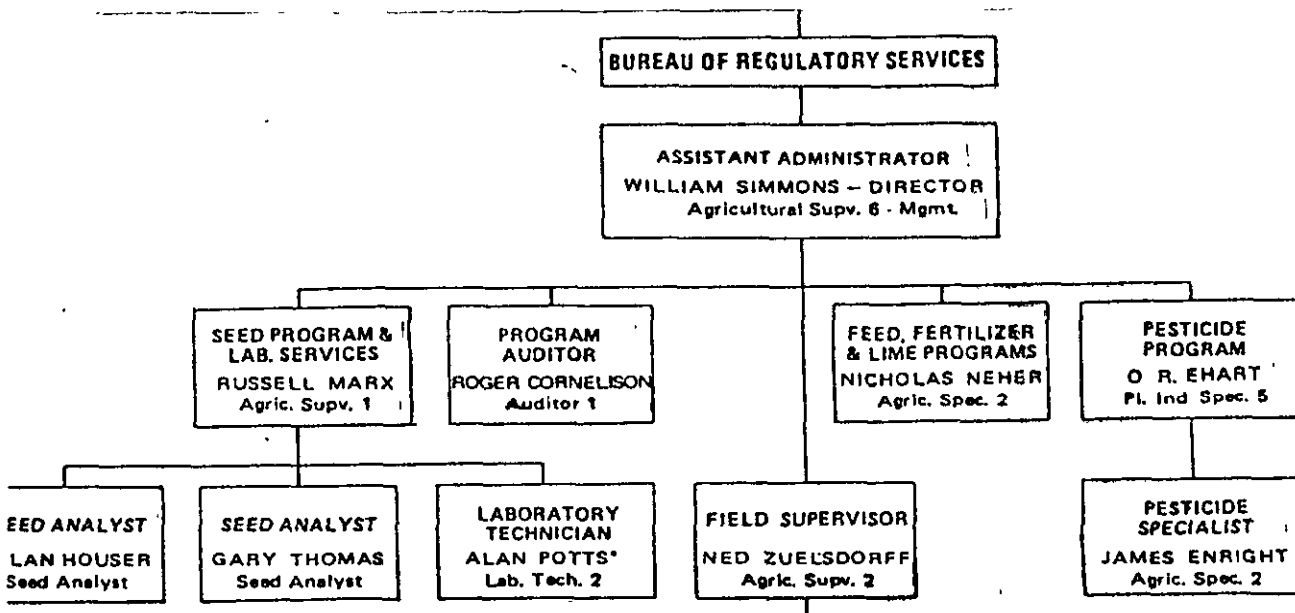
2. On August 23, 1979, the appellant requested reclassification of his position from its then current classification of Agricultural Specialist 2 (AS2) (Pay Range 15-04). This request was denied by DOATCP, acting on a delegated basis pursuant to §230.05(2)(a), stats., on July 7, 1980. See Respondent's Exhibit 3, which included in part the following explanation:

Position reclassification was not appropriate in this case. Your position was placed in the position standard for Agricultural Specialist 2. Class levels within the current Agricultural Specialist series are designed for specific agency jobs and do not provide

for movement by reclassification from one level to another within the series. Hence, it became necessary to perform a classification survey and request the State Division of Personnel to revise the position standards for Agricultural Specialists... As a result of the survey and audit analysis, your position was not reclassified, however, it was recommended for reallocation in the survey proposal.

3.. As a result of the aforesaid survey, the appellant's position was reallocated to Agricultural Specialist 3 (Pay Range 15-05) effective June 14, 1981.¹

4. The organization of the Bureau of Regulatory Services, as relevant, at the time of the reclassification denial, is as set forth in the following chart which is excerpted from appellant's Exhibit 16:



¹This case involves an appeal of the July 7, 1980, denial of the reclassification request, and therefore this decision addresses only the factual setting as it exists on and before that date, and the class specifications then extent.

5. The duties and responsibilities of appellant's position include, in summary, the implementation and coordination of the feed, fertilizer, FDA, lime, and micro-organism compliance programs, including cooperation with FDA and other federal and state personnel regarding compliance as to these programs; the annual licensing of feed, fertilizer and lime manufacturers and labelers and processing of micro-organism permits, including cooperation with federal and state personnel on product labeling and uses; the administration of the tonnage reporting program for feed fertilizer, and lime; the coordination and implementation of the FDA medicated feed contract, the FDA/WDATCP sulfa drug residue agreement, and USDA sulfa drug residue in the swine eradication programs; representation to other bodies and to the public with respect to the programs he administers, including the representation of the WDATCP on the fertilizer research council, the lime advisory committee, and the feed committee, service as liason with the American Association of Feed Control officials and the American Association of Plant Food Control Officials, and service as a representative of the Feed and Fertilizer Association for EPA surveys, and the development of press releases and TV and radio presentations; and technical responsibilities, including the development of needed statutory and rule changes, service to the bureau director on product manufacturing practices, and cooperation with University, industry, and departmental personnel with respect to new concept developments.

6. The position of head of the pesticide program, occupied by O.R. Ehart, is comparable to the appellant's position. Its duties and responsibilities include, in summary, the provision of pesticide training and information both in and out of the department, the provision of inter- and intra-agency and industry program liason, including service on various committees, attendance at workshops, etc., the development and continuing evaluation of

the statewide applicator certification program, including the development of a standard multiple-choice exam; the supervision of, and the provision of resources for, the statewide licensing and registration programs in the pesticide control area, including supervision of the licensing of the manufacture and labeling of pesticide products distributed in the state; the supervision of, and the provision of resources for, the permit programs, such as applications for use of "permit only" pesticides and experimental use permits; the coordination and supervision of the pesticide enforcement and compliance program; and the development, modification, and implementation of pesticide program objectives, by developing and recommending new and changed laws and regulations and program objectives, and assuring programs are in harmony with federal requirements.

7. Mr. Ehart acts as a lead worker to the Pesticide Specialist position occupied by James Enright, classified as Agricultural Specialist 2. The duties and responsibilities of this position include annual licensing of pesticide manufacturers and labelers, special state registrations of pesticides, enforcement of state pesticide laws, the implementation of enforcement grants and agreements, the provision of expertise in the preparation of pesticide use surveys, and the provision of general assistance to the director of the pesticide programs.

8. The class specifications for Agricultural Specialist 2, Appellant's Exhibit 13, effective February 1971, contain the following definition:

This is responsible professional work as a specialist in a number of complex investigational areas, such as solid waste, Grade A milk or H.T.S.T. Milk installations. An employe in this class is also responsible for conducting investigations on new farm or plant equipment for sanitary compliance, evaluating plans for construction or remodeling of food processing plants to assure compliance with appropriate regulations and codes and generally functions as a technical specialist in a wide variety of areas. Work is performed under general supervision of a Bureau Director.

9. The class specifications for Agricultural Specialist 4, (PR 15-06) Appellant's Exhibit 13, effective February 1971, contain the following definition:

This is highly responsible advanced professional work as director of a statewide program of major scope, such as the instate or out-of-state food promotion program, the product grading program, or poultry disease control and eradication program. Employees in this class are responsible for the complete operation of the program and function as a technical specialist in the specific area. Work is performed independently with considerable technical judgment exercised in developing and carrying out program responsibilities.

10. There has been a logical and gradual change in the duties and responsibilities of appellant's position from 1974 to the time of the instant reclassification request.

11. The appellant's position is better described by the class specifications for Agricultural Specialist 4 (PR 15-06), and most appropriately classified as that classification.

CONCLUSIONS OF LAW

1. This appeal is appropriately before the Commission pursuant to §230.44(1)(b), stats.

2. The appellant has the burden of proving by a preponderance of the credible evidence that the respondents erred in denying his reclassification request.

3. The appellant has satisfied his burden of proof.

4. The respondents erred in denying the request for reclassification of appellant's position to Agricultural Specialist 4 (PR 15-06).

OPINION

On this record, the appellant's position is better described by the Agricultural Specialist 4 class specifications:

...director of a statewide program of major scope... responsible for the complete operation of the program and... technical specialist in the specific area. Work is performed independently with considerable technical judgment exercised in developing and carrying out program responsibilities.

than by the Agricultural Specialist 2 class specifications:

...responsible professional work as a specialist in a number of complex investigational areas...

The appellant has the responsibility for the administration of the feed, fertilizer, and lime programs, which is a statewide program of major scope. His position cannot properly be compared with the pesticide specialist position of Mr. Enright, classified as AS 2, which is not responsible for the administration of a program but works under the direction of Mr. Ehart, the director of the pesticide program. In the opinion of the Commission, the classification of these two positions at the same level constitutes an anomaly which was never satisfactorily explained. Furthermore, the comparison between these positions is much more material to the issue in this case than the comparison respondents attempted to make between the appellant's position and a number of other AS 2 positions located outside the Bureau of Regulatory Services.

Mr. Neher's position is more properly compared to Mr. Ehart's. Both are responsible for the administration of "statewide program[s] of major scope."

At the hearing, the respondents attempted to differentiate these two positions. Some of these purported distinctions were not supported by the evidence. For example, the work that Mr. Ehart does with the EPA is fully paralleled by the appellant's work with the federal sector, and specifically the EPA. Also, the "public information" aspect of Mr. Ehart's work was not

shown on this record to be significantly more important than that performed by Mr. Neher.

The major areas of difference between the two positions are that the pesticide program has responsibility for pesticide certification and that it supports two positions. In the opinion of the Commission, these differences are adequately compensated for by the fact that Mr. Neher's position is responsible for three separate and complex substantive areas.

The record also adequately supports a determination that there has been a logical and gradual change in the duties and responsibilities of appellant's position as required for reclassification by §Pers 3.01(3)(a), WAC. See, e.g., Appellant's Exhibit 2.

ORDER

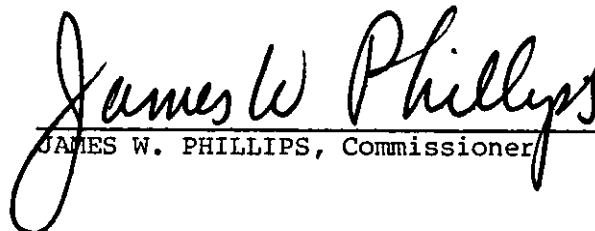
The action of the respondents denying the request for reclassification of appellant's position is rejected and this matter is remanded for action in accordance with this decision.

Dated: July 8, 1982 STATE PERSONNEL COMMISSION

AJT:jmf


DONALD R. MURPHY, Chairperson


LAURIE R. McCALLUM, Commissioner


JAMES W. PHILLIPS, Commissioner

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