

STATE OF WISCONSIN

PERSONNEL COMMISSION

* * * * *

MICHAEL KENNEDY et al,

Appellants,

v.

Administrator, DIVISION
OF PERSONNEL,

Respondent.

Case Nos. 81-180, 238, 235,
234, 226, 251, 227, 240,
207, 239, 222, 225, 241,
& 242-PC

* * * * *

OPINION
AND
ORDER

This matter is before the Commission on consideration of a proposed decision and order issued by a hearing examiner. The Commission has considered the appellants' objections to the proposed decision and order and heard the parties' oral arguments.

A central dispute in this case concerns the conflicting expert opinions as to the proper classifications of the positions in question. The proposed decision characterizes the opinions as essentially conclusory in nature, and the Commission agrees. This is supported by the transcript of the testimony of Prof. Hagglund, the primary witness on behalf of the appellants, which both parties asked the Commission to examine. See, e.g., Hagglund testimony, pp 22-23:

"... So we did both interviews of incumbents, interviews of their supervisors, we gathered as much written data including position descriptions and personnel evaluation forms where they were available as we could put our hands on. We then took the Planning Analyst series which were involved and our test consisted of in the case of Mr. Kennedy, we took the position series Planning Analyst 3 and 4 and identified what appeared to be the differential or distinguishing characteristics between these two series. We underlined them in yellow and then looked at the product of our writing and tried to determine whether or not the case could be supported by the 1968 series which were in effect at the time of the appeal were worded. Prior to accepting the draft job description which we had prepared we also took it back to the incumbents

and back to their supervisors to determine whether it was accurate so there was a two-fold review. There was an oral review at the time we took the notes and there was a second review at the time of the final job description, which was accepted. We then made a determination as to whether or not each of the three jobs that we looked at were appropriately evaluated in their present classification which was also the classification or position they held in 1980. And we concluded they were improperly evaluated at the present time. They could have never been evaluated in terms of the equity or in terms of the distinguishing characteristics in the series of Planning Analyst 4 in the case of Mr. Kennedy, Planning Analyst 5 in the case of Mr. Thiede, and Planning Analyst 7 in the case of Mr. Gunderson."

This testimony is a general description of what analysis was done and what conclusions were reached. While the witness states that the distinguishing characteristics of the various series were identified and the duties and responsibilities of the three positions actually studied were compared thereto, he does not specifically state what these identifying characteristics are or how the particular aspects of the job measured up to those characteristics. There simply can be no question but that this testimony is conclusory.

The appellants have not sustained their burden of proof, and the respondents' decision must be affirmed.

ORDER

The proposed decision and order of the hearing examiner, a copy of which is attached hereto, is adopted as the decision and order of this Commission. The decision of the administrator denying the request for reclassification of these positions is affirmed and these appeals are dismissed.

Dated: January 6, 1984

STATE PERSONNEL COMMISSION


DONALD R. MURPHY, Chairperson


LAURIE R. McCALLUM, Commissioner

AJT:ers
EFORM1


DENNIS P. MCGILLIGAN, Commissioner

Parties

John Uhler
George Gunderson
Michael Kennedy
Phillip Winkel
Donald R. Maccaulay
John Sowinski
Raymond Jackson
John Pamperin
George Novenski
Raymond Person
Charles Thiede
Donald Revello
Vernon Reding
Dale Schaul
c/o James Birnbaum
621 Exchange Building
205 Fifth Ave. S.
La Crosse, WI 54601

Howard Fuller
Secretary, DER*
P.O. Box 7855
Madison, WI 53707

*Pursuant to the provisions of 1983 Wisconsin Act 27, published on July 1, 1983, the authority previously held by the Administrator, Division of Personnel over classification matters is now held by the Secretary, Department of Employment Relations.

STATE OF WISCONSIN

PERSONNEL COMMISSION

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* * * * *

PROPOSED
DECISION
AND
ORDER

NATURE OF THE CASE

These are appeals pursuant to §230.44(1)(a), Stats., of the denial of the request for reclassification of certain positions. Following a hearing in Madison, the parties filed briefs with the hearing examiner. The appellants' reply brief was filed on May 4, 1983.

FINDINGS OF FACT

1. The parties have stipulated that the duties and responsibilities of the appellants' positions are accurately described by their respective position descriptions. The individual appellants did not testify. Accordingly, the Commission incorporates by reference, as its findings on the duties and responsibilities of the appellant's positions, their position descriptions, copies of which are attached hereto, as follows:

<u>Appellant</u>	<u>Respondent's Exhibit #</u>
Uhler	6
Gundersen	9
Kennedy	12
Winkel	14

<u>Appellant</u>	<u>Respondent's Exhibit #</u>
Macaulay	17
Sowinski	19
Jackson	22
Pamperin	25
Novenski	31
Person	34
Thiede	37
Revello	40
Schaul	42
Reding	45

2. The class specifications for the Planning Analyst (PA) series, Respondent's Exhibit 1, and the position standard for Civil Engineer - Transportation (CE), Respondent's Exhibit 3, are attached hereto and incorporated by reference as the Commission's findings as to the content of the relevant class specifications and position standards.

3. For some period of time following the adoption of the position standards in 1968, senior management of the Department of Transportation (DOT), wherein all of the appellants are employed, had been concerned about perceived inequities in the PA class specifications, which had been seen to have resulted in a systemic underclassification of DOT PA positions relative to other classification series.

4. To a large extent as a result of these concerns, the Division of Personnel (DP) within the Department of Employment Relations (DER), initiated a classification survey of this occupational area.

5. Jean Whitcomb (then Dumas) who was directly managing the survey for DP, indicated on March 6, 1980, in a meeting with DOT officials held to discuss the survey, that if there were any positions which were appropriate for reclassification on the basis of the existing class specifications, that such transactions should not be held up until the completion of the survey.

6. Subsequently, the DOT Secretary, Lowell Jackson, signed a memo dated March 10, 1980, to the Secretary of DER, requesting the reclassification of various positions, including the appellants herein, as follows:

<u>Appellant</u>	<u>Classification</u>
Kennedy	PA 3 - PA 4
Uhler	PA 3 - PA 4
Macaulay	PA 4 - PA 5
Sowinski	PA 4 - PA 5
Jackson	PA 4 (Sup) - PA 5 (Sup)
Person	PA 4 (Sup) - PA 5 (Sup)
Thiede	PA 4 (Sup) - PA 5 (Sup)
Reding	PA 4 (Sup) - PA 5 (Sup)
Gundersen	PA 6 (Mgt) - PA 7 (Mgt)
Winkel	PA 6 (Mgt) - PA 7 (Mgt)
Pamperin	PA 6 (Mgt) - PA 7 (Mgt)
Novenski	PA 6 (Mgt) - PA 7 (Mgt)
Revello	PA 6 (Mgt) - PA 7 (Mgt)
Schaul	CE 3 - Transportation - PA 4

7. Top officials of DOT, DER, and DP met on or about March 10, 1980, at which time this memo was delivered and its subject discussed. At that meeting, the heads of DER and DP conveyed the implicit impression that they sympathized with DOT's concerns about the perceived inequities with respect to the PA classifications, and "a hopeful response in terms of [DOT] being able to correct the problem through classification change rather than waiting for the survey."¹

¹. The quoted part of this finding is taken from the transcript of the deposition of Roger Schrantz, the administrator of the Division of Planning and Budget in DOT, p. 22, which was received in evidence as Appellant's Exhibit 5.

8. At the time of the aforesaid meeting, DP had not done any substantive analysis of these reclassification requests.

9. Subsequently, by memo dated June 10, 1980, from the Administrator of DP to the Secretary of DOT, Respondent's Exhibit 4, these reclassification requests were denied. This memo contained, in part, the following:

We have spent many hours of staff time studying and searching for a way of responding to these concerns. As we have become more familiar with the functions of the positions submitted for reclassification, it has become apparent that reclassification of these positions would create serious interagency classification inequities within the Planning Occupational Group. To reclassify these eighteen positions in the Division of Planning and Budget prior to the completion of a statewide survey of all positions in this Occupational Group would be likely to create severe employee morale problems for other agencies. We also concluded that approval of these Reclassification Requests would be in violation of §230.09(1), Wis. Stats., which requires that each classification include all positions which are comparable with respect to authority, responsibility and nature of work required. Therefore, the reclass requests are denied.

10. All of the reclassification denials were made by DP on a non-delegated¹ basis.

11. The individual appellants were not notified of their denial by DOT management until May, 1981. They thereafter filed timely appeals with this Commission.

12. The appellant's positions are better described by, and more properly classified within the class specifications for their classification at the time of the reclassification requests, as opposed to the requested classifications.

1. See §230.05(2)(a), Stats.

CONCLUSIONS OF LAW

1. These appeals are properly before the Commission pursuant to §230.44(1)(a), Stats.
2. The Commission's authority, on this record, extends only to the issue of whether the Administrator's decision denying the requested reclassifications was correct.
3. The appellants have the burden of proving that the aforesaid decision was incorrect.
4. The burden of proof is that "... the facts be established to a reasonable certainty by the greater weight or clear preponderance of the evidence." Reinke v. Personnel Board, 53 Wis. 2d 123, 137, 191 N.W. 2d 833 (1971)
5. None of the appellants has sustained his burden of proof.
6. The decision of the respondent denying these reclassification requests was not incorrect.

OPINION

COMMISSION JURISDICTION OVER THE ISSUES

In their posthearing briefs, the appellants argue that the Commission lacks subject matter jurisdiction over the entirety of the issues that were noticed for hearing.

While the appellants objected during prehearing proceedings to the issues proposed by the respondent, which ultimately were adopted by the Commission, they did not submit any arguments in support of their objection at that time. However, it is axiomatic that matters relating to subject matters jurisdiction may be raised at any time, see Van Laanen v. Wettengel, Wis. Pers. Bd., No. 74-17 (1/2/75); Morgan v. Knoll, Wis. Pers. Bd., No. 75-204 (5/25/76); 2 Am Jur 2d Administrative Law §726, p. 627; so

the Commission, will consider the appellants' contentions to the extent that they relate to subject matter jurisdiction.

The dispute over the proper scope of the issues can be illustrated by using one case as an example. With respect to Mr. Uhler (No. 81-238-PC), the respondent proposed the following statement of issue:

Whether or not the decision of the Administrator denying reclassification of the appellant's position from Planning Analyst 3 (PR01-14) to Planning Analyst 4 (PR01-15) was correct. If not, should appellant's position have been reclassified to Planning Analyst 4 (PR01-15) or Research Analyst 4 (PR08-04), Research Analyst 5 (PR08-05) or Research Analyst 6 (PR08-06).

The appellants' argument is that he requested reclassification from PA 3 to PA 4, that this was denied by the respondent with no mention of reclassification to the Research Analyst (RA) series, and that therefore the "personnel decision of the administrator" which is appealable to the Commission pursuant to §230.44(1)(a), Stats., did not include anything related to the RA classification. The appellants also argue against consideration of any levels of the Planning Analyst series below that of the classification of the positions in question at the time of the requests for reclassification.

The respondent's argument on this question is set forth in his post-hearing brief as follows:

Section 230.44(4)(c), Wis. Stats., states that the Commission, after hearing an appeal, shall either affirm, modify, or reject the action which is the subject of the appeal.

By providing the Commission with the power to modify, as well as to affirm or reject, the legislature is clearly expressing the intent that the Commission, by applying its own expertise, may issue decisions which result in the correct personnel action being taken.

By giving the Commission the authority to "modify" actions, the legislature clearly gave the Commission authority in addition to that provided by the terminology "affirm" or "reject," See §16.05(1)(f), Stats. (1975). The word "modify" has been defined as follows:

1) to change or alter; esp., to change slightly or partially in character, form, etc. 2) to limit or reduce slightly; moderate (to modify a penalty)....

Webster's New World Dictionary (second College Edition), 1972.

The definition set forth in Black's Law Dictionary (Revised Fourth Edition), 1968, is somewhat similar:

To alter; to change in incidental or subordinate features; enlarge, extend; limit, reduce.

It would appear from the foregoing that there should be a distinction between the "modification" of a transaction by the Commission, and the substitution by the Commission of a substantially unrelated transaction for the transaction appealed. Determining whether a particular remedy goes beyond the allowable modification can present difficulties.

On one end of the spectrum lie actions by the Commission which involve relatively incremental changes in transactions, for example, a reduction in the degree of discipline imposed with respect to an appeal pursuant to §230.44(1)(c), Stats., see, e.g., Holt v. DOT, Wis. Pers. Commn. No. 79-86-PC (11/8/79); Barden v. UW, 82-237-PC (6/9/83); or which may alter the effective date of a transaction, see, e.g., Kimball v. DP, 79-236-PC (4/23/81).

On the other hand, in Werth v. DP, 81-130-PC (8/5/81), the Commission rejected the statement of issue proposed by the appellant:

"What is the proper civil service classification for Karen Werth?"

The Commission decision contained the following comment:

This is an appeal under §230.44(1)(a), Stats., and therefore is an appeal of the decision of the administrator in this case to reallocate the position to a particular classification. The Commission does not have the authority to enter into an independent inquiry as to the proper classification of the position, as is intimated by appellant's proposed issue.

This is not to suggest that in no case involving an appeal of a classification matter could the Commission properly consider classifications which were not explicitly addressed by the administrator's decision. For example, in a particular case, the administrator's decision as to the reallocation of a position following a survey may well be considered an implicit rejection of various related classifications. Another example is a denial of a request for reclassification to a particular classification and level within the series, which in some cases may be considered an implicit denial of a higher level within the series.

In the instant case, the administrator/respondent denied the reclassification requests. There is nothing in these decisions to the effect that any of the positions should be classified as Research Analysts, nor at lower level Planning Analyst classifications than the current level of the positions, in the cases of Winkel, Pamperin, Novenski, Revello, and Schaul. Nor can it be said, on this record, that such determinations were implicit in the denials of the reclassifications. Therefore, the Commission lacks the authority to consider any issues as to whether certain of appellant's positions should have been reclassified to the Research Analyst series or to levels in the Planning Analyst series below the actual classifications of those positions at the time of the reclassification requests.

The Commission also feels, in light of some of the arguments that have been made in this case, that it should point out that in reviewing these reclassification denials, it is limited to consideration of the existing class specifications and position standards. It lacks the authority to require that a position be reclassified or an employe be regraded to a higher level in the PA series, on the theory that this would compensate for

a perceived problem with the class specifications for the series that results in positions being systematically underpaid in comparison to positions in different series. The revision of existing class specifications and position standards, and the reassignment of classification to new pay ranges, is the function of the Administrator, Division of Personnel¹, with the approval of the personnel board, see §230.09(2)(a)(b), Stats. This Commission, in deciding appeals pursuant to §230.44(1)(a) and (b), Stats., of classification decisions, must apply the existing class specifications and position standards as they have been approved by the personnel board. See, WFT v. DP, Wis. Pers. Commn. 79-306-PC (4/2/82); Shepard v. DP, Wis. Pers. Commn. No. 80-234, 237, 239-PC (6/3/81); Zhe v. DP, Wis. Pers. Commn. No. 80-285, 286, 292, 296-PC (11/19/81), affirmed, Zhe v. Personnel Commission, Dane Co. Circuit Court, No. 81 CV 6492 (11/2/82).

EXPERT WITNESSES

Several witnesses with professional backgrounds in personnel management testified concerning their opinions regarding the correct classifications of these positions. Testifying that the positions were properly classified at the requested level were Victor Thompson, a Personnel Specialist 3 within the DOT Bureau of Personnel Management, and George Hagglund, Professor of Labor Education and Director of the School for Workers, UW-Extension. Testifying that the positions were properly

¹. This is now the responsibility of the Secretary of DER; see 1983 Wisconsin Act 27, §1609 b, dm

classified in their current classifications were Jean Whitcomb and William Calcese, Personnel Specialists with DP, and John Roslak, Director of the Bureau of Personnel Management in DOT.

The appellants argue in their brief that much less weight should be accorded the testimony of Calcese and Whitcomb than that of Professor Hagglund, because of the latter's superior credentials:

The State offered the testimony of the two persons who were given the responsibility to analyze the appropriateness of the reclassification requests, Jean Whitcomb and Bill Calcese. Neither of them would ever be qualified as an expert before any trial court, state or federal. Both of them lack the academic preparation necessary to be qualified as an expert, both have absolutely no professional recognition, no standing in the community as a publisher of learned treatises or any of the other indices of recognition as an expert. The uncontroverted testimony is that they receive on-the-job training and they learn from each other.

Professor Hagglund has a Bachelor's degree in Industrial Psychology and Master's and Doctor's degrees in Industrial Relations. He is a Professor of Labor Education, Chairman of the Department of Labor Education and Director of the School for Workers at the UW-Extension. His extensive academic experience has included major responsibilities in the area of job classification and classification systems. He has published in this area, and has had other experience working with classification matters.

Mr. Calcese has a Master's degree in Public Administration and has had approximately four years experience as a personnel specialist for the state, working extensively in the classification field.

Ms. Whitcomb has Bachelor's degrees in economics and math and has had approximately 10 years experience as an employe in the state personnel system, including extensive work in the classification field.

It should be noted at the outset that the Commission is not "...bound by common law or statutory rules of evidence," §227.08(1) Stats. However,

it is certainly not the case, even in judicial proceedings, that the only way that a witness can be qualified as an expert is by having an academic background. See 31 Am Jur 2d Expert and Opinion Evidence §27:

Generally speaking, any person who by study or experience has acquired particular knowledge or practical skill to any business or employment requiring peculiar knowledge or experience may be allowed to give in evidence his opinion upon matters of technical knowledge and skill relating to that business or employment. There is no precise requirement as to the mode in which such skill or experience shall have been acquired. Knowledge acquired by doing is no less valuable than that acquired by study.

See also, 907.02, Stats:

If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise.

While Professor Hagglund certainly has impressive credentials as an expert in the area of classification, the respondent's witnesses have had a number of years of experience working on a daily basis with the state classification system. The Commission is not prepared to conclude, as is intimated by the appellants, that the qualifications of the respondent's expert witnesses are distinctly overshadowed by those of Professor Hagglund.

With respect to the expert opinion testimony itself, it is characterized by the common feature of being essentially conclusory in nature.

For example, Professor Hagglund specifically analyzed three of the appellants' positions. After having described the process of analysis he used, he testified as follows:

... We then made a determination as to whether or not each of the three jobs that we looked at were appropriately evaluated in their present classification which was also the classification or position they held in 1980, and we concluded they were improperly evaluated at the present time. They could have never been

evaluated in terms of the distinguishing characteristics in the series of Planning Analyst 4 in the case of Mr. Kennedy, Planning Analyst 5 in the case of Mr. Thiede, and Planning Analyst 7 in the case of Mr. Gundersen. Hagglund Transcript, p. 24.

Both Mr. Calcese and Ms. Whitcomb testified that they reviewed the positions and the relevant class specifications and determined that the requested reclassifications were not warranted.

In no case did any of the experts explain how the specific duties and responsibilities of a particular position corresponded to the elements of a particular classification as set forth in the class specifications, nor testify with respect to detailed comparisons between a position and another position at the requested classification level. There is no absolute requirement that an expert provide the specifics of the analysis that supports his or her conclusion. However, where there are conflicting expert opinions, and no such underlying information, the Commission lacks an important tool for evaluating and weighing these conflicting opinions.

The appellants have the burden of proof as to all matters in dispute. This means, pursuant to Reinke v. Personnel Board, 53 Wis. 2d 123, 137, 191 N.W. 2d 833 (1971), that they must establish the facts "... to a reasonable certainty by the greater weight or clear preponderance of the evidence." To the extent that their case relies on expert opinion evidence, it may be said that their conclusory opinion evidence is counterweighed by the respondent's contrary conclusory expert opinion.

A corollary question related to the matter of the expert witnesses is the question of the admissibility of Professor Hagglund's written report, which was marked as Appellants' Exhibit 44. Since the parties argued at considerable length on this matter, the Commission will address it in this opinion.

This report is 91 pages in length. It consists of a 10 page narrative which describes Professor Hagglund's methodology, findings and conclusions, and contains extensive appendices which include copies of the PA position standards, job descriptions of certain of the appellants' positions which were prepared as part of his study, position descriptions of certain positions in other series to which he made comparisons, charts setting forth the point or factor evaluation analysis performed, and a copy of "The National Position Evaluation Plan - Definitions of Factors and Respective Degrees used in Evaluating Supervisory, Professional, Sales and Administrative Positions" published by NMTA Associates.

The respondent's objection to this document was sustained. It was based on the ground that it had not been exchanged before the hearing, pursuant to the Commission rules, specifically, §PC 2.01, Wis. Adm. Code:

... With the exception of rebuttal matter, names of witnesses and copies of exhibits must be submitted more than 2 working days before the commencement of the hearing or will be subject to exclusion, unless good cause for the failure to comply is shown....

The hearing in this matter commenced on August 10, 1982. Professor Hagglund took the stand on September 9th. A copy of the report, which bore the date of September 3, 1982, was not provided respondent's counsel until September 9th at the hearing. The hearing dates had been scheduled at a prehearing conference held April 5, 1982.

At the hearing, counsel for the appellants argued that the document was not subject to the mandatory exchange rule since it was not really an exhibit:

... I am not marking it as an exhibit... It is going to be used as a tool to explain his process that he followed and the outline he followed. It is no different than putting up a chart here where he could get [up] with a magic marker and show you exactly what he did. Hagglund Transcript, p. 10.

This 91 page document consists not only of the 10 pages of narrative outlining the study that was conducted, but also voluminous charts and other documentary evidence, a great deal of which previously had not been offered into evidence. When there was discussion at the hearing of severing the first 10 pages, and only making reference to that part of it, Professor Hagglund himself protested: "[it] gets difficult in terms of trying to form a picture of what we did without at least referring to these documents." Hagglund transcript, p. 14. The Commission cannot accept the notion that this document should not have been handled as an exhibit. Certainly, any approach which would have consisted of getting the bulk of the document into the record by having the witness read it or refer to it in detail as he testified, without offering it in evidence, would have been effectively to have circumvented the requirements of §PC 2.01, Wis. Adm. Code.

It also was argued that there was good cause for failure of compliance with the exchange rule because the report had not been finally completed and given to appellants' counsel himself until shortly before the commencement of the hearing on September 9, 1982. However, in the Commission's view, a party cannot be excused from compliance with the rule simply because of the amount of time a witness takes to prepare an exhibit. The parties were aware on April 5, 1982, that the hearing was scheduled to commence on August 9, 1982. The prehearing conference report explicitly reminded the parties of the need to exchange exhibits in advance of the hearing pursuant to §PC 2.01, Wis. Adm. Code. The parties had an obligation to have prepared their cases, and to have worked with their witnesses, in a manner that would have permitted exhibits to have been exchanged more than two working days before the commencement of the hearing. There was no showing of any reason why this was not done.

Therefore, the Commission concludes that the objection to the receipt of this document in evidence was properly sustained.

A second procedural question relating to the expert witnesses involved the appellants' motion, made at the first day of hearing for sanctions on the ground that the respondent's expert witnesses, when deposed, gave evasive or incomplete answers.

Their deposition testimony had been to the effect that the specific detailed analysis and comparisons which occurred at the time of the reclassification denials had not been reduced to writing and could not be recalled without essentially redoing the analysis at that time. The matter was not further pursued then. The witnesses apparently could have been asked at that time, but were not, to have gone through the specific analysis that would have supported their conclusions, although this would have taken a substantial period of time. See Whitcomb Deposition dated February 12, 1982, p. 69. There never was any showing or basis for a conclusion, that their answers were incomplete or evasive. In fact, as discussed above, a specific, detailed analysis of each appellant's position never was offered by the respondent's witnesses. On this record, the denial of sanctions was appropriate.

RESPONDENT'S CONDUCT AS

"ADMISSION AGAINST INTEREST"

The appellants argue in their brief as follows:

It is uncontroverted that the reclassification requests of the appellants were first initiated by the Department of Transportation and not the appellants themselves. The reclassification procedures were initiated by the Department of Transportation at the specific suggestion and request of the Department of Employment Relations. Indeed, it is inconceivable that the administrators of the Department of Employment Relations would suggest a procedure of reclassification to alleviate an admitted and conceded problem if in fact they had any doubts professionally that the reclassification requests were not appropriate or would not be approved.

Therefore, the conduct of the employes and administrators of the Department of Employment Relations constitutes significant admissions against interest which support the conclusions that the appellants should have been reclassified consistent with their requests.

In the opinion of the Commission, the appellants' conclusion simply does not follow from the premise. It is entirely conceivable that the respondent's position on submission of the reclassification requests was based simply on the facts that the employes had a right to request such review and that it might have resulted in the resolution of the problem.

INDIVIDUAL CASES

Gundersen and Winkel

The classifications properly in issue for these cases are PA 6 (Mgmt) and PA 7 (Mgmt).

The Planning Analyst class specifications reflect substantial emphasis on the organizational context of positions, following a pattern, as illustrated by the following excerpts from the definitions found in the class specifications, Respondent's Exhibit 1 (emphasis added):

PA 5
"chief of a major agency
planning program"

PA 6
"director of a large
agency planning program"

PA 7
"director of a major
agency planning program"

PA 8
"administrator of a large
agency planning program"

PA 9
"administrator of a major
agency planning program"

The usage and placement of the underscored terms conflicts with any suggestion that they were utilized at random. Furthermore, these terms have specific meanings under the Wisconsin Statutes. See §15.02(3)(c), Stats.:

For their internal structure, all departments shall adhere to the following standard terms ...:

1. The principal subunit of the department is the 'division'. Each division shall be headed by an 'administrator':
2. The principal subunit of the division is the 'bureau'. Each bureau shall be headed by a 'director'.
3. If further subdivisions is necessary, bureaus may be divided into subunits which shall be known as 'sections' and which shall be headed by 'chiefs' and sections may be divided into subunits which shall be known as 'units' and headed by 'supervisors'.

These statutory definitions are consistent with the pattern in which these terms are used in the class specifications, above.

The appellants argue in their reply briefs that the "Kellett reorganization," reflected in §15.02(3)(c), Stats., predated the creation of the current DOT, which is a "super agency" that was not envisioned at the time of the Kellett reorganization plan. They contend that therefore it is unnecessary or inappropriate "... to use the definitions of the Kellitt [sic] reorganization plan which applied to the structure of the Departments and State Government prior to the creation of super agencies...."

Laying to one side the question of the significance of the description of DOT as a "super agency," this argument is gainsaid by the fact that the Kellett reorganization was more than a one-time plan; it was adopted by the legislature and incorporated into the statutes, where it remains today as an ongoing mandate on agency organizational structure. If the legislature felt that these precepts had been outdated by the development of DOT, or that agency organizational structure should be varied according to agency size, or for any other reason, it could have amended the law. Similarly, the terminology remains in the class specifications.

Since the PA 7 specifications provide that "This is highly responsible administrative and planning work usually as director of a major agency planning program;" (emphasis supplied), it would follow that a position at this level usually would be the director of a bureau.

Both of the positions in question are section chiefs and report to a bureau director, and at least on that score would not appear to be appropriately classified at the PA 7 level.

The Commission certainly would consider an argument that the organizational status of these positions could be offset by other factors. However, as previously discussed, the testimony of the appellants' experts was essentially conclusory in nature. It did not specifically address this question. Nor, with the exception of the argument discussed above, that the effects of the Kellett reorganization are irrelevant, was this question specifically discussed in the briefs.

The appellants' initial brief, after setting forth the elements of the PA 6 and PA 7 class specifications, contains the following:

"Summary

The characteristics of the PA 6 and PA 7 levels are essentially the same, with only subtle differences in scope. The primary difference is that statements of the PA 7 rank intended to imply a broader responsibility and role in the administration of the agency's policy planning activities.

Therefore, an examination of the uncontroverted factual record demonstrates that appellants Gundersen, Winkel, Pamperim [sic], Novenski and Revello all perform at the PA 7 level."

p. 31.

The appellants' reply brief contains an attack on the validity of the position comparisons used by the respondent. However, even if those comparisons were invalid, the appellants did not present in evidence any position descriptions of positions at the PA 7 level which arguably were comparable to the appellants' positions.

The appellants also point out that the duties and responsibilities of Mr. Winkel's position have increased from those of the prior incumbent. However, change alone cannot justify reclassification; the changed duties and responsibilities must meet the criteria for reclassification to PA 7.

As was noted above, the appellants have the burden of proving that the respondent's decision denying the request for reclassification of their position was incorrect. They must establish the facts necessary to that end "... to a reasonable certainty by the greater weight or clear preponderance of the evidence." Reinke v. Personnel Board, 53 Wis. 2d 123, 137, 191 N.W. 2d 833 (1971). The major element of the case of these appellants consisted of the essentially conclusory opinions of their experts, which were counterweighed by the essentially conclusory opinions of the respondent's experts. Based on the evidence of record in this matter, the appellants simply have not satisfied their burden.

PAMPERIN, NOVENSKI, and REVELLO

The classifications properly in issue with respect to these appellants are PA 6 (Mgmt) or PA 7 (Mgmt). These positions are section chiefs which report to bureau directors. As set forth above, with respect to the Gundersen and Winkel positions, although these positions are not at the level of bureau directors, the Commission would at least consider arguments that there were other compensating factors that would justify the PA 7

classifications. Again, the appellants have not addressed this point. The appellants' reply brief addresses solely the RA issue. Their main brief's arguments are essentially conclusory, and were quoted above under Gundersen and Winkel. These appellants also failed to satisfy their burden of proof.

THIEDE, MACAULEY, SOWINSKI, JACKSON, REDDING and PERSON

The classifications properly at issue in these cases are PA 4 and PA 5. These positions supervise units, whereas the PA 5 definition refers to "work comparable to that of a chief" of a section. Again, the appellants have not suggested specifically how these positions compare to a section chief position. Again, the appellants' case consists substantially of conclusory opinions, and they have not satisfied their burden of proof.

SCHAUL

The classifications here properly in issue are Civil Engineer 3 - Transportation (CE3) and PA 4. The major goals of this non-supervisory position are summarized in the position description, Respondent's Exhibit 42, as follows:

To act as project leader in 1) the development of comprehensive transportation plans for large urban areas, in cooperation with local planning officials. 2) research and development of new or improved planning methodologies. To participate as team leader or team member on special projects.

The respondent's brief includes the following comments on this position:

The Schaul position description, Respondent Exhibit #42, describes a non-supervisory position which performs highly technical forecasting work. This position does not do planning work since it is limited to the development of travel forecasts and other quantitative or engineering data to be used in planning.

The PA 4 class specifications contain the following definition:

This is lead professional or specialist level professional planning work requiring skills from a variety of educational backgrounds which may be applied in one of three specific programs....

Agency Planner

Employees in this class perform work characterized by responsibility for specialized planning studies of a policy nature. The employe independently carries out major studies and often supervises several lower level agency planners in the conduct of the study. (emphasis supplied)

On this record, the only available information concerning the duties and responsibilities of this position consists of the position description itself. In order for the appellant to prevail, he must satisfy his burden of proving that his position meets the PA 4 definition and is more properly classified in that classification.

The Commission must conclude that the appellant has failed to satisfy his burden. The position description demonstrates more emphasis on collecting and analyzing data for use by local planning officials, rather than on "... responsibility for specialized planning studies of a policy nature ... independently carries out major studies...." This is illustrated by the following excerpts from the appellant's position description, Respondent's Exhibit 42:

... Activities include directing and coordinating studies to supplement available data, analyzing the data and study results, and working with the local planning officials in the development of transportation system improvements ... In the long range element, coordinates the selection and collection of transportation system travel patterns data and related socio-economic data; advises local agencies on transportation goals and objectives; and recommends alternative solutions for transportation problems to the local officials and planning agency.

KENNEDY and UHLER

The issue as to these appeals involves the PA 3 and PA 4 classifications.

In order for these positions to be properly classified at the PA 4 level, they must satisfy the PA 4 definition:

This is lead professional or specialist level professional planning work requiring skills from a variety of educational backgrounds....

Agency Planner

Employees in this class perform work characterized by responsibility for specialized planning studies of a policy nature. The employe independently carries out major studies and often supervises several lower level agency planners in the conduct of the study. (emphasis supplied)

The positions must independently carry out major studies. This point is not specifically addressed by the appellants in their brief or in their experts' testimony. The description of these positions that is in the records is not of a nature that would support a conclusion that these are major studies. Whereas the appellants' comparison of the two classifications in their initial brief at p. 27 recognizes that there are distinctions in relative degree between the two levels:

... The PA 4 rank specifies a slightly higher level of responsibilities and duties. The PA 4 rank requires one more year of relevant experience and emphasizes a role of leadership in conducting planning work, and more general responsibility for a broader scope of planning activities of a policy nature...,

nowhere is this kind of comparison specifically addressed. The brief simply goes on to state:

Appellants Uhler, Schaul and Kennedy clearly perform at the PA 4 level as the uncontroverted record reveals. (see Exhibits Appellants' 25 and Appellants' _____) [sic].

The reclassification requests, Appellants' Exhibits 25 (Uhler), and 27 (Kennedy), include a list of "criteria" which are said to demonstrate that the projects are "complex" and "specialized; and a list of items in support of the contentions that the appellants have considerable impact on the projects for which they are responsible. However, it must be noted that the PA 3 definition refers to the conduct of "highly complex planning studies," (emphasis added), and that the extent of an employee's impact on a project is not indicative of whether the project is "major."

This is not to suggest that comparisons of the appellant's positions to other positions classified at the PA 4 level is the only way to show that the work of these jobs is at that level. However, in a series that concededly rests on somewhat subtle relative distinctions between levels, such comparisons would appear to be very useful tools. In any event, on the record before the Commission, these appellants have not sustained their burden of proving that the decision denying reclassification of their positions to PA 4 was incorrect.

PA3-PA4 RECLASSIFICATION DELEGATION

One additional facet of these cases is that the appellant argues that reclassification from PA 3 to PA 4 was delegated -- i.e., that DOT had been delegated by the administrator of the Division of Personnel, pursuant to §230.05(2)(a), Stats., the authority to have finally decided reclassifications at this level within the PA series. Therefore, it is argued that the matter should have ended with the approval of these reclassifications when DOT signed off on the reclassification requests.

The appellants assert that Mr. Roslak, the DOT Director of Personnel Management, testified that these were delegated transactions. However, a review of the tape of Mr. Roslak's testimony could not locate such testimony.

The appellants also point to the fact that the original reclassification requests, contained in Appellants' Exhibit 25 and 27, had check marks in the boxes for "Delegated Action," as opposed to the boxes marked "Nondelegated action."

These documents were signed by Mr. Roslak in the boxes marked "Signature of Appointing Authority" on March 13, 1980. However, immediately to the left of his signature is printed: "If nondelegated action, do not complete items below." It is noteworthy that none of the "items below" were filled in. Presumably, if Mr. Roslak had felt that these were delegated transactions, he would have filled in these items, and would have checked the boxes marked "approved as proposed," none of which he did.

Furthermore, it is undisputed that DOT forwarded these reclassification requests to the Division of Personnel for consideration there, which is inconsistent with the notion that these were delegated transactions.

In conclusion, the only evidence on this record that these were delegated transactions is the fact that the boxes marked "delegated" rather than the boxes marked "nondelegated" were checked by DOT. This is most likely consistent with either of two possibilities -- that it was a delegated transaction or that it was nondelegated and the "delegated" box was checked erroneously. In light of the substantial body of countervailing evidence, the Commission cannot find that these were delegated transactions.

ORDER

The decision of the Administrator denying the request for reclassification of these positions is affirmed and these appeals are dismissed.

Dated: _____, 1983 STATE PERSONNEL COMMISSION

DONALD R. MURPHY, Chairperson

AJT:jmf
JPDO5

LAURIE R. McCALLUM, Commissioner

DENNIS P. MCGILLIGAN, Commissioner

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*Pursuant to the provisions of 1983 Wisconsin Act 27, published on July 1, 1983, the authority previously held by the Administrator, Division of Personnel over classification matters is now held by the Secretary, Department of Employment Relations.