

STATE OF WISCONSIN

PERSONNEL COMMISSION

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 *
 PETER E. VRANES, *
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 Appellant, *
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 v. *
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 Secretary, DEPARTMENT OF *
 EMPLOYMENT RELATIONS, *
 *
 ↔ Respondent. *
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 Case No. 83-0122-PC *
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DECISION
 AND
 ORDER

NATURE OF THE CASE

This is an appeal, pursuant to §230.44(1)(b), Stats., of a reallocation decision.

A hearing in the matter was held before Commissioner Dennis P. McGiligan on December 19 and 28, 1983 in the Commission's office in Madison, Wisconsin. The parties completed their briefing schedule on March 13, 1984.

FINDINGS OF FACT

1. The appellant, Peter E. Vranes, began working for the Public Service Commission (PSC) on December 14, 1964 as a Statistician 1. Appellant was reallocated on June 1, 1965 to Research Analyst 1 and was reclassified on August 10, 1969 to Research Analyst 2. Effective June 14, 1981 the appellant was reclassified to Research Analyst 3.

2. As a result of a 1983 Research and Planning Survey, appellant's position was reallocated to Research Technician 3 effective June 12, 1983.

3. On July 15, 1983, appellant filed a timely appeal of such reallocation with the Commission.

4. The following is a summary of the primary duties and responsibilities of appellant's position:

a. Most of appellant's work involves the operation and maintenance of the rate order reporting system, electric base rate and water base rate systems, production cost and purchased gas adjustment systems, municipal class C section of the annual report edit and storage system and degree day reporting system.

b. A small proportion of his duties includes performance of special projects, answering inquiries and professional improvement.

c. In performing his duties, the appellant mainly collects and extracts data from various sources such as the PSC rate orders; reviews the data for accuracy and completeness; and puts it into the proper form for use in regular reports and/or files. These reports may be used by the PSC, the National Association of Regulatory Utility Commissioners (NARUC), other agencies and associations outside state government, utilities and the public.

d. In carrying out his responsibilities appellant must have a working knowledge of the use of statistical techniques, i.e., ratios, measures of central tendency and measures of dispersion. However, appellant does not use professional research methodologies such as regression analysis.

5. The state position standard for Research Analyst is, in relevant part, as follows:

B. Inclusions

- 1) The Research Analyst series encompasses positions which have the primary purpose of conducting research, performing statistical analysis, or developing and maintaining statistical information reporting systems. Positions must be professional, as defined in §111.81(11), Stats., and typically require a professional knowledge of statistical or other quantitative research or analysis methods, or of the specific research methodology of a professional discipline such as history, demography, or psychology. Positions in this series provide information, interpretations, and

analysis to program planners, evaluators, administrators, or the public, with the common feature of enabling these users to know or forecast key features of the environment of their activities;

* * *

C. Exclusions

Excluded from classes described in this position standard are:

- 1) Positions which do not meet the criteria set forth in §111.81(11) for identification as professional;
- 2) Positions in which research or analysis activities are subsidiary or incidental to carrying out other responsibilities such as provisions of direct services to clients or patients, the administration of a program of direct or administrative services, enforcement of regulations or assurance compliance, development of plans for programs or facilities, or the evaluation and recommendation of action on programs, proposals, or policies;
- 3) Positions with the primary purpose of performing computer programming and systems analysis, fiscal analysis, budget analysis, or similar analytic functions identified in other classification series;
- 4) Positions performing applied or theoretical research in the natural or medical sciences, or which are identified in other classification series which are based on the specific discipline in which knowledge is required (e.g., economists);
- 5) All positions which are better defined in other classes or class series.

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III. Class Definitions and Point Ranges

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C. RESEARCH ANALYST 3

(PR8-04)

This is an advanced entry, developmental, or full performance objective level, depending on the duties and responsibilities assigned and the manner in which the position is structured.

This level may be used as an advanced entry or developmental level for positions which have point values of 245 points or more, but which are structured to allow the incumbent to develop the proficiency needed to perform at the higher level. Such positions involve assignments of greater scope, impact, or complexity than typically found at lower levels, and function under limited supervision.

This level is the full performance objective level for positions which have point values between 170 and 240 points. Such positions typically function under general supervision.

6. The following is the state position standard for Research Technician:

B. Inclusions

This position standard encompasses positions with the primary purpose of collecting, compiling, and manipulating statistical information, operating statistical information reporting systems or performing other research support work which is considered "technical," rather than clerical or professional in nature. In most instances, these positions will be located in specialized research or statistical information reporting units, and will be providing technical support to professional research staff or to the users of the data. In performing this work, these positions typically apply knowledge of basic statistical concepts and techniques, package computer programs and basic data processing concepts, and/or established guidelines or procedures for the collection, analysis, or reporting of specialized quantitative information, as well as skill in performing statistical or mathematical calculations.

C. Exclusions

Specifically excluded from this series are positions which:

- 1) are professional in nature, as defined in §111.81(11), Stats.;
- 2) provide general administrative or clerical support in research or statistical information reporting units;
- 3) perform data collection/analysis/reporting as a subordinate part of fiscal control, application processing, grant administration, compliance monitoring, or similar functions;
- 4) are more appropriately classified in other technical series such as Management Information Technician, Peripheral Equipment Operator, Computer Operator, Psychological Services Technician, or Engineering Technician;
- 5) are better identified by other classes or class series.

* * *

II. Class Definitions

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C. RESEARCH TECHNICIAN 3

(PR6-10)

This is either lead, or paraprofessional, technical research support work.

* * *

As the full performance objective level for paraprofessional positions, this level encompasses positions which spend the majority of time in functions such as:

- operating a small, well-established statistical information reporting system, or a well-defined part of a larger system, including planning activities needed to collect and compile data, modifying procedures, working with data processing unit staff to further automate the system, and interpreting results.
- producing an ongoing series of reports or publications, including compiling data, developing the form or presentation, utilizing package programs to manipulate data and develop tables or charts, and writing narratives to describe the results.
- performing the most advanced technical support work, typically involving adapting and applying a variety of package computer program or utility routines to perform complex data manipulations (e.g., setting up data files, manipulating data to develop special reports, perform a variety of statistical analyses as requested by professional staff).

Positions of this type may lead the work of other staff on an ad hoc basis to complete specific projects.

The work is more complex than that identified at the Research Technician 2 level due to the more extensive responsibility for work planning and coordination, the greater intricacy of procedures, methods or problems, and/or the greater degree to which the examination and evaluation of data approaches professional-level analysis.

Positions at this level require working knowledge of statistical or data processing concepts and procedures, but, in addition, require a greater degree of knowledge than positions at the Research Technician 2 level, in the form of: an extensive or expert knowledge of the guidelines or procedures governing the collection and reporting of a particular data series, a greater degree of subject-matter knowledge, or considerable knowledge of package or utility program systems.

Work is performed according to specific guidelines, but the number and variety of guidelines and work situations require the employe to use judgment in locating and selecting the most appropriate procedure or guideline to apply and making minor deviations to adapt guidelines to specific cases. Situations where existing guidelines can't be applied or major deviations are necessary are referred to supervisor or authorizing agency. Work is performed under general supervision.

7. From a classification standpoint, the appellant's position is not at a higher level than the following three positions, all of which are classified as Research Technician 3:

a. The position occupied by Jean A. Darnell, and like the appellant's position, located in the Accounts & Finance Division of the Public Service Commission. This position is responsible for the operation and maintenance of the Investor-Owned and the Class AB Municipally-Owned Sections of the Annual Report Edit, Storage and Retrieval System, the Electric Bill Comparison System, the Gas Bill Comparison System, the Composite Depreciation and Salvage Study System and for part of the Remainder Assessment Revenue System. The position is also responsible for preparing bulletins which are published and distributed internally, to the media, affected utilities, Legislative Reference Bureau, and depository libraries, and generally cover the financial and operating characteristics of individual utilities and of the aggregate activity of the utility industries in Wisconsin. The position is further responsible for performing special studies and for doing research on topics of special interest as assigned by the bureau director. The work of this position is further summarized in the position description as follows:

"... contributes substantially to the division's auditing function by machine-checking utility annual reports to make certain they are complete and that schedules total correctly. It contributes by calculating the adjusted revenue figures from which the remainder assessment is derived. The remainder assessment provides the bulk of the funding for the commission's activities. The work product also consists of summarized annual report data and several published bulletins which allow the commission staff to respond in a timely manner to requests for information regarding utility rates, revenues and expenses. In addition, the product of its composite depreciation and salvage studies contributes to the auditing staff's ability to monitor and certify depreciation rates."

b. The position occupied by Gary A. Umhoefer in the Department of Health and Social Services, Division of Community Services, Office of Management Information (Economic Assistance Research & Statistics Section). As set forth in Umhoefer's position description, the major goals of this position are as follows:

"Under general supervision of the Chief, E.A. Research and Statistics Section. This position operates all or part of several statistical information reporting systems and provides technical support to selected special projects including work planning, coordination, control, and the performance of a comprehensive range of technical support functions for the collection and preparation of a variety of records for data processing; compilation and interpretation of data; and preparation of reports for federal, state, and county use. This position applies a wide variety of package computer programs and utility routines to perform manipulations of data gathered from 72 county departments of social services and 11 tribal agencies involving specialized program knowledge of a variety of income maintenance programs: Aid to Families of Dependent Children, Food Stamps, and Medicaid."

c. The position occupied by Beth Dorschner and located in the same section as Umhoefer's noted above. This position carries all of the aforesaid responsibilities attached to Umhoefer's position. In addition, it "carries major responsibility from [sic] obtaining needed source data to completing final reports, and for accuracy and timeliness in meeting these report deadlines, most of which are federally mandated." It is also responsible for gathering data and providing reports for a wider variety of economic assistance programs than Umhoefer.

8. The appellant's position does not have "professional" duties and responsibilities as that term is used in §111.81(11)(a), Stats., and does not have "the primary purpose of conducting research, performing statistical analysis, or developing and maintaining statistical information reporting systems ... and typically require a professional knowledge of statistical

or other quantitative research or analysis methods, or of the specific research methodology of a professional discipline," work which is considered to be 'professional' under the provisions of §111.81(11)(a), Stats., as set forth in the Research Analyst position standard. (emphasis added)

9. On the basis of a comparison of appellant's duties and responsibilities with the class specifications for the Research Analyst series and the Research Technician series as well as certain positions noted above which are allocated to the Research Technician series, the record indicates that the duties and responsibilities of appellant's position are more accurately described in the Research Technician series by the Research Technician 3 class specifications; and respondent's decision to reallocate appellant's position from Research Analyst 3 to Research Technician 3 as a result of the aforesaid survey was appropriate.

CONCLUSIONS OF LAW

1. This appeal is properly before the Commission pursuant to §230.44(1)(b), Stats.
2. The appellant has the burden of proof.
3. The appellant has not sustained his burden of proof.
4. The respondent's decision reallocating appellant's position from Research Analyst 3 to Research Technician 3 was not incorrect.

OPINION

The parties stipulated at the prehearing conference to the following issues:

Whether the respondent's decision to reallocate appellant's position from Research Analyst 3 (PR 08-03) to Research Technician 3 (PR 06-10) was correct.

If not, should the appellant's position have been reallocated to Research Analyst 2 (PR 08-03) or Research Analyst 3 (PR 08-04).

The appellant maintains that the aforesaid reallocation was incorrect. The respondent takes the opposite position.

The appellant initially argues that the burden of proof for reallocation of the aforesaid position is on the respondent. In appeals of interested parties and appointing authorities from actions of the Director, the burden of proof is on the appellant who is advocating the affirmative. Lyons v. Wettengel, 73-36, 11/20/74. More specifically, in reallocations the burden of proof is on the appellant to establish that he should be reclassified in the manner he alleges. Alderden v. Wettengel, 73-87, 6/2/75. See also Prissel v. Wettengel, 73-174, 6/16/75. Along this same line, the Court has found no error in the Board's statement that the burden of proof was on the appellant to show he should be reclassified as requested. Jackson v. State Personnel Board, 164-086, 2/26/79, (Dane County Circuit Court). The appellant did not offer any persuasive evidence or argument to convince the Commission that it should change its approach in this case. This is not a discharge case where the employer has the burden of proving that a discharge was for just cause as in Reinke v. Personnel Board, 53 Wis. 2d 123, 191 N.W. 2d 833 (1971). Nor is this a matter covered by §230.34(1), Stats., which provides that an employe with permanent status in class may be "demoted only for just cause." In this regard the Commission notes that the aforesaid statutory provision contains no definition of the term "demotion." However, the civil service rules specifically state that a reallocation is not the same as a demotion. See §ER-Pers. 17.01 and 17.02(3), Wis. Adm. Code. Finally, it is true that §230.15(3), Stats.,

requires that no person shall be "reduced in the classified service in any manner or by any means, except as provided in this subchapter," as pointed out by appellant. However, the revision of existing class specifications and position standards, the reassignment of classifications to new pay ranges and the reallocation of positions are all procedures that are specifically contemplated in Subch. II, of Ch. 230, Stats. Nothing precludes these procedures from resulting in a reduction in an employe's classification. Therefore, based on all of the above, the Commission rejects this argument of the appellant.

The Commission next turns its attention to the merits of the dispute. At issue is whether the appellant's position is "professional" as that term is defined in §111.81(11), Stats. Appellant argues that regardless of the burden of proof the evidence shows Vranes to be a Research Analyst. Respondent maintains that appellant's position is specifically excluded from the Research Analyst standard since it does not require the appellant to perform professional research work.

An examination of the record supports the respondent's position. The duties and responsibilities assigned to the appellant do not require the application of professional research methodologies. It is true that appellant must utilize certain methodologies in the performance of his work including "ratios, measures of central tendency and statistical measures of dispersion." However, absent additional evidence, the record does not support a finding that these are professional research methodologies such as regression analysis. It is undisputed that appellant did not use regression analysis at the time of his reallocation or at any time material herein.

At the time of the reallocation the bulk of the appellant's duties and responsibilities included: operation and maintenance of the rate order reporting system, electric base rate and water base rate systems, production cost and purchased gas adjustment systems, municipal class C section of the annual report edit and storage system and degree day reporting system. A much smaller fraction of his duties included performance of special projects and answering inquiries. In carrying out all of the aforesaid duties, the appellant essentially collects and/or extracts data from a variety of sources. He must be very exact in his work. However, the parties differ strenuously over how said data collection is characterized. Appellant uses the word "analysis" in describing his compilation of data. Respondent prefers the word "transfer."

Each of the above systems or projects has its own sources for data. However, the appellant essentially gathers the data from the source(s), for example a PSC rate order, reviews the data for accuracy and completeness, puts it into a more usable form and then generates regular reports and/or files. These reports/files may be used by the PSC, the National Association of Regulatory Utility Commissioners (NARUC) as well as other agencies and associations outside state government, utilities and the public. The appellant often does not know how the information he compiles is used. The appellant's job does not require his use of professional research methodologies such as regression analysis.

While it is true that appellant's position requires the exercise of discretion and the ability to read complex data sources, the manipulation of the data extracted does not require the appellant to choose and apply a variety of professional research methods thereby adapting general knowledge to specific problems. Appellant essentially takes raw data and puts it

into a more useful form for other parties. In accomplishing this, appellant uses procedures and/or formulas which have been established over time and which must be constantly reapplied to new data.

In addition, although appellant is responsible for the operation and maintenance of a number of different systems and reports, these are repeated on a regular and on-going basis. To satisfy the statutory definition of §111.81(11), Stats., which is part of the Research Analyst position standard, the work must be varied in character and not able to be standardized. That is, it calls for addressing many different types of problems which in turn call for the judgmental adaptation of general professional principles. No persuasive evidence was presented that established appellant spends a significant portion of time applying general principles or theories to consistently new or different problems or that he constantly must make judgments as to what research methods to apply, what conclusions to reach, and whether data is valid.

Finally, the record supports a finding that the majority of appellant's work involves the production of reports and files which are fairly "standardized in relation to a given period of time." Only a small fraction of appellant's work includes the performance of special projects or studies which are not done on a regular basis.

In order to be a "professional employe" within the meaning of the aforesaid statute, an employe must be engaged in work which: is predominantly intellectual and varied in character; involves the consistent exercise of discretion and judgment in its performance; generates output or results which cannot be standardized in relation to a given period of time; and requires knowledge of an advanced type in a field of science or learning. Based on all of the foregoing, the Commission finds it reasonable to

conclude that appellant is not a "professional employe" as that term is defined by §111.81(11), Stats. Therefore, since the position standard for Research Analyst requires that positions must be professional, as defined by the statute, to be included in that series, the appellant cannot be a Research Analyst.

The record supports a finding that appellant's position is more appropriately classified as a Research Technician. In this regard the Commission notes that the position standard for Research Technician sets forth in the Inclusion statement the types of positions covered by the standard:

This position standard encompasses positions with the primary purpose of collecting, compiling, and manipulating statistical information, operating statistical information reporting systems, or performing other research support work which is considered "technical," rather than clerical or professional in nature. In most instances, these positions will be located in specialized research or statistical information reporting units, and will be providing technical support to professional research staff or to the users of the data. In performing this work, these positions typically apply knowledge of basic statistical concepts and techniques, package computer programs and basic data processing concepts, and/or established guidelines or procedures for the collection, analysis, or reporting of specialized quantitative information as well as skill in performing statistical or mathematical calculations. (emphasis added)

The appellant's position clearly fits the above description. In addition, a majority of his duties and responsibilities are best described at the Research Technician 3 level which provides in material part:

This is either lead, or paraprofessional, technical research support work. As the full performance objective level for paraprofessional positions, this level encompasses positions which spend the majority of time in functions such as: *producing an ongoing series of reports or publications*, including compiling the data, developing the form or presentation, utilizing package programs to manipulate data and develop tables or charts, and writing narratives to describe the results. (italicized emphasis added)

Finally, the respondent introduced evidence establishing that appellant's position compares favorably with those of Jean A. Darnell, Gary A. Umhoefer and Beth Dorschner, all of which are classified as Research Technician 3. See Finding of Fact 7. The appellant offered no alternative comparisons to indicate that positions like his are allocated to the Research Analyst series.

The appellant put forward a number of other arguments in support of his position which are likewise rejected by the Commission. First, appellant maintains that his job duties were inaccurately portrayed at the time of his reallocation by his supervisors and position description. However, the duties and responsibilities of appellant's position are basically the same regardless of which position description is used. The main difference between these position descriptions is in how those duties are categorized which, as noted above, has been resolved against the appellant. The Commission likewise rejects appellant's argument that the reallocation was improper because he (appellant) was not consulted with respect to the 1983 position description. In this regard the Commission notes that appellant could point to no legal requirement for respondent to do this. Secondly, appellant contends that the disputed position description deliberately eliminated any requirement to improve professional status and that respondent, in reallocating appellant's position, failed to consider that Vranes, in carrying out his duties, was required to exhibit "ability to deal with the public in a positive and professional manner." (Appellant's Exhibit 2.) Assuming arguendo that the above statements are true, appellant's contention still must fail. The word professional in those contexts is clearly used in a different sense than the term which is included in the Research Analyst standard. There, the reference is to the statutory

definition of the word, which, as noted above, the appellant fails to meet. Thirdly, contrary to appellant's assertion, the fact that he has a degree in economics does not by itself make him a "professional" employe. There is no persuasive evidence in the record that appellant's degree is necessary to perform his work. Also, said factor is only one of four required to be met by the statute in order to qualify as a "professional employe." Finally, appellant argues that he has performed the same work for the past 19 years while classified as a Research Analyst, and that it was improper for the Respondent to suddenly reallocate him as a Research Technician. However, whatever is true with respect to the past, it is clear that appellant was correctly reallocated as the result of the 1983 Research and Planning Survey as noted above.

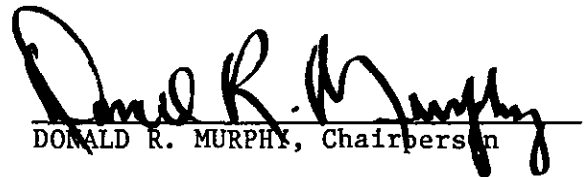
The facts which give rise to this dispute call for a sympathetic consideration of the appellant's situation. It is undisputed that appellant is a hard-working and valuable employe of the PSC. However, the appellant's rights are governed by the applicable rules, statutes and precedent. If, in the future, appellant utilizes regression analysis or other professional research methodologies, the Commission would be faced with different facts on which to make a classification decision. However, the Commission is limited to making a decision on this appeal based on the facts as they existed at, and immediately prior to, the disputed reallocation.

Based on all of the above, the Commission finds that the answer to the issue as framed by the parties is YES, the respondent's decision to reallocate the appellant's position from Research Analyst 3 (PR 08-03) to Research Technician 3 (PR 06-10) was correct and should be affirmed.

ORDER

The respondent's reallocation decision is affirmed and appellant's appeal is dismissed.

Dated: July 19, 1984 STATE PERSONNEL COMMISSION


DONALD R. MURPHY, Chairperson

DPM:jat


LAURIE R. McCALLUM, Commissioner


DENNIS P. MCGILLIGAN, Commissioner

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