

STATE OF WISCONSIN

PERSONNEL COMMISSION

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 \*  
 SALVADOR G. USABEL, \*  
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 Appellant, \*  
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 v. \*  
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 Secretary, DEPARTMENT OF \*  
 EMPLOYMENT RELATIONS, \*  
 \*  
 Respondent. \*  
 \*  
 Case No. 84-0005-PC \*  
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DECISION  
AND  
ORDER

NATURE OF THE CASE

This is an appeal pursuant to §230.44(1)(b), Stats., of the respondent's denial of the request for reclassification of appellant's position.

FINDINGS OF FACT

1. In December, 1981, the appellant transferred from a position in the Division of Finance and Program Management, Department of Administration, DOA, classified as an Equal Opportunity Specialist 8 - Confidential (Pay Range 1-16), to a position in the Division of State Agency Services, DOA, with the same classification.

2. The working title of his new position was Director, State Office of Contract Compliance, and his immediate supervisor was the division Administrator. He began work in this new position on January 11, 1982.

3. At the time he began work in his new position between 10 and 17% of his work was at the level of an Administrative Officer 2 (AD-2) (Pay Range 1-17) from a classification standpoint.

4. During the period of January 11 through December 10, 1982, the appellant on an incremental month by month basis, received more and more work identified at an A02 (PR 1-17) level, until at the end of that period this

constituted between 50 and 57% of the duties and responsibilities of the position.

5. Sometime in December 1982, after December 10th, the appellant submitted a request for reclassification of his position to A02 (PR 1-17). By letter dated December 7, 1983 (Respondent's Exhibit 1), DER responded that his new duties and responsibilities justified the allocation of his position to the A02 (PR 1-17) level, but that a reclassification/regrade was not warranted because "these new duties were not assigned gradually," and "that if the Department of Administration wishes to fill this position permanently, it must do so by competitive examination."

#### CONCLUSIONS OF LAW

1. This matter is properly before the Commission pursuant to §230.44 (1)(b), Stats.
2. The appellant has the burden of proving that the respondent erred in denying the reclassification of his position and the regrade of the incumbent (the appellant) to A02 (PR 1-17).
3. The appellant has not sustained his burden of proof.
4. The respondent did not err in denying the reclassification/regrade as aforesaid.

#### OPINION

A reclassification request transaction normally involves a three part analysis. First, the classification level of the position must be determined. Second, it must be determined whether the changes in the job which precipitated the reclassification request were logical and gradual. Third, it must be determined whether the incumbent of the position in question has performed the permanently assigned duties and responsibilities for a minimum

of six months and should be regraded pursuant to §ER-Pers 3.015(3), Wis. Adm. Code, and be allowed to stay in the position at the higher level, or whether the position should be opened to competition.

In the instant case, Mr. Robert Belongia, Executive Personnel Officer, DER, decided that the job was at the higher level, but denied a reclassification on the ground that the job changes had not been gradual, but rather were considered to have been abrupt. He also indicated that should the employing agency (DOA) wish to fill the job on a permanent basis, it must do so by competition. This all necessarily implied a decision by the respondent that in this event, the position would be reallocated to A02 and the appellant/incumbent would be denied a regrade.

The respondent stipulated that at the time of the reclassification request, the best classification for the appellant's position would have been A02 (PR 1-17). With respect to the necessity of a "logical and gradual" change for a reclassification, see §ER-Pers 3.01(3), Wis. Adm. Code., the respondent also stipulated that the change in the duties and responsibilities of appellant's position had been logical, but it did not agree that they had been gradual.

The internal guidelines with respect to the "gradual" criterion in use in DER at the time of this transaction (respondent's Exhibit 9) provided, in part, as follows:

"Generally, a reclassification/regrade will be permitted only when the new functions which warrant the classification change are less than one-half of the total duties used to justify the change in classification for the position. For example, a position in a classification assigned to Pay Range 8 may be assigned duties constituting 26% of total time which meet the criteria for a Pay Range 9 position. A change in the position resulting in a total of 51% of the duties at the Range 9 level would be justification for a reclassification/regrade."

Also, as a general rule the respondent would not consider changes to have been gradual if they constituted a significant portion of the position (more than 25%) and occurred abruptly (over a period of less than 6 months). This guideline was not reflected in Respondent's Exhibit 9 but subsequently was set forth in a revision thereto, see Appellant's Exhibit 9, and Mr. Riehle of DER testified that this provision embodied the same concept as contained in Respondent's Exhibit 9.

Finally, the respondent utilized the guideline that duties and responsibilities had to be in place for at least six months. This guideline and its application in this case are summarized in the respondent's post-hearing brief as follows:

The policy is that a reclassification or regrade will be permitted only when the new functions which warrant the reclassification are less than half the total duties used to justify the change in classification. The duties must also have been performed for six months to justify reclassification. The duties which form the base for the final change must also have been in place for six months or more prior to the final change. To warrant a classification change at least one half of the position's duties must be at the higher level.

The Appellant's position was performing PR1-17 level work approximately ten percent of the time through February, 1983 (Respondent's Exhibit No. 6; Appellant's testimony). By June, 1982, the amount of time spent on assistant administrator functions had risen to thirty percent (Appellant's testimony) and finally by December 10, 1982 he spent fifty percent of his time on the higher level of duties and responsibilities (Respondent's Exhibit No. 5; Appellant's testimony). Within nine months there had been a significant change in his duties and responsibilities but the change was not gradual.

The basic thrust of appellant's contention is that his duties and responsibilities changed incrementally over an 11 month period from 10-17% at PR 1-17 to 50-57% by December 1982. He argues that this scenario does not fall within the proscription set forth above of more than 25% of the total

job changing within 6 months. The respondent contends that the changes in appellant's position would still not be considered to have occurred "gradually" because he had not performed the duties and responsibilities for at least six months - i.e., he had not performed all of the duties and responsibilities for at least six months prior to the reclassification request, and he had not performed the duties which constituted the "base for the final change" for at least six months before the final change.

The appellant has not presented any arguments as to why the six month "waiting period" guideline utilized by DER should not have precluded reclassification on the ground that there had been no gradual change. Furthermore, even if arguments have been made that this six months waiting period guideline should not have been applied to determine the gradualness of the change,<sup>1</sup> there can be no doubt on this record that regardless of whether the changes could be considered gradual, the appellant would not have been entitled to regrade, because he had not "performed the permanently assigned duties and responsibilities for a minimum of 6 months" as required for a regrade by §ER-Pers 3.015(3), Wis. Adm. Code. The changes in appellant's job continued throughout the period prior to the submission of his reclassification request in December 1982, and all of these duties and responsibilities could not have been performed for six months before then.

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<sup>1</sup> E.g., that the guideline was arbitrary and not an appropriate application of §ER-Pers 3.01(3), Wis. Adm. Code, or that it should be deemed void because it was not promulgated as an administrative rule. The Commission wishes to make it clear that in affirming the respondent's action in this case, it expresses no opinion on these matters.

If the respondent had granted the reclassification but denied a regrade, the appellant would have been functionally in exactly the same position he was when the respondent denied the reclassification but indicated that the position should be reallocated to A02. Under each set of circumstances, the appellant either would not have received or did not receive a regrade, and would have had to compete for appointment to the position at the A02 level.

ORDER

The respondent's action as set forth in Respondent's Exhibit 1 denying the request for reclassification of the appellant's position is affirmed and this appeal is dismissed.

Dated: Dec. 6, 1984

STATE PERSONNEL COMMISSION

  
DONALD R. MURPHY, Chairperson

  
LAURIE R. McCALLUM, Commissioner

  
DENNIS P. MCGILLIGAN, Commissioner

AJT:ers  
EFORM1/2

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