

PERSONNEL COMMISSION

DECISION
AND
ORDER

These are appeals, pursuant to §230.44(1)(b), Wis. Stats., of the denial by respondent of appellants' requests for reclassification of their positions from Regulation Compliance Investigator 3 (RCI 3) to Regulation Compliance Investigator 4 (RCI 4). A hearing was conducted on July 11 and 12, 1984, and the parties were permitted to file post-hearing briefs.

1. At all times relevant to their respective appeals, appellants have been employed in the classified service as Regulation Compliance Investigators by respondent and have been assigned to the Green Bay regional office.

2. In a memorandum to Dennis Strey, his immediate supervisor, dated February 17, 1983, appellant Brown requested that the respondent reclassify his position from RCI 3 to RCI 4. In a memorandum to Mr. Strey dated March 18, 1983, appellant Augustine requested that the respondent reclassify his position from RCI 3 to RCI 4. These requests were forwarded by Mr. Strey

to Jane Jansen, the Deputy Administrator of respondent's Division of Trade and Consumer Protection and Director of respondent's Bureau of Consumer Protection in a memorandum dated March 28, 1983, and were received by Erwin Sholts, respondent's Director of Personnel in August of 1983. Mr. Sholts denied appellants' reclassification requests on February 4, 1984. Appellants filed timely appeals of such denials with the Commission on February 23, 1984. Mr. Sholts subsequently agreed to review his denial decisions. In a memorandum dated May 3, 1984, Mr. Sholts again denied appellants' requests for reclassification.

3. The duties and responsibilities of appellants' positions are as set forth in appellants' exhibits A-11 (1) and A-24 (1). In summary, these duties primarily include the initiation, planning, and conduct of investigations of alleged violations of consumer trade practice laws. After Mr. Sholts' first denial of appellants' requests for reclassification, appellants made available to Mr. Sholts a position description which they felt more accurately described their duties. The additional duties and responsibilities listed on these position descriptions included:

- A.7. Independently issue warning letters and seek voluntary assurances of compliance in lieu of prosecution when applicable.
- A.8. Recommend corrective action and suggest penalties once the investigation is completed and all evidence has been evaluated.
- A.10. Act as a lead investigator under the Ag. 132 compliance program performed by weights and measures investigators. Evaluate written surveys; direct investigations. Initiate compliance action which may include warning letters, assurances of compliance, criminal or civil prosecution.

The record indicates that weights and measures investigators were assigned to conduct investigations in program areas other than weights and measures and that appellant Augustine was assigned to guide their activities and to share his knowledge and experience with them until they were working at the full performance level in these new program areas.

In addition, appellants pointed out to Mr. Sholts that appellant Brown was appointed as acting supervisor of the Green Bay regional office for the period of April, 1979, through August, 1979.

4. For the period of time from July 1, 1982, through June 30, 1983, appellant Augustine completed action on 256 complaints. Of these 256, approximately ten could be considered as involving the "most complex investigations," i.e., those referred to circuit court and the energy savings claims compliance surveys. During the same period of time, appellant Brown completed action on 416 complaints. Of these 416, approximately 11 could be considered as involving the "most complex investigations," i.e., those referred to circuit court and the product safety compliance survey. For the period of time from July 1, 1981, through June 30, 1982, appellant Augustine completed action on 256 complaints. Of these 256, approximately seven could be considered as involving the "most complex investigations," i.e., those referred to circuit court and the product safety compliance surveys and investigations.

5. There are three positions in respondent's Green Bay regional office to which investigations of alleged violations of trade practice laws are assigned. Appellants occupy two of these three positions and the third is occupied by Mr. Strey. The assignment of an investigation to one of these three investigators is done on a geographical basis, i.e., those alleged violations of trade practice laws which occur in one of the three areas into which the Green Bay region is divided are assigned to the investigator who has been designated to cover that area.

6. A maximum of 20% of appellants' time is devoted to conducting the "most complex investigations." Mr. Strey testified that 70% of appellants' time is devoted to conducting complex investigations and that 50% to 70% of appellants' time is devoted to conducting investigations that go beyond the

boundaries of their assigned geographical areas and that many of these are statewide investigations.

7. The position standard for the RCI series includes the following:

Definitions

- A. Regulation Compliance Investigator - for purposes of this Position Standard and the Regulation Compliance Investigator Supervisor series the following definitions are applicable: a regulation compliance investigation is the systematic gathering of factual and physical evidence sufficient to either resolve complaints and/or to determine that alleged violations of federal or state laws, rules, and regulations occurred. A regulation compliance investigation usually concludes in one or more of the following actions: conciliation; warning, suspension or revocation of authority; fines or forfeitures; restitution; civil prosecution; and in some isolated cases, criminal prosecution.
- B. Routine/Difficult Investigations - refers to cases that are relatively short-term in nature and require supporting evidence that is clearly discernible as a result of full comprehension of the pertinent laws, rules and regulations.
- C. Complex Investigations - refers to cases that require substantial planning and deduction and a variety of supporting evidence from several sources which is difficult to extract.

REGULATION COMPLIANCE INVESTIGATOR 3 (PR5-11)

Definition

This is responsible regulation compliance investigative work at the full performance level. Positions allocated to this level are responsible for independently planning and conducting complex, indepth investigations pertaining to the laws, rules and regulations of the program(s) involved. Work at this level includes the analysis, evaluation, and summarization of all evidence sufficient to determine that a violation did or did not occur, the development of a recommendation for the appropriate course of action, and may include the leading/coordinating of others on particular cases. Work at this level is performed under general supervision and differs from work at lower level Regulation Compliance Investigator positions in terms of the complexity of investigative assignments and the independence of judgment required.

Model Positions:

Consumer Protection - independently plans and conducts indepth investigations relating to individual consumer complaints, large scale violations, and participates in all aspects of the prosecution and/or settlement of cases.

REGULATION COMPLIANCE INVESTIGATOR 4 (PR5-12)

Definition

This is advanced and/or lead regulation compliance investigation work. Positions allocated to this level function in one or a combination of the following capacities: (1) as a senior investigator responsible for planning and conducting the most complex investigations pertaining to the program area involved. The investigations at this level typically are long term in duration and involve a pattern of multiple violations of the same offense; or (2) a lead investigator responsible for guiding full performance level investigators (3 level) on a specific complex investigation or a wide variety of routine/difficult investigations. Work at this level is performed under general supervision.

Model Positions:

Consumer Protection - (1) responsible, a predominance of the time, for coordinating multiple investigations relating to statewide issues, patterns, or impact being conducted simultaneously in several areas of the state; or (2) responsible for conducting an investigation of statewide scope that requires difficult interpretations of relatively vague or untested laws, rules, and regulations. Work at this level is normally performed under the general supervision of a program director rather than a field supervisor.

8. In the following memo dated November 14, 1978, to Mr. Sholts from Marian Walluks, the Class Plan Coordinator for the State Division of Personnel, Department of Employment Relations, approved the allocation pattern for respondent's use of the RCI 4 classification:

The following allocation factors listed in your November 2, 1978 memo are considered to be an adequate basis for the delegated application of the Regulation Compliance Investigator 4 classification by your agency.

1. More than fifty percent (50%) of the work activities assigned to a position in this class are of a statewide nature and are performed under the direction of the Administrator's office. (The position may be located in a regional office but would report to the office supervisor for administrative purposes only).
2. The work is of a lead nature over lower level investigators who may be located in regional offices relative to data and evidence collection in the special program areas of the "4" level investigator.
3. The statewide responsibility for major program activities must be in one of the following areas:

- (a) auto repair, consumer product safety, or a comparable multi-faceted program area,
- (b) two or more specific statutory areas where the research and investigations are of a varied nature and involve the testing, modification, revision and development of laws, rules and regulations as well as the investigation of specific cases.

This memo is intended to document this allocation pattern for delegated use within the Department of Agriculture, Trade and Consumer Protection.

9. Lead work is the assignment by higher level management or supervision of the following responsibilities and work on a continuing basis for one or more subordinate employees.

-Review and assignment of incoming work. Post completion work review. Training and retraining of subordinate staff on a continuing basis. Set and reset work priorities. Recommend work priority changes to higher level supervisors. Assistance to the supervisor in scheduling and other similar assistance to supervisor as requested. The explanation of work procedures and sharing of knowledges with co-workers.

Performance of the following activities does not constitute the basis for leadworker status:

-Guiding the work activities of probationary or trainee co-workers. Sharing of knowledge and experiences with co-workers. Consultation and/or counseling of a co-worker who is in development status. Explanation of work unit procedures to new co-workers or to fellow workers who are performing a duty for the first time.

10. Appellant Augustine's duties relating to the Ag 132 compliance program carried out by the weights and measures investigators are not lead work duties and do not consume a significant portion of appellant Augustine's time.

11. Appellants' duties are more accurately described by the RCI 3 class specifications and the appellants are most appropriately classified at the RCI 3 level.

CONCLUSIONS OF LAW

1. This matter is appropriately before the Commission pursuant to §230.44(1)(b), Wis. Stats.

2. The appellants have the burden of proving that respondent's decisions denying the reclassifications of appellants' positions from Regulation Compliance Investigator 3 to Regulation Compliance Investigator 4 were incorrect.

3. The appellants have failed to meet that burden of proof.

4. Respondent's decision denying appellants' reclassification requests were correct.

OPINION

The proper classification of a position involves a weighing of the class specifications and the actual work performed to determine which classification best fits the position. In appeals of reclassification denials, it is frequently the case that the duties and responsibilities of the subject position overlap in some respects both of the class specifications in question. The position is not entitled to reclassification because some aspects of the work involved fall within the higher class, Kallin v. Weaver and Wettengel, 73-124-PC (11/28/75), particularly if those aspects constitute less than a majority of the total duties and responsibilities of the position, Bender v. DOA and DP, Case No. 80-210-PC (7/1/81).

The position standard requires that an RCI 4 be responsible for planning and conducting the most complex investigations. It can reasonably be assumed that the terminology "most complex investigations" is intended to denote the truly exceptional cases and that these cases would not constitute a majority or even a significant percentage of the cases filed with respondent. Since assignments of cases in the Green Bay regional office are based on geography, not complexity, it would not be possible for an investigator in that office to perform the most complex investigations

the majority of his time unless it was shown that these most complex investigations consumed a percentage of appellants' time disproportionate to their occurrence in appellants' caseload mix. A review of appellants' caseloads confirms that these "most complex investigations" constitute only a very small percentage of the total number of investigations conducted by appellants. Although it could reasonably be assumed that these "most complex investigations" are more time-consuming than less complex investigations, the record simply does not support the conclusion that three to four percent of the investigations consume more than 50% of appellants' time. Mr. Strey, appellants' supervisor, testified that as much as 70% of appellants' time was devoted to investigating complex cases and those going beyond the boundaries of the appellants' assigned geographical areas. However, the standard for classification as an RCI 4 is whether the position conducted the most complex investigations and whether these investigations are statewide in nature. Respondent does not dispute the fact that appellants are outstanding employees with considerable knowledge and skill. Although the state of Wisconsin may wish to reward appellants' job performance, the non-progression reclassification is not the appropriate vehicle to use. The issue in an appeal such as the one under consideration here is whether the majority of the duties of the position satisfy the standards of the higher classification, not whether the employee in the position is doing a good job.

Appellant Augustine has been assigned certain duties relating the Ag 132 weights and measures compliance program. This resulted from the fact that weights and measures investigators have been assigned to conduct investigations other than those relating to weights and measures. To assist them in assuming these new duties, respondent has assigned appellant

Augustine to guide their work activities, to share his knowledge and experience with them, and to explain work unit procedures to them. For purposes of accurately characterizing appellant Augustine's role, these weights and measures investigators should be regarded as trainees, employees in developmental status, and fellow workers who are performing a duty for the first time. Appellant Augustine was assigned these duties on a temporary basis, i.e., until the weights and measures investigators were working at the full performance level in all assigned program areas. Appellant Augustine's duties relating to the weights and measures investigators do not involve, on a permanent and continuous basis, the review and assignment of incoming work, the training and re-training of subordinate staff, or the establishment of work priorities for subordinate staff and, as a result, do not satisfy the criteria for lead work. In addition, appellant Brown's acting supervisor assignment was of a temporary nature and, therefore, not an adequate basis for a reclassification of his position.

Appellants argue that other positions classified at the RCI 4 level do not perform the most complex investigations the majority of the time and actually perform duties less complex than appellants'. However, the issue under consideration in this appeal is whether appellants' positions satisfy the requirements of the RCI 4 class specifications, not whether positions other than appellants satisfy such requirements. Even if it were found that such other positions did not perform the most complex investigations the majority of the time, such a finding would not change the fact that appellants' positions do not satisfy the requirements for classification at the RCI 4 level. To reclassify a position simply because another comparable position is inappropriately classified would compound an error and

would ignore the requirement that the majority of the duties and responsibilities of a position satisfied the applicable specifications before the position may be classified at a particular level.

It is clear that appellants perform many of the duties of a position classified at the RCI 4 level. The deciding factor in this case is that they clearly do not do so the majority of the time and are, therefore, more appropriate classified at the RCI 3 level.

ORDER

The decisions of respondent denying the appellants' requests for reclassification are affirmed and these appeals are dismissed.

Dated: September 12, 1984 STATE PERSONNEL COMMISSION


DONALD R. MURPHY, Chairperson


LAVERNE R. McCALLUM, Commissioner

LRM:jab
FORMS


DENNIS P. MCGILLIGAN, Commissioner

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