

STATE OF WISCONSIN

PERSONNEL COMMISSION

* * * * *
 DEPARTMENT OF TRANSPORTATION, *
 et al. *
 Appellants, *
 v. *
 Secretary, DEPARTMENT OF *
 EMPLOYMENT RELATIONS, *
 Respondent. *
 Case Nos. 84-0071, 0182, 0184, *
 0185, 0187, 0188, *
 0189, 0190, 0191, *
 0192, 0193, 0196, *
 0197, 0211, 0212-PC *
 * * * * *

DECISION
AND
ORDER

These matters are before the Commission as appeals from reallocation decisions. The initial appeal (Case No. 84-0071-PC) was filed by the Department of Transportation on behalf of 42 of its employees who were reallocated from Motor Vehicle Inspector 1 to State Patrol Inspector 2. Subsequently, fifteen separate appeals were filed by individual employees or groups of employees who were reallocated. The parties agreed to consolidation of the cases and to the following issue for hearing:

Whether respondent's decision to reallocate on August 22, 1984, forty-two Motor Vehicle Inspector 1 (05-08) positions to State Patrol Inspector 2 (05-10) level was correct.

Subissue: Whether the positions should be more properly classified as State Patrol Inspector 1 (05-09).

A proposed decision and order was issued May 13, 1985, that would have affirmed respondent's decision. Appellants filed written objections to the proposed decision and oral arguments were held before the Commission. Based on the record in this matter and after consulting with the hearing

examiner, the Commission issues the following decision and order which reverses the proposed decision. The changes are based upon the Commission's analysis that the term "investigatory responsibilities" as used in the State Patrol Inspector position standard refers to certain specific and relatively complex investigations in which the appellants have no experience or training.

FINDINGS OF FACT

1. At all relevant periods prior to August of 1984, Motor Vehicle Inspector 1's (MVI 1's) employed by the Department of Transportation (DOT) were assigned to permanent or portable truck scales to weigh and inspect trucks and to enforce applicable laws and regulations. Some MVI 1's also were responsible for inspecting school buses. MVI 1's always worked in uniform and at an assigned location. The MVI 1 classification definition provided:

This is technical work in the enforcement of state motor carrier laws and regulations. Employees in this class are responsible for enforcement of state laws relating to motor carriers; and they are empowered to make arrests for violations of these laws and regulations. The work involves operation of state trucking weighing stations for the purpose of detecting violations of motor carrier laws and may include some patrolling of public highways. Work also includes inspection of school buses, trucks, and other motor vehicles for compliance of motor vehicle safety equipment, laws and regulations. Employees work independently in the field and work is reviewed by technical supervisors.

Among the various worker activities described by the standard MVI 1 position descriptions were the following:

B-7 Investigate all complaints involving school buses. Take enforcement action when warranted.

* * *

2% G. Handling of Investigations and Complaints

G-1 Conducts investigations as a result of information requested on motor carrier inspection reports written previously.

- G-2 Prepares correspondence and issue citations when warranted to complete investigation.
- G-3 Investigate complaints regarding trucking and school bus violations.
- G-4 Take necessary enforcement action.
- G-5 Submit written reports upon completion.

Appellants obtained knowledge and skill as MVI 1's in conducting these limited types of investigations even though the vast majority of their work was not investigative in nature.

2. Until August of 1980, Motor Vehicle Inspector 2's (MVI 2's) employed by DOT performed investigations, including background investigations of prospective State Troopers, Vehicle Identification Number (VIN) investigations and title revocation investigation. MVI 2's worked out of their homes and in plain clothes. They received a significant amount of training in performing investigations. The MVI 2 classification definition provided:

This is specialized or technical investigations work to insure compliance with various motor vehicle laws and regulations. An employe in this class is responsible for investigative work relating to registration, driver control, revocation and suspension, safety responsibility and automobile and salvage dealers with authority to confiscate registration plates and drivers licenses when irregularities occur. An employe must organize and complete work with little supervision especially in regard to undercover investigations, while comprehensive reports of each case are reviewed by administrative supervisors.

The only way for an employe to move from MVI 1 to MVI 2 was via promotion.

3. In August of 1980, as a result of a change in federal funding, the average amount of work time spent by MVI 2's performing investigations went from approximately 80% to approximately 10%. From August of 1980 until August of 1984, MVI 2's generally worked alongside MVI 1's and performed MVI 1 work even though the two classifications were assigned to different pay ranges.

4. Effective August 22, 1984, respondent DER implemented a lengthy survey of law enforcement positions, including the MVI positions. One result of the survey was the creation of two new classifications for DOT inspectors, State Patrol Inspector (SPI) 1 and 2. The position standard for these classifications includes, in part, the following language:

I. INTRODUCTION

A. Purpose and Use of This Position Standard

This position standard is the basic authority for making classification decisions relative to present and future positions performing motor carrier law enforcement duties. This position standard will not specifically identify every eventuality or combination of duties and responsibilities of positions that currently exist or those that result from changing program emphasis in the future. Rather, it is designed to serve as a framework for classification decision making in this occupational area.

B. Inclusions

This series encompasses positions performing technical work in the enforcement of State motor carrier laws and regulations. Duties include patrolling highways and operating State truck weighing stations for the purpose of detecting violations of motor carrier laws, inspecting school buses, trucks, and other motor vehicles for compliance with motor vehicle safety equipment laws and regulations, making arrests for violations of motor carrier laws and regulations, investigating to locate persons not responding to bad check payment inquiries, confiscating driver licenses and plates, identifying vehicles through locating confidential vehicle identification numbers, and investigating the facilities and operations of motor vehicle and salvage dealers.

* * *

D. Entrance and Progression Through This Series

Employees typically enter this series by competitive examination for Enforcement Cadet, and after successful completion of a training program at the State Patrol Academy, are certified to positions at the State Patrol Inspector 1 level. Employees advance to the State Patrol Inspector 2 level through reclassification. Employees at the 2 level assume lead work and investigatory responsibilities.

* * *

II. CLASS CONCEPTS AND REPRESENTATIVE POSITIONS

STATE PATROL INSPECTOR 1

(PR5-09)

This is entry level motor carrier law and regulation enforcement work under the close supervision of a State Patrol Inspector Supervisor or State Patrol Sergeant. Positions operate State fixed scale or portable scale units for the purpose of detecting violations of motor carrier laws and regulations and inspect school buses, trucks, and other motor vehicles and operators for maintenance and compliance with safety equipment regulations.

STATE PATROL INSPECTOR 2

(PR5-10)

This is objective level motor carrier law and regulation enforcement work under the general supervision of a State Patrol Inspector Supervisor or State Patrol Sergeant. Positions operate State fixed scale or portable scale units for the purpose of detecting violations of motor carrier laws and regulations and inspect school buses, trucks, and other motor vehicles and operators for maintenance and compliance with safety equipment regulations. Positions may also train lower level inspectors.

III. QUALIFICATIONS

The qualifications required for these classification levels will be determined on a position-by-position basis at the time of recruitment. Such determinations will be made based on an analysis of the goals and worker activities performed and by an identification of the education, training, work or other life experience which would provide reasonable assurance that the knowledge and skill required upon appointment have been acquired.

The position standard indicates that the movement from SPI 1 to 2 is a progression series.

5. The appellants in this matter were notified that effective August 22, 1984, their positions were to be reallocated from MVI 1 to SPI 2. All of the appellants had been employed as MVI 1's since sometime prior to November of 1983. Any MVI 1's hired since November of 1983 were reallocated to the entry level (SPI 1). Only two of the appellants had as little as twenty-six months of experience as a MVI 1. Some of the appellants had as much as eighteen years of experience, and thirty-five had been employed as MVI 1's since 1971 or before. None had received training in conducting

those types of investigations previously performed by MVI 2's (See Finding of Fact #2).

6. The standard position description for a SPI 1 provides that the incumbent is to investigate complaints involving school buses (Activity C5) and, when required, assist with investigations of "motor vehicle violations and personnel background." (Goal G) The latter responsibility of assisting with investigations is listed as representing 5% of the SPI 1's time. The standard position description for a SPI 2 provides that the incumbent is to investigate complaints involving school buses (Activity C5) and also lists 10% of the incumbent's time as conducting investigations of motor vehicle violations and personnel background. (Goal G)

7. The appellants' positions are better described at the SPI 1 level than at the SPI 2 level because they lack the experience necessary to perform the investigative responsibilities that are to be performed by a SPI 2.

CONCLUSIONS OF LAW

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

2. The appellants have the burden of showing that the respondent's decision to reallocate their MVI 1 position to the SPI 2 classification was incorrect and that instead, their positions should have been reallocated to the SPI 1 level.

3. The appellants have met that burden of proof.

4. The respondent's decision to reallocate the appellants' positions to the SPI 2 level was incorrect and the appellants' positions are more properly classified at the SPI 1 level.

OPINION

The appellants in this case argue that their positions must be classified at the lower level (SPI 1) because they have neither experience nor training in the area of investigation which is one of the responsibilities assigned to SPI 2's.¹ The respondent argues that the SPI 1 classification identifies entry level positions and that the appellants, with up to 18 years of experience as inspectors cannot be considered as working at the entry level.

The position standard indicates, and neither party disputes, that the SPI 1 and SPI 2 classifications represents a progression series; i.e., movement from the 1 level to the 2 level is accomplished by the "attainment of specified education or experience by the incumbent." §ER-Pers 3.01(3), Stats. In this case, instead of determining whether a particular incumbent had met the education and/or experience requirements for having their position reclassified from the 1 to the 2 level, the Commission is being asked to determine whether over forty positions that were previously classified in a series that has now been abolished should be reallocated to the entry or the objective level.

The Commission's focus is on the position standards of the new classifications rather than on the standard position descriptions that have been developed to describe duties actually assigned by management. The standard

¹ There is a one pay range differential between the SPI 1 and 2 classification. One apparent motivation for the appellants to seek the lower classification and pay range is that upon their automatic progression from SPI 1 to 2, they would be entitled to a one step pay increase. This increase is not available to them via the reallocation action taken by respondent.

position descriptions were not formally approved by the Secretary of the Department of Employment Relations as part of the classifications established under §230.09(1)(a), Stats. In contrast, the Secretary has approved the position standards.

According to the position standards, there must be a "reasonable assurance that the knowledge and skill required upon appointment have been acquired."² (See SPI Position Standard, II Qualifications). SPI 2's must have the knowledge and skill to operate fixed or portable scale units and to inspect school buses, trucks and other motor vehicles and operators, all under general supervision. An Inspector 2 must also have the knowledge and skill to train lower level inspectors. These responsibilities are clearly delineated in the position standard's SPI 2 representative position. Additional duties of "lead work and investigatory responsibilities" are established for the SPI 2 classification under the section describing progression through the series. Therefore, SPI 2's must also have the knowledge and skill to perform, upon appointment, lead work and investigations.

The respondent argued that the investigation responsibility was such a minor percentage of the SPI 2's time that it was not reflected in the representative position. Regardless of where the duty is reflected on the

² While the position standards refers to knowledge and skill required "upon appointment", the Commission reads this term broadly as used here to include the process of reclassification/regrade. To read the term appointment more narrowly to refer only to placement of an employe into a new position, would be inconsistent with the fact that SPI is a progression series. The first sentence of the paragraph entitled "Qualifications" also states that "qualifications... for these classification levels" are to be determined "at the time of recruitment." Technically, there would not be any recruitment at the SPI 2 level, because the only method of filling a position at the 2 level would be by reclassification as part of the progression series.

position standard, it is a responsibility established for SPI 2 positions. As is true with the typical progression series, the incumbent must have the knowledge and skill to perform at the higher level before being classified at that level.

There is no dispute that the appellants possess the knowledge and skill to perform leadwork, train lower level inspectors, operate scales and conduct inspections. The record also shows that the appellants have knowledge and skill in conducting certain investigations, even though they lack knowledge and skill in performing the types of investigations identified within Goal G the SPI 2 standard position description. According to the MVI 1 position descriptions that are in the record (Respondent's Exhibits 5 and 17), appellants all have knowledge and skill in conducting investigations of school bus complaints (Activity B-7) and in handling investigations and complaints relating to motor carriers and school buses (Goal G). The proposed decision and order prepared for this case concluded that the appellant's positions met the requirements for classification at the SPI 2 level because they had the knowledge and skill to perform *some* investigations, i.e. those described in B-7 and G of the standard MVI 1 position description. However, the Commission concludes that the term "investigatory responsibilities," as used in paragraph I.D. of the SPI position standard, should be defined in terms of the investigations referred to elsewhere in the SPI standards. The "Inclusions" paragraph specifically refers to positions that have duties which include:

investigating to locate persons not responding to bad check payment inquiries, confiscating driver licenses and plates, identifying vehicles through locating confidential vehicle identification numbers, and investigating the facilities and operations of motor vehicle and salvage dealers.

This paragraph may be relied upon in interpreting other portions of the position standard just as in construing a statute, the intent of a given section must be derived from the act as a whole. State v. Tollefson, 85 Wis 2d 162 (1978).

It should also be noted that the SPI position standard only makes mention of "investigatory responsibilities" in terms of the SPI 2 classification. Because it is a progression series, the description of the various types of investigations found in the "Inclusions" paragraph logically refers to the investigations that are to be performed by inspectors at the SPI 2 or objective level.

The primary purpose of the "Inclusions" portion of the position standard is to describe certain duties encompassed by the standard. Persons classified as SPI's are not required to perform all of those duties listed as being included in the standard. The list of inclusions would be determinative if, for example, a SPI contended his/her position should be classified in the Trooper series solely because s/he identified vehicles through locating confidential vehicle identification numbers. Although this is the primary purpose of the "Inclusion" paragraph, it is not inconsistent to rely on the language for the additional purpose of defining the term "investigatory responsibilities."

If the phrase "investigatory responsibilities" was not defined in terms of these specific investigations, but as referring to any type of investigation, someone with skill and experience in investigating welfare fraud would meet the investigation requirements for progression from a SPI 1 to SPI 2. It should also be noted that this interpretation of the statute is consistent with the duties actually assigned to SPI 2's as indicated by the standard position description.

Because the SPI series is a progression series and because knowledge and skill are required "upon appointment", the Commission looks to see whether all of the requirements for classification at the higher level have been met. The concept of classifying a position based on the majority of the duties is not appropriate under these circumstances. Here, the appellants do not have the training and experience to perform the investigatory responsibilities required at the SPI 2 level. As a consequence, their positions should have been reallocated to the SPI 1 classification.

ORDER

Respondent's decision to reallocate the appellant's position to the SPI 2 level is reversed and these matters are remanded to the respondent for action in accordance with this decision.

Dated: September 20, 1985 STATE PERSONNEL COMMISSION


DENNIS P. MCGILLIGAN, Chairperson


DONALD R. MURPHY, Commissioner


LAURIE R. McCALLUM, Commissioner

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