

STATE OF WISCONSIN

PERSONNEL COMMISSION

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KENNETH VANDEN WYMELENBERG/
DEPARTMENT OF JUSTICE (DOJ),
Appellant,

v.

Secretary, DEPARTMENT OF
EMPLOYMENT RELATIONS,
Respondent.

Case Nos. 85-0099 & 0100-PC

* * * * *

DECISION
AND
ORDER

This is an appeal of the denial of a request by appellant for the reclassification of his position. The hearing was held before Laurie R. McCallum, Commissioner, on October 28, 1985, and the briefing schedule was completed on December 23, 1985.

FINDINGS OF FACT

1. At all times relevant to this appeal, appellant has been employed as the Director of the Department of Justices' (DOJ's) Training and Standards Bureau. Appellant's position was reclassified from Administrative Officer 1 (A01) to A02 in 1972. On or about December 27, 1984, appellant requested a reclassification of his position from A02 to A03. This request was denied by the Department of Employment Relations (DER) in a memo dated May 6, 1985. Appellant filed a timely appeal of such denial with the Commission.

2. The following is a summary of the duties and responsibilities of appellant's position as described in the position description signed by appellant on June 22, 1984, and is an accurate description of such duties:

- 8% A. Management of Law Enforcement Standards Board (LESB) minimum employment standards development and implementation for law enforcement officers.
 - A1. Identify law enforcement positions for which minimum employment standards must be met.
 - A2. Assure sufficient documentation of attainment of employment standards by all certified officers and the maintenance of all local and central records.
 - (1) Conversion of central records from manual to automated.
 - A3. Develop and recommend revision of standards and implementation policies to LESB.
- 5% B. Management of LESB minimum employment standards, development and implementation for County Jail Officers.
 - B1. As in A1 above, for county jail officers
 - B2. As in A2 above, for county jail officers
 - B3. As in A3 above, for county jail officers
- 8% C. Direct LESB law enforcement training operations. This includes basic training for recruits, in-service or refresher training, and training in specialized areas such as evidence, emergency vehicle operations, firearms, CPR, and radar certification.
 - C1. Assure continued development and implementation of curricula and instructional methods.
 - C2. Assure appropriate documentation of training achievements by all officers participating in Board sponsored programs.
 - C3. Recommend certification standards and procedures for schools, instructors and students.
 - C4. Direct and authorize reimbursement procedures for all LESB sponsored training programs. Local Aids paid from Law Enforcement Training Fund exceed \$2,000,000 annually.
- 9% D. Direct LESB county jail training program operations. This includes basic training and in-service or refresher training.
 - D1, D2, & D3 as in C1, C2 & C3 above but for county jail officers.
- 10% E. Supervision of LESB and DOJ training and operational aids development and delivery.

E1. Supervise development and approve purchases of audio-visual training aids, books, pamphlets for recruit, jailer, in-service and specialized training programs.

E2. Assure efficient operation of a 600 print Law Enforcement Film Library.

60% F. Supervision of Training and Standards Bureau operations and personnel.

55% F1. Direct assignments and evaluate performance of Bureau personnel.

F2. Direct the preparation of the Bureau's biennial budget and supporting federal grants.

3. Two to three percent of appellant's time is devoted to administering the Native American Grants Program. This program awards and monitors grants for joint law enforcement efforts by counties and tribes.

4. Five percent of appellant's time is devoted to directing the preparation of the bureau's biennial budget and supporting federal grants. The bureau's biennial operating budget is approximately \$3,000,000. The revenue which supports this operating budget is program revenue in the form of a penalty assessment surcharge equal to 11% of certain fines and forfeitures collected statewide.

5. Appellant's position reports to the Administrator of the Division of Law Enforcement Services. The Training and Standards Bureau has 13.5 professional positions, including appellant's.

6. The following positions were offered in the record for comparison purposes:

a) Leticia Smith - A03 - Director, Office of Employee Development and Training, Department of Employment Relations -- This position reports to the Secretary of DER and is responsible for:

30% A. Office administration including managing personnel resources and developing recommendations regarding and monitoring the office's budget; directing office efforts in developing, advertising and presenting training, consultation and informational services; monitoring statutorily mandated

programs (supervisory training, record keeping, employee development) to ensure compliance.

- 65% B. Developing and analyzing statewide employee development and training policies, including recommending the development and revision of legislation, administrative rules, and standards; advising state agency heads on the development and maintenance of employee development and training programs, office policies, rules, and procedures; and monitoring state agency development and training programs.
- b) Hamdy Ezalarab - A03 - Director, Office of Human Resources, Division of Corrections (DOC), Department of Health and Social Services (DHSS) -- This position reports to the Assistant Administrator of the Division of Corrections and is responsible for:
- 30% A. Directing the development and implementation of internal DOC personnel policies, practices and procedures; administering the office including the preparation and implementation of the operating budget.
- 40% B. Evaluating, modifying, and approving the DOC training plan and PPDP program including approving correctional training academy policies and programs; directing the establishment of policy for and the planning for the DOC equal opportunity, affirmative action/civil rights plan and the DOC personnel services and counseling programs.
- 10% C. Participating in the planning and formulation of the DOC medium range and configuration plans; developing DOC human resources policies and plans; developing legislation regarding correctional officers' employment and training; and directing DOC human resources management studies.
- 20% D. Directing subordinate managers in the planning, development, implementation and evaluation of the DOC human resources programs.

Note: DOC contains 11 separate employing units and 3,785 employees and will add 920 new positions due to the opening of three new correctional institutions.

- c) Dennis Fay - A03 - Director, Bureau of Community Development, Department of Development -- This position reports to the Administrator, Division of Economic and Community Development and is responsible for:
- 20% A. Meeting with and maintaining relationships with groups and individuals interested in community development to promote the active participation of local government officials, business, community organizations and others in the development of Wisconsin communities and to provide coordinated service delivery; and working with interested parties to

develop community development proposals which include private and public resources.

- 20% B. Bureau administration including managing personnel resources and developing and managing the biennial budget.
- 20% C. Recommending to the administrator the need to develop or modify programs, services, legislation, or administrative rules and design, implement, and monitor such changes; and administering grant funds including the contracting, monitoring, modifications and evaluation activities related to those funds.
- 10% D. Developing and maintaining a mechanism to share program and policy information and planning initiatives with other departmental units, other state agencies, and other community development related entities at the local, state, and federal level.
- 40% E. Service Delivery
 - 20% E1. Directing the provision of community development technical assistance to local governmental units and other appropriate organizations and individuals in such areas as: community development, downtown revitalization, tax incremental financing, capital and municipal budgeting and finances, economic assistance for local governments, historic preservation, regional planning, and state planning aids.
 - 20% E2. Directing the provision of training necessary to implement grant and loan fund programs for those having formal agreements with the Department in the area of community development.

Note: Three other A03 bureau director positions in DOD's Division of Economic and Community Development were offered in the record for comparison purposes. The scope and complexity of these positions is equivalent to or greater than that of the Director, Bureau of Community Development A03 position described above.

- d) Loren Brumm - A03 - Director, Bureau of Intergovernmental Relations and Resource Development, Board of Vocational, Technical and Adult Education (BVTAE) -- This position is responsible for:

Directing the agency's efforts to secure federal and state discretionary grants and contracts and to solicit private sector gifts and grants; directing the State VTAE Foundation; directing the federal and private sector equipment acquisition program; establishing and directing a grants management system; arranging for technical assistance to VTAE districts in public and private resource development; in coordination with the Executive Assistant, directing the

agency's legislative analysis and policy development program; and supervising facilities construction, remodeling, and renovation activities.

e) Matthew Mandt - A03 - Director, Financial Examinations Bureau, Office of the Commissioner of Insurance -- This position reports to the Deputy Commissioner and is assigned to :

45% A. Plan and direct the development and modification of procedures to review the financial condition of insurers and identify those companies that require regulatory attention; oversee the selection of companies for financial examination, review the scope of the examination and review and evaluate the examination reports; and review and approve staff recommendations regarding applications from companies for licensure in Wisconsin.

25% B. Plan and direct the development of procedures to monitor the condition of insurers with financial problems; recommend appropriate action against companies in financially hazardous condition; and monitor the rehabilitation or liquidation of any insurers.

10% C. With industry and agency advice, recommend accounting standards for loss reserves and unearned premiums and for reinsurance assumed and ceded.

10% D. Plan and direct the development of administrative rules to implement revisions in the insurance statutes; draft and recommend statutory changes; and propose and develop research projects to determine where regulatory changes are needed.

10% E. Supervise work activities of bureau personnel.

f) Christine Nye - A03 - Deputy Director, Bureau of Health Care Financing, Department of Health and Social Services (DHSS) -- This position reports to the Bureau Director and is responsible for:

25% E. Assisting the Director in developing strategies for health care cost containment and health care delivery reforms which will have a fiscal impact upon Medical Assistance expenditures in Wisconsin. Medical assistance is an \$800 million plus program in Wisconsin.

25% B. Coordinating the development and monitoring of the biennial Medical Assistance budget; the review and approval of all fiscal notes and bill analyses assigned to the Bureau; and the development of initiatives for legislation and administrative rules.

25% C. Coordinating the development and monitoring of the Bureau's annual operating budget; developing and coordinating uniform

bureau policies and procedures for professional service contracting; developing, implementing, and monitoring internal bureau policies and procedures; and supervising major management initiatives.

- 10% D. Performing liaison role and maintaining working relationship with other state agencies, federal agencies, the legislature, and the medical assistance fiscal agent.
- g) Robert Gilbertson - A02 - Chief, Grants and Contracts, Board of Vocational, Technical and Adult Education (BVTAE) -- This position reports to the Special Assistant to the State Director and is responsible for:
- 30% A. Maintaining working relationships with external funding sources and planning and directing the preparation of solicitation, compliance and reporting efforts in the grant and contract area.
- 25% B. Directing the development of agency and systemwide positions on federal appropriations and related legislation and maintaining working relationships with federal agency legislative staff, congressional committee staff, and education organization legislative staff.
- 25% C. Planning and directing special statewide studies focusing on legislative issues; systemwide capacities to deliver services, and systemwide financial concerns.
- 20% D. Planning and directing the acquisition of property for the 39 campuses of the VTAE system and developing financial resources to support the acquisition of property from federal, state, business and industry sources.
- h) Randy Blumer - A02 - Deputy Director, Bureau of Financial Examinations, Office of the Commissioner of Insurance -- This position reports to the bureau director (see Mandt position described above) and is responsible for:
- 60% A. Developing and implementing policies and procedures for the regular examination and investigation of the financial status of insurers, for the calculation of premium tax assessments and other fees, and for processing and financial review of applicants for incorporation, admission, licensure, or merger of insurers; monitoring the quality of financial examination reports; and coordinating the identification of problem companies and developing enforcement strategies.
- 20% B. Supervising section chiefs and bureau support staff.
- 10% C. Developing and implementing policies and procedures as necessary to coordinate activities between sections, and

participating in development, implementation and monitoring annual work plan and budgets.

- 10% D. Supervising staff in the analysis of financial trends and problems, developing recommendations for change including changes in statutes and administrative rules; responding to non-routine inquiries regarding accounting standards or financial conditions of insurers; and keeping the bureau up-to-date on the latest development in financial services auditing and trends.

7. The position standard for the A02 classification provides in pertinent part:

Definition:

This is highly responsible and difficult administrative work in a major state agency. An employe in this class is responsible for providing all administrative and managerial services for the agency, including directing such staff services as personnel, budget preparation, fiscal management and purchasing; and/or for administering a complex departmental program. Employes exercise broad supervision and control over large numbers of technical, professional and clerical people. An employe in this class often serves as the principle advisor to the department head in developing departmental policies and rules and in promoting needed legislation. Within a broad framework of laws, rules and policies, employes are responsible for many decisions affecting the department's program. The work is performed with a high degree of independence subject to administrative review by the department head.

8. The position standard for the A03 classification provides in pertinent part:

Definition:

This is highly responsible administrative and managerial work in providing highly complex executive, liaison, and staff functions and services. An employe in this class is responsible for major management functions including program development and evaluation. The work involves responsibility for management functions as they affect the programs of numerous complex organizational segments with professional or technical programs, and for the evaluation and improvement of such operations in any management area. An employe develops departmental policies and regulations, recommends the establishment and revision of legislation, and makes responsible management decisions within a broad framework of laws, rules and policies which have a great effect upon departmental programs. The work is performed with a high degree of independence, subject only to administrative review by the department head. Positions allocated to this class differ from

those allocated to Administrative Officer 2 in the amount of authority delegated by the agency head, the influence of the administrative officer's decisions on the line functions of the agency, the variety, complexity, and professional nature of the agency's programs, the relationship of the administrative officer to professional program administrators, and the nature and complexity of the agency's organizational structure.

9. The duties and responsibilities of appellant's position compare to the duties and responsibilities of the positions offered for comparison purposes (see Finding of Fact #7 -- subsections a through h of Finding of Fact 9 correspond to subsections a through h of Finding of Fact #7) as follows:

- a. Leticia Smith - A03 -- This position is similar to appellant's in that both are responsible for providing training to a particular group of persons; for recommending the standards which the training curriculum shall meet; for maintaining a training record-keeping system; and for administering a training program financed through program revenues. The Smith position has more scope, variety, and complexity than appellant's position in that the Smith position has responsibility for training in many subject areas whereas appellant's training responsibilities are limited to the law enforcement/jailer area; and the Smith position is responsible for marketing training programs and relying on the success of such marketing in the form of program registration fees for the office's operating budget whereas appellant's position is not responsible for marketing training programs and relies on an external source, i.e., a penalty assessment surcharge, for the Bureau's program revenues.
- b. Hamdy Ezalarab - A03 -- This position is similar to appellant's in that both have a significant training component and both have administrative responsibility for an office including the preparation and administration of the office's operating budget. The Ezalarab position has more scope, variety, and complexity than appellant's position in that the training component of the Ezalarab position does not represent a majority of the duties and responsibilities of the position but does consume almost 100% of appellant's position's time; the Ezalarab position participates in developing policy in the varied human resources area and other areas for a very large division but appellant's position participates in developing policy only for the limited program area appellant's position administers.
- c. Dennis Fay - A03 -- This position is similar to appellant's position in that both positions have a training component; both have administrative responsibilities including budget development and monitoring and the management of program personnel resources; both administer grant funds; and both make policy recommendations

regarding their programs. The Fay position has more scope, variety, and complexity in that only 20% of the Fay position's time is devoted to training-related duties and responsibilities but nearly 100% of appellant's position's time is devoted to such duties; the Fay position is responsible for two programs, i.e., community development block grants and community services but appellant's position is responsible for only one program, i.e., training of law enforcement/jailer personnel; the Fay position is responsible for dealing with a variety of individuals from a variety of communities with a variety of characteristics, needs, and problems in regard to a variety of diverse areas, i.e., community development, downtown revitalization, tax incremental financing, capital and municipal budgeting and finance, economic assistance for local governments, historic preservation, regional planning, and state planning aids whereas appellant's position deals with a much narrower and less complex range of issues and a much less diverse constituency.

- d. Loren Brumm - A03 -- This position is similar to appellant's position in that both have responsibility in the grants management area. However, appellant's position's responsibilities in this area consume only 2 to 3% of his time and relate only to the award and monitoring of one grant program whereas a significant portion of the Brumm position's time is devoted to grant-related responsibilities and such responsibilities include soliciting private and public sector grants, directing the state VTAE Foundation, directing the federal and private sector equipment acquisition program, and arranging for technical assistance to VTAE districts in public and private resource development and monitoring a variety of grant programs. In addition, the Brumm position is responsible for a variety of diverse programs, e.g., not only the diverse resource development activities described above but also an agency-wide legislative analysis and policy development program and a facilities construction, remodeling, and renovation program whereas appellant's position is basically responsible for one program, i.e., training of jail/law enforcement personnel. Finally, appellant's position participates in analyzing legislation and establishing policy only for his limited program area where the Brumm position participates in analyzing legislation and establishing policy for the entire agency.
- e. Matthew Mandt - A03 -- This position is responsible for directing each aspect of the financial monitoring of a diverse and complex regulated industry. The program area for which appellant is responsible is much less complex and much less diverse.
- f. Christine Nye - A03 -- This position participates in administering an \$800 million program and supervising 120 employes whereas appellant administers a \$3 million program and supervises 12.5 employes. The Medical Assistance program which the Nye position participates in administering serves a much larger client population than the program appellant's position administers and is

subject to much more complex federal and state statutory and administrative rule requirements.

- g. Robert Gilbertson - A02 -- The duties and responsibilities of this position are narrower in scope and/or less complex than those of the A03 positions described above, i.e., the liaison, grant solicitation and monitoring, legislative analysis, research, and property acquisition duties relate solely and directly to the agency's financial resources program and are comparable in this regard to the duties of appellant's position which relate only to one program of the DOJ. The relative complexity of the two programs and the relative diversity of the duties assigned to the two positions also appear to be comparable.
- h. Randy Blumer - A02 -- Although the Bloomer position appears to exercise less independence and to occupy a lower position in the organizational hierarchy than appellant's position, the program the Blumer position participates in administering is much more complex and diverse (see Finding of Fact #9e) than the program appellant's position administers and, for this reason, the positions appear to be comparable.

10. The duties and responsibilities of appellant's position are more closely comparable to those of the A02 positions offered for comparison purposes than those of the A03 positions offered for comparison purposes and appellant's position is more appropriately classified at the A02 level.

CONCLUSIONS OF LAW

1. This matter is appropriately before the Commission pursuant to §230.44(1)(b), Stats.
2. The appellant has the burden of proving that respondent's decision denying the request for the reclassification of appellant's position was incorrect.
3. The appellant has failed to satisfy that burden.
4. The decision of respondent denying the request to reclassify appellant's position from A02 to A03 was correct.

OPINION

The language of either the A02 or A03 position standards, viewed in isolation, could describe the duties and responsibilities of appellant's

position. For this reason, the Commission has carefully compared the duties and responsibilities of appellant's position with those of the positions offered for comparison purposes in the record (see Finding of Fact 6). As presented in Finding of Fact #9, the duties and responsibilities of appellant's position have less complexity, diversity, and scope than the duties and responsibilities of the A03 positions offered for comparison purposes and are more closely comparable to the duties and responsibilities of the A02 positions offered for comparison purposes. On this basis, the Commission concludes that the appellant's position is more appropriately classified at the A02 level.

ORDER

The action of respondent is affirmed and this appeal is dismissed.

Dated: March 13, 1986 STATE PERSONNEL COMMISSION


DENNIS P. MCGILLIGAN, Chairperson


DONALD R. MURPHY, Commissioner


LAURIE R. MCCALLUM, Commissioner

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