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 RONALD DANIELSKI, \*  
 ROMAN SIEHOFF, \*  
 PHILLIP RAU, \*  
 \*  
                   Appellants, \*  
 \*  
 v. \*  
 \*  
 Secretary, DEPARTMENT OF \*  
 EMPLOYMENT RELATIONS, \*  
 \*  
                   Respondent. \*  
 \*  
 Case No. 85-0196-PC \*  
 \*  
 \* \* \* \* \*

DECISION  
 AND  
 ORDER

This matter is before the Commission as an appeal of a reclassification denial. The parties agreed to the following issue for hearing:

Whether the respondent's decisions denying the reclassification of the appellants' positions from Tax Compliance Supervisor 1 to Tax Compliance Supervisor 2 were correct.

Subissue: If not, whether the appellant's positions are more appropriately classified at the Tax Compliance Supervisor 2 classification or the Administrative Assistant 5 classification.

FINDINGS OF FACT

1. The appellants' positions are located in the Milwaukee District Office of the Field Compliance Section of the Compliance Bureau of the Division of Income, Sales, Inheritance and Excise Tax of the Department of Revenue.

2. There are four district offices in the Department of Revenue, Field Compliance Section: Appleton, Eau Claire, Milwaukee, and Madison. Each district office is headed by a district office supervisor who is designated as the chief compliance officer for the district. The Appleton, Eau Claire and Madison offices are headed by supervisors whose positions

are classified as Tax Compliance Supervisor 2 (TCS 2); the Milwaukee office supervisor's position is classified as Tax Compliance Supervisor 3 (TCS 3).

3. The appellants' immediate supervisor is Paul Gaieck whose position is classified as a TCS 3. Mr. Gaieck is the chief compliance officer in the Milwaukee District. In contrast to the other chief compliance officers and to the appellants, Mr. Gaieck does not directly supervise any Tax Representatives. It is the Tax Representatives who have the direct contact with the taxpayers. Tax Representatives are considered to be professional employees.

4. The Milwaukee District is divided into three geographic subunits. Each of the appellants supervise one of these subunits and is responsible for the compliance activities in his subunit. Some of the appellants' activity reports are made directly to the Field Compliance Section Chief, Mr. Leonard Erickson, in Madison.

5. A chief compliance officer is responsible for the management and coordination of the compliance effort in a district, may prepare the district's budget and is accountable for the tax compliance activities carried out in the district.

6. The appellants' positions are substantially identical to those of the Appleton, Eau Claire, and Madison TCS 2 positions except as follows:

- a) The appellants' supervisor, Mr. Gaieck must approve all proposed compromises of less than \$1500 under the inability to pay provisions. The TCS 2 positions in Appleton, Eau Claire and Madison have identical authority as Mr. Gaieck.
- b) The appellants' positions are not designated as chief compliance officers for a district tax compliance office. The TCS 2 positions in Appleton, Eau Claire and Madison and Mr. Gaieck's TCS 3 position are

all designated as the chief tax compliance officer in their respective districts.

c) The appellants do not supervise one or more paraprofessional positions performing other types of collection activities than are performed by Tax Representatives.

d) The geographic area serviced by the appellants is substantially smaller than the TCS 2s area, although the total number of delinquent accounts within the areas are similar.

e) As part of their duties and responsibilities as supervisors within the largest district office the appellants oversee the provision of on-the-job training for new tax representatives, review reports prepared by the trainees, and make recommendations as to whether the trainee should progress to a permanent position. Since most of the vacancies occur in the Milwaukee District, the new representatives are typically placed there for their training.

7. The position standard for the Tax Compliance Supervisor series were adopted in 1975. The definitional statements at the various levels of the series provide as follows:

TSC 1:

This is supervisory professional tax compliance work in either the central office [or] the Milwaukee district office of the Income, Sales, Inheritance and Excise Tax Division of the Department of Revenue. Positions allocated to this class in the central office are responsible for directing and reviewing the work of a professional, paraprofessional and clerical staff in a speciality area of tax compliance. Positions allocated to this class at the district field level direct the work of subordinate tax representative positions in all phases of tax compliance laws. All positions allocated to this class instruct their subordinates of changes in tax laws, rules or policies and evaluate their work to assure the uniform interpretation and application of these tax laws. Work is performed under the general supervision of higher level Compliance Supervisors and is reviewed through reports and personal conferences. (Emphasis added).

TSC 2:

This is responsible supervisory professional tax compliance work in the Income, Sales, Inheritance and Excise Tax Division of the Department of Revenue. Positions allocated to this class function as the chief compliance officer in a district office such as those currently located in Appleton, Eau Claire, or Madison and are responsible for assuring compliance in all phases of income, sales and excise tax laws. Work includes responsibility for the tax compliance program in a district; staff work assignment and evaluation; and ensuring the effectiveness of the compliance program and its conformance with divisional policies. Work is performed under the general supervision of higher level administrative positions and reviewed through reports and personal conferences. (Emphasis added.)

TCS 3:

This is highly responsible supervisory and administrative professional tax compliance work in the Income, Sales, Inheritance and Excise Tax Division of the Department of Revenue. Positions allocated to this class function as the chief of the Division's Central Compliance Office or as the chief compliance officer of the Milwaukee District office. The position which directs the Central Compliance office is responsible for assuring compliance and enforcement of laws and regulations pertaining to all phases of sales, income and excise taxes and assists in divisional policy and procedure determinations. The position in the Milwaukee district office is responsible for the work assignment and review of the district compliance staff, the effectiveness of the district compliance program and its conformance with divisional policies and conducting staff training programs for new tax representatives. General supervision is received from a higher level administrative position. (Emphasis added.)

8. The Administrative Assistant 5 classification includes the following definition:

This is responsible line administrative and professional staff assistance work in a large state agency. Employees in this class direct an important function of the department and/or provide staff services in management areas such as accounting, purchasing, personnel or budget preparation. Employees in this class may be responsible for supervising a staff of technical, semi-professional or professional employees in directing the assigned program. Employees have a great deal of latitude in areas of decision making and initiating action within a broad framework of laws and rules. Work is evaluated by administrative superiors through conferences, personal observations and reports.

All positions allocated to this class must meet the definitions of "Confidential" and "Supervisor" as contained in §111.81, Stats.

9. The Administrative Assistant series is a general series that is typically used when more specific specifications do not exist.

10. The district organization of the tax compliance section has not been altered since the class specifications were adopted in 1975. However, while some additional tax compliance duties have been assigned to the appellant's positions since that time, most of those duties have also been assigned to the TCS 2 positions in Madison, Eau Claire and Appleton.

11. The central office position held by Harold McCarthy was reclassified from a TCS 1 to TCS 2 in 1982. Mr. McCarthy is the chief of the referral section, supervises 18 people and reports directly to the director of the compliance bureau. Of the 18 persons supervised, 14 are either clerical or paraprofessional. The position's main duties and responsibilities are: the management of the referral review program from the central office to the district offices and supervision of the collection of delinquent out-of-state accounts program. For the former program, his section acts as a conduit for sending referrals directly to appropriate compliance areas and reviews the completed referrals when they are returned by the representatives in the field. For the out-of-state collection program, Mr. McCarthy's section generally utilizes fewer collection tools than are available for in-state taxpayers. If the referral section's collection efforts are unsuccessful, the matter is referred to an out-of-state collection agency. Mr. McCarthy is responsible for, inter alia, approving settlements of \$1,500 or less and administering the contracts with the various collection agencies.

12. The central office position held by Mark Williams was reclassified from a TCS 1 to TCS 2 in 1982. Mr. Williams supervises the

Delinquent Tax Control Unit of 15 employes and reports directly to the chief of the Field Compliance Section in the Compliance Bureau. All but one of the 14 persons supervised are either clerical or paraprofessional. While not a data processing unit, the delinquent tax control unit is responsible for the computerized records on delinquent accounts.

13. At least 3 central office positions remain classified at the TCS 1 level.

#### CONCLUSIONS OF LAW

1. This matter is before the Commission pursuant to §230.44(1)(b), Stats.
2. The appellants have the burden of showing that respondent's decisions not to reclassify their positions from TCS 1 to 2 was incorrect.
3. The appellants have not met their burden of proof.
4. The respondent's decisions not to reclassify the appellants' positions were not incorrect.

#### OPINION

The appellants seek to show that their positions, as presently constituted, are better described at the TCS 2 or AA 5 level than at the TCS 1 level. While the Commission acknowledges that certain equitable considerations support classification of the appellant's position at a level higher than TCS 1, the positions are in fact best described by the TCS 1 specifications.

The TCS 1, 2 and 3 specifications describe both field and central office positions in the Department of Revenue's Income, Sales, Inheritance and Excise Tax Division. The chart below summarizes the field allocations:

TCS 1 - Supervisory professional tax compliance work in the Milwaukee district office, directing the work of subordinate tax representative positions in all phases of tax compliance laws. Work

is performed under the general supervision of higher level compliance supervisors.

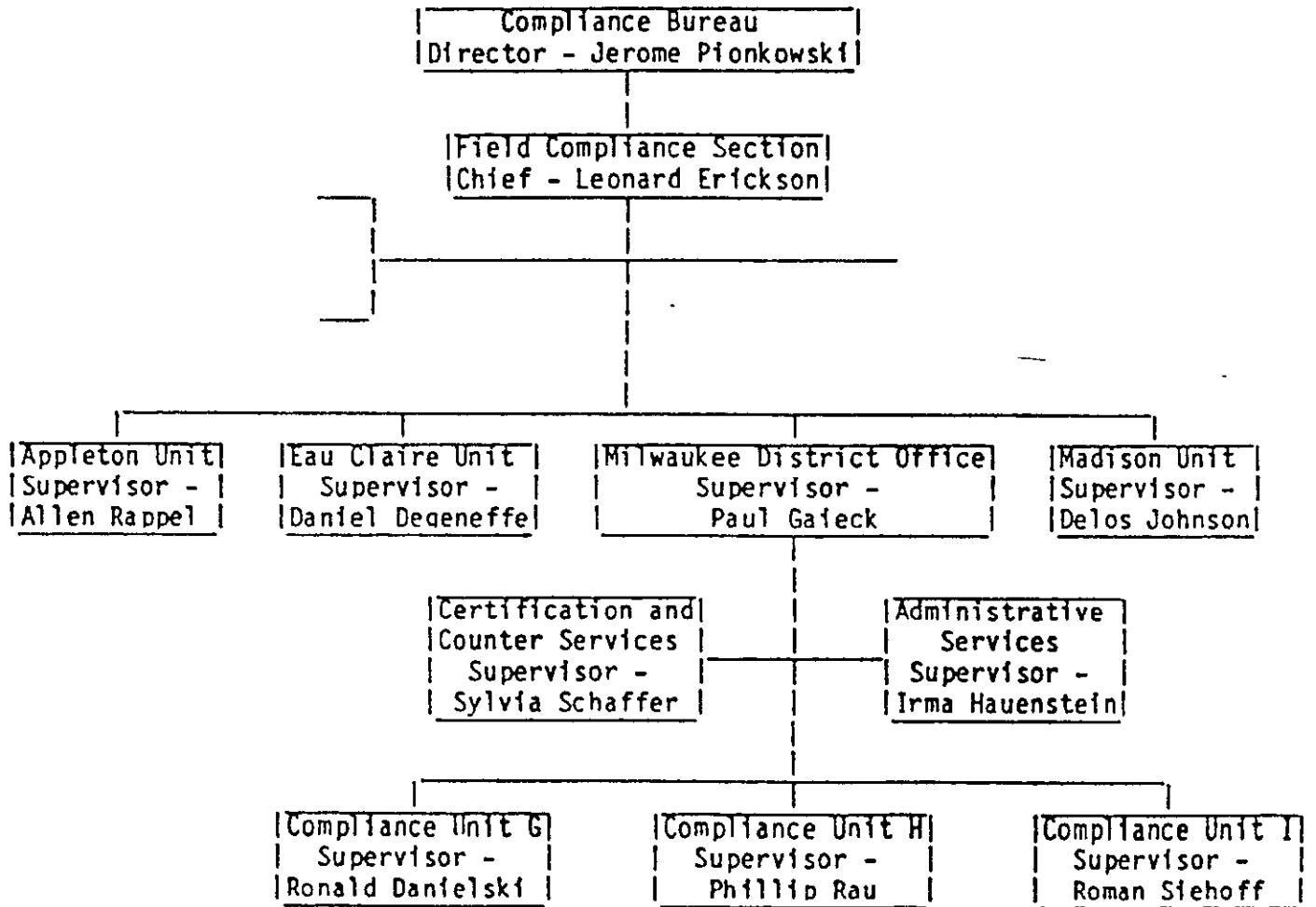
TCS 2 - Responsible supervisory tax compliance work as the chief compliance officer in a district office such as Appleton, Eau Claire, or Madison with responsibility for the tax compliance program in a district. Work is performed under the general supervision of higher level administrative positions.

TCS 3 - Highly responsible supervisory and administrative professional tax compliance work functioning as the chief compliance officer in the Milwaukee District office where the position is responsible for work assignment and review of the district compliance staff, the effectiveness of the district compliance program and its conformance with divisional policies and conducting staff training programs for new tax representatives.

The appellants have raised a variety of arguments in support of their appeal.

1. District Organization

Appellants argue that the geographic areas they oversee are comparable to the respective areas assigned to the TCS 2's in Madison, Eau Claire and Appleton and that there are six rather than four districts. Appellants support this argument by referring to Exhibit 22, the official organization charts for the Department of Revenue. The relevant portion of that organization chart is set out below.





Although the "official organization chart" referred to Appleton, Eau Claire and Madison (Tax Compliance) Units, Milwaukee District Office and each appellant as heading a unit in Milwaukee, testimony established that the organizational chart is in error. Michael Kaphingst, who oversees DOR's staffing and classification, testified that while the chart accurately reflected reporting relationships, several of the titles listed on the chart were inaccurate. Mr. Kaphingst stated that the chart should refer to Appleton, Eau Claire, Madison and Milwaukee as district offices in order to accurately reflect the agency's organization. Several other witnesses also testified that there are in fact four district compliance offices.

Even if the Appleton, Eau Claire and Madison offices were titled units rather than districts, their supervisors would still report to the compliance section chief rather than to another compliance supervisor. The appellants are supervised by Mr. Galeck, a TCS 3, which is consistent with the reference in the TCS 1 specification to supervision by a higher level Compliance Supervisor.

## 2. Chief Compliance Officer

Appellants argue that they should be considered as the chief compliance officers for the geographic area over which they have responsibility. To the extent that the respondent might choose to designate compliance officers for areas below the district level, the appellants clearly would be named the chief compliance officers for their units. However, the respondent has named chief compliance officers only for each of the four compliance districts: Appleton, Eau Claire, Madison and Milwaukee. Mr. Galeck is the chief compliance officer for the Milwaukee district and as such is accountable for the compliance program within that district. The Department of Revenue could choose to reorganize itself into six districts,

including three Milwaukee districts, designating each of the appellants as chief compliance officers for their districts and having them report to the compliance section chief. That option has not been chosen.

3. Distinctions in Responsibilities and Accountability

The distinctions between the appellants' positions and the TCS 2 positions in Appleton, Eau Claire and Madison are summarized in Finding of Fact 6. Of the five distinctions noted, designation as the chief compliance officer for a district, is the most significant. The other four distinctions (approving certain compromise agreements, supervision of one or more professionals, training, and the size of the geographic area involved) are not determinative for classification purposes. As noted above, the chief compliance officer is held accountable for compliance activities in their district, may prepare the district's budget and is responsible for the management and coordination of the compliance effort in a district. The appellants' supervisor, Mr. Gaieck, is assigned that role for the Milwaukee district.

Appellants are assigned certain training responsibilities that are typically not performed by the Appleton, Eau Claire and Madison TCS 2's because most of the vacancies for new Tax Representatives are within the Milwaukee district. The training responsibility requires the TCS to reassign the existing case load and to review the trainee's work. This responsibility is shared by the three appellants.

4. Change in Responsibilities

The class specifications for the TCS series were adopted in 1975. Since that time, the appellants have acquired additional responsibilities, including compromising dooimages and approving credit memos, assigning personnel for tax payer assistance, overseeing special investigations, contacting local liquor license boards, authorizing property seizures,

appearing at sheriff's execution sales, conferring regarding collection of delinquencies via real estate closings, issuing satisfactions of delinquent tax warrants and conducting exit interviews with employes. These responsibilities have been assumed in all of the tax compliance districts, not just in Milwaukee. They represent a relatively small portion of the appellants' overall time and, at least to some extent, fit within the reference in the TCS 1 definition to "direct the work of subordinate tax representative positions in all phases of tax compliance laws."

5. Effect of McCarthy and Williams Positions

Two positions in the central compliance office (held by McCarthy and Williams) were reclassified by the respondent in 1982 from TCS 1 to TCS 2. Appellants contend that the reclassification of these two positions given an absence of any reference to central office positions in the TCS 2 specifications means that the appellants' positions can and should also be reclassified. After the reclassification of the Williams and McCarthy position, three central office positions remain classified at the TCS 1 level. Those three TCS 1 positions are in charge of the registration unit, the close-out unit and the billing unit.

The respondent justified the Williams and McCarthy reclassifications with the absence of any language that precludes the classification of a central office position at the TCS 2 level. The specifications do provide a general central office allocation at the TCS 1 level and, at the TCS 3 level refer to the chief of the central compliance office. Appellants produced a document (Exhibit #27) prepared in August of 1981 by the executive personnel office in what was then called the Division of Personnel, the predecessor to respondent DER. That document denied reclassification of Mr. Williams' position and stated:

The class specification for Tax Compliance Supervisor 2 identifies positions which "function as the chief compliance officer in a district office." Three such positions were identified at this level as a result of the 1975 survey and those same three positions remain the only positions presently allocated to that level. While it is true that Mr. Williams' subordinate staff has increased and that the Unit's programs have increased to include refund offset, control systems for inheritance and motor fuel taxes, etc., the position does not meet the class specification language at the "2" level. It should be noted in this regard that this class specification language does not provide for the inclusion of positions other than those mentioned since there is no language referring to "typical positions," "positions such as," etc. In the absence of this language there can be no allocation of this position to the Tax Compliance Supervisor 2 level and our response of June 30, 1981 to your request for a limited survey is the appropriate approach to this problem.

Less than one year later, another analyst in DER concluded that the specifications were written broadly enough to permit classifications of central office positions at the TCS 2 level and, accordingly, approved reclassification of the Williams and McCarthy positions based on new programs not in existence at the time the specifications were written, the statewide (and, as to McCarthy, interstate) role of the positions and the level of reporting relationships.

The appellants have raised a serious question as to whether the reclassification of these two positions, and especially the Williams position, was correct in terms of the specifications that exist. To the extent that either the McCarthy or the Williams positions or both are erroneously classified at the TCS 2 level, they would not provide a basis for also reclassifying the appellants' positions to the 2 level. To the extent that the McCarthy or Williams positions or both are correctly classified at the 2 level, they should be compared to the appellants' positions and the comparison should be considered as a factor in reaching a conclusion as to the proper classification of the appellants' positions. Where, as here, the respondent has specifically contended that the

comparison positions are properly classified, the Commission is reluctant to conclude that the positions were, in fact, classified incorrectly.

Here, both McCarthy and Williams are primarily responsible for a record-keeping unit or section. The bulk of their employes are clerical and paraprofessional. In contrast to the appellants, very few subordinates are professional. McCarthy, a section chief, reports to the director of the Compliance Bureau. Williams, who heads a unit, reports to Leonard Erickson who is chief of the Field Compliance Section. In contrast, the appellants report to Mr. Gaieck who in turn reports to Mr. Erickson. Williams and McCarthy both have at least statewide responsibilities while the appellants' responsibilities are limited to a geographic area of the state. The appellants' areas of programmatic responsibilities are much broader than Mr. Williams in that they cover more aspects of the full range of compliance activity. Given Mr. McCarthy's role in out-of-state collection, and "phone-power" contacts with the field in addition to his section's referral responsibilities, his position has programmatic breadth that is at least equivalent to the appellants. These additional programs were not in existence at the time the specifications were written. Mr. Williams also oversaw an increase in the program within the delinquent tax area. As noted above, the appellants also acquired additional responsibilities.

The comparison with the Williams' position supports the reclassification of the appellants' position although the appellants compare less favorably with the McCarthy position given both the much higher organizational level and the interstate responsibilities for Mr. McCarthy. When one combines the weight of the central office comparisons with the language in the specifications that more specifically describes field positions at all three TCS levels but leave blank any allocation at the TCS 2 level for central office positions, the result is to support continued

classification of the appellants' positions at the TCS 2 level. This result is hardly clear cut and, as noted above, there would be substantial support for reorganization of the four field districts into six districts. Given the facts presented, the current organizational structure and the allocation of the burden of proof on the appellants, reclassification from TCS 1 to 2 is not appropriate at this time.

6. Administrative Assistant 5 Classification

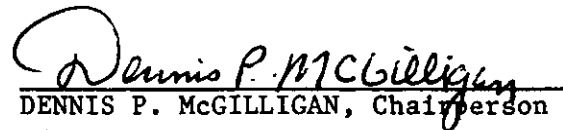
Testimony established that the AA series is a "catch-all" series and is only used in the absence of a specific classification describing the position. Here, the TCS series is specifically designed to encompass positions such as the appellants so it would be inappropriate to substitute the general AA series for the more specific descriptions that are available.

For the reasons set out above, the Commission issues the following

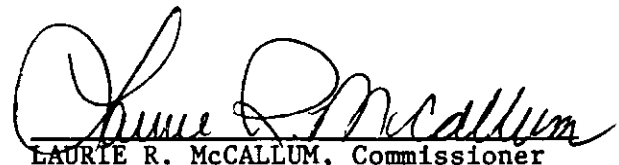
ORDER

The respondent's decisions denying the reclassifications is affirmed and this matter is dismissed.

Dated: September 17, 1986 STATE PERSONNEL COMMISSION

  
DENNIS P. MCGILLIGAN, Chairperson

  
DONALD R. MURPHY, Commissioner

  
LAURIE R. MCCALLUM, Commissioner

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