

STATE OF WISCONSIN

PERSONNEL COMMISSION

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 *
 ANDERSON et al., *
 (Gene Anderson, Joseph Bronner*
 Ruth Kelly, Charles Kirk, *
 Bettie Temperly and *
 LaVern Woodford), *
 *
 Appellants, *
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 v. *
 *
 Secretary, DEPARTMENT OF *
 EMPLOYMENT RELATIONS, *
 *
 Respondent. *
 *
 Case No. 86-0098-PC *
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 * * * * *

ORDER

This matter is before the Commission for consideration of a proposed decision and order, a copy of which is attached. The Commission has consulted with the hearing examiner.

Respondent objects to a conclusion in the proposed decision that respondent's argument "conceded appellants' positions had experienced logical and gradual change in their duties," and contends that certain language in its post-hearing brief is inconsistent with that conclusion.

However, even assuming arguendo that respondent's contention were correct, there is ample support in the record for an explicit finding that there was a logical and gradual change in the duties and responsibilities of appellants' positions. As is summarized in findings #10 and #11, a number of changes have occurred in these positions since 1982. The record does not suggest that these changes were sudden or radical, but rather supports a finding they were logical and gradual. Furthermore, respondent's formal reclassification denial analysis (Respondent's Exhibit 6) did

not mention any concerns about the logical and gradual change factor, and this factor was never mentioned by respondent's expert witness at the hearing.

ORDER

The attached proposed decision and order is adopted by the Commission as its final resolution of this matter, with the addition of the following finding:

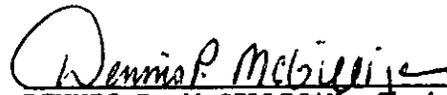
11.5. The changes in the duties and responsibilities of appellants' positions which preceded the instant transaction were logical and gradual.

Also, the order is amended to include the following sentence:

The Commission retains jurisdiction for the purpose of ruling on the appellant's motion for attorney's fees and expenses.

Dated: September 29, 1987 STATE PERSONNEL COMMISSION

AJT:jmf
JMF06/2


DENNIS P. MCGILLIGAN, Chairperson


DONALD R. MURPHY, Commissioner


LAURIE R. MCCALLUM, Commissioner

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PROPOSED
 DECISION
 AND
 ORDER

The captioned matter came before this Commission on an appeal of respondent's decision to deny appellants' request for reclassification of their positions from Administrative Assistant 5 - Supervisor to Administrative Officer 1 - Supervisor. Testimony on appellants' appeal was heard by Commissioner Donald R. Murphy. Exhibits were received in evidence and each party submitted posthearing briefs. This examiner enters the following findings of fact, conclusions of law, opinion and order, after careful consideration of the foregoing information.

FINDINGS OF FACT

1. The appellants: Gene Anderson, Joseph Bronner, Ruth Kelly, Charles Kirk, Bettie Temperly and LaVern Woodford are Field Operations Managers (FOMs) employed in the Long Term Care Section, Bureau of Quality Compliance, Division of Health, Department of Health and Social Services.
2. The respondent, Department of Employment Relations, is a state agency and is responsible for personnel and employment relations policies

and programs for the state government. It administers the state civil service system.

3. At an undetermined time in 1985, the appellants requested reclassification of their positions from Administrative Assistant 5 - Supervisor (AA 5 - Supr., PR 1-15) to Administrative Officer 1 - Supervisor (AO 1 - Supr., PR 1-16). Their positions were reviewed in house by the Bureau of Personnel and Employment Relations (BPER).

4. Because the classification action was not delegated, BPER, after reviewing appellants' reclassification request and recommending approval, forwarded the request to the respondent for final action.

5. The respondent in making its decision, reviewed the recommendations rationale and accompanying documents sent by BPER, performed job audits of three of the appellants and had discussions with appellants' first and second level supervisors. In addition, respondent compared appellants' positions with other positions, in state government and the class specifications.

6. By letter dated April 16, 1986 with copies to each appellant, respondent notified appellants' director of personnel of its denial of their reclassification request. Within thirty days after receiving respondent's denial of reclassification, the appellants appealed the reclassification decision to the Commission.

7. The appellants' positions were created in 1982. They report to a section chief, who is an Administrative Officer 2. He directs the appellants in the management of all resident review and survey activities of long-term care providers.

8. The six appellants, called Field Operation Managers, are located in the four districts of the state. Their supervisor is located in the

Central office at Madison, Wisconsin. Supervision of the FOM's is provided through bi-monthly meetings.

9. The following distinctions can be made between the AA 5 and AO 1 class specifications:

1) The AA 5 position is defined as responsible line administrative work in a large state agency, while an AO 1 position is described as responsible and difficult administrative work in a major state agency.

2) AA 5 employees direct an important function of the department, in contrast to AO 1 employees who direct important phases of the department's program.

3) AA 5 employees are supervised by administrative superiors evaluation their work through reports, conferences, and personal observation. AO 1 employees are supervised by administrative superiors by reviewing their work through reports and conferences.

10. Appellants' positions were originally entitled Nurse Supervisor. In 1982, they were renamed Field Operations Manager. Since then, five new responsibilities have been added to that position: The swing bed program, which consists of 55 certified facilities; a support staff function, which includes data processing; department sign off authority for survey reports; hearing and informal conference functions; and public relations.

11. Also since 1982, appellants' positions have expanded. In 1983, 75% of their job was divided into seven (7) components. By 1985, that subheading had increased to eighteen (18) components.

12. The appellants' bureau director identified three programs in which the appellants work: Inspection of Resident Care, State Licensure and Surveying and Certifying Facilities. Each of these programs arise from a separate and distinct body of law.

13. In terms of scope, complexity and discretion, appellants' positions appear stronger than the two AA 5 Supervisor positions in evidence by the respondent as comparables. The Luce position, the stronger of the two, supervised seven employes, who worked in two disciplines. Luce was supervised by an AO 1. In contrast, appellants supervise minimally twice as many employes, who work in seven disciplines and are supervised by an AO 2. The other comparable AA 5 - Reuter, supervised one person, conferred, counseled and assisted local emergency government officials. His position description indicated little, if any, independent authority and that he was primarily responsible for coordinating emergency government programs.

14. Appellants' positions appear to be comparable to the Jules Bader position, an AO 1 - Supervisor, as described by Mr. Bader. Bader supervises five employes who work in various disciplines. Like appellants, he has regional authority, but in contrast to appellants, his first line supervisor is officed in the same building in the same work area where Bader has frequent contact with him. Bader has no legal or enforcement activities and the consequence of error, if his job duties were improperly performed, seems less severe than appellants'. While Bader's position description stresses policy making factors, he testified that he can make recommendations but none have been implemented.

15. Appellants' duties and responsibilities are not excluded by the AO 1 - Supervisor classification specifications.

CONCLUSIONS OF LAW

1. This Commission has jurisdiction over appellants' allegations under §230.44(1)(b), Wis. Stats.

2. The appellants have the burden of proving by a preponderance of evidence, to a reasonable certainty, that respondent erred in denying the request to reclassify appellants' positions.

3. The appellants have satisfied that burden.

4. Respondent erred in denying appellants' request for reclassification of their position.

5. Appellants' positions are more appropriately classified at the Administrative Officer 1 - Supervisor level.

OPINION

The respondent, in its argument, conceded appellants' positions had experienced logical and gradual change in their duties but contend the question is whether the change is sufficient to warrant reclassification to Administrative Officer 1 - Supervisor.

Again, as pointed out by respondent in its argument, the Commission has said that in instances where class specifications contain general language or are subject to more than one interpretation, comparable positions may be considered to clarify and distinguish differences between classifications. DOT (Potts) v. DP, 80-362-PC, 6/25/82.

In this matter presently before the Commission, the definitional section for the two classifications are very similar: Administrative Assistant 5 - Supervisor: This is responsible line administration and professional staff assistance work in a large state agency. Administrative Officer 1 - Supervisor: This is responsible and difficult administrative work in a major state agency. As illustrated above, these subtle distinctions, standing alone and unsupported by a gloss, lack clarity and elicit the use of other aids to interpret them.

In this instance, both parties presented evidence of comparable positions to assist in interpreting the classification specifications. The question before the Commission was reduced to one of determining which testimony about the comparable positions was the most credible.

Respondent's personnel specialist testified that respondent in making its decision compared two AA 5 - Supervisor positions and one AO 1 - Supervisor position with those of appellants. The personnel specialist testified that the AO 1 Supervisor position -- Jules Bader's position, although similar to appellants', exceeded them in scope, complexity and areas of responsibility. However, Mr. Bader testified and directly contradicted much of the personnel specialist's testimony about his position. The personnel specialist's testimony was based upon her interpretation of Bader's position description and not a field audit.

Respondent's personnel specialist also testified that the AA 5 - Supervisor positions used as comparables, one in the Division of Emergency Government, Department of Administration, and the other in the Quality Control Unit, Department of Health and Social Services, were similar to appellants' positions. Again, the specialist's testimony was based upon a reading and interpretation of position descriptions for those two positions. Bader testified that he had first hand knowledge of the AA 5 - Supervisor position in the Quality Control Unit, DHSS. He testified that it had less scope, complexity, discretion and managerial responsibility than appellants' positions. Though Bader was not a personnel specialist, his personal account of the Luce position was not rebutted.

The appellants, their supervisor and their bureau director testified in detail about changes, increased duties and greater responsibility which had been given appellants' positions from their formation in 1982 to the present time. The appellants' bureau director, Larry Tainter, who for 18 years

held various high level personnel positions in state civil service, during his testimony provided his analysis of the classification specifications and explained why he recommended reclassification of appellants' positions.

In the opinion of the examiner, the evidence offered by the appellants was more persuasive. The testimony of appellants' witness about various relevant positions and duties, based on personal knowledge, was closer to the source and more reliable than respondent's evidence which was based primarily upon interpretations of reports about such positions. Accordingly, Mr. Tainter's analysis was developed from information which was more accurate than that provided respondent's personnel specialist. Clearly the preponderance of the evidence favored the appellants.

ORDER

Respondent's action is rejected and this matter is remanded for action in accordance with this decision.

Dated: _____, 1987 STATE PERSONNEL COMMISSION

DENNIS P. MCGILLIGAN, Chairperson

DRM:jmf
JMF04/3

DONALD R. MURPHY, Commissioner

LAURIE R. McCALLUM, Commissioner

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