

as to time inherent in such a process, the Commission does not grant appellant's request. If appellant feels that the recruitment and selection process is taking or has taken an unreasonably long time, he may be able to bring an action in court, pursuant to §230.44(4)(c), Stats., within 60 days after the date of service of this decision, for failure to comply with this order.

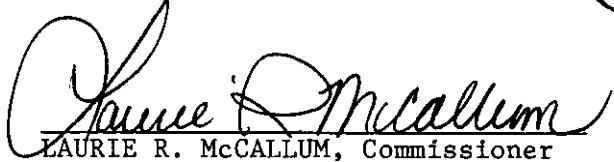
Dated: February 1, 1988 STATE PERSONNEL COMMISSION


DENNIS P. MCGILLIGAN, Chairperson

LRM:jmf
JANE/2


DONALD R. MURPHY, Commissioner

Attachment


LAURIE R. McCALLUM, Commissioner

Parties:

Leroy Shorey
2733 Killdeer Court
Cottage Grove, WI 53527

John Coughlin
Secretary, DILHR
P. O. Box 7946
Madison, WI 53707

John Tries
Secretary, DER
P. O. Box 7855
Madison, WI 53707

3. A personnel management survey was conducted by the Department of Employment Relations (DER) which resulted in the reallocation of appellant's position from Job Service Supervisor 6 to Unemployment Benefit Supervisor 6 (UB Sup. 6) effective March 30, 1986, and in the establishment of the current UB Sup. position standard. At that time, appellant's position, functioning as the Section Chief of the Interstate Benefit (IB)/TRA Section, Bureau of Benefits, Division of Unemployment Compensation, had the following duties and responsibilities as accurately described in the position description signed by appellant on April 1, 1986:

- 25% A. Management/Supervision of Section Functions.
- 10% B. Supervision of section personnel.
- 25% C. Participation, as Wisconsin's Primary Program Expert, in Regional and National Efforts Related to Interstate Claims (IB) and Combined Wage Claims (CWC).
- 15% D. Participation, as Wisconsin's Primary Program Expert, in the Overall Direction, Management, and Supervision of Wisconsin's TRA Payment System.
- 15% E. Direction of Wisconsin Agent State Interstate Benefit Activities.
- 10% F. Participation as Program Expert in the Development and Implementation of Wisconsin's Internet System (part of Interstate Benefit Program).

4. At the time the survey was being conducted and finalized, a majority of the appellant's position's time was devoted to directing and coordinating benefit adjudication and claim services for interstate benefits. These duties and responsibilities were similar to the benefit adjudication and claim services duties and responsibilities of the positions functioning as managers of local unemployment compensation offices.

5. On August 11, 1986, appellant's position was assigned certain duties and responsibilities relating to the TAA program. As a result of that assignment, appellant's position's duties and responsibilities changed

abruptly. Such duties and responsibilities are accurately described in the position description signed by appellant on February 24, 1987, as follows:

- 25% A. Management/Supervision of IB/TRA Section Functions and Personnel
- 10% B. Participation, as Wisconsin's Primary Program Expert, in Regional and National Efforts Related to Interstate Claims (IB) and Combined Wage Claims (CWC).
- 30% C. Coordination of the Trade Act Program for the State of Wisconsin Based on a Thorough and Complete Knowledge of all Components.
 - C1. Act as liaison and coordinator between the federal regional office and DILHR. Coordinate TRA activities in the areas of benefit management information (reporting requirements), fiscal and Tax and Accounting (budget requests and TRA accounts), placement and employability services (training, job search and relocation), and any activities relating to TRA with regional and national offices, and state Job Service district offices and Unemployment Compensation local offices.
 - C2. Develop, review and monitor contracts between UC, Employment and Training, and Job Service Divisions and recommend remedial action when goals and program requirements are not satisfied.
 - C3. Develop policies, procedures and performance standards for both TRA and TAA activities.
 - C4. Be the agency expert and spokesperson for TRA and coordinate program delivery activity with Wisconsin employers, unions and union representatives, local offices, district Job Service offices, employment and training components, and the TRA Payment Unit.
 - C5. Provide training and technical assistance to UC local offices and Job Service district offices and the TRA Payment Unit.
 - C6. Prepare Wisconsin's TRA budget request to acquire the necessary funds for allowance payments, training, job search and relocation, and administrative costs.
- 20% D. Participation, as Wisconsin's Primary Program Expert, in the Overall Direction, Management and Supervision of Wisconsin's Trade Act Assistance and Trade Adjustment Allowance Payment System.
 - D1. Identify and initiate system modification which results from changes to federal law, regulations of the U.S. Secretary of Labor or modification to the administrative agreements between USDOL and Wisconsin.
 - D2. Analyze and recommend Wisconsin's position with respect to proposed changes to the Secretary's regulations.

- D3. Monitor higher level eligibility decisions for compliance with federal law/regulations. Initiate remedial action which can include review by the labor and Industry Review Commission or the Wisconsin Courts.
- D4. Direct preparation of reports required by the Secretary of Labor and higher state administrative levels.
- D5. Initiate/respond to communication involving U.S. Department of Labor representatives as required to execute the federal-state TRA/TAA Services Agreement.
- D6. Monitor and evaluate total program performance and recommend remedial actions as necessary.
- D7. Respond to inquiries/prepare responses to inquiries about TRA and TAA on behalf of UC Administration, DILHR Secretary and the Governor to state legislators, congressional representatives and other involved parties.

5% E. Direction of Wisconsin Agent State Interstate Benefit Activities

10% F. Participation as Program Expert in the Development and Implementation of Wisconsin's Internet System (part of Interstate Benefit Program)

6. On or around February 24, 1987, appellant requested that the classification of his position be changed to the UB Sup. 7 level. Respondent DILHR denied such request on or around April 29, 1987, and appellant filed a timely appeal of such denial with the Commission on May 13, 1987.

7. Appellant's position's new duties and responsibilities relating to the TAA program consume 30% of appellant's position's time. As a result of this new assignment, duties and responsibilities related to the direction and coordination of benefit adjudication and claim services for interstate benefits no longer consume a majority of appellant's position's time.

8. The position standard for the UB Sup. series provides the following, in pertinent part:

II. Class Concepts

UNEMPLOYMENT BENEFIT SUPERVISOR 6

(PR 01-15)

This is professional supervisory unemployment benefit work in the State Unemployment Compensation Program.

Positions allocated to this class function as a manager of a local office. Managers are responsible for directing and coordinating all benefit adjudication and claims services for a defined geographic area of the State. Work is performed under general supervision.

Positions allocated to this class at the Administrative Office supervise a staff responsible for ensuring program quality compliance by monitoring and evaluating service against the standards established by State and Federal regulations. Work is performed under general supervision.

A centrally located position responsible for directing and coordinating benefit adjudication and claims services for interstate benefits with a unique processing system is also allocated to this level. Work is performed under general supervision.

UNEMPLOYMENT BENEFIT SUPERVISOR 7

(PR 01-16)

This is professional supervisory unemployment benefit work in the State Unemployment Compensation Program.

Positions allocated to this class are responsible for directing and coordinating all benefit adjudication and claims services for a defined geographic region of the State consisting of more than one local office. Positions allocated to this level supervise and provide advice and leadership in planning, procedural implementation, self-appraisal and corrective action development, staff utilization, productivity and quality of services to Local Office Managers. Work is performed under general supervision.

Positions allocated to this class at the Administrative Office supervise a staff responsible for developing the methods, systems, policies and procedures used in conducting statewide benefit administration including disputed claims resolution which impacts directly on services provided in both field and administrative offices. Work is performed under general supervision.

9. The first line supervisor of appellant's position is Karen Morgan, Director, Bureau of Benefits, Division of Unemployment Compensation. Appellant's position's duties and responsibilities relating to the TAA and TRA programs and certain of appellant's position's duties and responsibilities relating to the CWC and Internet programs are characterized by Ms. Morgan as "program management" duties and responsibilities which involve the development of forms, policies, and procedures for these programs; liaison with those in the higher levels of the public and private

sectors; supervision by a bureau director; and training of unemployment compensation staff on a statewide basis. The managers of the local unemployment compensation offices do not develop forms, policies, or procedures for the unemployment compensation program but use the forms, policies, and procedures developed at the bureau level; have fewer and lower level liaison duties than appellant's position; are supervised by area managers, i.e., a lower supervisory level than a bureau director; and do not have statewide training responsibilities.

10. After the assignment of the new TAA duties and responsibilities to appellant's position, appellant's "program management" duties and responsibilities related to the TAA, TRA, CWC and Internet programs consumed a majority of appellant's position's time.

11. Since 1983, appellant's position has functioned as a section chief in the Bureau of Benefits, Division of Unemployment Compensation. The following section chief positions within the Bureau of Benefits are classified at the UB Sup. 7 level:

(a) John Roche -- This position, under the general direction of the bureau director, manages and supervises professional staff of the disputed claim section who provide technical assistance to unemployment compensation local office managers, perform quality review and evaluation, conduct adjudication training and write procedural manuals for resolution of unemployment compensation eligibility questions. This position has principle responsibilities for statewide evaluation of non-monetary determination quality and certification of the technical competency of adjudicators for reclassification purposes.

(b) Fred Heil -- This position, under the general direction of the bureau director, directs, manages and supervises a highly

technical, professional staff responsible for the (1) development and modification to the standard benefit information processing system; (2) special program responsibilities; and (3) coordination and development of changes to the computer system as it relates to the disputed claims system.

It is undisputed that the majority of the duties and responsibilities of these two positions are similar in nature but stronger, from a classification standpoint, than those of appellant's position.

12. The duties and responsibilities of appellant's position are better described by the UB Sup. 7 class specifications than the UB Sup. 6 class specifications and appellant's position is more appropriately classified at the UB Sup. 7 level.

13. It is undisputed that the new TAA duties assigned to appellant's position on August 11, 1986, constituted a logical but not gradual change in appellant's position.

CONCLUSIONS OF LAW

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

2. The appellant has the burden to prove that his position should be classified at the UB Sup. 7 level and that, if so, his position should not be regraded but should be filled through competition.

3. Appellant has sustained these burdens.

4. Appellant's position is more appropriately classified at the UB Sup. 7 level and should be reallocated to such level.

5. When so reallocated, appellant's position should not be regraded but should be filled through competition.

DECISION

The first issue to be addressed in this appeal is:

Was respondents' decision on or around April 29, 1987, not to change the classification of appellant's position correct?

Subissue: Is appellant's position more appropriately classified as an Unemployment Benefit Supervisor 6 (UB Sup. 6) or an Unemployment Benefit Supervisor 7 (UB Sup. 7)?

As of the effective date of the above-referenced survey, a majority of appellant's position's time was spent performing duties specifically described in the UB Sup. 6 class specifications, i.e., "a centrally located position responsible for directing and coordinating benefit adjudication and claim services for interstate benefits." As the hearing record indicates, these duties are very similar in nature to the primary duties of positions functioning as managers of local unemployment compensation offices. The duties of these local unemployment compensation office manager positions are also specifically described in the UB Sup. 6 class specifications and these positions are classified at the UB Sup. 6 level.

As the result of the abrupt addition of the above-described TAA duties (see Finding of Fact 5) to appellant's position, the majority of appellant's position's time was no longer devoted to the interstate benefits duties and responsibilities specifically described in the UB Sup. 6 class specifications. The question then becomes one of whether the duties and responsibilities of appellant's position could be described by the language of the other two UB Sup. 6 allocations (see Finding of Fact 7). It is clear that appellant's position does not function as a manager of a local unemployment compensation office and that the primary emphasis of appellant's position is not the supervision of a staff "responsible for ensuring program quality compliance by monitoring and evaluating service against the standards established by state and federal regulations."

Could the duties and responsibilities of appellant's position be described by the language of the two UB Sup. 7 allocations (see Finding of Fact 7)? It is clear that appellant's position does not function as an area manager for the unemployment compensation program, i.e., as a position "responsible for directing and coordinating all benefit adjudication and claim services for a defined geographic region of the state consisting of more than one local office." Appellant's position could, however, be described as "supervising a staff responsible for developing the methods, systems, policies and procedures used in conducting statewide benefit administration including disputed claims resolution which impacts directly on services provided in both field and administrative offices." Appellant's position develops forms, policies, and procedures for statewide benefit programs (TRA, TAA, CWC, Internet) which impact on services provided in field offices and administrative offices.

Thus, the duties and responsibilities of appellant's position are better described by the language of the UB Sup. 7 class specifications than the language of the UB Sup. 6 class specifications although they are not specifically identified in the language of the UB Sup. 7 class specifications.

A logical next inquiry then is whether the duties and responsibilities of appellant's position are more closely comparable to those of positions classified at the UB Sup. 6 or UB Sup. 7 level. It is clear from the record that a majority of appellant's position's time is devoted to duties and responsibilities characterized by Ms. Morgan as "program management" duties for the TAA, TRA, CWC, and Internet programs. It is undisputed that these "program management" duties and responsibilities are higher level duties and responsibilities than the benefit adjudication and claim

services duties and responsibilities which are the primary duties and responsibilities of the local unemployment compensation office manager positions and which were the primary duties and responsibilities of appellant's position as of the effective date of the above-referenced survey (see Finding of Fact 8). The question then becomes one of whether such "program management" duties and responsibilities of appellant's position are sufficiently strong to render appellant's position more closely comparable to positions classified at the UB Sup. 7 level. Ms. Morgan testified that, in her opinion, they were, although she also felt that appellant's position was not as strong a position as the Roche position or the Heil position. (see Finding of Fact 10) Respondent attempted to rebut this testimony through the introduction of testimony by a classification expert that the TAA duties and responsibilities added to appellant's position, standing alone, would merit classification at only the pay range 13 or 14 levels (UB Sup. 4 or UB Sup. 5 levels). However, these TAA duties and responsibilities do not stand alone and do not represent an increase in "volume" without a change of substance. A change in volume only usually would not support a change to a higher classification. The TAA program, however, is a distinct program with its own requirements. It is clear that greater scope and variety and multiplicity of responsibilities can strength a position as well as greater complexity. It is not tenable on the record before the Commission for respondent to maintain that the assignment of "program management" responsibility for an additional statewide program to appellant's position actually weakened the position. This is also inconsistent with the acknowledgment by respondent's classification expert in the hearing record that appellant's position "didn't get enough credit at the time of the

survey" for these same type of "program management" duties as they related to the TRA, CWC, and Internet programs. In other words, respondent's classification expert acknowledged that such "program management" duties actually strengthen appellant's position and there is nothing in the record from which to include that the "program management" duties related to the TAA program were distinguishable from those relating to the TRA, CWC, or Internet programs. In fact, respondent's classification expert testified that these TAA duties represent "more of the same" type of duties as those relating to the TRA, CWC, and Internet programs.

Respondent further argues that, even if appellant's position's new duties and responsibilities relating to the TAA program were at the pay range 16 level (UB Sup. 7) level, because these new duties and responsibilities constitute less than a majority of the duties and responsibilities of appellant's position, the classification of appellant's position could not be raised to the UB Sup. 7 level. Once again, respondent fails to realize that the entire position must be considered in making a classification decision. In other words, all of the duties and responsibilities of the position must be considered, not just the newly added duties and responsibilities.

The Commission concludes, in view of the above, that, not only are the duties and responsibilities of appellant's position better described by the UB Sup. 7 class specifications than by the UB Sup. 6 class specifications, but the nature and level of such duties and responsibilities are more closely comparable to those of the UB Sup. 7 positions offered for comparison purposes (see Finding of Fact 10).

The second issue to be considered in this appeal is:

If respondent's decision was not correct regarding the classification of appellant's position, was the appropriate action a

reclassification, or reallocation, of appellant's position to the UB Sup. 7 level?

Subissue: Should appellant's position have been regraded or should appellant's position have been filled through competition?

§ER-Pers 3.01, Wis. Adm. Code, provides, in pertinent part:

(1) ALLOCATION. Allocation means the initial assignment of a position to the appropriate class by the administrator as provided in §230.09(2), Stats.

(2) REALLOCATION. Reallocation means the assignment of a position to a different class by the administrator as provided in §230.09(2), Stats., based upon:

- (a) A change in concept of the class or series;
- (b) The creation of new classes;
- (c) The abolishment of existing classes;
- (d) A change in the pay range of the class;
- (e) The correction of an error in the previous assignment of a position;
- (f) A logical change in the duties and responsibilities of a position; or
- (g) A change in the level of accountability of a position such as that resulting from a reorganization when the change in level of accountability is the determinant factor for the change in classification.

(3) RECLASSIFICATION. Reclassification means the assignment of a filled position to a different class by the administrator as provided in §230.09(2), Stats., based upon a logical and gradual change to the duties or responsibilities of a position or the attainment of specified education or experience by the incumbent.

(4) REGRADE. A regrade means the determination of the administrator under §230.09(2)(d), Stats., that the incumbent of a filled position which has been reallocated or reclassified should remain in the position without opening the position to other candidates.

It is clear from the record in this appeal and it is undisputed by the parties that the assignment of the TAA duties and responsibilities to

appellant's position constituted a logical but not gradual change to the position. Therefore, the action to be taken is the reallocation of appellant's position to the UB Sup. 7 level under §ER-Pers 3.01(2)(f), Wis. Adm. Code.

It has also been asserted by the appellant that the position, if so reallocated, should not be regraded but should be filled through competition. Respondent has not disputed this assertion and the Commission concurs in view of the substantial changes in the position resulting from the abrupt assignment of the TAA duties and responsibilities to the position and the policy favoring competition for positions changed in this manner and to this extent.

ORDER

The action of respondents is reversed and this matter is remanded to respondents for action in accordance with this decision.

Dated: _____, 1987 STATE PERSONNEL COMMISSION

DENNIS P. MCGILLIGAN, Chairperson

LRM:jmf
JMF01/2

DONALD R. MURPHY, Commissioner

LAURIE R. MCCALLUM, Commissioner

Parties:

Leroy Shorey
2733 Killdeer Court
Cottage Grove, WI 53527

John Coughlin
Secretary, DILHR
P. O. Box 7946
Madison, WI 53707

John Tries
Secretary, DER
P. O. Box 7855
Madison, WI 53707