

STATE OF WISCONSIN

PERSONNEL COMMISSION

 *
 GENE KLEINERT, *
 *
 Appellant, *
 *
 v. *
 *
 Secretary, DEPARTMENT OF *
 EMPLOYMENT RELATIONS, *
 *
 Respondent. *
 *
 Case No. 87-0206-PC *
 *

FINAL
 DECISION
 AND
 ORDER

After reviewing the record and consulting with the hearing examiner, the Personnel Commission adopts the Proposed Decision and Order as its Final Decision and Order except as follows:

The first two paragraphs of the Decision section are deleted and the following substituted:

DECISION

The first issue agreed to by the parties is:

Did Respondent implicitly reject a request from the Appellant to reclassify his position to the Regulation Compliance Investigator 5 level?

Respondent clearly did not expressly reject such a request since appellant did not mention the RCI series to respondent in the context of the reclassification of his position until after the subject denial and respondent did not consider the RCI series in conducting its review of the classification of appellant's position. However, implicit in every decision to classify a position at a particular level is the decision not to classify the position at any other level. It should not be assumed that an employe has the expertise to know which classifications it is

appropriate to review in order to determine the proper classification of his/her position. Such expertise lies with the classification experts in the employing agencies and in DER. In a case where an employee makes a general request for the upgrading of the classification of his position, the Personnel Commission's review need not be limited to those classifications specified by the employee in his request but may extend to any classification the specifications for which could describe the duties and responsibilities of appellant's position. In a case such as the instant one, however, where the employee specifically limits his request to certain classification or series, the Personnel Commission's review will be limited to those classifications or series.

A review of the Auditor 3 position standard and the hearing record indicates that positions classified at the Auditor 3 level typically spend a majority of their time conducting complex audits of a variety of financial records of a variety of entities for a variety of purposes. An example of such a position would be that of Richard Sauer (see Finding (10)(a), above). Mr. Sauer's position audits all the financial records of individuals, partnerships, corporations, and fiduciaries to determine if such entities have paid the proper income, franchises gift, sales/use, and/or withholding taxes. In contrast, appellant's position audits only those financial records involving bingo transactions of only those non-profit entities licensed to conduct bingo activities and only for the purpose of determining whether such entities have complied with the requirements governing bingo activities. Clearly, the duties and responsibilities of appellant's position are much less complex and much more specialized and narrow in scope than those of the Sauer position. Although the Lynch position offered for comparison purposes (see Finding of Fact

(10)(c), above) appears to be a weaker Auditor 3 position than the Sauer position, the duties and responsibilities of the Lynch position are clearly more complex, broader in scope, and less specialized than those of appellant's position, i.e., involve the review of a variety of financial records, a variety of organizations acting in a variety of roles, and a variety of transactions. In contrast, the duties and responsibilities of appellant's position are limited to the review of only those financial records of non-profit licensees related to bingo transactions. Appellant's position is not comparable to the Auditor 3 positions offered for comparison purposes.

Since it has not been alleged that appellant's position "guides the state's central pre-audit field program within a functional grouping of state agencies" as described in the AS 5 position standard, it would have to be determined that appellant's position conducted "the largest and most difficult field audits within an audit program of narrow scope" in order for appellant's position to meet the requirements for classification at the AS 5 level. Although appellant's position does conduct some of the largest and most difficult field audits within the bingo program, this position also conducts some of the smallest and most routine. Because appellant's position is responsible for all audits within a specified geographical area, not just the largest and most difficult, it cannot be concluded that appellant's position is primarily assigned to conduct the largest and most difficult audits and, as a result, it cannot be concluded that appellant's position satisfies the standard for classification at the AS 5 level.

The duties and responsibilities of appellant's position are best described by the language of the position standard for the AS 4 classification, i.e., as "a field auditor conducting large, independent audits of a

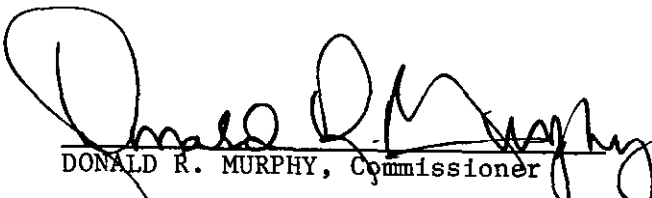
narrow scope and nature," and appellant's position is, therefore, most appropriately classified at the AS 4 level.

ORDER

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

Dated: August 29, 1988 STATE PERSONNEL COMMISSION

LRM:rcr
RCR03/1


DONALD R. MURPHY, Commissioner


LAURIE R. McCALLUM, Commissioner

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PERSONNEL COMMISSION

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PROPOSED
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 ORDER

NATURE OF THE CASE

This is an appeal of respondent's decision to deny appellant's request for the reclassification of his position. A hearing was held on April 21, 1988, before Laurie R. McCallum, Commissioner. The briefing schedule was completed on July 11, 1988.

FINDINGS OF FACT

1. At all times relevant to this matter, appellant has been employed in a classified position in the Division of Enforcement, Department of Regulation and Licensing.

2. Appellant's position was reclassified from Audit Specialist 2 (AS 2) to Audit Specialist 4 (AS 4) effective January 5, 1986.

3. In February of 1987, appellant requested that his position be reclassified from AS 4 to AS 5 or be reallocated to Auditor 3. Respondent denied such request on November 10, 1987, and appellant filed a timely appeal of such denial with the Personnel Commission.

4. At no time prior to the subject denial did appellant request the consideration of, or did respondent consider, the Regulation Compliance

Investigator (RCI) series in the review of the proper classification of appellant's position.

5. The duties and responsibilities of appellant's position are accurately described in the position description signed by appellant's supervisor on March 13, 1987. The position description lists the major goals of the position as follows:

- 80% A. Performance of field auditing of bingo organizations' records to assure compliance with Chapter 163 of the Wisconsin Statutes, and the Wisconsin Administrative Code relating to the practice of bingo.
- 5% B. Investigation of complaints involving licensees of the Bingo Control Board, concerning audit problems or matters within their jurisdiction to assure compliance with Chapter 163 of the Wisconsin Statutes.
- 15% C. Performance of administrative duties to preserve records as potential evidence and to ensure monitoring of audits and investigations of licensees of the Bingo Control Board.

6. The primary emphasis of appellant's position is the audit of financial records. Appellant's position is assigned to a specific geographical area and performs all audits in such area. Some of these audits are large and complex, some are small and routine. Appellant's position does not function as a supervisor or a lead worker over other professional staff.

7. A comparison of appellant's previous position description (the one upon which the January, 1986, reclassification was based) and the March, 1987, position description indicates the addition of the following duties and responsibilities:

- A9. Determine non-compliance of corrective action to be taken by licensees pursuant to audit reports and inform the supervisor or that person's designee via a memorandum setting forth a brief summary of the case, a brief written recommendation on the possible course of action to take in the case and a cover memo referring all of the materials to the Administrator of the Division of Enforcement.

B7. Provide assistance to the district attorneys or other public officials in preparing cases for civil or criminal prosecution where authorized by the supervisor.

B8. Testify at civil or criminal formal proceedings and/or trials when necessary, to answer questions by parties, their attorneys or the district attorneys or other public officials concerning the case as authorized by the supervisor.

8. These additional duties represent a very small percentage of appellant's position's total duties and responsibilities.

9. Two minor amendments were made to Chapter 163 of the Wisconsin Statutes during the time period relevant to this appeal. 1985 Senate Bill 269, published on March 19, 1986, allowed an organization to round off its bingo prizes to the next lower dollar or next higher dollar. 1985 Assembly Bill 655, published on April 9, 1986, allowed the licensed bingo organization to select the type of "bingo checking account" from a wider variety of financial institutions, including those which do not return cancelled checks. Neither amendment had any significant impact on the complexity or scope of the audits conducted by appellant's position.

10. The following positions were offered for comparison purposes:

a) Richard S. Sauer - Auditor 3 - Field Audit Section, Audit Bureau, Department of Revenue -- This position conducts field audits of the records of individuals, partnerships, corporations, and fiduciaries in order to determine that the proper tax liabilities have been reported for income, franchise, gifts, sales/use and withholding tax purposes and prepares appropriate audit reports summarizing the findings of such audits.

b) John R. Rosenau - Audit Specialist 5 - Excise Tax Bureau, Department of Revenue -- This position: (i) has responsibility for field auditing, investigating, and assisting all persons who pay or are required to pay excise taxes to ensure full payment of tax due and

compliance with governing laws and (ii) serves as lead auditor of Audit Specialist 4's during field audits of major oil companies, and (iii) assists in the training of new field personnel. The primary emphasis of this position is the audit of major oil companies,

c) W. Patrick Lynch - Auditor 3 - Division of Enforcement, Department of Regulation and Licensing -- The major goals of this position are the investigation of complaints within the jurisdiction of the Real Estate Board, the audit of trust accounts of licensees of the Board, the performance of related administrative duties, and the education of licensees of the Board and the public concerning real estate trust account practices and procedures. The audits conducted by the position involve the review of a variety of transactions; e.g., sales, rentals, management, trades, each subject to different requirements; the review of a variety of entities, e.g., partnerships, corporations, individuals, serving in a variety of roles, e.g., owner, tenant, manager, seller, buyer; and the review of a variety of accounts, e.g., escrow accounts, earnest money accounts.

11. The position standard for the AS 4 classification provides, in pertinent part:

Class Description

Definition:

This is highly responsible specialized auditing work examining the financial transactions of government agencies, individuals, and businesses subject to state taxation or regulation. Positions identified in this classification typically function in one of the following capacities: 1) as a field auditor conducting pre-audit reviews of major agencies 2) as a field auditor conducting large, independent audits of a narrow scope and nature, such as found in the medical assistance, motor fuel tax, dairy trade compliance, etc. 3) as the chief internal preauditor for the largest

state agencies, 4) as a lead worker within a medium sized organizational subunit responsible for office auditing of tax returns of businesses and individuals to insure compliance with pertinent tax laws.

The positions identified in this class differ from those classified as Audit Specialist 3 in that the audits conducted are of a more complex nature and are done independently with general policy direction and guidelines coming from the central office. In addition, employees in this class often independently consult with representatives of the entities being audited to discuss procedural problems or evidence of discrepancies. Supervision is received through audit report review and periodic conferences with the central office supervisor.

12. The position standard for the AS 5 classification provides, in pertinent part:

Class Description

Description:

This is advanced specialized auditing work examining the financial transactions of governmental agencies, individuals, and businesses. Employees typical of this class are those that guide the state's central pre-audit field program within a functional grouping of state agencies, or those that conduct the largest and most difficult field audits within an audit program of narrow scope, such as the medical assistance, motor fuel tax, dairy trade practice compliance, etc. field audit programs. Employees in this class function with a high degree of independence and determine the scope of the field audit and also assist in establishing general audit policy and procedures. Supervision is received in the form of audit report review, conferences, and discussion of problem areas.

Areas of specialization:

Medical assistance, Dairy Trade Practice Compliance, Motor Fuel Tax, Pre-Audit, or any comparable area of specialization.

Examples of Work Performed

Guide the state pre-audit review function within a large grouping of state agencies, such as all educational agencies, which include participating in the development of audit programs, recommending agency processing procedures, and directing a number of subordinate positions.

Plan and direct field audits and investigative work of staff auditors, conduct the most complex audits and cost

studies, and analyze pricing activities of private businesses under the trade practice laws.

Conduct field audits of the largest and most complex health clinics and day care centers eligible for matching state funds, which include examining receipts, reconciling them against disbursements, and analyzing general office procedures, and policies.

Plan and direct field audit work of staff auditors and conduct the most complex audits for the primary purpose of establishing reasonable daily rates to be paid for care of Medicaid patients in skilled nursing homes.

Apply laws and regulations and interpret administrative procedures.

Make oral and written recommendation based on audit findings.

Guide, train and review the work of assistants.

13. The Auditor 3 position standard provides, in pertinent part:

Class Description

Description:

This is responsible, professional level auditing work in examining the financial records and procedures of governmental units, individuals, business firms, utilities or other comparable entities. Employees in this class are differentiated from those classified as Auditor 2 in that the program objective requires an audit of greater scope and normally involves larger and more complex entities and accounting systems, thus requiring greater independent decision making responsibilities through the interpretation of a wider variety of complex policies, rules and procedures governing the audit program. Responsibility for training and guiding junior auditors during the conduct of the audit may also exist. Supervision is generally received in the form of conferences, discussion of problem areas, and review of the working papers or audit report.

14. The Regulation Compliance Investigator 5 position standard provides, in pertinent part:

This is specialized/advanced regulation compliance work. Employees in this class perform and coordinate investigative functions relating to civil violations of state and federal laws, rules and regulations under very general supervision.

Representative Position

Under very general supervision, position requires employe to perform specialized investigative and program coordination work. Employees provide and coordinate a comprehensive investigative service typically on a state-wide basis which relates to the

enforcement of the laws, rules and regulations of a specialized program area, such as Motor Carrier Reciprocity, Railroad Safety, Worker's Compensation, or Consumer protection where the predominance of the assignments involve industry-wide investigations as opposed to incidents.

15. The duties and responsibilities of appellant's position are best described by the position standard for the AS 4 classification and appellant's position is most appropriately classified at the AS 4 level.

CONCLUSION OF LAW

1. This case is properly before the Personnel Commission pursuant to §230.44(1)(b), Stats.

2. Appellant has the burden to prove that respondent implicitly rejected appellant's request for the reclassification of his position to the RCI 5 level.

3. Appellant has sustained his burden of proof in this regard.

4. Respondent implicitly rejected appellant's request for the reclassification of his position to the RCI 5 level.

5. Appellant has the burden to prove that respondent's decision denying the appellant's request to either reclassify his position from Audit Specialist 4 to either Audit Specialist 5, Auditor 3 or Regulation Compliance Investigator 5 or to reallocate his position from Audit Specialist 4 to Auditor 3 was incorrect.

6. Appellant has failed to sustain his burden of proof in this regard.

7. Respondent's decision that appellant's position was most appropriately classified at the AS 4 level was correct.

DECISION

The first issue agreed to by the parties is:

Did Respondent implicitly reject a request from the Appellant to reclassify his position to the Regulation Compliance Investigator 5 level?

Respondent clearly did not expressly reject such a request since appellant did not mention the RCI series to respondent in the context of the reclassification of his position until after the subject denial and respondent did not consider the RCI series in conducting its review of the classification of appellant's position. However, implicit in every decision to classify a position at a particular level is the decision not to classify the position at any other level. It should not be assumed that an employe has the expertise to know which classifications it is appropriate to review in order to determine the proper classification of his/her position. Such expertise lies with the classification experts in the employing agencies and in DER. In a case such as the instant one, the Personnel Commission's review need not be limited to those classifications specified by appellant in his request but may extend to any classification the specifications for which could describe the duties and responsibilities of appellant's position. The issue then becomes:

Was Respondent's decision denying the Appellant's request to either reclassify his position from Audit Specialist 4 to either Audit Specialist 5 or to reallocate his position from Audit Specialist 4 to Auditor 3 correct?

A review of the RCI 5 position standard and the hearing record indicates that positions classified at the RCI 5 level typically spend a majority of their time conducting statewide, industry-wide investigations generated through complaints received by the employing agency. Appellant's position spends only 5% of its time conducting investigations; has responsibility for a geographical area, not state-wide responsibility; reviews

the practices of individual licensees, not industry-wide practices; and reviews licensees on a regular rotation, not in response to complaints. Appellant's position clearly does not meet the standard for classification at the RCI 5 level.

A review of the Auditor 3 position standard and the hearing record indicates that positions classified at the Auditor 3 level typically spend a majority of their time conducting complex audits of a variety of financial records of a variety of entities for a variety of purposes. An example of such a position would be that of Richard Sauer (see Finding (10)(a), above). Mr. Sauer's position audits all the financial records of individuals, partnerships, corporations, and fiduciaries to determine if such entities have paid the proper income, franchises gift, sales/use, and/or withholding taxes. In contrast, appellant's position audits only those financial records involving bingo transactions of only those non-profit entities licensed to conduct bingo activities and only for the purpose of determining whether such entities have complied with the requirements governing bingo activities. Clearly, the duties and responsibilities of appellant's position are much less complex and much more specialized and narrow in scope than those of the Sauer position. Although the Lynch position offered for comparison purposes (see Finding of Fact (10)(c), above) appears to be a weaker Auditor 3 position than the Sauer position, the duties and responsibilities of the Lynch position are clearly more complex, broader in scope, and less specialized than those of appellant's position, i.e., involve the review of a variety of financial records, a variety of organizations acting in a variety of roles, and a variety of transactions. In contrast, the duties and responsibilities of appellant's position are limited to the review of only those financial

records of non-profit licensees related to bingo transactions. Appellant's position is not comparable to the Auditor 3 positions offered for comparison purposes.

Since it has not been alleged that appellant's position "guides the state's central pre-audit field program within a functional grouping of state agencies" as described in the AS 5 position standard, it would have to be determined that appellant's position conducted "the largest and most difficult field audits within an audit program of narrow scope" in order for appellant's position to meet the requirements for classification at the AS 5 level. Although appellant's position does conduct some of the largest and most difficult field audits within the bingo program, this position also conducts some of the smallest and most routine. Because appellant's position is responsible for all audits within a specified geographical area, not just the largest and most difficult, it cannot be concluded that appellant's position is primarily assigned to conduct the largest and most difficult audits and, as a result, it cannot be concluded that appellant's position satisfies the standard for classification at the AS 5 level.

The duties and responsibilities of appellant's position are best described by the language of the position standard for the AS 4 classification, i.e., as "a field auditor conducting large, independent audits of a narrow scope and nature," and appellant's position is, therefore, most appropriately classified at the AS 4 level.

ORDER

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

Dated: _____, 1988 STATE PERSONNEL COMMISSION

LRM:jmf
JMF10/1

DONALD R. MURPHY, Commissioner

LAURIE R. McCALLUM, Commissioner

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