

STATE OF WISCONSIN

PERSONNEL COMMISSION

* * * * *
 *
 JEFF HOLUBOWICZ et al. *
 (Jeff Holubowicz, Frank Dzioba, *
 Tom Schave, Ed Firlus, *
 Jerry Giebink, Dean Helwig), *
 *
 Appellants, *
 *
 v. *
 *
 Secretary, DEPARTMENT OF *
 HEALTH AND SOCIAL SERVICES, *
 and Secretary, DEPARTMENT OF *
 EMPLOYMENT RELATIONS, *
 *
 Respondents. *
 *
 Case No. 88-0039-PC *
 *
 * * * * *

FINAL
 DECISION
 AND
 ORDER

This matter is before the Commission following the issuance of a proposed decision and order. The Commission has considered the parties' objections and arguments with respect to the proposed decision and order and has consulted with the examiner. The Commission adopts the proposed decision and order, a copy of which is attached hereto and incorporated by reference, as the Commission's final disposition of this matter. The Commission adds the following comments with regard to certain of appellants' objections that are not addressed in the proposed decision.

Appellants refer to changes in their positions. While there were some changes in these positions, the positions as constituted as of the date of respondents' decision were properly classified as Industries Specialist 1.

Appellants also argue their positions were eroded by the assignment of certain of their duties to Industries Specialist 3 positions. This argument does not help appellants' case. The general rule is that the appointing authority, or management, has the right to assign and reassign duties and

responsibilities to employes, §230.06(1)(b), Stats., and DER has the authority to determine the classification of positions based on the duties and responsibilities assigned by management, §230.09(1), (2a), Stats., and it is only DER's decision which can be appealed to this Commission, §230.44(1)(b), Stats.

Dated: Jan 25, 1989 STATE PERSONNEL COMMISSION

AJT:rcr
VIC01/1


DONALD R. MURPHY, Commissioner


GERALD F. HODDINOTT, Commissioner

STATE OF WISCONSIN

PERSONNEL COMMISSION

* * * * *
 *
 JEFF HOLUBOWICZ, et al. *
 (Jeff Holubowicz, Frank Dzioba, *
 Tom Schave, Ed Firlus, *
 Jerry Giebink, Dean Helwig) *
 *
 Appellants, *
 *
 v. *
 *
 Secretary, DEPARTMENT OF *
 HEALTH AND SOCIAL SERVICES *
 and Secretary, DEPARTMENT OF *
 EMPLOYMENT RELATIONS, *
 *
 Respondents. *
 *
 Case No. 88-0039-PC *
 *
 * * * * *

PROPOSED
 DECISION
 AND
 ORDER

NATURE OF THE CASE

This is an appeal pursuant to §230.44(1)(b), Stats., of the denial of a reclassification request. In an interim decision and order entered on July 13, 1988, the Commission denied respondent DHSS's motion to dismiss the appellants other than Mr. Holubowicz on the ground of purported defects in the appeal document. Mr. Holubowicz was the only appellant to appear at the hearing on the merits, acting as spokesperson and representative of the rest of the appellants. Mr. Holubowicz advised at the beginning of the proceeding that Mr. Helwig was withdrawing due to having received a promotion. Therefore, the following decision does not apply to Mr. Helwig.

FINDINGS OF FACT

1. At all relevant times, appellants have been employed in the classified civil service by the Department of Health and Social Services (DHSS), Division of Corrections (DOC), Bureau of Program Services, Badger

State Industries Distribution Center. (BSIDC), in positions classified as Industries Specialist 1 (IS 1)

2. The duties and responsibilities of appellants' positions are to a large extent the same, and can be summarized as follows:

A. Driving, loading and unloading a truck in distributing Badger State Industries' products to customers and in transporting laundry. The laundry transportation involves some transportation of contaminated laundry, which is enclosed in laundry bags. Appellants on occasion have handled hazardous wastes. Much of the furniture requires final assembly, using simple hand tools, on the customer's site, and a final quality-control inspection. The employe in some cases may have to exercise judgment in setting up the furniture pursuant to the customer's site blueprints. The employe must exercise limited discretion in interacting with the customer at the site, and may resolve relatively simple problems with product on-site by making adjustments or repairs on the spot. However, respondent's policy is that any customer complaints or product problems of a substantial nature are to be referred by the employe to the immediate supervisor at BSIDC for resolution.

B. Direction of inmate employes in the movement of finished goods and raw materials. This task involves a range of supervisory-type activities as well as responsibility for the maintenance of security.

C. Training of inmate employes to perform skilled and semi-skilled job assignments. This activity includes training inmate employes in the use, care and maintenance of hand tools and power equipment.

D. Maintenance of records including shipping and receiving orders and inventory.

E. Maintenance of standards of order and cleanliness.

3. The percentages of time devoted to the above activities are as follows:

	Holubowicz, Dzioba	Schaur, Firlus, Giebink
A	60%	A 70%
B	15%	B,C 10%
C	10%	D 10%
D	10%	E 10%
E	5%	

4. All appellants work under the general supervision of the Industries Distribution Center Supervisor (Industries Supervisor), who is present at the Industries Distribution Center but is not present at the delivery site. The supervisor remains responsible and accountable for the work performed and decisions made by appellants. None of appellants have leadwork responsibilities or responsibilities for training classified employes except for on-the-job orientation provided to other new employes.

5. The Industries Specialist Position Standard (Respondent's Exhibit 16) includes the following:

A. Purpose of Position Standard

This position standard is the basic authority for making classification decisions relative to present and future positions responsible for directing the work of correctional inmates, disabled workers or similar persons in a rehabilitation program designed to provide work experience, job training, vocational skills and/or good work habits as well as to produce goods or services for use and sale. Such positions are presently found in the Department of Health and Social Services' correctional institutions and Workshop for the Blind, but the series may be used to identify similar positions in other agencies or programs. Because of the wide variety of ways in which these positions can be structured, this position standard may not specifically identify every eventuality or combination of duties and responsibilities which may exist. Rather it is designed to serve as a framework for classification decision making in this occupational area.

B. Inclusions

This position standard encompasses positions which both direct the work of correctional inmates, disabled workers or similar persons in producing or distributing (including on-site assembly) goods/services to be sold on the open market and provide on-the-job training to these workers to assist them in developing job skills. These positions require knowledge of the particular trade or work being directed. These positions may also have responsibility for maintaining security among correctional inmates participating in an industries program, but this is not the primary purpose of the positions. Positions may have responsibility for leading the work of other Industries Specialist positions but do not have supervisory authority over other civil service employes as defined in s. 111.81(19), Stats.

* * *

D. Entrance and Progression Through the Series

Entrance and progression through this series will normally be by competitive means. Reclassification or reallocation of positions to higher/lower levels within this series will be in accordance with applicable personnel rules.

E. Definitions

* * *

Leadworker: An employe whose assigned duties include training, assisting, guiding, instructing and reviewing the work of one or more permanent classified employes in his or her work unit. Leadworkers do not have supervisory authority as defined in s. 111.81(19), Stats.

Sole On-Site Specialist: An employe who directs all activities of a particular type of industry at an institution and reports to an Industries Supervisor or Industries Superintendent position not physically located at the facility or institution. This employe may lead other specialist positions.

Moderate Skill Level: The work involves:

- 1) Starting, stopping and using some judgment to make adjustments within prescribed limits to the controls (tending) of machines used to make products or process materials;
- 2) Driving/operating machines or equipment such as trucks, vans or tractors to deliver products, move material or transport people; and/or

- 3) Using hand tools or special devices to assemble or work with objects and materials with some latitude for judgment with regard to tolerances and selecting the appropriate object, tool or material.

Taking prescribed actions on the basis of computing (performing arithmetic operations) and/or compiling (gathering and classifying) information may also be involved. Usually little or no formal academic or vocational training is necessary since the basic skills are normally learned during the first few months of employment. Machines and/or equipment typically operated at the moderate skill level include:

* * *

- 2) Distribution - furniture assembly tools, light truck and forklift; or
- 3) Manual Assembly - hand packaging equipment.

Intermediate Skill Level: The work involves operating (setting up and adjusting the machine or material as the work progresses) machines requiring greater latitude for judgment than is typically required at the moderate skill level. The work may also involve computing or compiling information. Some vocational training may be desirable, but most necessary skills will usually be learned during the first few months to a year of employment. Machines and/or equipment typically operated at the intermediate skill level include:

- 1) Metal Stamping - punch press and power press;
- 2) Metal Signage - power shear, brake, punch press, varityper, engraver, vacuum applicator and spray painter; or
- 3) Coco Mat - power looms, sewing machine, yarn spoolers, beam winder and braiders.

High Skill Level: The work involves the exercise of considerable judgment, skill and manual dexterity in working to precise measurement to perform a variety of tasks such as creating graphic designs, setting type manually or repairing machines or equipment using hand tools and inspecting machine parts for conformance to specifications using micrometers, calipers and/or other precision measuring instruments;

and/or

Examining and evaluating data, considering alternatives and determining the appropriate action to be taken. Examples include:

/

- 1) Developing detailed drawings to scale from blueprints or specifications, showing methods of construction and indicating sizes and kinds of material to be used; or
- 2) Setting up (adjusting machines or equipment by replacing or altering tools, jigs, fixtures, etc., to prepare, change or restore their function) and operating a variety of machines including woodwork- ing machines (latches, mortisers, tenoners, routers, saws, etc.), printing machines and equipment (two-color offset presses, horizontal and vertical cameras, etc.) and metal-working machines (lathes, milling machines, grinders, brakes, etc.).

Skills are normally acquired through a trade apprenticeship program resulting in the issuance of a license;

or

Formal vocational and on-the-job training in a variety of specialty machines and equipment where expertise is usually acquired over a period of several years.

Machines and/or equipment typically operated at the high skill level include:

- 1) Machine Shop - drafting tools and equipment, tool grinder, turret lathe, milling machines and vertical and horizontal boring machines;
- 2) Printing and/or Graphics - printing presses (multi-color offset), platen press, cylinder press, phototypesetters, platemaker, horizontal camera and vertical camera; or
- 3) Wood and/or Metal Furniture - planer, router, mortiser, tenoner, shaper, milling machine, vertical and horizontal boring machines and turret lathe.

* * *

G. Classification Factors

- 1) Accountability/Responsibility
 - a. Availability of other lead or supervisory staff at the institution or workshop who are responsible for industrial operations at the site; and/or

b. Responsibility for leading the work of other Industries Specialist positions.

2) Skill Level Required in the Type of Industry (See Definitions).

II. CLASS DEFINITIONS

The following class definitions represent the basic class concepts for each classification level. Several different areas of specialization and position categories exist within this occupational area and it is recognized that this position standard cannot describe every eventuality or combination of duties and responsibilities. Therefore, these class definitions are intended to be used as a framework within which positions can be equitably allocated on a class factor comparison basis with other positions which have been specifically allocated. In applying these allocations, it is necessary to refer to the definitions contained in Section I.E.

INDUSTRIES SPECIALIST 1

(PR 3-09)

This is objective level Industries Specialist work which involves directing and training inmates, disabled workers or similar persons. Positions at this level direct work of moderate skill level such as found in specializations like laundry or distribution. Work is performed under the guidance or general supervision of an on-site leadworker or supervisor.

INDUSTRIES SPECIALIST 2

(PR 3-10)

This level typically encompasses three types of objective level positions:

- 1) Positions which function as the leadworker of Industries Specialist 1 positions as described above (typically as a shift leadworker for a large production unit) where the work performed by inmates, disabled workers or similar persons is at the moderate skill level. Positions function under the general supervision of an on-site supervisor;
- 2) Positions which function as the sole on-site specialist for an industry where the work performed by inmates, disabled workers or similar persons is at the moderate skill level. Such positions direct all activities of a particular type of industry at an institution or facility and report to an Industries Supervisor or Superintendent position not physically located at the facility or institution. Such positions may also

function as the leadworker of Industries Specialist 1 positions. Work is performed under general supervision; or

- 3) Positions which direct and train inmates, disabled workers or similar persons performing at the intermediate skill level. Work is performed under the guidance or general supervision of higher-level Industries Specialist or Supervisor positions at the institution or facility.

INDUSTRIES SPECIALIST 3

(PR 3-11)

This level typically encompasses three types of objective level positions:

- 1) Positions which lead the work of Industries Specialist 2 positions in directing a production unit in which the work performed by inmates, disabled workers or similar persons is at the intermediate skill level. Positions function under the general supervision of an on-site supervisor;
- 2) Positions which function as the sole on-site specialist for an industry where the work performed by inmates, disabled workers or similar persons is at the intermediate skill level. Such positions direct all the activities of a particular type of industry at an institution or facility and report to an Industries Supervisor or Superintendent position which is not physically located at the facility or institution. Such positions may also function as the leadworker of other Industries Specialist positions. Work is performed under general supervision; or
- 3) Positions which direct and train inmates, disabled workers or similar persons performing work at the high skill level. Work is performed under the general supervision of an on-site Industries Supervisor.

6. Appellants requested reclassification from IS 1 to IS 3. This request was denied at the institutional level on June 8, 1987, at the Division of Corrections level on November 16, 1987, and at the departmental level by the Bureau of Personnel and Employment Relations (BPER) on March 2, 1988. The denial of this reclassification request was effected on a delegated basis from the Department of Employment Relations (DER) pursuant

to §230.04(1m), Stats. Appellants appealed the denial to this Commission pursuant to §230.44(1)(b), Stats.

CONCLUSIONS OF LAW

1. This matter is properly before this Commission pursuant to §230.44(1)(b), Stats.
2. Appellants have the burden of proof to establish that respondents erred in denying their reclassification request.
3. Appellants having failed to sustain their burden, the Commission concludes that respondents' decision to deny this reclassification request was not incorrect.

DISCUSSION

Appellants contend that the Industries Specialist (IS) series is a progression series. Respondents dispute this. A progression series is one in which the classification levels are differentiated on the basis of the attainment of "specified training, education or experience," §§ER-Pers 3.015(20(b)), 3.01(3), Wis. Adm. Code. There is nothing in the IS position standard that differentiates the class levels on this basis. Furthermore, the fact that the lowest (IS 1) level is designated as the objective level is inconsistent with the theory of a progression series, as one of respondents' expert witnesses testified, since a progression series typically has one or more entry levels to allow for progression to the objective or full-performance level as the employe learns the work and completes whatever training and education requirements are contained in the position standard. Also, if this were a progression series, it could be anticipated this would be reflected in paragraph D of the position standard (Respondents' Exhibit 16), which instead reads:

D. Entrance and Progression Through the Series

Entrance and progression through this series will normally be by competitive means. Reclassification or reallocation

of positions to higher/lower levels within this series will be in accordance with applicable personnel rules."

Since the IS series is not a progression series, appellants' positions can be reclassified only if they have changed to the point where they better fit the IS 2 or 3 class definitions rather than the IS 1 class definition.

In order to satisfy the IS 2 class definition, the appellants would have to be either 1) performing leadwork, 2) acting as the sole on-site specialist directing inmates performing work at the moderate skill level, or 3) directing inmates performing at the intermediate skill level.

As to 1), it is undisputed that appellants are not leadworkers. As to 2), it is not disputed that they direct inmates who work at the moderate skill level, but they are not "sole on-site specialists." That term is defined in the position standard as:

An employe who directs all activities of a particular type of industry at an institution and reports to an Industries Supervisor or Industries Superintendent position not physically located at the facility or institution. This employe may lead other specialist positions. (emphasis supplied)

It is clear that appellants neither direct all activities at an institution nor report to a supervisor who is physically located at another facility or institution. The fact that the supervisor is not present at the customer's establishment or delivery site does not help appellants' case because the definition of "sole on-site specialist" requires that the supervisor be physically located away from the "facility or institution." It is also immaterial whether the supervisor's position was vacant for a period or filled temporarily by someone who may not have been able to have operated at the full performance level. As the definition makes explicit, the critical point is whether there is a supervisory position at the facility.

The identity or absence of an incumbent in the position is immaterial from a classification standpoint so long as the position has not been vacant for so long that the vacancy has become in effect the status quo. Compare, Fredisdorf v. DP, 80-300-PC, (3/19/82).

As to 3) appellants do not direct inmates performing work at the intermediate skill level. Rather, this work is at the moderate skill level, which is defined by the position standard as:

* * *

- 2) Driving, operating machines such as trucks... to deliver products....
- 3) Using hand tools or special devices to assemble or work with objects and materials with some latitude for judgment with regard to tolerances and selecting the appropriate object, tool or material.... Machines and/or equipment typically operated at the moderate skill level include:

* * *

- 2) Distribution - furniture assembly tools, light truck and forklift....

This is exactly what is involved in appellants' operation, and it does not fit within the definition of "intermediate skill level":

The work involves operating (setting up and adjusting the machine or material as the work progresses) machines requiring greater latitude for judgment than is typically required at the moderate skill level... Machines and/or equipment typically operated at the intermediate skill level include:

- 1) Metal stamping - punch press and power press,
- 2) Metal Signage - power shear, brake, punch press, varietyper, engraver, vacuum applicator and spray painter; or
- 3) Coco Mat - power looms, sewing machines, yarn spoolers, beam winder and braiders.

In order to qualify for the IS 3 level, appellants would have to be:

1) leadworkers of IS 2 positions, 2) sole on-site specialists directing inmates working at the intermediate skill level, or 3) direct and train inmates working at the high skill level. As discussed above, appellants are neither leadworkers nor sole on-site specialists. The work performed

by the inmates they direct is at the moderate skill level. It is not at the high skill level, which typically involves the operation of planers, routers, mortisers, tenovers, shapers, milling machines, vertical and horizontal honing machines and turret lathes.

In conclusion, while appellants' positions do not fall within the IS 2 or 3 class definitions, they are squarely described by the IS 1 definition:

This is objective level Industries Specialist work which involves directing and training inmates... Positions at this level direct work of moderate skill level such as found in specializations like laundry or distribution. Work is performed under the guidance of an on-site leadworker or supervisor.

Appellants raise a number of aspects of their jobs -- e.g., nature of contacts with customers, physical demands such as weight lifting requirements, handling bags of contaminated laundry, etc. -- that would be relevant to a reclassification request if the position standard utilized a factor evaluation system. However, the IS position standard does not include factor evaluation. Appellants argue that respondents "side-stepped" the factor evaluation system. This is not a matter of "side-stepping" factor evaluation. Rather, factor evaluation cannot be applied if it is not called for by the position standard. It is also noted that Appellants' Exhibit 49-49A, the DER bulletin describing the FES ("New System for Classifying Positions") explicitly states that the FES system was being implemented in conjunction with classification surveys as class specifications or position standards were being updated. This obviously had not occurred with regard to the IS position standard as of the date of this reclassification denial.

Finally, respondents moved for partial "summary judgment" after appellants rested, on the ground that there was an inadequate foundation that all of appellants' duties and responsibilities were as testified by

their spokesperson, Mr. Holubowicz. This motion was taken under advisement by the examiner in accordance with §PC5.01(2), Wis. Adm. Code. Since the record reflects that Mr. Holubowicz made an adequate foundation as to the essentially similar nature of the appellants' duties and responsibilities, this motion is denied.

ORDER

Mr. Helwig's appeal is dismissed at his request. The appeal of the other appellants is dismissed on the merits, and respondents' decision denying their request for reclassification is affirmed.

Dated: _____, 1988 STATE PERSONNEL COMMISSION

LAURIE R. McCALLUM, Chairperson

AJT:jmf
JMF05/2

DONALD R. MURPHY, Commissioner

GERALD F. HODDINOTT, Commissioner

Parties:

Jeff Holubowicz, Frank Dzioba
Tom Schave, Ed Firlus,
Jerry Giebink, Dean Helwig
DHSS/Corrections/OIO/BPS
Badger State Industries
Waupun Correctional Institution
Waupun, WI 53963

Patricia Goodrich
Secretary, DHSS
P. O. Box 7850
Madison, WI 53707

Constance P. Beck
Secretary, DER
P. O. Box 7855
Madison, WI 53707

15