STATE OF WISCONSIN   PERSONNEL COMMISSION

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SUSAN C. LULLING,   *
MARILYN ARNESON,   *
                                    *
            Appellants,   *
                                    *
v.   *
                                    *
Secretary, DEPARTMENT OF   *
EMPLOYMENT RELATIONS,   *   ORDER
                                    *
            Respondent.   *
                                    *
Case Nos. 88-0136, 0137-PC   *
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After having reviewed the arguments and objections of the parties and having consulted with the hearing examiner, the Commission adopts the Proposed Decision and Order with the addition of the following language:

The Commission, in deciding the instant case, follows that line of cases which establish that classification specifications should prevail over equitable considerations or instances of improper application of the specifications. (Zhe et al. v. DHSS & DP, Case No. 80-285-PC (11/19/81), affirmed by Dane County Circuit Court, Zhe et al. v. PC, 81-CV-6492 (11/2/82); Kennedy et al. v. DP, Case No. 81-180, etc.-PC (1/20/83); McCord v. DER, Case No. 85-0147-PC (3/13/86). The Commission is of the opinion that the language of the TSIO position standard provides little room for doubt that it is intended to include within its scope the positions held by appellants and that, while certain provisions of the MIT positions standard also describe the duties and responsibilities of appellants' positions, the specificity with which they are described by the TSIO position standard is controlling.

The Commission does not regard the outcome of these appeals as satisfactory, however, despite the fact that it regards the outcome as inevitable considering the state of the law in this regard. The record shows that DER does not dispute the fact that appellants' positions and the TSIO 2 position at the UW-Green Bay are comparable to at least the six WISCOMP MIT 2 positions offered for comparison purposes in the hearing record. In fact, in Appellant's Exhibit 4, Cornell Johnson, one of DER's personnel specialists, states in an August 31, 1988, memo to his team leader, that "There are currently 25 positions performing work which could be defined as Typesetting System Input Operators in my opinion. This number reflects 20 positions which are currently classified as MIT 2's or MIT 3's which would be reallocated downward to the TSIO 2 classification. These positions are located in DPI's Word Processing Center and DOA's WISCOMP." Mr. Johnson, in this memo, recommended that these MIT 2 (pay range 10) and MIT 3 (pay range 12) positions be reallocated to the TSIO 2 (pay range 6) classification and both the TSIO 1 (pay range 5) and TSIO 2 classifications be reassigned to higher pay ranges. It is clear from the record that DER acknowledges that these MIT 2 and MIT 3 positions are incorrectly classified. The Commission recognizes that DER no longer has the authority to assign classifications to pay ranges. However, it is troubling that, for whatever the reasons, this situation of obvious inequity has been allowed to occur and to continue.
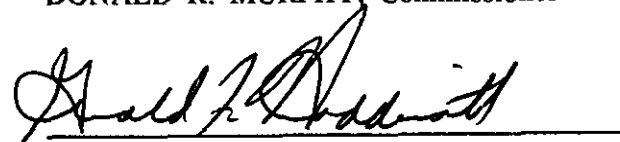
Finally, the Commission notes that, while it lacks general equitable authority, appellants may wish to bring their salary concerns to the attention of the Claims Board, which can consider claims based on equitable principles pursuant to §16.007(5), Stats.

Dated:_____ 13 , 1989   STATE PERSONNEL COMMISSION

LAURIE R. McCALLUM, Chairperson

DONALD R. MURPHY, Commissioner

GERALD F. HODDINOTT, Commissioner

LRM:lrm

Parties:

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STATE OF WISCONSIN   PERSONNEL COMMISSION

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SUSAN C. LULLING,   *
MARILYN ARNESON,   *
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          Appellants,   *
                              *
v.   *   PROPOSED
                              *   DECISION
Secretary, DEPARTMENT OF   *   AND
EMPLOYMENT RELATIONS,   *   ORDER
                              *
          Respondent.   *
                              *
Case Nos. 88-0136, 0137-PC   *
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Nature of the Case

This matter is before the Commission as an appeal of a decision by respondent denying the appellants' requests for the reclassification of their positions. The parties agreed to the following issue:

> Whether the respondent's decisions denying the reclassification of the appellants' positions from Typesetting Input Operator 2 to Management Information Technician 2 or 3 were correct.

A hearing was held on April 7 and 14, 1989, before Laurie R. McCallum, Commissioner. The briefing schedule was completed on May 22, 1989.

Findings of Fact

1. At all times relevant to this matter, appellants have been employed in positions classified at the Typesetting System Input Operator 2 (TSIO 2) level in the Duplicating Services unit at the University of Wisconsin-Extension.

2. Position descriptions signed by appellants in 1983 provide an accurate description of their duties and responsibilities at that time, as follows:

30% A1. Operate Comp-Set 500 Phototypesetter with disc drive (504) to produce a variety of brochure, reports, pamphlets, letterheads, and other publications.

30% A2. Operate 3510 with disc drive (504) to produce charts and forms utilizing forms package memories.

16% A3. Do complete mark-up and plotting of forms and charts.

5% A4. Do paste-up of forms and charts.

⸱1% A5. Perform daily maintenance on all equipment.

1% A6. Keep accurate record of time on job tickets.

2% A7. Keep record of jobs recorded on diskette.

5% A8. Assist in proofreading.

5% A9. Assist in mark-up and paste-up of jobs other than forms and charts.

4% A10. Operate Pako processor to process jobs from cassette.

1% A11. Load paper into cassettes in dark room.

3. Position descriptions signed by appellants in 1988 provide accurate descriptions of the duties and responsibilities of their positions at that time, as follows:

65-75% A. Production of high quality typeset camera copy.

A1. Operate the Veritype 500 and 3510 (computerized photo-typesetters) and Pako-Processor to produce a wide variety of forms, charts, tables, brochures, etc. This requires the utilization of programming codes and formatting commands to create and revise copy.

A2. Interpret copy-marked manuscript, correct typographical errors, proofread, discuss problems with customers and make suggestions.

A3. Maintain and record complete and accurate production records including inputting data into the IBM System 36 for billing, cost accounting and management information records.

A4. Arrange priorities of assigned work; suggest additional resources or overtime as required.

A5. Prepare layouts and perform paste-ups indicating, for example, parameters, gripper, perforation, folds, color

separation, screens and photo insertions, photo enlargements, reductions, and cropping.

20-30% B. Performance as primary operator, lead worker and/or back-up to supervisor.

B1. Assign and prioritize incoming work orders; coordinate with customer support staff.

B2. Perform quality control to assure that outgoing work conforms to unit and UW-Extension standards.

B3. Initiate customer contact as required for specific work order or types of work; develop standard styles and formats to meet customer needs and to increase efficiency.

B4. Review production records to assure accurate billing.

5% C. Miscellaneous

C1. Maintain work area, attend meetings and training sessions, cross-reference files.

C2. Participate in the development and implementation of new or revised processes and procedures.

4. Appellants' work with the computerized phototypesetters does not involve the design of computer systems or software. Such work does involve the manipulation, modification, and augmentation of existing pre-packaged software for the purpose of adapting it to the specific needs of the unit. The primary purpose of appellants' positions is to use the computerized typesetting equipment and other related equipment to produce printed materials in response to orders placed by the UW-Extension's customers. The primary purpose of appellant's positions is not the performance of data processing support functions for users external to their unit although they are required to apply some technical data processing knowledge.

5. Approximately 90% of Appellant Lulling's position's work product consists of forms. The primary work product of Appellant Arneson's position consists of brochures, catalogues, and handbooks.

6. The position standard for the Typesetting System Input Operator series provides, in pertinent part:

I. Introduction

A. Purpose of this position standard

This position standard is intended to be used for making classification decisions relative to present positions performing clerical duties in the operation of typesetting equipment while still being flexible enough to classify future positions which may involve different programs, program emphasis and/or duties and responsibilities. . . .

B. Inclusions

This series encompasses positions which operate a variety of computer-assisted typesetting equipment.

II. CLASS DESCRIPTIONS

TYPESETTING SYSTEM INPUT OPERATOR 2

This is full performance level work of moderate difficulty involving the operation of a variety of typesetting equipment in a text processing and composition unit or comparable unit. Positions allocated to this class operate machines for the purpose of converting written text information into computer printed formats. . . .

TYPESETTING SYSTEM INPUT OPERATOR 2 - WORK EXAMPLES

Types text copy and selects, interprets and files computer codes, based on general format guidelines.
Assists in the development of work methods and procedures for the unit.
Provides users with cost estimates for composition.
Operates and maintains video display terminals, cathode ray tube typesetter, photopaper processor, tape drives, disk packs, line printer, and TTY.
Runs programs to review and makes corrections, as necessary, to files (including all mark-ups) on video display terminals.
Schedules work flow, assigns work to operators, reviews work for accuracy, and coordinates work flow with other units.
Instructs and trains operators in the operation, adjustment and care of equipment, and in the details of layout and copy preparation.
Proofreads text and format.

Performs minimum maintenance on equipment for operations.

7. The position standard for the Management Information Technician series provides, in pertinent part:

I. INTRODUCTION

A. Purpose of Position Standard

' This Position Standard is intended to be used to classify positions engaged primarily in technical data processing support functions. . . .

B. Inclusions

This Position Standard includes positions which are performing data control, programming, forms design, tape librarian and/or other specialized data processing work which is considered to be "technical" in nature. In most instances, organizationally these positions will be located within the agency's data processing operation providing direct technical data processing supportive services to the professional data processing staff or to users.

C. Exclusions

This Position Standard excludes the following types of positions:

(1) All positions whose primary functions are clerical rather than technical in nature and, therefore more properly identified within a clerical classification. In such cases, the positions may have to apply some technical data processing knowledge. However, such interaction will usually be in support of the position's majority functions which may include responsibility for maintaining a statistical reporting system, issuing licenses or other similar clerical activities.

(2) All positions more appropriately identified with another technical series such as Computer Operator, Peripheral Equipment Operator or Data Processing Operations Technician.

(3) All positions performing programming work which is considered to be "professional" in nature, as identified in the Management Information Specialist and Management Information Specialist-Confidential series.

(4) All other positions which are more appropriately identified by other class series.

* * * * *

F. Definitions

The following are the basic definitions for the previously identified areas of specialization. . . .

Programming

The efforts of positions identified here will be directed towards programming areas such as intelligent key-to-disc equipment. Within this area, the programming may be of two types. The most routine involves preparing programs for systems (such as Entrex or comparable) which are being used for data entry purposes. In these cases, the programming will be of a limited scope as dictated by existing hardware operating system requirements. Specific functions performed may include: preparing data entry formats for new and revised key-to-disc applications, coding necessary system libraries using established job number naming; coding necessary programs; preparing all library printouts and other documentation; keying all new or changed libraries into the system; consulting with data entry users; creating tapes as necessary; debugging system failures and performing recovery functions; and assisting in training system operators.

The complex programming identified here involves the programming of intelligent systems which are being used for more advanced processing purposes than identified above. In cases such as these, the system's mini-computer is being used to process a variety of non-data entry applications which would normally be processed on the agency's main computer. The programming required to support these applications is similar in nature (but not scope and complexity) to that performed by "professional" programmers and involves the application of greater programming knowledge than what is required of the more routine programming identified above.

Forms Design

Positions identified under this subtitle will typically function as a forms designer for a state agency. Responsibilities will include: preparing and laying out the format for department forms; reviewing requests for new, revised, or reordered forms for appropriateness; maintaining department forms and files; and providing liaison with users regarding technical questions related to form layout, design, content, etc.

* * * * *

II. CLASS DEFINITIONS AND SPECIFIC ALLOCATIONS

Management Information Technician 2

Definition:

This is typically an objective or progression level. Positions identified here perform complex management information technician work. . . .

Specific Allocations:

Programming - This is the objective level for positions responsible for programming intelligent key-to-disc equipment for data entry purposes or for other programming of similar scope and complexity. . . .

Management Information Technician 3

Definition:

This is typically a lead or objective level. Positions identified here in a lead capacity are responsible for leading other technicians engaged in complex management information technician work. Positions identified here as an objective level perform very complex management information technicians work under general supervision.

Specific Allocations:

Programming - This is the objective level for positions responsible a majority of the time for complex technical programming responsibilities.

Forms Design - Positions identified as forms designers will typically be identified here as an objective level. These positions may perform all forms design work for a small agency or a portion of the forms design work for a larger agency.

8. The duties and responsibilities of appellants' positions are substantially identical to those of positions in the printing units of the University of Wisconsin-Green Bay, the Department of Administrations's WISCOMP Center, and the University of Wisconsin-Milwaukee. These positions are classified at the TSIO 2 or MIT 2 level. The MIT 3 positions at these locations offered for comparison purposes in the record have either lead work or "troubleshooter" responsibilities or handle the most complex assignments as opposed to assignments of varied levels of complexity. The duties and responsibilities or appellants' positions are not comparable to those of these MIT 3 positions.

9.   Appellants submitted   requests for the reclassification of their positions from TSIO 2 to MIT 2 or MIT 3 to the UW-Extension Personnel Office on April 20, 1988.   These requests were denied by respondent in a letter dated November 9, 1988.   Appellants filed timely appeals of such denials.

9.   The duties and responsibilities of appellants' positions are better described by the position standard for the TSIO 2 classification than that for the MIT 2 or MIT 3 classifications.

Conclusions of Law

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

2.   The appellants have the burden to show that respondent's decision denying their requests for the reclassification of their positions from TSIO 2 to MIT 2 or MIT 3 was incorrect.

3.   Appellants have failed to sustain this burden.

4.   Appellants' positions are most appropriately classified at the TSIO 2 level.

Decision

Section ER-Pers 3.01(3), Wis. Adm. Code, provides as follows:

> RECLASSIFICATION.   Reclassification means the assignment of
> a filled position to a different class by the administrator as
> provided in s. 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.

Respondent argues that appellants' positions have not undergone a logical and gradual change within the meaning of §ER-Pers 3.01(3), Wis. Adm. Code.   A comparison of appellants' 1983 position descriptions (See Finding of Fact 2,

above) and those position descriptions accompanying the subject reclassification requests appears to indicate that appellants' positions have not undergone any significant change since 1983. Although it would be relevant to review any changes which occurred in the duties and responsibilities of these positions since they were first classified at the TSIO 2 level, it is not apparent from the record when they were first classified at the TSIO 2 level or what their duties and responsibilities were at that time. As a consequence, the Commission will rely upon the 1983 duties and responsibilities of the subject positions to determine whether there has been a logical and gradual change. The record does indicate in this regard that appellants' mark-up and paste-up duties expanded as a result of the retirement of an employee classified as a Graphic Artist 2 and that their record-keeping duties related to billing, cost accounting and management information had changed from a manual system to a computerized system on the IBM System 36. The record also indicates in regard to appellant Lulling that the award to the UW-Extension of the Hospital Forms Management Contract resulted in a shift of emphasis in her position to forms output which is acknowledged to be more complex than the output of catalogues, booklets, and handbooks. All of these changes appear to be logical outgrowths of those duties and responsibilities appellants were performing in 1983 and appear to have been assigned on a gradual basis. The Commission concludes on this basis that the duties and responsibilities of appellants' positions have undergone a logical and gradual change.

The more significant question is whether appellants' positions are more appropriately classified at the TSIO 2 or MIT 2 or MIT 3 level. As the language of the MIT position standard indicates, positions appropriately classified in the MIT series are those engaged primarily in technical data processing support functions which, in most instances, means that these positions will be located

within an agency's data processing operation providing direct technical data

processing support services to professional data processing staff or users. The

language of the MIT position standard also indicates that the MIT series does

not encompass clerical positions which apply some technical data processing

knowledge in support of the position's majority function or positions which

are more appropriately identified by other class series. It is hard to imagine a

better fit between a position standard and a position than that between

appellants' positions and the TSIO 2 position standard. The TSIO position

standard states that the series encompasses positions which operate a variety

of computer-assisted typesetting equipment. This is clearly the primary

function of appellants' positions. The TSIO 2 classification specifications state

that TSIO 2 positions operate a variety of typesetting equipment in a text

processing and composition unit for the purpose of converting written text

information into computer printed formats. This is clearly the primary

function of appellants' positions. Finally, appellant's positions perform each

of the duties described by the TSIO 2 Work Examples. Appellants argue that

their positions are involved in "programming" and "forms design" within the

meaning of the MIT position standard. Even if this were the case, such a

finding would not overcome the fact that the majority of appellants' duties and

responsibilities are specifically described by the language of the TSIO position

standard. It is not uncommon for certain duties and responsibilities of a single

position to be described by position standards for different classifications or

different series. However, the test to be applied is which position standard

"best fits" or most specifically describes the duties and responsibilities of the

position. In this case, even if certain duties and responsibilities of appellants'

positions could be described as "programming" or "forms design" duties within

the meaning of the MIT position standard, the TSIO 2 position standard is

clearly a better "fit" and more specifically describes such duties and

responsibilities. Appellants' positions are clearly better described by the TSIO

2 position standard than that for the MIT 2 or MIT 3 classifications and are

more appropriately classified at the TSIO 2 level.

Appellants argue that it is inequitable that appellants' positions

perform the same duties and responsibilities as certain positions classified at

the MIT 2 level (which are assigned to a higher pay range) but are paid less

and that one way to remedy this inequity would be to reclassify appellants'

positions to the MIT 2 level. It seems clear from the record that an inequity

does exist, i.e., the duties and responsibilities of appellants' positions are

substantially identical to those of certain MIT 2 positions (See Finding of Fact 8,

above). However, as the Commission noted in Augustine & Brown v. DATCP,

Case No. 84-0036,0037-PC (9/12/84):

> "To reclassify a position simply because another comparable
> position is inappropriately classified would compound an error
> and would ignore the requirement that the majority of the duties
> and responsibilities of a position satisfied the applicable
> specifications before the position may be classified at a particular
> level."

Appellant attempts to distinguish the instant fact situation from that present

in the Augustine & Brown decision by arguing that, in the instant case, there

was not a single allegedly misclassified comparable position but a number of

such positions. However, such an argument adds little to the case when, as

here, the proper classification level of the positions is so clear-cut. If the

proper classification level were in doubt, the fact that most of the positions

found to be equivalent were classified at the higher level would be relevant to

the question of the proper classification of the position. However, in a

situation such as the one before us where it is clear what the proper

classification of the subject positions should be, the fact that a number of positions are misclassified, as opposed to a single position, sheds little light.

Appellant also argues that, even if the Commission decides not to reclassify the appellants' positions to remedy the inequity, it should function as a court of equity and award appellants the difference in salary between what was earned by those employees occupying the comparable positions at the MIT 2 level and what appellants earned. However, as an administrative agency, the Commission has only that authority expressly granted by statute or necessarily implied from such express grant of authority. No such express grant or necessary implication exists in this regard and appellants cite no authority for their argument. Furthermore, the issue agreed to by the parties is specifically limited to a question of the correctness of respondent's decision denying the subject reclassification requests and the argument advanced by appellants goes beyond the scope of this issue.

Order

The actions of respondent in denying the subject reclassification requests is affirmed and these appeals are dismissed.

Dated:_____, 1989   STATE PERSONNEL COMMISSION

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LAURIE R. McCALLUM, Chairperson

_____
DONALD R. MURPHY, Commissioner

_____
GERALD F. HODDINOTT, Commissioner

LRM:lrm

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