

WAYNE MERTENS,

Appellant,

v.

Secretary, DEPARTMENT OF
EMPLOYMENT RELATIONS,

Respondent.

Case No. 90-0237-PC

DECISION
AND
ORDER

This matter is before the Commission as an appeal of a reallocation decision. The parties agreed to the following statement of issue:

Whether the decision by respondent reallocating appellants' positions to the Revenue Agent 3 level was correct.
Subissue: Whether appellants' positions are more appropriately classified at the Revenue Agent 3 or Revenue Agent 4 level.

The hearing was scheduled to be held on a consolidated basis with Beyer v. DER, Case No. 90-0242-PC. At the commencement of the hearing, Mr. Beyer withdrew his appeal and it was subsequently dismissed by the Commission by order dated June 27, 1991.

FINDINGS OF FACT

1. At all times relevant to this proceeding, the appellant has been employed as an out-of-state collections specialist in the Out-of-State Collections Unit, Referral Section, Compliance Bureau in the Income, Sales, Inheritance & Excise Tax Division of the Department of Revenue (DOR).

2. The appellant's supervisor is Harold McCarthy, Chief of the Referral Section.

3. The appellant's duties are accurately reflected in a position description completed in May of 1990. The position summary reads as follows:

Obtain compliance with tax laws from taxpayers who reside outside this state through collection of delinquent taxes, establish tax liabilities, obtain tax returns, review books and records, provide

taxpayer assistance, locate taxpayers and attend and conduct hearings to determine taxpayer's ability to pay taxes.

4. Also within DOR are approximately 90 classified positions referred to as field tax representatives whose responsibilities are summarized by their position descriptions as follows:

Obtain compliance with tax laws through collection of delinquent taxes, establish tax liabilities, obtain tax returns, review books and records, serve legal documents, provide taxpayer assistance, locate taxpayers, attend and conduct hearings to determine taxpayer's ability to pay taxes, conduct investigations, and seller's permit revocation activities.

The field reps are assigned a geographical area within the state of Wisconsin and are then assigned the responsibility to obtain tax compliance for persons and other taxable entities within that area. These positions are all within the Field Compliance Section of the Compliance Bureau.

5. For the most part, the field reps and the out-of-state collection specialists utilize the same collection tools to obtain compliance within their assigned geographic areas. Those tools include installment agreements, garnishments of a wage payment or bank account, license revocations, certifications (used to force an employer to withhold a portion of a delinquent taxpayer's salary) and letters to taxpayers threatening certification.

6. The duties and responsibilities of field tax reps and the out-of-state collection specialists differ, in part, as follows:

a. Field reps spend more time travelling and have significantly more face-to-face contacts with taxpayers or their representatives.

b. Involuntary collection tools are used much more frequently by field reps.

c. Issues of residency and nexus are only addressed by the out-of-state collection specialists.

7. The respondent carried out a classification survey of various positions within the Department of Revenue. The survey was based on a quantitative evaluation system (QES). DER asked DOR to identify any problems with the existing specification system, including compensation and recruitment problems. DER worked with DOR to determine what classifications and what positions were to be included within the survey. DER then issued a QES question-

naire to the incumbents in what had been identified as benchmark positions. The questionnaire was designed to gather information about each of the various classification factors: personal contacts, discretion, knowledge, effect of actions, consequence of error, physical effort, surroundings and hazards and environment. After the employes completed the questionnaires, DER and DOR staff conducted individual audits of the benchmark positions to insure that the information on the questionnaires was complete and accurate. The resulting information summary was resubmitted to all of the employes in the particular job type and their responses were added to make a final composite of information.

8. Based on guidelines prepared by DER, DOR developed a list of raters to serve on the rating panel. The panelists were provided training to become familiar with the QES factors and the system of levels/definitions within the factor or subfactor. The panel then reviewed each position composite and an attached position description in terms of each classification factor. The numerical ratings of the panelists, after being checked for inter- and intra-rater reliability and bias, were subjected to a computer program which generated clusters or groupings of positions. Once ratings and pay range assignments were made, the class specifications were drafted. The specifications were then used to make reallocation decisions for individual positions within DOR.

9. The newly promulgated Revenue Agent (RA) classification specifications include the following language:

E. Definition of Terms

Persons - Includes all taxable entities such as sole-proprietorships, partnerships and corporations.

Field Tax Collection - Performing collection activities both within and outside of an agent's assigned office.

Complex Field Tax Collection - Performing examinations of books and records, resolving employe-employer disputes, representing the department at speaking engagements and training other revenue agents.

* * *

F. Classification Factors

Individual position allocations are based upon the general classification factors described below:

1. The freedom or authority to make decisions and choices and the extent to which one is responsible to higher authority for actions taken or decisions made;
2. Information or facts such as work practices, rules, regulations, policies, theories and concepts, principles and processes which an employe must know and understand to be able to do the work;
3. The difficulty in deciding what needs to be done and the difficulty in performing the work;
4. The relative breadth, variety and/or range of goals or work products and the impact of the work both internal and external to the work unit;
5. Type of supervision received;
6. Organizational status as it relates to level of responsibility; and
7. The nature and level of internal and external coordination and communication required to accomplish objectives.

G. Classification Descriptions

This classification specification is used to classify professional positions as described under Section B of this classification specification. In most instances, positions included in this series will be clearly identified by one of the classification definitions which follow below in Section II. However, a position may evolve or be created that is not specifically defined by one of the classification definitions. In classifying these positions, it would be necessary to compare them to the classification definitions based on the factors described in Section E of the classification specification.

II. DEFINITIONS

* * *

REVENUE AGENT 3

This is either experienced entry, progression (developmental) or objective level work performing tax collection, registration, revocation or liability determination. Positions allocated to this class may function in one of the following capacities: 1) Positions allocated to this class, as an objective (full performance) level, perform out-of-state collections, sales/use tax or withholding tax office audit review, specialized review and adjustment of delinquent tax accounts, personal liability determi-

nations, permit revocation or nonrenewal, registration, and/or state temporary and concessionaire sellers work. These positions also provide taxpayer assistance in their area of expertise. Work is performed under general supervision

REVENUE AGENT 4

This is objective or advanced level work involving field tax collection, bankruptcy or sales/use tax activities. Positions allocated to this class may function in one of the following capacities ... 2) Positions allocated to this class as objective (full performance) level, perform complex field tax collection activities and taxpayer assistance. Work is performed under general supervision

10. Appellant performs his out-of-state collection responsibilities at the objective level.

CONCLUSIONS OF LAW

1. This matter is properly before the Commission pursuant to §230.44(1)(b), Stats.
2. The appellant has the burden of establishing the respondent's reallocation decision was incorrect.
3. The appellant has not sustained his burden of proof.
4. The respondent's reallocation decision was not incorrect.

OPINION

In a classification appeal, the Commission must analyze the duties and responsibilities of a position and determine which of the various classifications at issue best describe those duties.

The appellant serves as an out-of-state collections specialist for the Department of Revenue.

The Revenue Agent class specifications refer to objective level positions performing "out-of-state collections" in the first allocation under the Revenue Agent 3 definition. The specifications also refer to objective level positions performing "complex field tax collection activities and taxpayer assistance" in the second allocation in the RA 4 definition. The term "complex field tax collection activities" is defined in the specifications in such a way that it does not exclude the appellant's position. As between these two allocations, the reference to out-of-state collections is a more specific description of the duties as-

signed to the appellant's position. In addition, this allocation is consistent with DOR's organization chart which refers to the appellant's position as being within the Out-of-State Collections Unit and the field tax rep positions as being within the Field Compliance Section. The Commission has previously held that class specifications are analogous to a set of statutes or rules and should be interpreted in the same way that statutes and rules are interpreted when applying them to particular fact situations. Klepinger v. DER, 83-0197-PC, 5/9/85; reversed on other grounds by Dane County Circuit Court, DER v. Wis. Pers. Comm. (Klepinger), 85-CV-3022. Where there is a specific and a general provision in the same statute, the specific provision must control in the construction of the statute. Student Ass'n of University of Wisconsin-Milwaukee v. Baum, 74 Wis2d 283, 246 NW2d 622. Therefore, the RA specifications must be interpreted as specifically identifying the appellant's position within the first allocation at the RA3 level.¹

The appellant sought to show, primarily through a comparison of position descriptions, that his out-of-state collections responsibilities were the same as those assigned to the field (in-state) collections positions which are specifically identified at RA4 level, except for the geographic areas being served. There are, however, at least some distinctions between the field and the out-of-state positions. The distinctions include a far different frequency of face-to-face contacts and a difference in the frequency of using involuntary collection tools. The appellant must also address issues of residency and nexus which are not faced by the field reps. Given these distinctions, the appellant cannot successfully argue that his responsibilities are identical to those of the the field reps described by allocation 2) at the RA4 level.

The appellant also contends that errors were made in terms of the ratings awarded by the rating panel for the benchmark position (held by Ruth Shade) in the out-of-state collections unit. Assuming, arguendo, that the Commission can consider the appellant's contention, the record is insufficient to support a conclusion that the ratings awarded to the appellant's position,

¹The appellant suggested that if the word "field" in allocation 2) at the RA4 level was dropped off, the allocation would describe his duties. The Commission may not ignore language in interpreting the specifications, just as in interpreting a statute, effect must be given, if possible, to every word, clause and sentence. Greenebaum v. Department of Taxation, 1 Wis2d 234, 83 NW2d 682 (1957).

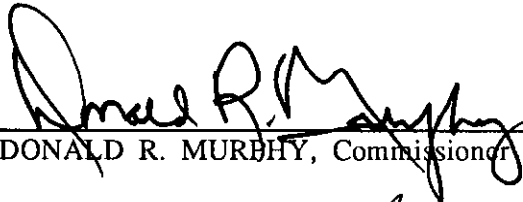
vis-a-vis other positions included in the survey, were somehow erroneous. The record does not include the actual ratings generated by the members of the rating panel, nor does it include the various composites which were analyzed by the panel, other than the composite for the Shade position. The record also does not include either the levels/definitions relied upon by the panel in rating each position or information as to how the results of the computer program would have been different if one or more of the factor ratings for the out-of-state collections specialist composite position were changed. Therefore, there is no evidence in the record on which the Commission could determine whether the raters somehow misinterpreted or misapplied the quantitative evaluation system (QES) factors to the duties performed by the various representative positions.

Appellant interpreted testimony that there was 98% inter-rater reliability to mean that the survey was 98% accurate and that there was a "2% human error factor." There is no evidence in the record which would support the application of appellant's interpretation of this testimony so as to cause the rejection of the survey's allocation of the out-of-state collection positions.

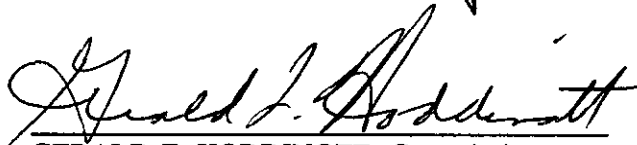
ORDER

The respondent's decision classifying the appellant's position is affirmed and this matter is dismissed.

Dated: August 8, 1991 STATE PERSONNEL COMMISSION


DONALD R. MURPHY, Commissioner

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GERALD F. HODDINOTT, Commissioner

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