

STATE OF WISCONSIN

PERSONNEL COMMISSION

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LEE A. DAVISON et al.  
(Joseph Dulka & Kenneth Weisensel),

Appellants,

v.

Secretary, DEPARTMENT OF  
EMPLOYMENT RELATIONS,

Respondent.

Case No. 90-0243-PC

\* \* \* \* \*

STEPHEN R. DANIELSON,

Appellant,

v.

Secretary, DEPARTMENT OF  
EMPLOYMENT RELATIONS,

Respondent.

Case No. 90-0263-PC

\* \* \* \* \*

FINAL  
DECISION  
AND  
ORDER

This matter is before the Commission following the issuance of a proposed decision and order by the hearing examiner. At this time, the Commission adopts the proposed findings, conclusions and order as final. However, because these appeals can be decided on narrower grounds, the Commission substitutes the following decision for the proposed decision.

DECISION

It is clear from the record that appellants' positions are specifically identified in the RAO 2 classification specifications and that the duties and responsibilities to which appellants' positions devote a majority of their time are accurately described by the RAO 2 classification specifications. Appellants argue that their positions should be classified at the RAO 3 level since they

perform duties and responsibilities identified in the fifth allocation of the RAO 3 classification specifications. The record does show that appellants' positions do supervise the field audits of large multistate corporations with sales in excess of \$50 million annually. However, the record also shows that appellant's positions do not devote a majority of their time to this function.

Appellants also contend that the survey position rating process that was followed in the course of the survey resulted in erroneous rankings of their positions, and that their positions compare favorably to certain other positions that were reallocated to the RAO 3 level, on the basis of the QES (Quantitative Evaluation System) factors utilized in the survey, as well as on basis of the classification factors which are found in the RAO class specification. Respondent argues that the Commission lacks jurisdiction over what it considers is an attempt to call into question the position evaluation process that occurred during the survey. Assuming, arguendo, that the Commission can consider appellants' contentions with respect to the QES factors and that their contentions with respect to the class factors have some probative value notwithstanding the specific identification of their positions by the RAO 2 class specification, the record reflects that they did not present enough evidence to have prevailed in any event.

As part of the prehearing discovery process, appellants requested of respondent "the evaluation and rating criteria" utilized with respect to certain positions, see Appellant's Exhibits 6 and 7. By a letter dated January 16, 1991, respondent declined to provide this information because of the following reasons:

- a. They are irrelevant to any issue appealable to the Commission, and will not reasonably lead to any admissible evidence,
- b. Survey methodology is not a justiciable issue over which the Commission has jurisdiction. Appellants' Exhibit 8.

Appellants took no action concerning respondent's refusal to provide this material, but at the hearing stated that:

The appeal letter also requested copies of the data used by the survey rating panel and that information has not been provided. This information was again requested on November 28, 1990, and January 7, 1991, (see Exhibits 6 and 7). These requests were made in an attempt to see whether or not there are errors in the surveys that were taken, in the rating panel analysis or in the

computer program that analyzed the data. Without that information we cannot determine where the error is. As part of our appeal here today, we again request copies of the data used in this reallocation of positions.

As appellants in effect concede, without the requested information it is difficult to see how they could possibly demonstrate there were any of the errors in the survey process to which they refer. In other words, even assuming that appellants' approach could properly be considered by the Commission, on this record appellants would not have satisfied their burden of proof (proponderance of the evidence) necessary to show errors in the "surveys that were taken, in the rating panel analysis or in the computer program that analyzed the data," because there was no evidence in the record to show what these ratings, etc., were.<sup>1</sup>

As was noted above, appellants sought to procure the rating information through a prehearing discovery request to respondent, which DER refused to provide. Appellants made no attempt to compel discovery prior to the hearing, but requested at the hearing that DER be directed to produce the information. Laying to one side the question of the relevance of the information, this request was made too late. The Commission rules require that "copies of exhibits shall be served and filed at least 3 working days before the commencement of the hearing." Section PC 4.02, Wis. Adm. Code. The Commission rules also provide for prehearing discovery at §PC 4.03, Wis. Adm. Code, which provided a basis for appellants to have made their request for information. This section also provides for orders to compel discovery:

PC 4.03 Discovery. All parties to a case before the Commission may obtain discovery . . . as provided by Ch. 804, Stats. . . . For good cause, the Commission or the hearing examiner may issue orders . . . to compel discovery.

At the hearing, appellants stated that they had not been advised how they should proceed. However, in addition to the Commission's rules cited above, the prehearing conference report dated October 24, 1990, explicitly advised the parties of the need to file and exchange exhibits at least three

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<sup>1</sup> Appellants also sought to elicit this information on cross-examination of a DER employee, but she was not able to answer their questions.

working days before the hearing pursuant to §PC 4.02, and it should be obvious that this requirement can not be met if the documents in question are not produced until after the hearing has already started. Furthermore, appellants did not contact the Commission before the hearing, in which case they could have received information about how to proceed.

Appellants did provide some testimony on their own behalf comparing their positions to the RAO 3 positions in the context of the QES and classification factors. However, they did not present evidence that would permit the Commission to conclude by a preponderance of the evidence that their positions should be rated as high on the basis of these factors as the positions to which they were compared. This is due in part to the problem, discussed above, that the record does not reflect the details of how the positions were evaluated by the rating panel. Also, appellants' testimony was for the most part conclusory in nature, and there is no basis for the Commission to conclude that their opinions should carry more weight than the conclusions of the rating panel, which had many years of experience with DOR programs.

For example, appellants contended that the knowledge and expertise required for audits of companies with \$10,000,000 in sales was the same as for companies with \$100,000,000 in sales. However, even if this is correct, the amount of the audited taxpayer's revenues obviously can have a bearing on the impact of the work performed (class factor #4) and the Commission could not conclude on the basis of this representation by appellants that respondent's reliance on sales figures was improper.

Another example involves appellants' contention that their supervision of lower level auditors requires more time and detailed involvement than the supervision of more experienced higher-level auditors. This fails to account for the level of responsibility associated with supervising more highly-classified employees, who presumably are performing more responsible work

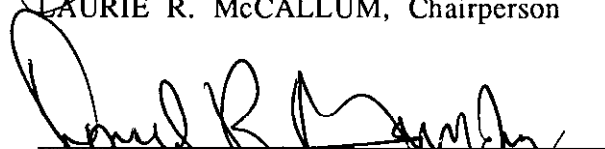
ORDER

The proposed decision and order, a copy of which is attached hereto, is incorporated by reference as the Commission's final disposition of this matter, with the exception that the foregoing "DECISION" is substituted for the proposed "DECISION", and respondent's action reallocating appellants' positions from RA 2 to RAO 2 rather than to RAO 3 is affirmed and this appeal is dismissed.

Dated: May 1, 1991 STATE PERSONNEL COMMISSION

  
LAURIE R. McCALLUM, Chairperson

AJT/dah

  
DONALD R. MURPHY, Commissioner

  
GERALD F. HODDINOTT, Commissioner

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PROPOSED  
DECISION  
AND  
ORDER

Nature of the Case

This is an appeal of a decision by respondent to reallocate appellants' positions from the Revenue Administrator 2 (PR 01-17) level to the Revenue Administrative Officer 2 (PR 01-17) level and not to the Revenue Administrative Officer 3 (PR 01-18) level. A hearing was held before Laurie R McCallum, Chairperson, on February 8, 1991.

### Findings of Fact

1. At all times relevant to this appeal, appellants have been employed by the Department of Revenue (DOR) as District Field Audit Supervisors. These positions are primarily responsible for managing the district field audit program and for supervising the activities of 12-20 field auditors involved in auditing income tax, gift tax, sales and use tax, corporation franchise tax, and withholding tax returns of taxpayers ranging from the small sole proprietorship to the large corporations. The field auditors supervised by appellants' positions are classified at the Auditor 3, 4, and 5 levels. Although appellants' positions do supervise the audits of large multi-state corporations with sales in excess of \$50 million annually, they do not do this the majority of their time.

2. A personnel management survey of certain positions, including appellants', was conducted during 1990. As a result of this survey, appellants' positions were reallocated from Revenue Administrator 2 to Revenue Administrative Officer 2 (RAO 2). Appellants filed timely appeals of such reallocations.

3. The position standard for the RAO series promulgated as a result of such survey states as follows, in pertinent part:

#### Definitions

##### REVENUE ADMINISTRATIVE OFFICER 2

Positions allocated to this level include: . . . (5) District Field Audit Supervisor: This position supervises and directs the work of Revenue Auditors within a district who audit income, gift, sales and use, corporation franchise and withholding tax returns of taxpayers; prepares biennial budget for district audit program; and participates in the development and revision of legislation; . . .

### REVENUE ADMINISTRATIVE OFFICER 3

Positions allocated to this level include: . . . (3) Large Case Field Audit Supervisor: This position supervises Revenue Auditors involved in auditing generally only the large multi-state corporations whose sales exceed \$50,000,000 per year for compliance with franchise tax and sales/use tax; selects and assigns cases to be audited by Revenue Auditors; reviews audit reports; and determines which cases should be referred to the Intelligence Section for possible criminal investigation; . . .

4. The Large Case Field Audit Supervisor positions have the same range of duties and responsibilities as appellants' positions but spend the majority of their time supervising the audits of large multi-state corporations with sales in excess of \$50 million annually. The field auditors supervised by the Large Case Field Audit Supervisor positions are classified at the Auditor 5, 6, and 7 levels.

5. The duties and responsibilities of appellants' positions are better described by the language of the position standard for the RAO 2 classification than that of the RAO 3 classification and appellants' positions are more appropriately classified at the RAO 2 level than the RAO 3 level.

### Conclusions of Law

1. This matter is appropriately before the Commission pursuant to §230.44(1)(b), Stats.
2. Appellants have the burden to prove that respondent's decision real-locating their positions to the RAO 2 level was incorrect.
3. Appellants have failed to sustain this burden.
4. Appellants' positions are appropriately classified at the RAO 2 level.

### Decision.

The proper classification of a position involves a weighing of the classification specifications and the actual work performed to determine which



classification best fits the position. It is frequently the case that the duties and responsibilities of a position are described by the language of two or more classification specifications. The classification which "best fits" a position is that which describes the duties and responsibilities to which the position devotes a majority of its time. [Bender v. DOA and DP, Case No. 80-210-PC (7/1/81); Division of Personnel v. State Personnel Commission (Marx), Court of Appeals District IV, 84-1024 (11/21/85); DER & DP v. State Personnel Commission, Dane County Circuit Court, 79-CV-3860 (9/21/80)].

This task is simplified to a great extent where, as here, a position is specifically identified in a classification specification. This specific identification may not be dispositive of a classification issue where, for example, the position standard is several years old and the duties and responsibilities of a specifically identified position have changed significantly since the position standard was promulgated. However, this is not the case here. The RAO position standard was newly promulgated at the time that it was used by respondents to make the subject reallocations of appellants' positions. It is clear from the record that appellant's positions are specifically identified in the RAO 2 classification specifications and that the duties and responsibilities to which appellants' positions devote a majority of their time are accurately described by the RAO 2 classification specifications. Appellants argue that their positions should be classified at the RAO 3 level since they perform duties and responsibilities identified in the fifth allocation of the RAO 3 classification specifications. The record does show that appellants' positions do supervise the field audits of large multistate corporations with sales in excess of \$50 million annually. However, the record also shows that appellant's positions do not devote a majority of their time to this function.

It appears that appellants, in bringing these appeals, were actually disputing the results of the personnel management survey of their positions, i.e., the assignment of the District Field Audit Supervisor positions to the RAO 2 classification; the assignment of the RAO 2 classification to pay range 01-17; the assignment of the Large Case Field Audit Supervisor positions to a higher classification than the District Field Audit Supervisor positions; the failure of the survey rating panel to accurately value the responsibilities of appellants' positions; the failure of the survey results to accurately reflect the values assigned to the responsibilities of appellants' positions by the survey rating panel; and the failure of the survey to recognize experience, job knowledge, and job change. These issues are not cognizable by the Commission within the context of a classification appeal, i.e., the Commission is bound by the classification specifications in effect at the time the disputed classification action was taken and does not have the authority to modify or reject these specifications in reaching its decision. [Zhe et al. v. DHSS & DP, Case No. 80-285-PC (11/19/81); affirmed by Dane County Circuit Court, Zhe et al. v. State Personnel Commission, 81-CV-6492 (11/2/82)].

Based on the above, the Commission concludes that respondents were correct in reallocating appellants' positions to the RAO 2 level based on the language of the relevant classification specifications.

Order

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

Dated: \_\_\_\_\_, 1991      STATE PERSONNEL COMMISSION

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LAURIE R. McCALLUM, Chairperson

LRM/gdt/3

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DONALD R. MURPHY, Commissioner

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GERALD F. HODDINOTT, Commissioner

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