



Services (Office) was created within DRL to provide such services. This new Office included two Attorney 13 positions and these position were assigned responsibility for serving as legal counsel to assigned boards (50%); serving as hearing examiners for boards to which they were not assigned (40%); and serving as legal advisors to DRL staff working with the boards (10%).

Appellants Austin and Rittel were appointed to these two positions. Subsequent to 1981, two additional Attorney 13 positions were created within the Office and the responsibilities of these positions were identical to those assigned to the Austin and Rittel positions in 1981. In August of 1988, appellants Polewski and Jefferson-Moore were appointed to these two new positions.

3. In July of 1989, appellants' position descriptions were revised to read as follows, in pertinent part:

A. (60%) Provide legal advice and counsel to examining boards in the department.

A. Advise board during meetings in the following typical areas:

- a. licensing and examination questions.
- b. open meetings and open records requirements.
- c. procedural questions, e.g., voting, quorum, and parliamentary procedure requirements.
- d. general statutory interpretation.
- e. advice on board authority and jurisdiction.
- f. advice on new legal precedents affecting the boards and their licenses.
- g. advice on appropriate findings and conclusions in board-conducted informal disciplinary settlement conferences.
- h. advice on recommendations made by the Division of Enforcement for filing complaints against licensees.
- i. advice on proposed decisions made by hearing examiners in disciplinary and license denial proceedings.
- j. advice on arguments, objections and petitions for rehearing by attorneys representing parties in disciplinary and license denial proceedings.
- k. advice relating to petitions from licensees and other members of the public for promulgation of administrative rules, declaratory rulings, change in licensure

status, and administrative appeals of previous board actions.

- l. advice on the promulgation of administrative rules and the introduction of legislation.

A2. Prepare written legal opinions on questions of significance, including the following:

- a. interpretation of statutes and administrative rules affecting the boards and their licensees.
- b. interpretation of recent judicial decisions affecting occupational licensing.
- c. deciding the merits of legal questions raised by petitions for declaratory rulings.

A3. Draft documents for and on behalf of the boards, typically including the following:

- a. findings, conclusions, orders, and opinions in disciplinary and license denial proceedings, and in informal disciplinary settlement conferences.
- b. formal responses to legal questions addressed to the boards by licensees and other members of the public.
- c. declaratory rulings.
- d. administrative rules and legislative proposals.
- e. requests for formal opinions of the Attorney General.
- f. correspondence on behalf of the board responding to practice questions from licensees and other members of the public.

B. (30%) Serve as designated hearing examiner in disciplinary and license denial proceedings before the department and the boards.

B1. Establish hearing schedule, conduct prehearing conferences, hear and decide prehearing motions, control discovery, issue subpoenas and procedural order.

B2. Preside at formal disciplinary hearings.

B3. Prepare findings of fact, conclusions of law, an order and a written opinion in disciplinary and license denial proceedings.

C. (10%) Provide legal advice to department staff in such areas as board authority and jurisdiction, response to public inquiries, practice questions, interpretation of board and department statutes and rules, licensing and examination questions, and open meetings and open records requirements.

4. The changes in the duties and responsibilities of appellants' positions between 1981 and 1989 primarily consisted of an increase in the time spent providing legal counsel and advice to assigned boards from 50% to 60%; a decrease in the time spent serving as a hearing examiner from 40% to 30%; the addition of responsibility for serving as a mediator in settlement conferences in disciplinary cases; changes in statutory and rule provisions relating to assigned boards; and the addition of new boards to which to provide legal services. At no time relevant to these appeals have appellants' positions been responsible for investigating or prosecuting consumer complaints.

5. On or around July 31, 1989, the appellants requested the reclassification of their positions from Attorney 13 to Attorney 14. This request was denied by respondent in a memo dated June 14, 1990.

6. At the time the subject reclassification requests were filed, respondent had not developed classification definitions for the Attorney series. Instead, the position standard for the Attorney series consisted of allocation patterns drawn from all Attorney positions in state agencies. Duties and responsibilities justifying classification at a higher level in the Attorney series included litigation before administrative and judicial forums; providing legal services for a broad range of program areas; serving as chief counsel for an independent state agency; and serving as a supervisor of other Attorney positions. Classification decisions were made using a whole job comparison analysis.

7. Positions in the Attorney 13 allocation pattern (as of July 31, 1989) which had components resembling to some extent those of appellants' positions include:

a. #51. Agriculture Staff Attorney: Serves as assistant legal counsel to the department in the administration and enforcement of a broad range of agricultural, trade and consumer protection laws, with special emphasis on food, meat inspection, weights and measures, packaging and labeling, hazardous substances, consumer product safety, fraudulent advertising and other consumer protection, business regulation, and unfair trade practice laws. Duties include the furnishing of day-to-day legal guidance and advice to division administrators and enforcement staffs; acting as complaint counsel or hearing examiner in contested administrative proceedings; assisting local district attorneys and the attorney general's office in the prosecution of civil and criminal enforcement actions commenced by the department; the drafting

of administrative rules and proposed legislation; and representing the department before legislative committees, other administrative agencies, and the courts as required.

b. #54. Health and Social Services Hearing Examiner Supervisor: Position is responsible for administration of the various administrative hearing functions and procedures in the areas of health, welfare, and social services. Supervises 16.5 attorneys functioning as hearing examiners and legal consultants in areas of health, welfare, social services, and probation and parole. Provides legal consultation, advice and services to the Secretary and other department staff. Conducts administrative hearings (10%).

c. #55. Health and Social Services Staff Attorney: Provides legal advice and counsel to the Department's Divisions on matters relating to policies, procedures, and litigation. Represents the Department before various state and federal administrative tribunals, including but not limited to Division of Nursing Home Forfeiture Appeals, Personnel Commission, Claims Board, Labor and Industry Review Commission, Office of Administrative Hearings, etc. Functions as liaison with the State Department of Justice, County Corporation Counsels, judges and district attorneys in judicial proceedings.

d. #64 Personnel Commission Chief Counsel: Serves as general counsel to the State Personnel Commission (60%). Reviews, edits, and provides advice to the Commission on decisions prepared by hearing examiners. Serves as prehearing conference officer and hearing examiner in hearings of civil service appeals and discrimination/retaliation complaints filed by state employees. Supervises one Attorney hearing examiner.

8. Appellants' positions do not have a significant supervisory or litigation component. The only positions listed in the Attorney 14 allocation pattern (as of July 31, 1989) which appear not to have had a significant supervisory or litigation component are:

a. #91 Chief Counsel for the Office of the Commissioner of Banking; Acts as legal counsel to the Office of the Commissioner of Banking. Conducts legal research, prepares memorandums, briefs, and opinions relating to state banking laws. Represents the Commissioner in hearings on charter and branch applications and deposits between banks on out-of-state banking laws. May assist in prehearing investigations. Assists Attorney General's office in litigation proceedings; prepares records, briefs and arguments. Drafts rules, interpretations and opinions related to Consumer Act. Revises contract forms, investigates complaints, conducts hearings and establishes administrative procedures to obtain voluntary compliance with Consumer Act. Reviews and drafts legislation.; and

b. #112 Chief Counsel for the Wisconsin Employment Relations Commission (WERC). Serves as legal counsel to Commission on matters relative to federal and state labor law, rules and regulations, and the collective bargaining process. Drafts opinions regarding interpretations of law involving contract disputes and other legal disputes in the public and private sectors where few legal precedents exist or must be developed. Acts as Commission liaison with A.G.'s office on enforcement orders and appeals. May represent Commission in circuit or supreme courts when A.G. is required to represent a state agency in the same proceeding. Analyzes legislative bills and attends hearings as requested by the Commission. Drafts procedural rules for consideration and adoption by the Commission. Reviews complaint decisions issued by staff examiners following petitions for review filed by aggrieved or disputing parties or on the Commission's own initiative. Reviews record in complaint, declaratory rulings and election cases heard by the Commission. Performs precedent research, analyzes testimony and record, and drafts decisions for Commission's signature. Performs mediation and arbitration services in complex labor disputes. Conducts complex hearings on unfair labor, prohibited practices and representation cases.

9. In relation to the subject reclassification request, appellants' positions are more comparable from a classification standpoint to the positions in the Attorney 13 allocation pattern than to those in the Attorney 14 allocation pattern.

10. During 1990, respondent conducted a personnel management survey of Attorney positions and created a new position standard for the Attorney series. This position standard states, in pertinent part:

## II. CLASS DEFINITIONS AND REPRESENTATIVE POSITIONS

The following definitions of duties and responsibilities, as well as the representative positions identified for specific classification levels, provide examples and patterns for both present and future position allocations.

Attorney 13 (PR 9-73)

Attorney 13-Conf., Mgt., Supv., Conf./Supv. (PR 1-73)

### Definition

This is responsible professional work involving the provision of legal services. Positions allocated to this level function as 1) Administrative Hearing Examiners; or 2) Staff Counsel in a narrow area of specialization such as document

drafting, legal research, or administrative rules development or; 3) legal advisors for a singular and narrowly defined program area.

#### Representative Positions

##### Health and Social Services: Hearing Examiner

Conducts administrative hearings relating to eligibility for various public assistance and social service programs administered by the Department, actions affecting foster parents or children, child abuse, legal settlement, actions affecting various licenses issued by the Department, probation and parole revocation, and such other administrative hearings as the Department is, or may be, required to provide by law. Prepares decisions, orders and other post-hearing documents. Provides legal consultation, advice, and services to Department staff.

##### Legislative Reference Bureau: Document Drafting/Legal Research

Prepares bills, amendments, resolutions, and petitions pursuant to legislative instruction. Advises authors and bill draftsmen on alternatives and statutory limitations. Consults with legislators and others entitled to bill drafting services. Appraises and assembles facts in a logical, clear and concise manner.

##### Industry, Labor and Human Relations: Legal Advisor/narrow program area

Under the general direction of the Bureau Director for Legal Affairs, interprets existing federal and state U.C. laws and regulations; researches and develops program policy for Chapter 108, Wis. Stats., and related federal laws and programs; provides other legal services to the division and the department upon request; and disseminates U.C. information to interested parties.

ATTORNEY 14 (PR 9-74)

ATTORNEY 14-Conf., Mgt., Supv., Conf./Supv. (PR 1-74)

#### Definition

This is very responsible professional work involving the provision of a full range of legal services. Positions allocated to this level function as 1) Chief Counsels for state agencies other than those identified at the Attorney 15 level; or 2) Deputy Chief Counsels reporting to Chief Counsel positions; or 3) Litigating Attorneys with primary responsibility for administrative and/or court proceedings outside of the

Department of Justice; or 4) Agency Staff Counsel responsible for functioning as a legal generalist, providing legal advice on a wide variety of issues and representing their agency in administrative and/or court proceedings.

Representative Positions

Public Instruction: Chief Counsel

Provides legal advice and administrative support to the Department's top management team. Represents the Department or State Superintendent in legal actions and proceedings before state and federal judicial and administrative tribunals either individually or in conjunction with the Department of Justice. Conducts administrative hearings and adjudicates contested cases including matters appealed to the State Superintendent pursuant to statute and teacher license revocations. Manages the Office of Legal Services.

Transportation: Deputy Chief Counsel

As Deputy Director, supervises the Office of General Counsel and its regulatory intervention activities. Coordinates and provides legal advice, counsel and services to the Secretary of Transportation and departmental staff, including Federal, State and local officials in matters relating to transportation. Coordinates representation and represents the DOT before the Transportation Commission and other agencies. Represents the DOT publicly in transportation matters.

Public Service Commission: Litigating Attorney

Represents the Commission in proceedings before all levels of State and Federal courts, and in litigation before other governmental agencies at the State and Federal levels, such as the DOE, SEC, FERC, FCC, ICC and NRC. Provides legal service and counsel to the Commission and the staff and in litigation before the Commission.

Health and Social Services: Agency Staff Counsel

Provides legal advice and counsel to the Department's Division on matters relating to policies, procedures, and litigation. Represents the Department before various State and Federal administrative tribunals, including but not limited to Division of Hearings and Appeals, Personnel Commission, Claims Board, Labor & Industry Review Commission, Office of Administrative Hearings, etc. Functions as liaison with the State Department of Justice, county corporation counsels, judges, and district attorneys in judicial proceedings.

11. As a result of this survey, appellants' positions were reallocated from Attorney 13 to Attorney 13; the positions described in 8.a. and 8.b., above, were reallocated from Attorney 14 to Attorney 14; the position described in 7.b., above, was reallocated from Attorney 13 to Attorney 13; and the positions described in 7.a., 7.c., and 7.d. were reallocated from Attorney 13 to Attorney 14.

12. In addition to the new Attorney position standard, respondent adopted a new allocation pattern for positions in the Attorney series. Positions in the new Attorney 13 allocation pattern which have components resembling to some extent those of appellants' positions include:

a. #3 Health and Social Services Hearing Examiner. Conducts administrative hearings relating to eligibility for various public assistance and social service programs administered by the Department, actions affecting foster parents or children, child abuse, legal settlement, actions affecting various licenses issued by the Department, probation and parole revocation, and such other administrative hearings as the Department is, or may be, required to provide by law. Prepares decisions, orders and other post-hearing documents. Provides legal consultation, advice, and services to Department staff.

b. #8 Industry, Labor and Human Relations Unemployment Compensation Hearing Examiner: Conducts administrative hearings and writes decisions for the Unemployment Compensation Program, the Work Incentive Program, and various other federal wage insurance programs.

c. #11 Industry, Labor and Human Relations Unemployment Compensation Hearing Examiner Supervisor: Supervise the hearing examiners, stenographic reporters and clerical staff assigned to regional hearings offices. Supervision includes all matters relating to conduct of hearings and issuance of appeal tribunal decisions. As time permits, conducts complex hearings and prepares findings of fact and decisions.

d. #14 Industry, Labor and Human Relations Unemployment Compensation Staff Attorney: Under the general direction of the Bureau Director for Legal Affairs, interprets existing federal and state U.C. laws and regulations; researches and develops program policy for Chapter 108, Wis. Stats., and related federal laws and programs; provides other legal services to the division and the department upon request; and disseminates U.C. information to interested parties.

e. #15 Office of the Commissioner of Insurance Staff Attorney: Provides legal counsel to non-Attorney employees who review, process, investigate and resolve consumer complaints and inquiries on insurance. Reviews and prepares cases for

administrative or court proceedings concerning disciplinary actions against insurers or agents accused of violations of consumer insurance laws and acts as a hearing officer at such proceedings. Prepares consumer information and educational materials and conducts meetings with consumer groups concerned with insurance problems and regulations.

f. #16 Office of the Commissioner of Insurance: Provides legal counsel to the Board of Governors of the Patients Compensation Fund and the Wisconsin Health Care Liability Insurance Plan and the Peer Review Council. Assists with drafting statutory and administrative rule changes, monitoring the defense of the Patients Compensation Fund, and acting as the hearing officer at hearings conducted by the Office of the Commissioner of Insurance.

g. #31 Vocational, Technical, and Adult Education--Educational Approval Board Staff Attorney: Investigates school compliance with applicable statutes and rules, complaints regarding supervised schools, and claims against private school boards. Reviews applications for approval of schools and courses. Participates in litigation, rule-making, and administrative hearings through research, presentation of testimony and evidence, and drafting of rules, proposed legislation, and required legal documents. Develops and revises forms related to agency functions under Wis. Stats. §38.51.

13. Positions in the new Attorney 14 allocation pattern which have components resembling to some extent those of appellants' positions include:

a. #51 Department of Administration, Lottery Board Chief Counsel: Serves as chief legal counsel and advises Lottery Board, Executive Director, and staff on a wide variety of legal matters. Drafts opinions, contracts, and other legal documents. Acts as agency liaison with the Attorney General's Office in preparation of court cases at both trial and appellate level, and appears with the Attorney General's Office in court proceedings. Drafts administrative rules and assists in the review of legislation and prepares complex legislation. Represents the agency in administrative hearings before other agencies; appears before legislative committees and conducts administrative hearings.

b. #57 Employee Trust Funds Chief Counsel: Serves as chief counsel for the department by providing legal counsel and assistance to the department's Secretary and staff and to the Employee Trust Fund, Teacher Retirement, Wisconsin Retirement and Group Insurance Boards and to other persons and entities as required. Drafts, negotiates and interprets department contracts with insurance and administrative services providers. Provides comprehensive legal representation for the department in administrative hearings under Ch. 40 or 227. Formulates and drafts various proposed legislative and rule changes relating to retirement

and insurance programs; and interprets and explains the impact of proposed and enacted state and federal laws and regulations on department programs.

c. #61 Health and Social Services, Administrator, Office of Administrative Hearings: Under the supervision of the Assistant Deputy of the Department, administers, directs and supervises the activities of the Office of Administrative Hearings. Evaluates existing policies and procedures involved in administrative litigation and develops solutions to legal and programmatic issues contributing to litigation. Assists in developing policies and procedures affecting the Department's responsibilities to provide due process and administrative hearings. Provides advice to the Secretary's Office and program divisions on legal and administrative issues raised through the hearing process. Acts as hearing examiner in complex and sensitive issues.

d. #64 Industry, Labor and Human Relations, Director of the Bureau of Legal Affairs in the Unemployment Compensation Division: This position reports to the Deputy Administrator of the Unemployment Compensation Division. It requires the handling of the most complex professional administrative and legal work for all unemployment compensation and related programs. This position directly supervises a large staff of professionals, both directly and through subordinates, including employees in four regional hearing offices and the Enforcement Section. In addition, this position is responsible for performing or managing the performance of legal activities; functioning as Chair of the Council on Unemployment Compensation; developing appeals plans; and supervising appeals and legal enforcement activities.

e. #66 Industry, Labor and Human Relations, Chief of Enforcements for the Bureau of Legal Affairs/Enforcements Section of the Unemployment Compensation Division: As Chief of the Enforcements Section, this position supervises three Attorney 14's, four Job Service Specialist 4's, one Job Service Specialist 5, and one Job Service Assistant Supervisor 2. Duties include providing expert legal advice and representing the agency before administrative hearing officers, State courts and Federal courts in cases involving collection of benefit overpayments, recovery of delinquent unemployment taxes and resolution of disputed unemployment tax assessments and determinations of tax status.

f. #69 Chief Counsel for the Office of the Commissioner of Insurance: Advises Commissioner on laws and interprets administrative rules. Guides investigators in processing of complaints against insurers. Serves as counsel at disciplinary hearings involving agents or companies and at rate or rule-making hearings. Drafts decisions and orders. Advises on policy forms and other related legal documents as well as corporate insurance matters. Provides support service to Attorney General in court proceedings.

g. #95 Vocational, Technical, and Adult Education Chief Counsel: Serves as Chief legal counsel and advises State Board, State Director, and staff on a wide variety of legal matters. Drafts opinions, contracts, and other legal documents. Acts as agency liaison with the Attorney General's Office in the preparation of court cases and appears with the Attorney General's Office in court proceedings. Directs administrative rule preparation and assists in the preparation of legislation. Represents the agency in administrative hearings; appears before legislative committees, and conducts administrative hearings.

14. The duties and responsibilities of appellants' positions, for purposes of the subject reallocation decision, are better described by the classification specifications for the Attorney 13 classification than those for the Attorney 14 classification and are more closely comparable to the duties and responsibilities of the positions described in the Attorney 13 allocation pattern than those of the positions described in the Attorney 14 allocation pattern.

14. Appellants filed timely appeals of the subject reclassification and reallocation decisions.

#### 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 prove that respondent's decision denying their requests for the reclassification of their positions from the Attorney 13 level to the Attorney 14 level was incorrect.

3. The appellants have failed to sustain this burden.

4. At the time of the subject reclassification requests, appellants' positions were correctly classified at the Attorney 13 level.

5. The appellants have the burden to prove that respondent's decision reallocating their positions from the Attorney 13 level to the Attorney 13 level rather than the Attorney 14 level was incorrect.

6. The appellants have failed to sustain this burden.

7. At the time of the subject reallocation, appellants' positions were correctly classified at the Attorney 13 level.

## Opinion

### Denial of Reclassification Request

In the context of the instant case, "reclassification" means the assignment of a filled position to a different classification based upon a logical and gradual change to the duties or responsibilities of the position. §ER 3.01(3), Wis. Adm. Code. Respondent contends that appellants' positions did not undergo such a gradual and logical change during the relevant time period. Respondent bases this contention on the argument that the only changes in the duties and responsibilities of appellants' positions were changes in the percentages of time consumed by certain functions and that this did not represent a change in function or substance as is required for reclassification. Respondent is incorrect in this regard. If the changes in time percentages result in the majority of the positions' time being spent performing higher level duties and responsibilities, then the positions satisfy the requirements for classification at the higher level, regardless of whether any change in the substance or function of these duties and responsibilities has occurred and regardless of the actual size of the change in the percentages. Appellants have shown that the duties and responsibilities of their positions did change in a logical and gradual manner during the relevant time period. The remaining question in this regard then is whether the result of this change was that appellants were then performing Attorney 14-level duties and responsibilities the majority of the time.

In support of their argument that the changes in the duties and responsibilities of their positions had this result, appellants contend that their positions functioned as chief counsels to entities equivalent to independent state agencies and that their positions provided legal advice over a wide range of program and issue areas.

The examining boards to which appellants' positions are assigned do not function as independent state agencies. Not only are they not listed as independent agencies of state government in the Wisconsin Statutes but they also do not carry out the independent administrative functions, e.g., personnel, procurement, budget, etc., that independent state agencies carry out. In addition, the focus of these examining boards, i.e., licensure and regulation of a particular profession, is much narrower than the focus of most, if not all, state

agencies. Finally, it would not be accurate to characterize the range of program and issue areas for which appellant's positions have responsibility as "wide." Although assignment to several examining boards requires familiarization with several sets of licensing and practice requirements, which, as a consequence, increases the complexity of the assignment, the same agency program and the same basic area of legal practice or expertise is involved. Although legal issues in other areas of legal practice or expertise may arise for appellants on occasion, e.g., tax, secured transactions, contracts, etc., appellants' work in these areas is sporadic at best and would not rise to the level of an area of legal practice or expertise.

The standard for classification of Attorney positions at the time the subject reclassification request was filed consisted of an allocation pattern of Attorney positions in state service. In order to sustain their argument that their positions should have been classified at the Attorney 14 level rather than the Attorney 13 level, appellants are required to show that their positions are comparable, from a classification standpoint, to the Attorney 14 positions, and are stronger, from a classification standpoint, than the Attorney 13 positions. Appellants have clearly failed to do this. Finding of Fact 7, above, describes four Attorney 13 positions which have components which resemble to a certain extent the components of appellants' positions. The position described in 7.a. has responsibility over a much broader range of program areas than appellants' positions and has a litigation function which appellants' positions do not have; the position described in 7.b. has responsibility over a much broader range of program areas in both the hearing examiner and legal counsel areas than appellants' positions and supervises 16.5 attorneys while appellants' positions have no supervisory responsibilities; the position in 7.c. has responsibility for providing legal advice over a much broader range of program areas than appellant's positions and has a litigation function which appellant's positions do not have; and the position described in 7.d. functions as the chief counsel of an agency with its attendant administrative functions and multiple program functions and has a supervisory component which appellants' positions do not have. These factors, i.e., litigation, providing legal services for a broader range of program areas, serving as chief counsel for an independent state agency, and serving as a supervisor of other Attorney positions were included among those factors justifying classification at a higher level in the

Attorney series. If it is conceded that appellants' positions were properly classified at the Attorney 13 level at the time the subject reclassification request was filed, it must be concluded that appellants' positions were at the weaker end of the range of Attorney 13 positions. Appellants failed to show that their positions were comparable to any of the positions in the Attorney 14 allocation pattern. This is illustrated by reference to the description of two such Attorney 14 positions in Finding of Fact 8, above. Not only do these two positions function as chief counsels to independent state agencies with much broader program responsibilities than the examining boards to which appellants' positions provide legal services, but they also provide a wider range of legal services, including litigation services, to their respective agencies.

#### Reallocation

It appears as though the duties and responsibilities of appellants' positions are best described by the language of the third allocation in the Attorney 13 class definition in the new Attorney series position standard, i.e., legal advisors for a singular and narrowly defined program area. The other two allocations in the Attorney 13 definition, i.e., administrative hearing examiner and staff counsel in a narrow area of specialization such as document drafting, legal research, or administrative rules development, do not describe the duties and responsibilities which consume a majority of appellants' positions' time. In addition, none of the four allocations in the Attorney 14 class definition, i.e., chief counsels for state agencies other than those identified at the Attorney 15 level; deputy chief counsels reporting to chief counsel positions; litigating attorneys with primary responsibility for administrative and/or court proceedings outside of the Department of Justice; or agency staff counsel responsible for functioning as a legal generalist, providing legal advice on a wide variety of issues and representing their agency in administrative and/or court proceedings, describes the duties and responsibilities which consume a majority of appellants' positions' time. However, since appellants argue that their duties and responsibilities are equivalent to those of positions classified at the Attorney 14 level, a comparison with those Attorney 14-level duties and responsibilities will be examined.

As with the prior classification specifications relevant to the instant reclassification decision, the current classification specifications recognize

the following factors as justifying classification at a higher level in the Attorney series: litigation, providing legal services for a broader range of program areas, serving as chief counsel for an independent state agency, and serving as a supervisor of other Attorney positions. The Attorney 14 position described in Finding of Fact 13.a., above, is similar to appellant's positions in that it provides legal services to a board attached to an independent state agency. However, this position provides a wider range of legal services, including contracting and litigation, than appellants' positions. The Attorney 14 position described in 13.b. not only provides legal services to an independent state agency and several attached boards with diverse program functions but also provides a wider range of legal services, including contracting and litigation, than appellants' positions. The Attorney 14 position described in 13.c., although involved primarily in the hearing examiner function which has been specifically identified at the Attorney 13 level, has a significant supervisory component, is responsible for supervising the administrative hearing function for a broader range of program areas, and acts as a hearing examiner only in complex or especially sensitive areas whereas appellants' positions function as hearing examiners for all cases, not just those which are most complex or most sensitive. The Attorney 14 position described in 13.d. has a significant supervisory component, supervises enforcement as well as hearing and legal advice processes (whereas appellant's positions are not involved in the enforcement function which is handled by other higher-level DRL attorneys), and chairs a state council attached to the agency. The Attorney 14 position described in 13.e. has significant supervisory and litigation components. The Attorney 14 position described in 13.f. serves as chief counsel for an independent state agency with a wide range of program functions including agent licensing and regulation, industry regulation including market conduct and financial examinations, rate-setting, management of several insurance funds and plans, and consumer protection and education; and has a litigation component. The Attorney 14 position described in 13.g. provides a wider variety of legal services than do appellants' positions, including contracting and litigation.

The Attorney 13 positions described in Finding of Fact 12, above, represent the range of positions included within this classification. Appellants' positions appear to be stronger, from a classification standpoint, than the

position described in 12.b. which serves solely as a hearing examiner for a narrow range of program areas. Appellants' positions appear to be weaker, from a classification standpoint, than the position described in 12.c. which has a significant supervisory component and which conducts only the most complex hearings. Appellants' positions appear to be comparable, from a classification standpoint, to the position described in 12.a. Although the emphasis on the hearing examiner, as opposed to the legal advice, function is a weaker attribute, the much wider range of program areas for which this position is responsible appears to counterbalance this weakness. Appellants' positions also appear to be comparable, from a classification standpoint, to the position described in 12.e. This position appears to provide legal advice and to serve as a hearing examiner in a single area of legal practice or expertise, i.e., licensing and regulation, but for more than one type of entity, i.e., insurance agents as well as insurance companies, each with its own set of governing statutes and administrative rules. Appellants' positions also appear to be comparable, from a classification standpoint, to the position described in 12.f. which provides legal advice and serves as a hearing examiner for several attached boards, each with its own set of governing statutes and rules. However, it is not clear from the record that the profession licensing and regulation function of the examining boards attached to DRL are involved in as complex a function as the insurance plan management function of the bodies to which the 12.f. position provides legal services. Appellants ask us to conclude from the statutes that the function of these bodies attached to the Office of the Commissioner of Insurance is simply to review claims filed against the insurance plans they administer and that this is a very straightforward and routine function. This conclusion is not only not apparent from the record in this proceeding but also appears to be inconsistent with the statutory provisions governing the responsibilities of these boards. See §§619.04, 655.27, and 655.275, Stats.

The foregoing analysis illustrates very clearly that the duties and responsibilities of appellants' positions fit squarely within the range of duties and responsibilities performed by Attorney 13 positions but not within the range of those performed by Attorney 14 positions.

Appellants appear to challenge the validity of the position standard for the Attorney series itself. The existing state of the law makes it clear that the

Commission is bound by the language of the existing classification specifications, Zhe et al. v. DHSS & DP, Case No. 80-285-PC (11/19/81); aff'd by Dane County Circ. Ct. Zhe et al. v. PC, 81-CV-6492 (11/2/82). Appellants also argue that, in applying the language of the position standard, respondent adhered to a rigid application of this language rather than examining the actual comparability of the duties and responsibilities of appellants' positions to those of positions classified at the Attorney 13 and 14 levels. Even if respondent had carried out their classification review of appellants' positions in this manner, the Commission has carried out a careful review of the comparability of these duties and responsibilities here as is appropriate in a de novo proceeding such as the instant one. In this regard as well, appellants have attempted to draw a parallel between this case and the case of Ghilardi and Ludwig v. DER, Case Nos. 87-0026, 0027-PC ((4/14/88). Specifically, appellants argue that the failure of DER to demonstrate a convincing basis for its distinction between administrative and judicial litigation in Ghilardi and Ludwig parallels DER's failure to demonstrate a convincing basis for its distinction between chief counsel positions and positions which function as legal counsel to examining boards in the instant case. However, the record in the instant case sustains respondent's position that appellant's positions do not have the same duties and responsibilities as positions which function as chief counsels for independent state agencies. Specifically, appellants have failed to show that they have responsibility on a regular basis for providing legal advice in regard to the type of administrative functions carried out by independent state agencies, e.g., contracting, procurement, personnel, budget, etc., as do chief counsel positions. In addition, appellants have failed to show that the examining boards to which they are assigned carry out the range of program responsibilities generally carried out by independent state agencies. Appellants also argue that respondent's classification analysis of their positions was improperly conducted in that respondent did not ask their advisory Legal Review Board for its opinion in this regard. However, again, since the instant proceeding constitutes a de novo review of the instant matter, the procedure followed by respondent at least in regard to this point  
is largely irrelevant.

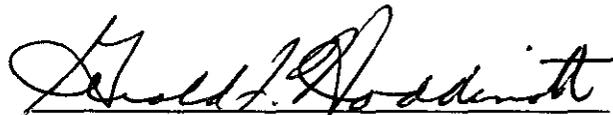
Order

The actions of respondent are affirmed and these appeals are dismissed.

Dated: October 31, 1991 STATE PERSONNEL COMMISSION

  
LAURIE R. McCALLUM, Chairperson

  
DONALD R. MURPHY, Commissioner

  
GERALD F. HODDINOTT, Commissioner

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