



STATE OF WISCONSIN

PERSONNEL COMMISSION

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AURIC GOLD,

Appellant,

v.

President, UNIVERSITY OF
WISCONSIN SYSTEM (Madison), and
Secretary, DEPARTMENT OF
EMPLOYMENT RELATIONS,

Respondents.

Case No. 91-0032-PC

* * * * *

DECISION
AND
ORDER

After having carefully considered the various arguments raised by the appellant in his objections filed on May 8, 1992, and after having consulted with the hearing examiner, the Commission adopts the attached Proposed Decision and Order as the final Decision and Order in the above matter, except as noted below.

The last paragraph beginning on page 17 is deleted and replaced with the following:

The record is insufficient to establish the existence of a detriment to the appellant.

This change reflects the conclusion that the appellant was able to establish "reasonable reliance" based upon Ms. Nielsen's statement described in finding of fact 2. It was reasonable for the appellant to conclude, based upon Ms Nielsen's statement, that his position would move to the pay range 12 level in approximately a year. However, even though certain elements of equitable estoppel were present, the element of a "detriment" was not, so the appellant's equitable estoppel claim must be rejected.

The appellant also claimed that the proposed decision failed to "address the fact that errors in classification are to be corrected by reallocation." The issue for hearing in this matter did not include the question of whether the appropriate classification action taken with respect to the appellant's position

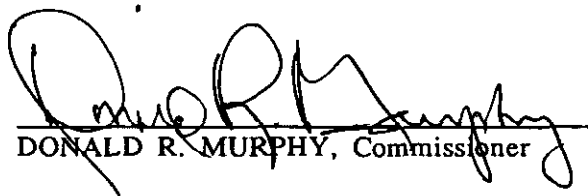
was more properly a reallocation than a reclassification.¹ Subissue 2, agreed to by the parties, specifically refers to the "proper effective date of the reclassification action" if the Commission were to find that the appellant's position was more appropriately classified at something other than Personnel Assistant 2. Also, the subissue specifically references the reclassification action. The decision being appealed here was the decision made by respondent UW to reclassify the appellant's position to the Personnel Assistant 2 level. Respondents provided testimony at hearing that the UW has only been delegated the authority to reclassify positions and not to reallocate. Because DER has never addressed the issue of reallocation of appellant's position, the issue of reallocation cannot be properly before the Commission in this matter.

Finally, the Commission responds to the appellant's contention that the Commission should be concerned about correcting the injustice suffered by the appellant. The Commission has not been granted generalized authority to correct an unfairness in the classification system. The Commission's authority is limited to reviewing classification decisions made by DER or, on a delegated basis, by employing agencies, and applying the existing class specifications to individual groupings of duties. That is what the Commission has done here and, given the appellant's failure to establish the elements of equitable estoppel, the Commission is unable to respond to the appellant's general claim of unfairness.

Dated: June 11, 1992 STATE PERSONNEL COMMISSION


LAURIE R. McCALLUM, Chairperson

KMS/kms/gdt/2
K:D:temp-7/92 Gold


DONALD R. MURPHY, Commissioner

¹The distinction between these two terms is apparent upon reading their definitions found in §ER 3.01(2) and (3), Wis. Adm. Code.

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**NOTICE
OF RIGHT OF PARTIES TO PETITION FOR REHEARING AND JUDICIAL REVIEW
OF AN ADVERSE DECISION BY THE PERSONNEL COMMISSION**

Petition for Rehearing. Any person aggrieved by a final order may, within 20 days after service of the order, file a written petition with the Commission for rehearing. Unless the Commission's order was served personally, service occurred on the date of mailing as set forth in the attached affidavit of mailing. The petition for rehearing must specify the grounds for the relief sought and supporting authorities. Copies shall be served on all parties of record. See §227.49, Wis. Stats., for procedural details regarding petitions for rehearing.

Petition for Judicial Review. Any person aggrieved by a decision is entitled to judicial review thereof. The petition for judicial review must be filed in the appropriate circuit court as provided in §227.53(1)(a)3, Wis. Stats., and a copy of the petition must be served on the Commission pursuant to §227.53(1)(a)1, Wis. Stats. The petition must identify the Wisconsin Personnel Commission as respondent. The petition for judicial review must be served and filed within 30 days after the service of the commission's decision except that if a rehearing is requested, any party desiring judicial review must serve and file a petition for review within 30 days after the service of the Commission's order finally disposing of the application for rehearing, or within 30 days after the final disposition by operation of law of any such application for rehearing. Unless the Commission's decision was served personally, service of the decision occurred on the date of mailing as set forth in the attached affidavit of mailing. Not later than 30 days after the petition has been filed in circuit court, the petitioner must also serve a copy of the petition on all parties who appeared in the proceeding before the Commission (who are identified immediately above as "parties") or upon the party's attorney of record. See §227.53, Wis. Stats., for procedural details regarding petitions for judicial review.

It is the responsibility of the petitioning party to arrange for the preparation of the necessary legal documents because neither the commission nor its staff may assist in such preparation.

* * * * *

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* * * * *

PROPOSED
DECISION
AND
ORDER

This matter arises from a classification dispute involving the position filled by the appellant in the Personnel Office of the Division of University Housing at the University of Wisconsin-Madison. The parties agreed to the following statement of issue:

Whether respondents' decision reclassifying appellant's position from Personnel Specialist 1 to Personnel Assistant 2 was correct.

Subissues:

1. Whether appellant's position is more appropriately classified as a Personnel Specialist 1, 2, or 3; a Personnel Assistant 2; or a Personnel Manager 2 or 3.
2. If the appellant's position is more appropriately classified as either a Personnel Specialist 1, 2, 3 or Personnel Manager 2 or 3 rather than as a Personnel Assistant 2, what is the proper effective date of the reclassification action.

In addition, during a prehearing conference held on June 25, 1991, the following subissue was proposed by the presiding hearing examiner:

Whether respondents should be equitably estopped from denying the reclassification of appellant's position to the Personnel Specialist 2 or 3 level.

By memo dated August 7, 1991, the respondents objected to this third subissue. The examiner appointed by the Commission to conduct the administrative

hearing issued a letter on August 29, 1991, indicating that a ruling on respondent's objection would be deferred until after the hearing scheduled for September 9, 1991, and would be addressed in the proposed decision and order issued subsequent to the hearing.

FINDINGS OF FACT

1. During the period from 1972 until June of 1988, Werner Bergman filled the position of Assistant Personnel Manager at University Housing at the University of Wisconsin-Madison. This position was initially classified as a Personnel Technician but in December of 1975 was reallocated to the Personnel Specialist 1 level upon the creation of that classification. At the time Mr. Bergman left the position in June of 1988, it was still classified at the Personnel Specialist 1 level.

2. Effective July 18, 1988, the appellant was appointed to the vacant position. The appointment letter, issued by Cheryl Nielsen, Personnel Manager 4-Supervisor for the Division of University Housing, indicates that the appointment was at the Personnel Specialist 1 classification. Nothing in the letter suggested the position would be part of a progression series so that the position would be reclassified and the appellant regraded as a consequence of satisfactory performance. During the employment interview, Ms. Nielsen advised the appellant that the position was at pay range 10 and that the next step would be to pay range 12, because there was a 2 pay range increase from Personnel Specialist 1 to 2. Ms. Nielsen also said that she expected this step to take place in roughly a year's time. Ms. Nielsen made no promise to the appellant that a change in classification would occur. The position was attractive to the appellant because it showed a lot of potential for career growth.

3. Ms. Nielsen resigned from her position as Personnel Manager early in 1990 and in April of 1990, Cheryl Mekschun was appointed to the vacancy. In approximately June or July of 1990, the appellant first contacted Ms. Mekschun about reclassifying his position. After reviewing the specifications and other campus positions, Ms. Mekschun concluded that the appellant's position was not properly classified at the Personnel Specialist 2 level.

4. By memo to his supervisor, dated May 8, 1990, the appellant requested reclassification of his position to the Personnel Specialist 2 level. Ms.

Mekschun, by memo dated September 14, 1990, informed the appellant that she could not recommend that his position be reclassified to Personnel Specialist 2.

5. By memo to the UW-Madison Classified Personnel Office, dated October 9, 1990, the appellant requested reclassification to the Personnel Specialist 2 level. This memo was received by the Classified Personnel Office on October 11, 1990.

6. The operative policy for establishing the effective date of reclassification requests is set forth in §332.060 of the Wisconsin personnel Manual:

A. Regrades Resulting From Reclassification Actions and Reallocation Actions under ER-Pers 3.01(1)(e), (f) and (g), Wis. Adm. Code.

Both delegated and nondelegated reclassification regrade actions and reallocation regrade actions taken under ER-Pers 3.01(1)(e), (f) or (g) will be made effective at the beginning of the first pay period *following effective receipt of the request*. However, a later effective date may be designated by the appointing authority when the conditions which warrant the reclassification/regrade or reallocation/regrade (e.g., attainment of required education or experience, performance of duties and responsibilities for six months, etc.) will not occur until such later date.

Effective receipt of a request may be made by any office within the operating agency that has been delegated, in writing, effective receipt authority by the appointing authority. A request may be initiated in one of the following three ways through submission of appropriate documentation:

1. If the first line supervisor or above in the direct organizational chain of command requests that the position be reviewed for proper classification level or recommending a specific classification level change, the required documentation is an updated Position Description and written reasons for the request.

2. *If a position incumbent requests his/her supervisor to review the level of the position and the supervisor takes no action or declines to initiate further action, the required documentation from the incumbent is a written request which includes a statement of the events (including the dates when the events took place) which have occurred in regard to the request for a classification review.*

3. *If a position incumbent has attained the specified education or experience required by the appointing authority for regrade in a position identified in a classification series where the class levels are differentiated on that basis; the documentation, as*

determined by the appointing authority, *must be submitted by the incumbent and/or appropriate supervisor.* (emphasis added)

7. At the time the appellant filed his reclassification request with the Classified Personnel Office, his duties were accurately described in his position description (Appellant's Exhibit 16), the last 2 pages of which are attached hereto and incorporated in this finding as if they had been set out fully, below.

8. The appellant is the only non-supervisory position in the Division of Housing that is assigned responsibility for interviewing and hiring LTE's. In carrying out his responsibilities, the appellant strives to monitor LTE's to resolve problems where possible and to assist the supervisor in taking disciplinary action when necessary.

9. The Division of Housing has not been delegated the authority to make classification decisions. That authority has been retained by the Classified Personnel Office.

10. LTE's do not have a grievance procedure available to them for obtaining review of disciplinary actions.

11. When describing the appellant's responsibilities for the purpose of seeking an exemption from coverage under the Fair Labor Standards Act, Ms. Mekschun wrote:

This position customarily and regularly exercises discretion and independent judgment in the LTE hiring for the division as well as other personnel related duties.

12. Positions which provide personnel services for permanent positions exercise a higher level of independent judgment and authority than those positions which provide personnel services to LTE's. This is due to the wider variety of classifications, staffing actions and labor relations issues which arise, in part, from the more extensive rights granted to permanent employees.

13. The position standard for the Personnel Assistant series includes the following language:

Paraprofessional: A type of work closely relating to and resembling professional level work, with a more limited scope of functions, decision-making and overall accountability. A paraprofessional position may have responsibility for segments of

professional level functions, but is not responsible for the full range and scope of functions expected of a professional position.

* * *

Direction: The employe usually receives only a general outline of the work to be performed and is free to develop own work sequences and methods within the scope of established policies. New, unusual or complex work situations are almost always referred to a superior for advice. Work is periodically checked for progress and conformance to established policies and requirements.

II. CLASS DESCRIPTIONS

The following class descriptions for the various class levels within the Personnel Assistant series are designed to provide basic guidelines for the allocation of both present and future positions, as well as to serve as a basis for comparisons with positions in other class series.

* * *

PERSONNEL ASSISTANT 2

This is paraprofessional personnel work of considerable difficulty in the personnel program of a department, institution, or university campus, in an organizational subunit of comparable size and complexity or in the State Division of Personnel. Positions in this class are responsible for: 1) a major program area such as delegated examination and recruitment in a large, centralized personnel office; 2) a variety of program areas such as clerical employment, payroll liaison, examination coordination, and fringe benefit counseling in a fully operational decentralized personnel office; 3) a wide variety of program activities as the principal assistant to the professional in charge of a personnel program for a small department or a major organizational subunit; 4) the total personnel program within an organizational subunit including the coordination and performance of all personnel-related activities; or 5) independent administrative support responsibilities in a specialized program area(s) in the State Division of Personnel. The work involves significant independent decision-making in connection with the application of laws, rules, regulations, and procedural guidelines; the development of internal procedures; the dissemination and interpretation of information relating to personnel policies and procedures; the coordination of a wide variety of program activities, and contacts with a central personnel office, the State Division of Personnel, employes, and the public. The work at this level typically involves more independent and complex program responsibilities than those of a Personnel Assistant 1 and is performed in accordance with established guidelines with significant involvement in the development of operating policies and procedures in the

area(s) of program responsibility and in other program areas.
Work is performed under direction.

* * *

PERSONNEL ASSISTANT 2 - WORK EXAMPLES

Coordinates and administers a comprehensive clerical employment program involving the establishment of the recruitment plan, preliminary interviewing and evaluation, administration of optional typing and shorthand tests, referral of certified eligibles, checking of references, and the processing of the necessary forms and correspondence to complete a transaction.

Processes transfers, reinstatements, voluntary demotions, promotions, and termination actions including the interpretation of rules, obtaining of necessary materials, and the counseling of management personnel.

Coordinates a delegated recruitment and hiring program in an established personnel office including preparing announcements and advertisements; interviewing walk-in applicants; functioning as a local examiner; maintaining necessary records, certification lists, and examination results; reviewing applications; and assisting the hiring unit in making a selection in accordance with established rules and guidelines.

Administers the Workmen's Compensation program for a large organizational unit. Answers questions, submits necessary forms, performs followup activities, and acts as liaison between the employe and the State Workmen's Compensation Division.

Performs and/or coordinates the classification, staffing, and recordkeeping activities for all Limited Term Employment (LTE) positions in the unit.

Provides technical assistance to professional personnel staff in areas such as personnel budget development and control; development and processing of certification requests; implementation and monitoring of an employe evaluation program; maintenance of personnel, staff development, position control, examination and other related records; development of materials for surveys, reclassifications, or certification requests; and the preparation of periodic and special reports.

Answers inquiries regarding personnel policies and procedures, employment opportunities, interpretation of laws and rules, and other matters relating to the personnel program from program personnel, employes, and the public.

14. The specifications for the Personnel Specialist series include the following definitions:

Personnel Specialist 1

This is *entry level professional* personnel work in either the central office of a state agency or the State Bureau of Personnel. Positions allocated to this class are assigned a variety of personnel functions in one or more areas such as: certification and reclass request review, occupational class analysis, staffing job analysis, recruitment, exam development, pay administration, and benefits analysis. Depending on the size of the agency, positions may also be involved in training, employment relations, payroll and/or affirmative action activities; however, such activities would not be the primary function of the positions. Work at this level is *performed under close supervision* and differs from work in the Personnel Assistant Series by the amount of analysis and independent professional judgement required.

* * *

Personnel Specialist 2

This is *beginning level professional* personnel work in either the central office of a state agency or the State Bureau of Personnel. Positions allocated to this class are assigned a variety of personnel functions in one or more areas such as: certification and reclass request review, occupational class analysis, staffing job analysis, recruitment, exam development, pay administration, and benefits analysis. Depending on the size of the agency, positions may also be involved in training, employment relations, payroll and/or affirmative action activities; however, such activities would not be the primary function of the positions. Work at this level differs from work in the Personnel Specialist 1 level in the complexity of assignments and independence of action. Work is under limited supervision.

* * *

Personnel Specialist 3

This is *professional* personnel work in either the central office of a state agency or the State Bureau of Personnel. Positions allocated to this class are assigned a variety of personnel functions in one or more of the following or comparable areas: certification and reclass review, occupational class analysis, staffing job analysis, recruitment, exam development, pay administration, and benefits analysis. Depending on the size of the agency, positions may also be involved in training, employment relations, payroll and/or affirmative action activities; however, such activities would not be the primary function of the positions. Work at this level is *performed under limited supervision* and differs from work at lower level Personnel Specialist positions in the complexity of assignments and independent judgement required. (emphasis added)

The class specifications for the Personnel Specialist series list the following work examples at the 1, 2 and 3 levels:

Conducts job audits of individual positions and studies background material to determine the proper allocation of positions and the proper personnel transaction involved (i.e., reclass, promotion, reallocation, demotion, transfer, layoff, etc.).

Reviews allocation patterns to determine the necessity for new classes and drafts proposed specifications.

Participates in recruitment activities by developing advertising copy and press releases. Advises applicants concerning the availability of work in various positions.

Works in compensation development activities by corresponding with and interviewing representatives of competitive employers in order to secure pay information. Assists with the compilation, tabulation, summarization and analysis of comparative pay and fringe benefit information.

Plans and conducts employe orientation and training sessions.

Conducts job analysis audits to determine required knowledges, skills and abilities necessary for a position and develops an examination to effectively test for such requirements.

Assist in the investigation of employe grievances.

May be responsible for payroll and fringe benefit programs.

Answers questions from the public related to employment opportunities in state service.

The following work example is listed at the Personnel Specialist 1 and 2 levels but not at the 3 level.

Participates in the examination process through the development of announcements, the review of applications and the evaluation of training and experience according to prescribed standards.

The Personnel Specialist specifications also describe the following training and experience for each of the three class levels:

Personnel Specialist 1

Graduation from a college or university with course work which demonstrates the knowledge of the basic principles of personnel administration or industrial psychology.

Personnel Specialist 2

Graduation from a college or university with course work which demonstrates knowledge of the basic principles of personnel administration or industrial psychology and 2 years of responsible work experience involving responsibility for some phase of a personnel management program. Graduate studies may be substituted for work experience on a year for year basis or an equivalent combination of training and experience.

Personnel Specialist 3

Graduation from a college or university with course work which demonstrates knowledge of the basic principles of personnel administration or industrial psychology and 3 years of responsible work experience, involving responsibility for some phase of a personnel management program. Graduate studies may be substituted for work experience on a year for year basis or an equivalent combination of training and experience.

15. The specifications for the Personnel Manager series include the following definitions:

Personnel Manager 2

This is professional personnel work in a state institution or at a small agency. *Positions allocated to this class functions as: personnel manager for a small agency which requires a full time personnel manager; assistant personnel manager at a large institution with involvement in all phases of the institution's personnel management program.* Positions at this level are assigned a variety of personnel functions such as: classification and reclass review; recruitment; rule interpretation; contract administration; and pay administration. Depending on the size of the agency or institution, this position may also be involved in training, affirmative action, and payroll activities. Work at this level is under general supervision.

Personnel Manager 3

This is responsible personnel management work in a state agency or institution. Positions allocated to this class function as: 1) *Personnel Manager* for a very small state agency which requires the services of a Personnel Manager on a full-time basis; 2) *Personnel Manager* for a medium-sized state institution characterized by 250-600 employees, a diversified organizational and occupational structure, an ongoing contract administration program involving responsibility for the administration of several contracts, and ongoing classification and staffing programs; 3) *Assistant Personnel Manager for a major institution with involvement in all the activities of the personnel program.*

Depending on the size of the agency or institution these positions may also be involved in training, affirmative action, and payroll activities. With the exception of the Assistant Personnel Manager, work at this level is performed under the general supervision of an administrative position having responsibility for general service areas encompassing more than the general personnel and employment relations areas. (emphasis added)

The work examples for the Personnel Manager 2 and 3 classifications are, for all practical purposes, identical. They read as follows:

Conducts job audits of individual positions and studies background material to determine the proper allocation of the positions and the proper personnel transaction involved (i.e. re-class, promotion, reallocation, demotion, transfer, layoff, etc.).

Advises management and supervisor on the interpretation of the Collective Bargaining agreements and assists supervisor in deciding the proper disciplinary action to be taken.

Provides interpretation of rules and laws that pertain to the civil service system to insure that the institution's personnel management program is consistent with the law.

Conducts a recruitment program including preparation of job announcement, conducting exams and setting up employment registers where delegated.

May be responsible for payroll and fringe benefits program.

May be responsible for the institution's affirmative action program.

Serves as chairperson of labor management meetings.

16. The appellant's duties are less significant, for classification purposes, than the duties assigned to the following positions classified in the Personnel Manager series:

a. The Personnel Manager 2 position filled by Kathleen Ingala at in the Personnel Office at University of Wisconsin-Stout. The position serves "as Personnel Manager for classified employment and as assistant to the Personnel Director" and has responsibility for maintaining the campus classification system, coordinating recruitment, testing and selection of all classified, project and LTE positions, planning and directing employee training for classified staff and directing other office staff in administering the LTE program. This position reports to the campus Director of Personnel.

b. The Personnel Manager 2 position (Assistant Personnel Manager) at Central Wisconsin Center filled by Doris Ziegler. This position, which is supervised by a Personnel Manager 5, provides "permanent and limited term staffing services through the administration of all phases of delegated re-

cruiting activities" (50%); provides classification services (30%); coordinates the institution's affirmative action program (10%); coordinates training and placement of injured workers (5%); and performs related duties (5%).

c. The Personnel Manager 2 position filled by Ann Cedergren which administers the classified personnel program for Administrative Data Processing and for the Madison Academic Computing Center, a division and a department, respectively, within the UW-Madison Graduate School, including recruitment and staffing for classified, LTE and student hourly positions and classification, staff orientation and labor relations functions. This position reports to a supervisor outside of the classified service.

d. The Personnel Manager 1 position filled by Marian Forseth which is responsible for all personnel support services, including personnel classification functions, personnel staffing functions, employment relations and the LTE program for the Division of Vocational Rehabilitation in the Department of Health and Social Services.

17. With only two exceptions, all of the Personnel Specialists employed at the University of Wisconsin-Madison work in the central personnel office for that agency, i.e. within the Classified Personnel Office. The two exceptions are the Val McCarthy position, classified at the Personnel Specialist 2 level, which is in the Human Resources Department of the University of Wisconsin Hospital and Clinics, and the William Rowe position, at the Personnel Specialist 3 level, in the Director's Office of the UW Physical Plant. Classification authority has been delegated by the Classified Personnel Office to the Human Resources Department for certain positions within the University of Wisconsin Hospital and Clinics. However, there is no comparable delegation to the UW Physical Plant. The Classified Personnel Office has not delegated final classification authority for UW Physical Plant positions.

18. In most respects, the appellant's responsibilities are comparable from a classification standpoint to those performed by the following positions classified at the Personnel Assistant 2 level:

a. The Personnel Assistant 2 position filled by Violet Herman at the Department of Health and Social Service's Lincoln Hills School. This position, supervised by a Personnel Manager 2, "independently executes a wide variety of functions concerning recruitment and hiring, Worker's Compensation, labor relations, training, records, application of rules and guidelines and distribution of personnel information." Ms. Herman's more responsible duties include processing certification requests, preparing classified ads, corresponding with applicants, administering civil

service exams, interviewing walk-in applicants, counselling employes and administrative staff with respect to fringe benefits, the Worker's Compensation process and benefits as well as other areas of the personnel program.

b. The Personnel Assistant 2 position filled by Barbara Sumwalt in the Bureau of Personnel Services at the Department of Public Instruction. This position, reporting to a Personnel Administrative Officer 2, coordinates and administers the clerical employment program and the LTE recruitment and hiring program for DPI. Specific duties with respect to the clerical employment program include obtaining budget approval for staffing, making classification decisions, reviewing interview questions, overseeing the preparation of certification lists including those to be considered via transfer, reinstatement and voluntary demotion.

c. The Personnel Assistant 2 position filled by Diane Bunck in the Personnel Office at UW-Oshkosh. This position reports to the Personnel Manager and provides "personnel support... for all classified employe staffing and classification functions" and monitors and coordinates the LTE hiring process. Specific duties include assisting with the development of revised position descriptions, determining interview format and conducting applicant (in contrast to selection) interviews, answering questions regarding pay and basic fringe benefits, conducting reference checks, conducting classification reviews of clerical positions and making recommendations as to the proper classification.

19. The appellant's duties are best described by the Personnel Assistant 2 classification.

CONCLUSIONS OF LAW

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

2. Appellant has the burden of establishing that respondents erred in classifying his position at Personnel Assistant 2 level or that respondents are equitably estopped from denying the reclassification of the appellant's position to the Personnel Specialist 2 or 3 level.

3. Appellant has not sustained his burden of proof.

OPINION

The first task in ruling on this appeal is determining which of six classifications (Personnel Specialist 1, 2, 3, Personnel Assistant 2, or Personnel

Manager 2 or 3) best describes the duties performed by the appellant at the Division of Housing on the University of Wisconsin-Madison campus at the time of his reclassification request.

The key language in the Personnel Specialist specifications is the requirement that the position work "in either the central office of a state agency or the State Bureau of Personnel." It is clear that the appellant's position at the Division of Housing fits neither of these two categories. In addition, there has been no delegation of authority to the Division of Housing which would provide it with the same authority over classification matters as the central office. Most of the Personnel Specialists described on the record worked at the Central Personnel Office or at the Department of Employment Relations, the successor to the State Bureau of Personnel. As noted in finding of fact 17, there is also a Personnel Specialist 2 position at the Human Resources Department at the University of Wisconsin Hospital which has received delegated responsibility for classification decisions at the hospital and clinics. A Personnel Specialist 3 position, filled by William Rowe, is also found at the UW Physical Plant even though there has been no delegation of classification authority to the Physical Plant.

Respondents' witnesses acknowledged that the Rowe position is misclassified in the Personnel Specialist series and should be in the Personnel Manager series, although no action has been taken to correct the error. In a previous decision, Jenkins v. DOR & DER, 88-0061-PC, 5/31/89, the Commission held that an agency could not avoid the effect of a position comparison by contending that the comparable position was misclassified where no action had been taken regarding the allegedly misclassified position. In Jenkins, the only material distinction between the two classification levels was the size (small and medium) of the section being supervised and the position standard failed to define either "small" or "medium." Here, the misclassification is based on the unambiguous language of the specifications requiring positions to be "in either the central office of a state agency or the State Bureau of Personnel." There is no ambiguity which could act to place the Rowe position within the scope of this language. Therefore, to rely on the Rowe position as a basis for classifying the appellant's position in the Personnel Specialist series would simply perpetuate the error underlying the Rowe classification decision. See Crary v. DNR & DER, 89-0133-PC, 6/1/90.

The Personnel Manger 2 and 3 definition statements describe positions which serve as the personnel manager for an agency or institution or as assistant personnel managers who are involved in all activities or phases of the personnel program. Clearly, the appellant is not the personnel manager for the Division of Housing. That role is filled by his supervisor, Ms. Mekschun, whose position is classified at the Personnel Manger 4-Supervisor level. The remaining question is whether the appellant is assigned the range of responsibilities which are necessary for fulfilling the assistant personnel manager allocation. A review of both the work examples and comparison positions show that he does not. The work examples include references to determining the proper allocation of positions and the proper personnel transaction, interpreting collective bargaining agreements and conducting a recruitment program. The appellant's duties in these areas are limited to coordinating the recruitment of LTE positions and conducting classification analyses as part of that process. The appellant is not assigned nearly the breadth of responsibilities sufficient to say that he is involved with all phases of the Division of Housing's personnel management program.

Many of the positions classified in the Personnel Manager series and referenced at hearing are clearly designated as *the* personnel manger for a particular agency subunit. Those which serve as assistant personnel managers have duties which appear to include all phases or activities of their unit's personnel program. For example, the Ziegler position at Central Wisconsin Center provides staffing services for permanent *and* LTE positions and also performs classification services and coordinates the affirmative action program. Ms. Ziegler's position description specifically describes applying "labor contract provision, statute law and/or administrative rules to transfers, reinstatements, promotions and demotions," reviewing "requests for reclassification to determine if reclass is the appropriate action to take" and recommending "approval or denial based on Position Descriptions (PD), Organization Chart, background information, job comparisons, etc." These duties as assistant personnel manager are clearly much broader than those assigned to the appellant. The Ziegler position is assigned duties which are consistent with the wide scope of duties identified in the definition statements and described in the work examples for the Personnel Manager series. The appellant simply has not been assigned comparable duties.

In contrast, the appellant's responsibilities do generally fall within the definitional language found in the Personnel Assistant 2 specification. Appellant's duties are reasonably consistent with the language within the Personnel Assistant 2 class description:

2) a variety of program areas such as clerical employment, payroll liaison, examination coordination, and fringe benefit counseling in a fully operational decentralized personnel office; 3) a wide variety of program activities as the principal assistant to the professional in charge of a personnel program for a small department or a major organizational subunit;

In its written decision reclassifying the appellant as a Personnel Assistant 2, the respondents referred to several positions involving duties and functions which were "similar to or which compare favorably in complexity" to those performed by the appellant. Those three positions, identified in finding of fact 18 as the Herman, Sumwalt and Bunck positions, perform duties which, at least to some extent, involve less discretion and independence than the appellant's duties. In contrast to the appellant, none of these three positions have the responsibility to hire LTEs and to recommend LTE discipline and to respond to requests for assistance regarding LTE performance and behavior problems. However, these three positions do have responsibilities of working with management on staffing matters, handling budget issues, developing advertisements, contacting recruitment sources, monitoring hours worked, counselling staff and applicants regarding personnel policies, providing information regarding the Worker's Compensation program.

The "best fit" for the appellant's position among the various classifications which are within the scope of the issue before the Commission is the Personnel Assistant 2 classification. The appellant's position is clearly not properly placed in either the Personnel Specialist series or at the Personnel Manager 2 or 3 levels, it falls well within the language of the Personnel Assistant 2 classification and it is at least generally consistent with various other positions allocated to the Personnel Assistant 2 level.

Equitable Estoppel

During a prehearing conference held on June 25, 1991, the following subissue was proposed by the presiding hearing examiner:

Whether respondents should be equitably estopped from denying the reclassification of appellant's position to the Personnel Specialist 2 or 3 level.

By memo dated August 7, 1991, the respondents objected to this third subissue, suggesting that the appeal was untimely filed as to this topic. Respondents suggest that in order for this issue to properly be before the Commission, the appellant should have filed his appeal within 30 days of "the appealable actions in 1989 or the notification of the class decision in 1991." This case initially reached the Commission on March 7, 1991, well after the appellant had formally requested reclassification to the Personnel Specialist 2 level but before the respondents had issued a written decision on that request. During a pre-hearing conference held on April 12, 1991, the parties agreed to continue the appeal after respondent issued a decision on the reclassification request. The written decision reclassifying the appellant's position to the Personnel Assistant 2 level was issued on May 10, 1991. After the decision was rendered, the appellant's existing appeal was continued and the parties agreed upon issues set forth at the beginning of this decision. The May 10th decision included, *inter alia*, denial of appellant's contention that he was entitled to classification at the Personnel Specialist 2 level, consideration of positions allocated to the Personnel Specialist 1, 2 and 3 classifications and, ultimately, the establishment of an effective date for the reclassification. This decision was of sufficient breadth so that the parties agreed to establish issues for hearing addressing the appellant's contentions that his position should have been moved from Personnel Specialist 1 to a higher level in the Personnel Specialist series, with an effective date other than that which arose from his October 9, 1990 written reclassification request. The appellant's equitable estoppel theory is just one argument relied upon by the appellant to support his appeal on these issues. The theory falls within the scope of the respondents' May 10th denial, so the continuation of the previously filed appeal makes the equitable estoppel claim timely. Based upon this analysis, the subissue relating to equitable estoppel is properly before the Commission. The Commission rejects the respondents' objections and proceeds to discuss the merits of the appellant's arguments.

In City of Madison v. Lange, 140 Wis. 2d 1, 6-7, 408 N.W. 2d 763 (Ct. App., 1987), the court outlined the principles of equitable estoppel against the government:

Equitable estoppel has three elements: "(1) Action or non-action which induces (2) reliance by another (3) to his [or her] detriment." Before estoppel may be applied to a governmental unit, it must also be shown that the government's conduct would work a serious injustice and that the public interest would not be unduly harmed. Finally, the party asserting the defense of equitable estoppel must prove it by clear and convincing evidence. (citations omitted)

The standard as it applies to government conduct was also described in State v. City of Green Bay, 96 Wis. 2d 195, 202-2-3, 291 N.W. 2d 508 (1980):

[I]n order to estop the government, the government's conduct must be of such a character as to amount to fraud. But this court has noted that the word fraud used in this context is not used in its ordinary legal sense; the word fraud in this context is used to mean inequitable. (citations omitted)

The conduct which serves as the basis for the appellant's contention of equitable estoppel is commentary by Ms. Nielsen during the employment interview. These statements are summarized in finding of fact 2 as follows:

During the employment interview, Ms. Nielsen advised the appellant that the position was at pay range 10 and that the next step would be to pay range 12, because there was a 2 pay range increase from Personnel Specialist 1 to 2. Ms. Nielsen also said that she expected this step to take place in roughly a year's time. Ms. Nielsen made no promise to the appellant that a change in classification would occur. The position was attractive to the appellant because it showed a lot of potential for career growth.

This record is insufficient to establish either reasonable reliance by the appellant or the existence of a detriment to the appellant. Ms. Nielsen's statement to the appellant was merely an expression of an expectation on her part, rather than a promise to the appellant that the position would move to the Personnel Specialist 2 level exactly 12 months after the new employee came on board. The appellant was not entitled to rely on Ms. Nielsen's statement as meaning that if he took the job, he would invariably be reclassified to the Personnel Specialist 2 level after 12 months. Any reliance by the appellant to

this effect was unreasonable based both on the statement actually made by Ms. Nielsen and on the absence of any apparent authority she might have to effectuate the reclassification of the position.

In determining whether the appellant suffered a detriment from the respondents' conduct, the appropriate focus is on whether, if respondents are not estopped, the appellant would be in a worse position than before he acted in reliance on Ms. Nielsen's statement. Kelling v. DHSS, 87-0047-PC, 3/12/91. The only evidence which relates to the element of "detriment" is the appellant's statement that he was attracted to the position because of its potential for career growth. There is no evidence of what the appellant gave up in order to be hired in the Personnel Specialist 1 position. There is not even a statement by the appellant to the effect that he would not have accepted the job offer had known that the position would not move to pay range 12 (Personnel Specialist 2) in roughly a year's time.

Under these circumstances, the appellant's equitable estoppel claim must be rejected. There is no need to address the effective date issue.

ORDER

The respondents action of reclassifying the appellant's position to the Personnel Assistant 2 classification is affirmed and this case is dismissed.

Dated: _____, 1992

STATE PERSONNEL COMMISSION

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KMS:kms

DONALD R. MURPHY, Commissioner

GERALD F. HODDINOTT, Commissioner

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UNIVERSITY OF WISCONSIN-MADISON
Division of University Housing

Personnel Specialist 1

POSITION SUMMARY

Perform responsible personnel work for the Division of University Housing. Under general supervision, assist the Personnel Director in the administrative and personnel functions for University Housing's 308 classified employees, 25 unclassified employees, 200 limited term employees and 800 student employees. Position is responsible for a variety of personnel functions including limited term employment, worker's compensation coordination and special projects.

GOALS & WORKER ACTIVITIES

- 45% A. Coordination of the limited term employee recruitment and hiring program for both relief employees and special work projects.
- A1. Advise agency managers concerning their requests for limited term employees.
 - A2. Determine proper classification and budget accounts for LTE positions.
 - A3. Contact agencies that serve as recruitment sources, i.e., Job Service, Over 55 Employment, Madison Business College, MATC, etc.
 - A4. Develop newspaper advertisements for LTE recruitments.
 - A5. Interview and screen LTE applicants for appropriateness of background, verify their credentials, conduct reference and police checks.
 - A6. Hire LTEs, establish employment start dates and set up all documentation for payroll.
 - A7. Maintain file of active applications from which to draw potential candidates.
 - A8. Refer possible candidates to the hiring supervisor for interview when requested.
- 10% A9. Coordinate the daily assignment of reliefs in tandem with the third shift supervisors. Schedule relief LTEs to work as needed with frequent interaction with supervisors. Maintain records and the supporting documentation.
- A10. Monitor hours worked by LTEs for compliance with personnel policy. Provide regular updates to supervisors regarding LTE hours.

- A11. Respond to supervisor's requests for assistance concerning work performance and/or undesirable behavior problems.
 - A12. Recommend appropriate action to the Personnel Director when disciplinary action is a possible outcome.
- 35% B. Assistance to the Personnel Director in personnel related activities.
- B1. Monitor monthly unemployment compensation reports and submit information to campus coordinator on LTEs refusing work.
 - B2. Counsel division staff and job applicants on personnel policy and procedures, career progression and other related issues.
 - B3. Compile personnel related information and statistical data for comparative analysis and/or special projects.
 - B4. Develop and compile articles for the employe newsletter for distribution once per month.
 - B5. Assign parking priority numbers and process applications.
 - B6. Provide assistance on personnel related projects as assigned.
- 20% C. Performance of Worker's Compensation Coordinator duties.
- C1. Provide working instructions to the Program Assistant responsible for processing divisional injury reports.
 - C2. Monitor divisional injury reports for completeness and compliance with regulations.
 - C3. Review billings and time loss updates to determine need for further action relating to such things as leave of absence, fringe benefits, payroll status, etc.
 - C4. Interpret Worker's Compensation program complexities to supervisors and employes.
 - C5. Act as divisional safety coordinator, investigate accidents, make recommendations to lessen preventable accidents from recurrence, follow up as needed.