

STATE OF WISCONSIN

PERSONNEL COMMISSION

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MICHAEL P. HAGAN,  
 Appellant,

v.

Secretary, DEPARTMENT OF  
 HEALTH AND SOCIAL SERVICES,  
 and Secretary, DEPARTMENT OF  
 EMPLOYMENT RELATIONS,  
 Respondents.

Case No. 92-0803-PC

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INTERIM  
DECISION  
AND  
ORDER

This is an appeal pursuant to §230.44(1)(b), Wis. Stats., of the denial of a request for reclassification from Psychologist Supervisor 1-Doctorate (PS 1) to Psychologist Supervisor 2-Doctorate (PS 2).<sup>1</sup>

The March 1991 position description (PD) (Respondent's Exhibit 2) is an essentially accurate description of appellant's duties and responsibilities, as far as it goes. His position is at Ethan Allen School (EAS), Division of Youth Services (DYS), Department of Health and Social Services (DHSS). The working title of this position is Chief Psychologist or Clinical Services Supervisor, and it reports to the EAS Superintendent. It is responsible for supervising three Psychologists 3-Doctorate, one part-time Consulting Psychiatrist, and two Part-time Consulting Psychologists. The "Job Summary" in appellant's PD summarizes the duties and responsibilities of this position as follows:

Under the general supervision of the Superintendent, this position directs the provision of psychological treatment services in the young, vulnerable, and immature youth program, Independent Living program, gang program, Intensive Treatment Unit, Serious Sex Offenders program, long and short term AODA programs, Successful Living Unit, the Children of Alcoholics Program, as well as other institution programming; develops budgets; supervises psychological staff; and directs clinical policy and crisis management for the

<sup>1</sup>Subsequent to the denial of this reclassification request, appellant's position was reallocated to a new classification in a new series developed as the result of a DER survey. That reallocation not being before the Commission, this decision does not address the current classification of appellant's position and affects only the difference in back pay to which appellant would be entitled for the period from the effective date of the reclassification to the effective date of the reallocation.

institution. This position directs major psychological programs for all juveniles in the Southern catchment area, and also represents the Bureau of Residential Services in interagency committees and work groups.

Appellant also has been responsible for developing and supervising a clinical internship program. Interns who participate in the program "meet the predoctoral supervised experience requirement for licensure in the state of Wisconsin, as well as meeting the criteria for other certifications and recognitions usually associated with the successful practice of psychology." (Respondent's Exhibit 8).

The class specifications in this case date back to 1971 and are somewhat outmoded, given the organizational and programmatic changes in the state's institutional psychological programs since then. The PS 1 definition found in Respondent's Exhibit 4 is as follows:

This is very responsible supervisory and professional work in the practice of psychology in state residential and community programs. There are four types of positions allocated to this class, comparable in overall levels of program and supervisory responsibility, but functionally distinct in terms of specific duties and assignments. They are: (1) chief institution psychologist positions in correctional, mental health, and mental retardation facilities with institution-wide responsibility for psychological services' coordination; (2) institution service chief positions having independent responsibility for the administration of all aspects of the clinical program on an assigned unit, including the supervision of a multi-discipline staff; (3) regional clinical program supervisor positions in correctional programs responsible for coordinating all clinical services provided in the assigned region; and (4) the position which functions as Chief of the Child Behavior and Development Section in the Division of Health. Employees in this class are responsible for developing the goals and the procedures necessary for program implementation, and for providing leadership and guidance to staff to insure program effectiveness. Employees typically engage in the professional practice of psychology in addition to, or as a part of, their program supervisory role. The work is reviewed through regular consultations with the supervisor in terms of both specific and general clinical and administrative aspects.

The PS 2 definition contained in Respondent's Exhibit 5 is as follows:

This is highly responsible supervisory and professional work in directing major psychological programs at the state level. There are presently three positions in the Division of Corrections allocated to this level, each having responsibility for all psychological services' functions and activities in one of the following multi-unit operational areas: juvenile institutions, adult institutions, and probation and parole services. The work involves program development and evaluation, budget planning, inter-unit program coordination, and the administrative and functional supervision of psychological staff,

consultants and interns assigned to the units. In addition to these duties, the employe typically carries supervisory responsibility for one of the individual institution or regional program units which comprise his area and, in this regard, performs work similar to that identified at the Psychologist Supervisor 2 level. The work is performed under broad administrative and program guidelines and review is accomplished through periodic staff conferences and reports.

As was noted in the memo setting forth the denial of the reclassification request (Respondent's Exhibit 1), the PS 1 definition includes "chief institutional psychologist positions in correctional,<sup>2</sup> mental health, and mental retardation facilities with institution-wide responsibility for psychological services coordination," while the PS 2 definition refers to "directing major psychological programs at the state level." Respondent's decision to deny the request for reclassification of appellant's position relies primarily on the facts that appellant's position is the EAS chief psychologist and is not responsible for directing major psychological programs at the state level.

As mentioned above, many changes have occurred since the promulgation of these class specifications in 1971. Under these circumstances, the language from these class specifications cannot be applied mechanically. See Brandt v. DNR & DER, 87-0155-PC (11/3/88). ("There are cases where parts of a position standard became outmoded over the course of time and as circumstances change, and then classification decisions may be based on more general concepts reflected in the position standard, as opposed to outmoded specific sections." p. 8). Respondent's recognition of this concept with respect to this series is illustrated by the fact that there are two PS 2 positions at Mendota Mental Health Institution (MMHI) which do not meet the explicit PS 2 criteria set forth in the definition.

These positions (Respondent's Exhibit 9, Dennis Doran incumbent, and Appellant's Exhibit 2, no incumbent) have responsibilities, respectively, for the forensic clinical program, and for directing treatment services in the forensic, adult and child programs; the development and coordination of all institution clinical policy, the direction of institutional clinical crisis management intervention, the direction of strategic planning for clinical services, and participation in institution-wide administration. Both positions

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<sup>2</sup>At the time this class specification was promulgated, EAS was within the then Division of Corrections, which was part of DHSS, rather than the separate department it became in 1990.

provide statewide consultation to the administrator of the division of clinical treatment and facilities within DHSS.

Since these institutional positions are considered properly classified at the PS 2 level, comparison of them to appellant's position is of a good deal of significance in this case. Respondents support the higher level for these positions primarily on the grounds that they have larger programs and deal with more complex psychological issues.

Respondents point out that each position supervises a number of PS 1's. This factor provides significant support for respondent's case. However, appellant has established on this record that the MMHI psychological program is not more complex than the EAS program, and there are enough other factors to counterweight the supervisory responsibilities of the MMHI PS 2's and lead to the conclusion that appellant's position is on about the same level from a classification standpoint.

Respondents' assertion of greater complexity rests on MMHI's higher per capita budget and the description of the patient population. Respondents also adduced hearsay statements about the relative complexity of the psychological issues at MMHI attributed to unidentified program experts. In opposition to this evidence, appellant testified that he had considerable first-hand knowledge of the programs at MMHI, and in his professional opinion, the psychological issues at MMHI are less, not more complex, than the psychological issues at EAS. While presumably all the patients at MMHI are mentally ill, appellant deals with students who are both mentally ill and delinquent, and this subset of patients presents more complex psychological problems. Appellant also testified that while some youths are sent from EAS to MMHI, a psychotic youth who refuses voluntary commitment to MMHI can't be sent there. Also, while the PS 2's at MMHI do supervise a number of PS 1's, appellant has responsibility for more patients than those PS 1's. Hearsay evidence is admissible in commission proceedings. Section PC 5.03(5), Wis. Adm. Code, provides that it "may be admitted into the record at the discretion of the hearing examiner or commission and accorded such weight as the hearing examiner or commission deems warranted by the circumstances." While respondent's hearsay evidence of statements attributed to unnamed subject experts is entitled to some weight, it is outweighed by appellant's first-hand knowledge of both programs.

Another factor supporting the comparability of appellant's position to the PS 2's at MMHI is that since the 1990 DOC/DHSS reorganization, appellant

has not had anyone at a higher level within the organizational structures to rely on for program expertise. Therefore, he must make decisions on his own while in the past he could rely on central office psychologist supervisors for advice and assumption of responsibility.

Related to the latter point is that, as a result of the 1990 reorganization, appellant is required to perform functions that are really statewide in nature. For example, when a law was enacted concerning violent sex offenders, three levels of management at DOC were involved in developing a plan of implementation, while at the division of youth services, appellant had the sole responsibility for putting this plan together. Thus, while appellant does not meet the admittedly obsolete PS 2 requirement of "directing major psychological programs at the state level," he does have significant statewide responsibilities, as do the MMHI PS 2's.

Two other factors that suggest that appellant's position is at a higher level than PA 1, and which promote a positive comparison with the PS 2 positions at MMHI, are his oversight of a psychiatric program, and his development and oversight of a certified clinical psychology internship program. These functions are not performed by the MMHI PS 2 positions.

In conclusion on this point, the foregoing factors counterbalance the MMHI PS 2's supervision of a number of PS 1's, and lead to a conclusion that appellant's position should be considered comparable to those PS 2 positions. These factors also come into play in both comparing appellant's position to other chief institutional psychologist PS 1 positions in DOC, as well as with respect to other matters material to the classification question presented by this appeal.

DOC has particular institutions performing specific, relatively specialized roles with regard to the psychology program. For example, Dodge Correctional Institution provides the intake/evaluation function for the entire department. At EAS, these and many other functions are all under one roof. Appellant also provided uncontradicted testimony that the psychology programs at some of the less specialized DOC institutions - e.g., Kettle Moraine Correctional Institution and Fox Lake Correctional Institution - are primarily involved in crisis intervention, which is only one part of the EAS program. Also, appellant supervises more professional staff than the other institutional chief psychologist positions.

As discussed above, the 1990 reorganization resulted in a change in the supervision of appellant's position. This factor not only relates to the position

comparisons, but also supports appellant's case from the standpoint of general classification principles and the language of the class specifications. The PS 1 definition provides that "work is reviewed through regular consultations with the supervisor in terms of both specific and general clinical and administrative aspects." (emphasis added) (Respondent's Exhibit 4) It is clear that, reporting to the EAS superintendent, appellant does not get this kind of supervision. Rather, as set forth in the PS 2 definition: "work is performed under broad administrative and program guidelines and review is accomplished through periodic staff conferences and reports." (Respondents' Exhibit 5). While in this case the significance of the class specifications is limited due to their obsolete nature, the nature of supervision is a more general concept corresponding to general classification concepts, and is entitled to some weight in the evaluation of the evidence.

In reaching its decision, the Commission placed little weight on the fact that appellant's position was reallocated as a result of a survey to a classification one level below the MMHI positions. There are a number of differences between the new and old series, and it cannot be determined in this record the extent to which appellant's reallocation turned on an accurate assessment of factors germane to the prior series.

ORDER

Respondent's action denying the request for reclassification of appellant's position from PS 1 to PS 2 is rejected, and this matter is remanded for action in accordance with this decision.

Dated: October 27, 1995 STATE PERSONNEL COMMISSION

  
LAURIE R. McCALLUM, Chairperson

AJT:bjn

  
DONALD R. MURPHY, Commissioner