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DALE SEIDEL,

Appellant,

v.

Secretary, DEPARTMENT OF
EMPLOYMENT RELATIONS,

Respondent.

Case No. 95-0081-PC

* * * * *

DECISION
AND
ORDER

This is an appeal pursuant to §230.44(1)(b), Stats., of respondent's denial of reclassification of appellant's position from Administrative Officer 1 (AO 1) (PR 16) to Administrative Officer 2 (AO 2) (PR 17).

Appellant's most current position description (PD) (Respondent's Exhibit 6), which appellant signed on April 20, 1994, is essentially accurate as far as it goes. It does not include some aspects of the position, as will be discussed below. However, the position summary and goals provide a general outline of a substantial part of the duties and responsibilities of this position:

14. POSITION SUMMARY

Under the general supervision of the Division [of Emergency Government] Administrator, this position functions as the Assistant to the Division Administrator and is responsible for complex executive, liaison, management of the budget, fiscal, management information and related management service programs (personnel, training, purchasing, facilities management, program support, etc.) of the Division. In addition, the position is responsible for coordinating the Strategic Planning and Information Technology Planning activities of the Division. Serves as the Division's Public Affairs Officer, liaison to the National Guard and Governor's Office.

15. GOALS AND WORKER ACTIVITIES

20% A. Management, Preparation, Development and Implementation of the Biennial and Operating Budgets.

* * *

20% B. Management of the Management Information and Data Collection Programs of the Division.

* * *

20% C. Management of the General Management Service
Functions of the Division.

* * *

20% D. Management of all Strategic Planning and Information
Technology (IT) Planning Activities for the Division.

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15% E. Public Affairs. Liaison to the National Guard and Division's
representative to the Department of Military Affairs.

* * *

5% F. Supervision and Training of Assigned Staff.

Appellant directly supervises an AA3 supervisor (who supervises 7 lower level employees), a Public Information Officer 4, and a Financial Specialist 4. The highest level employee appellant supervises is at pay range 14, two levels below appellant.

In sum, this PD reflects a fairly typical administrative support section role in a division which would be consistent with an AO 1 or possibly an AA 5 classification. However, there was considerable testimony at hearing concerning duties and responsibilities which are not included in appellant's PD, but which represent a significant part of appellant's case. These additional activities may be characterized under four general headings: 1) appellant's role as part of the division overall management team; 2) his role serving in an acting capacity when higher level employees are absent. 3) his role acting as head of the disaster field office when Mr. Shanks, Director of the Bureau of Field Services and Disaster Resources is not functioning in this capacity;¹ 4) his role as incident or operations commander in connection with a specific disaster or incident, either on a backup basis or while acting as DEG duty officer.

There was significant testimony concerning the team management approach utilized within DEG (Division of Emergency Government). Appellant, the bureau chiefs,² and the DEG administrator would meet to discuss the

¹ Appellant testified specifically about the circumstances surrounding the massive 1993 flooding.

² Allen Shanks, Bureau of Field Services and Disaster Resources (AO 3), and Chris Bacon, Bureau of Technological Hazards (AO 3).

operation of DEG, including specific issues that would arise. All members of this team would participate in the discussion of these issues which frequently would include matters involving both bureaus, as well as administrative matters. While all members of the team frequently would have input on these issues, the administrator retains ultimate decision making authority and responsibility. Complainant testified that as a result of this team management approach, he essentially had program responsibility on a division wide basis:

The emergency management philosophy of all hazards, and the functional approach you attack things, is how do we prepare the State of Wisconsin for emergencies. We exercise, we train, how are we going to go about program development is a key part of my job in how do we work, how do we improve the program, regardless of whose program it is. We're continuing to look at the way the division works with the emergency management community in the state.

* * *

Q What responsibilities do you have in decision-making in this team?

A I would say an equal and shared responsibility with the two other bureau directors. The ultimate decision is always made by [administrator] Lee Connor....

While in a team discussion of issues, it is difficult to draw hard and fast programmatic lines with respect to each member's input, the Commission does not believe that this record supports a conclusion that appellant has a substantial degree of authority for program development and management outside the management services area for which he is directly responsible. Appellant has had some input in these areas as a member of the management team, this is not the same for classification purposes as leading programs or program areas.

The record reflects that all members of the management team share their ideas concerning issues which may arise, including those outside their immediate program areas. Also, because appellant's financial and other administrative activities affect the entire division, he has to be familiar with the division programs, and must work closely with the program administrators. However, the bureau directors retain ultimate responsibility for their programs, subject to the overall responsibility of the division administrator.

Appellant did produce testimony about two programs (survivable crisis management and disaster mitigation) which he developed initially, and which now are managed by Mr. Shanks, Director of the Bureau of Field Services and Disaster Resources. These activities are positive factors in terms of classification. However, the record provides little information as to the percentage of time appellant spends on these types of activities. They are not clearly identified on appellant's PD (Respondent's Exhibit). Appellant contends that these kinds of activities fall within §C2: "Develop and recommend to Administrator/Bureau Director changes to current policies, practices and procedures which will more effectively and efficiently meet the needs of the Division and public served." Since this activity is within an overall goal of "C. Management of the General Management service functions of the Division," (emphasis added), it is at best questionable whether the PD per se can be said to have any reference to appellant's substantive program functions, but a PD is only one piece of evidence and can not be considered as dispositive regarding position classification. However, assuming that activity C2 covers these functions, it is only one of ten activities under a 20% goal. This does not suggest that appellant's substantive program development activities constitute a very substantial amount of appellant's time, and the other evidence of record does not lead to a different conclusion.

Appellant's other substantive program areas (his role in the chain of command and occasional stints as head of the disaster field office and as an incident or operational commander) also are positive factors, but this does not appear to involve a substantial percentage of appellant's time. These activities are not reflected in appellant's PD, and again, there was little specific testimony on the amount of time involved in these activities.

The Commission concludes on the basis of this record that appellant's substantive program activities which fall outside a literal reading of his PD (Respondent's Exhibit 6), do not constitute more than 10% of his activities. This results in a hybrid position, with both administrative and a small, but not negligible, percentage of substantive program activities. A position of this nature presents some difficulty in terms of classification.

The AO 1 and AO 2 class specifications (Respondent's Exhibits 1 and 2) include the following definitions:

ADMINISTRATIVE OFFICER 1:

This is responsible and difficult administrative and/or advanced staff assistance work in a major state agency. Employees in this class are responsible for directing important phases of the department's program and /or for providing staff services in a variety of management areas. Work may involve assisting in the formulation of the agency's policies, the preparation of the budget, responsibility for fiscal management, physical plant, operating procedures, personnel and other management functions. Employees supervise a staff of technical and/or professional assistants and have a wide latitude for planning and decision making guided by laws, rules and departmental policy. Direction received is of a broad and general nature and the work is reviewed by administrative superiors through reports and conferences.

ADMINISTRATIVE OFFICER 2:

This is highly responsible and difficult administrative and/or advanced staff assistance work in a major state agency. An employee in this class is responsible for providing all administrative and managerial services for the agency, including directing such staff services as personnel, budget preparation, fiscal management and purchasing; and/or for administering a complex departmental program. Employees exercise broad supervision and control over large numbers of technical, professional and clerical people. An employee in this class often serves as the principle advisor to the department head in developing departmental policies and rules and in promoting needed legislation. Within a broad framework of laws, rules, and policies, employees are responsible for many decisions affecting the department's program. The administrative review by the department head.

These specifications are relatively old (promulgated in 1977), and DER has essentially abandoned reliance on some of the specific language therein. For example, the AO 2 administrative officer allocation requires "providing all administrative and managerial services for the [major] state agency." (emphasis added). (Respondent's Exhibit 2). However, DER does not view this as an absolute requirement for these types of positions to be classified at the AO 2 level if a position has duties and responsibilities which are comparable for classification purposes.

Appellant does contend that he falls within the AO 2 allocation for positions "administering a complex departmental program." (Respondent's Exhibit 2). He contends that DEG is a complex departmental program and that he has a significant role in the entire operation of DEG. However, the division administrator, Mr. Conner has the responsibility to administer DEG, not appellant.

Because appellant does not meet the definitional language in the AO 2 class specification, and DER has abandoned rigid adherence to this language, general classification principles, see, e.g., § 230.09 Wis. Stats., and position comparisons play a big role in the classification of this position. Since appellant's position is hybrid in nature, it is difficult to compare to more conventional positions.

Looking solely at appellant's divisional administrative management duties, respondent's personnel specialists testified persuasively that his position falls within the AO 1 range. For example, the AO 1 Director of the Office of Administrative and Management Services in the Bureau of Highway Engineering in DOT (Respondent's Exhibit 12) "is responsible for providing all administrative and managerial services." While this position is within a bureau as opposed to a division, the bureau is much larger than DEG, and the position supervises a much larger staff (24) than appellant. It is also noteworthy, in the context of appellant's reliance on his non-administrative program responsibilities, that this PD includes a clearly-defined role as "principal policy advisor to the bureau director."

Many of the AO 2 PD's in the record are of positions which fall within the allocation for "administering a complex departmental program." Because, as discussed above, appellant does not meet this criterion, these positions have little relevance. However, some of the AO 2 administrative services management type positions are much stronger from a classification standpoint than appellant's.

For example the Chief of Administration for the Division of Highways and Transportation Services in DOT is an AO 2. (Respondent's Exhibit 17). This division is much larger not only than DEG, but also many state agencies. This position, unlike appellant's, has the delegated authority to make certain personnel classification and purchasing decisions. It serves on the DOT legislative committee, and directs certain special programs. This PD also reflects these responsibilities:

20% B. Provision of Executive Policy Services to the Office of the Administrator.

5% B1. As a principal member of the division's manage-
ment team, inform or advise the Administrator on a wide range of organization, administrative and

general management matters, in various stages of development, implementation or evaluation.

- 10% B2. Direct the development of policies and procedures, and provide policy analysis relating to divisional management structures, operations and practices, human resources, and business and administrative programs. (NOTE: This goal requires substantial knowledge of highway program goals and operations.) (emphasis added). (Respondent's Exhibit 17).

This illustrates that this position also has program management responsibilities, in addition to management of the division's administrative service programs, within a division of approximately 1800 employees versus approximately 50 in DEG, and with a much larger budget. While, as appellant contends, there are other factors besides size which should be considered in position classification, neither can quantitative differences be ignored. Greater size usually can be associated with greater complexity, and the size difference here is very pronounced. Appellant has placed great stress on the important statewide impact of DEG's operation. The Commission agrees that this is an appropriate classification factor with respect to positions in the division. However, appellant's position is involved primarily with administrative functions, which are less directly intertwined with this factor than would be the case with a more program-oriented position. For example, assuming arguendo that DEG were considered to have the same or even higher degree of statewide impact as DHTS, the huge quantum differences in the size of the budgets, numbers of employees, etc., would contribute significantly to the comparative complexity of the administrative management positions in the divisions.

Another example of an AO 2 position that is much stronger than appellant's from a classification standpoint is the operations manager for the Office of the Secretary of State. (Respondent's Exhibit 18). This agency is approximately the same size as DEG, but this position is responsible for all agency programs and operations. In addition to responsibilities as the agency budget and fiscal officer and the agency human resources manager, this position supervises three program division administrators, the legal services unit, a senior level programmer analyst, and the head of administrative services.

As discussed above, it is difficult to assess the impact from a classification standpoint of appellant's program and emergency disaster line responsibilities. The record reflects that there are times when appellant functions at very high levels of responsibility and authority, and this evidence certainly supports his case. However, these activities are a relatively small percentage of appellant's position. The AO 1 and AO 2 positions discussed above as position comparisons all have program elements. Furthermore, respondent introduced into the record the PD's of some lower level DEG positions (Emergency Government Specialists 3)(PR 15) who also perform some of the activities cited by appellant, such as serving as division duty officer and as incident commander.

Appellant introduced a number of PD's but for the most part they did little to advance his cause. For example, the Travel and Purchasing Services Division in DOA (Appellant's Exhibit 2) is one of several that falls into the AO 2 allocation for the administration of a complex departmental program,³ and, as discussed above, appellant does not meet this criterion.

A position more comparable to appellant's is the AO 2 which serves as Assistant to the Division Administrator and the Director of Agency Support Services at the Educational Communications Board (Appellant's Exhibit 9). However, this position is responsible for both the agency's budget and personnel management, among other agency-wide activities, including a 10% goal for the "[p]rovision of management analysis for agency programs and operations."

The PD for the AO 2 Assistant to the Administrator, Administrative Services Division, Department of Industry, Labor and Human Relations (DILHR) (Appellant's Exhibit 1), appears to be similar to appellant's. There also were references in the record to another AO 2 position in the Equal Rights Division (ERD) in DILHR which appears to be similar to both the preceding position and appellant's.⁴ Respondent contended at hearing that both positions appeared to be misclassified, or there possibly were factors not apparent on their PD's which justified the AO 2 level. According to respondent, the class

³ Administration of the statewide travel program, which includes the state vehicle fleet.

⁴ The PD for this position (incumbent, Linda Hoelzel) is not in the record, but there was testimony that the two positions are similar.

level of these positions were under review, which had not been completed at the time of the hearing.

It is axiomatic that "two wrongs don't make a right"--i.e., a reclassification should not be based on a comparison to a misclassified position, see, e.g., Danielski v. DER, 85-0196-PC (9/17/86); Olson v. DOA & DER, 92-0731-PC (2/13/94). However, the situation in this case is somewhat in a state of limbo due to the fact that both the comparison AO 2 positions were under review at the time of the hearing. If respondent maintains these positions at the AO 2 level without some adequate basis, this certainly would support appellant's case. In the interests of fairness, respondent is to advise as to the classification status of these two positions upon issuance of the proposed decision. This will provide appellant an opportunity to file a motion to reopen the hearing if circumstances warrant it.⁵

Another factor relied on by appellant is that the division administrator to whom he reports is one of only two division administrators appointed by the governor. While this is of some significance in this classification evaluation, the DEG administrator cannot act independently of the agency head (adjutant general) as does the other gubernatorially-appointed division administrator (Division of Merit Recruitment and Selection). The latter official is part of DER but is vested statutorily with specific program authority independent of the DER secretary, see §§15.173(1), 230.05, Stats. Mr. McArdle, military counsel to the Adjutant General, testified that:

When they put the division back in to the Department of Military Affairs, they put all of the major duties and responsibilities in the adjutant general, not into the division administrator. So when Mr. Thompson came on board, because he was also a gubernatorial appointee, there was some conflict at times as to who had what authority. An agreement was entered, a written agreement, memorandum of understanding, between the Adjutant General and Mr. Thompson to define whose responsibilities were what.

Also, the DEG administrator is in Executive Salary Group 2 (ESG 2), while, for example, the DMRS Administrator is in ESG 3 pursuant to §20.923(4)(c) 3m.,

⁵ Respondent did provide additional information regarding the status of these two positions. Appellant did not file a motion to reopen the hearing.

Stats.⁶ These factors diminish the significance of appellant's reporting relationship to a gubernatorial appointee.

There are a number of other aspects of appellant's duties and responsibilities which were described in the record but which will not be addressed specifically because they fall within the scope of an AO 1 position of this nature or of a more specialized classification at a lower pay range--e.g., appellant's budget and grant activities.

In conclusion, the classification of positions of this nature requires the exercise of judgment in applying general concepts and comparing relatively varied positions. Appellant has the burden of proof and must establish by a preponderance of the evidence that respondent's decision was in error. While appellant's case is not without some support, the Commission concludes that on this record he did not sustain his burden of proof.

ORDER

Respondent's action denying the reclassification of appellant's position from AO 1 to AO 2 is affirmed and this appeal is dismissed.

Dated: July 23, 1996

STATE PERSONNEL COMMISSION


LAURIE R. McCALLUM, Chairperson

AJT:pf


DONALD R. MURPHY, Commissioner


JUDY M. ROGERS, Commissioner

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⁶ Section 20.923(4) provides for executive salary groups one through ten.

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 (except an order arising from an arbitration conducted pursuant to §230.44(4)(bm), Wis. Stats.) 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.

Pursuant to 1993 Wis. Act 16, effective August 12, 1993, there are certain additional procedures which apply if the Commission's decision is rendered in an appeal of a classification-related decision made by the Secretary of the Department of Employment Relations (DER) or delegated by DER to another agency. The additional procedures for such decisions are as follows:

1. If the Commission's decision was issued after a contested case hearing, the Commission has 90 days after receipt of notice that a petition for judicial review has been filed in which to issue written findings of fact and conclusions of law. (§3020, 1993 Wis. Act 16, creating §227.47(2), Wis. Stats.)

2. The record of the hearing or arbitration before the Commission is transcribed at the expense of the party petitioning for judicial review. (§3012, 1993 Wis. Act 16, amending §227.44(8), Wis. Stats.)

2/3/95