

STATE OF WISCONSIN

PERSONNEL COMMISSION

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ROLAND J. BOEDING,

Appellant,

v.

Secretary, DEPARTMENT OF  
EMPLOYMENT RELATIONS,

Respondent.

Case No. 95-0144-PC

\* \* \* \* \*

ORDER

The Commission, after reviewing the Proposed Decision and Order and the arguments of the parties, and after consulting with the hearing examiner, adopts as its final resolution of this matter the Proposed Decision and Order with the addition of the following language:

Complainant argues that the use of the bands as a tool for classifying his position was inappropriate. However, even if the bands are not used, the record fails to show that the duties and responsibilities of appellant's position satisfy the requirements stated in the AO 5 classification specifications or are comparable to those of AO 5 positions offered in the record for comparison purposes.


In his oral argument, complainant contended that the addition of the OCIP and environmental compliance responsibilities to his position could be analogized to the addition of responsibility for managing the risks associated with the investment of state funds by the Investment Board. However, this analogy is not apt. The OCIP and environmental compliance programs deal with the management of risks associated with the construction of new state properties and the care of existing state properties. The management of these risks is a responsibility the subject position has been assigned at all times during appellant's tenure in the position and before. The addition of

responsibilities relating to state investments would be a new and unrelated responsibility.

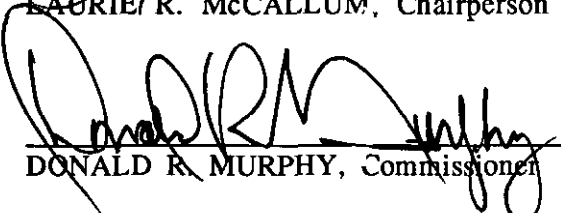
Finally, in his oral argument, complainant contended that the record did not show that the reclassification of the subject position to the AO 4 level during Mr. Gronert's tenure in the position relied on factors identical to or similar to those upon which appellant is relying here. However, this was the testimony of respondent's classification expert Evelyn O'Brien, who reviewed both the Gronert reclassification request and appellant's reclassification request, and appellant failed to successfully rebut this testimony.

Dated: October 22, 1996

STATE PERSONNEL COMMISSION

  
LAURIE R. McCALLUM, Chairperson

LRM:lrn

  
DONALD R. MURPHY, Commissioner

  
JUDY M. ROGERS, Commissioner

Parties:

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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 (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

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PROPOSED  
DECISION  
AND  
ORDER

This is an appeal of the denial by respondent of appellant's request for the reclassification of his position from Administrative Officer 4 (AO 4) to AO 5. A hearing was held on March 12, 1996, before Laurie R. McCallum, Chairperson, and the schedule for final argument was completed on May 10, 1996.

In March of 1991, appellant was appointed to the position of Director, Bureau of State Risk Management, Division of Finance and Program Management, Department of Administration (DOA). This position was classified at the Administrative Officer 4 (AO 4) level. The position description signed by appellant on March 5, 1991, was effectively identical to the position description which served as the basis for the reclassification of his predecessor in the position (Gordon Gronert) from the AO 3 to the AO 4 classification in 1989.

Some time in February of 1994, appellant requested the reclassification of his position to the AO 5 level. The following is a summary of the duties and responsibilities of appellant's position during the time period relevant to this request:

15% A. Supervises bureau staff. This staff consists of 16 FTE positions, including one AO 3 position and three AO 2 positions.

15% B. Establishes statewide risk management policies; directs the study of new risk management techniques; develops policies

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15% A. Supervises bureau staff. This staff consists of 16 FTE positions, including one AO 3 position and three AO 2 positions.

15% B. Establishes statewide risk management policies; directs the study of new risk management techniques; develops policies

and procedures for the implementation of new risk management techniques, including identifying the state's exposure to loss, analyzing the significance of the state's risks, selecting and applying the appropriate risk management techniques, and monitoring risk management decisions and making adjustments; acts as primary liaison with the DOA Secretary, Governor, and Legislature on risk management issues; assists the Attorney General's office on strategies relating to relevant litigation and legislative changes; oversees the development and operation of complex information systems which record claims, make payments, and maintain risk management data.

15% C. Develops and administers policies and procedures for applying loss control and safety techniques to reduce the frequency and severity of the state's losses, including the implementation of Executive Order 194 requiring all state agencies to develop and promulgate a written comprehensive health and safety program; develops policies and procedures for applying risk financing techniques to assure that resources are available to cover losses by state agencies; administers the statewide self-funded liability, property, worker's compensation, and environmental impairment liability programs; arranges for excess insurance contracts which involves the development and placement of tailor-made property/liability insurance which meets the unique needs of the state.

10% D. Monitors the cost/benefit ratio associated with the state's investment in risk management and safety activities; assists the Division of Executive Budget in reviewing state agency requests for risk management and safety activities; develops premium methodologies and annual premiums for the liability, property, worker's compensation and environmental impairment liability programs; develop the bureau's operating budget (\$3.6 million for FY 94), and develops projections of claims costs by analyzing past loss trends and projecting the impact of lost control and safety programs.

5% E. Establishes policies and procedures for the acquisition of insurance policies for state agencies when deemed more cost effective than financing internally; works with the Bureau of Procurement to develop and maintain appropriate state contract language to reduce the state's exposure to loss; establishes policies for all state agencies to follow for handling emergency cleanup of state properties when major losses are incurred as the result of fire, flood, or other natural disasters.

15% F. Directs the development and implementation of an Owner Controlled Insurance Program (OCIP) for the state's major building projects which provides liability, worker's compensation, and builder's risk insurance coverage for all contractors and subcontractors and project professional liability for all architects and engineers; develops the RFP for selection of a broker-administrator to market the insurance coverage and administer the OCIP; monitors the performance of the

broker/administrator; develops a retrospective rated insurance coverage program providing the state return premiums if losses are controlled on the projects; develops and implements a comprehensive safety program for these building projects; works with Division of Facilities Development to develop bid specification language for OPIC projects.

10% G. Develops and administers a statewide environmental compliance program which provides direction and guidance for compliance with all federal and state environmental laws; directs the development of statewide hazardous waste minimization program to eliminate future hazardous waste exposures; conducts research to determine state liabilities for prior disposal of hazardous waste and investigates hazardous waste sites in response to Potentially Responsible Party (PRP) notices to determine the state's potential liability; works with the Attorney General's Office to develop strategies in defending PRP notices.

5% H. Develops and administers a risk management program review process for agencies and institutions.

10% I. Chairs the State Risk Management Council, develops and manages an annual State Risk Management and Safety Conference, serves as liaison to public in relation to state risk management issues.

The primary differences between appellant's 1991 and 1993 position descriptions are as follows:

1. The addition of the OCIP program reflected in Goal F of the 1993 position description.
2. The addition of the environmental compliance program reflected in Goal G of the 1993 position description.
3. Chairing the State Risk Management Council and directing the State Risk Management and Safety Conference reflected in Goal I of the 1993 position description.
4. The addition of the safety responsibilities resulting from Executive Order 194 reflected in Goal C of the 1993 position description.

These additional responsibilities have been advanced by appellant as the basis for his reclassification request. The addition of each of these responsibilities resulted from a change in the emphasis of the program which this position directs from insuring losses and paying claims to loss prevention and control. This change in emphasis was offered as the primary basis for the reclassification of this position from the AO 3 to the AO 4 classification in 1989.

fundamental impact upon departmental programs, organization and operations. The employee develops and evaluates recommendations for the establishment and revision of legislation. The work is performed for the most part independently, subject only to administrative consultation and review with the department head.

The allocation pattern for classified senior manager positions consists of three categories or bands: (1) pay ranges 18 and 19; (2) pay ranges 20 and 21; (3) pay ranges 22 and 23. Under this allocation pattern, positions in the second band, including AO 5 positions which are in pay range 20, generally include the following three types of positions:

1. the director of a bureau within a major processing division supervising directly or indirectly large numbers of non-professional staff.
2. the director of a major bureau with subordinate staff classified at a level equivalent to band 1 positions, i.e., high level technical positions or multiple section chief positions in pay ranges 18 and 19.
3. unique positions such as deputy division administrators, deputy bureau directors within very large divisions, or positions with responsibility for major policy initiatives.

Under this allocation pattern, positions in the first band, which would include AO 4 positions at pay range 19, consist primarily of bureau directors with the majority of the highest level subordinate staff in pay ranges 14-17.

Positions offered for comparison purposes include the following:

1. AO 4--Janet Abrahamson--Director, Bureau of Procurement, Division of State Agency Services, Department of Administration--this position directs the state's purchasing, printing, and property disposal programs and associated warehousing, transportation, and distribution systems. This position supervises 22 FTE including three AO 2 positions. The size and composition of the staff and the organizational level of this position are comparable to those of appellant's position; and both positions direct a program which establishes policies and procedures and provides operational oversight for an administrative function carried out by all state agencies.
2. AO 4--Carol Hemersbach--Director, Bureau of General Services, Division of State Agency Services, Department of Administration--this position directs a bureau consisting of three sections which provides record storage and retrieval services, microfilming, printing, document distribution, mail processing and distribution, art work and forms layout and design, computer

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appellant's appointment. Even though appellant cites 1991 as the starting point for the state's review of its risk management practices, this process clearly started much earlier in view of the fact that, by July of 1990, the state had already made the decision to have a review of its worker's compensation claims practices undertaken and had completed the competitive process for selecting a consulting firm to conduct the review. Even though appellant's 1993 position description describes certain subprograms which came to life during appellant's tenure in the position and which were not identified in his 1991 position description, these subprograms were the outgrowth of the change in emphasis of the program to loss prevention and control which was undertaken prior to 1990; were of the type necessarily contemplated when the position was first classified at the AO 4 level; and, as a result, did not represent a higher level of duty, and responsibility for the position.

Since the language of the AO classification specifications was apparently drafted to describe positions which carry out business management functions for an agency but this classification series has been utilized by respondent to classify positions which carry out other functions such as the one under consideration here, the language of the specifications is of very limited utility. As a consequence, the Commission will rely upon the established allocation pattern and upon position comparisons to determine the best classification fit for appellant's position.

The AO 5 classification is in band 2 of the senior manager allocation pattern. The appellant's position does not satisfy any of the criteria for classification in band 2, i.e., it is not the director of a bureau in a major processing division; it is not a director of a major bureau supervising high-level technical positions or multiple pay range 18 or 19 section chief positions (appellant's position supervises one pay range 18 position); and it is not a unique position such as a deputy division administrator, a deputy bureau director in a large division, or a position with responsibility for a major policy initiative. On the other hand, appellant's position does satisfy the band 1 allocation pattern, i.e., a bureau director with the majority of the highest level subordinate staff in pay ranges 14-17. Although appellant contends that this allocation pattern did not come into existence until June of 1994, i.e., after the filing of this reclassification request, and should not be applied here, the record shows that, although the allocation pattern was formalized in June of

appellant's appointment. Even though appellant cites 1991 as the starting point for the state's review of its risk management practices, this process clearly started much earlier in view of the fact that, by July of 1990, the state had already made the decision to have a review of its worker's compensation claims practices undertaken and had completed the competitive process for selecting a consulting firm to conduct the review. Even though appellant's 1993 position description describes certain subprograms which came to life during appellant's tenure in the position and which were not identified in his 1991 position description, these subprograms were the outgrowth of the change in emphasis of the program to loss prevention and control which was undertaken prior to 1990; were of the type necessarily contemplated when the position was first classified at the AO 4 level; and, as a result, did not represent a higher level of duty, and responsibility for the position.

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1994, it represented the pattern of classification of senior manager positions which had been established over a period of years prior to 1994.

The record also does not show that appellant's position is comparable to the AO 5 positions offered for comparison purposes. Each of the AO 5 positions specified above satisfies one or more of the criteria for classification in band 2, i.e., the McCann position supervises high-level technical positions as well as pay range 19 supervisory positions; the Hoadley position is a unique position directing an unusually complex program area; and the Talsky position is a deputy division administrator. As discussed above, the record shows that there are factors which clearly distinguish these positions from appellant's position for classification purposes. In contrast, the programs directed by appellant's position and the AO 4 Abrahamson position are closely comparable in terms of scope, impact, and complexity; and the positions are closely comparable in terms of size and level of subordinate staff and organizational placement. Appellant contends that the fact that his position is supervised by a division administrator but the Abrahamson position is supervised by a deputy division administrator justifies the classification of his position at a higher level. Appellant cites in support of this contention the reallocation of Ms. Abrahamson's predecessor in the position from the AO 5 to the AO 4 classification when the deputy administrator position was created. However, the record does not show that this difference in reporting relationship results in any distinction between appellant's position and the Abrahamson position in terms of level of supervision or accountability, extent of program authority, or the nature of professional contacts and, as a result, does not appear to present a significant distinction here for classification purposes. Although Ms. Abrahamson's predecessor was reallocated from the AO 5 level to the AO 4 level when the deputy administrator position was created, this alone, without evidence that this change had no effect on the position's supervision, accountability, authority, or contacts, is an insufficient basis upon which to conclude that these positions should not be classified at the same level.

Order

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

Dated: \_\_\_\_\_, 1996      STATE PERSONNEL COMMISSION

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LAURIE R. McCALLUM, Chairperson

LRM:lrn

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DONALD R. MURPHY, Commissioner

\_\_\_\_\_  
JUDY M. ROGERS, Commissioner

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