

STATE OF WISCONSIN

PERSONNEL COMMISSION

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JOSEPH DAY (Phyllis Gorseye,
Chris C. Zwergel, Roberta M. Becker,
Maureen Breunig, Jerry Sumwalt,
Michael P. Olsen, Diane Monheim,
James Bolgrein, Ann E. Addis,
Lois Frank),

Appellants,

v.

Secretary, DEPARTMENT OF INDUSTRY,
LABOR AND HUMAN RELATIONS†
[DEPARTMENT OF WORKFORCE
DEVELOPMENT]

and

Secretary, DEPARTMENT OF
EMPLOYMENT RELATIONS

Respondent.

Case No. 95-0195-PC

* * * * *

DECISION
AND
ORDER

LARRY JERDEE,

Appellant,

v.

Secretary, DEPARTMENT OF INDUSTRY,
LABOR AND HUMAN RELATIONS†
[DEPARTMENT OF WORKFORCE
DEVELOPMENT]

and

Secretary, DEPARTMENT OF
EMPLOYMENT RELATIONS

Respondents.

Case No. 95-0201-PC

* * * * *

These cases, which were consolidated for hearing, involve appeals of reclassification denials. The issue in Day, et al. (95-0195-PC), involves the UCS (Unemployment Contribution Specialist) 3 and 4 classifications. The issue in Jerdee, (95-0201-PC), involves the UC Sup (Unemployment Contributions Supervisor) 3 and 4 levels (Mr. Jerdee supervises the appellants in the first case).

The facts of this case are essentially undisputed. Appellants' positions are in the UC (Unemployment Compensation) Division, Bureau of Tax and Accounting, Collection Section, Tax Collection Unit. The UCS 3 positions' duties and responsibilities are accurately summarized in their 1995 PD's (position descriptions), such as Mr. Day's (Respondents' Exhibit 5) which contains the following position summary:

THIS POSITION IS RESPONSIBLE FOR THE COLLECTION OF DELINQUENT UNEMPLOYMENT TAXES INCLUDING DETERMINING AND INITIATING LEGAL ACTION. IT IS A COMPLEX PROFESSIONAL LEVEL POSITION REQUIRING EXTENSIVE KNOWLEDGE OF CHAPTER 108, WISCONSIN STATUTES, AND LEGAL PRECEDENT, FEDERAL BANKRUPTCY AND STATE INSOLVENCY LAW, FRAUDULENT TRANSACTION LAW, FORECLOSURE LAW, EXECUTION AND EXEMPTION LAW, LIEN PRIORITY LAW, GARNISHMENT AND ATTACHMENT LAW AND THE LAW OF WISCONSIN AND OTHER STATES REGARDING THE ENFORCEMENT OF FOREIGN JUDGEMENTS. RESPONSIBILITIES INCLUDE VERIFYING OR ADJUSTING DEBTOR ACCOUNT, INITIATING CONTACT WITH TAX DELINQUENT BUSINESSES TO OBTAIN MISSING REPORTS AND PAYMENTS, MAINTAINING A REVIEW SYSTEM FOR ACCOUNTS, GATHERING DATA AND INITIATING COLLECTION PROCEDURES OR LEGAL ACTION, NEGOTIATING ASSIGNMENT OF WAGES OR PROPERTY, ARRANGING INSTALLMENT PAYMENT PLANS, REVIEWING SUCCESSORSHIP AND OTHER ISSUES FOR MONETARY DETERMINATIONS, DETERMINING PARTIAL PAYMENT OF SETTLEMENT CASES, PROVIDING DETAILED INFORMATION OF UC TAX WITH ACCOUNT SPECIFICATION, CLEARING OF TAX LIENS IN REAL ESTATE TRANSACTIONS, WRITING OFF DEBT WHEN COLLECTION IS NO LONGER FEASIBLE, IMPLEMENTING COMPROMISE LAW, INVESTIGATING AND ISSUING PERSONAL LIABILITY ASSESSMENTS FOR CORPORATE DEBT, FILING DEPARTMENT CLAIMS IN BANKRUPTCIES AND ASSURING THE CORRECT APPLICATION OF PAYMENT, REVIEWING APPEALS, RECOMMENDING AND TESTING DEPARTMENT EDP & - BOTH PC AND MAINFRAME, RECOMMENDING UC AND SPECIFIC TAX AND ACCOUNTING LAW REVISIONS, WORKING WITH OTHER DILHR AN/OR [sic] TAX AGENCIES, AND COORDINATING WITH THE INTERNAL REVENUE SERVICE, THE WISCONSIN DEPARTMENT OF REVENUE AND OTHER LAW ENFORCEMENT AGENCIES IN THE COLLECTION OF DEBT.

Mr. Jerdee's 1995 PD (Respondents' Exhibit 7) contains the following position summary:

Under the general direction of the Unemployment Compensation Collection Section Chief, this position is responsible for planning, organizing, directing, managing, supervising, coordinating, and evaluating activities of the Tax Collection Unit. Responsibilities include development and implementation of policies and procedures for nationwide collection of tax debts, including interest, penalties and costs. The incumbent monitors legal actions initiated by the unit to collect debts including judgement liens, levies and compromise. The position requires extensive knowledge and interpretation of all tax provisions of Wisconsin Statutes, Chapter 108. The incumbent must also have extensive knowledge of various state and federal laws relating to collection activities including federal bankruptcy law, state insolvency law, lien priority, garnishment and attachment, execution and exemptions and legal precedent.

The work of the unit (and appellants' positions) has changed substantially over the past ten years. These changes are summarized in a document prepared by the Chief of the Collections Section, Mary E. Pertzborn (Appellants' Exhibit A2). As a result of reorganization, statutory changes, and automation, much less time is spent on routine matters. Collectors now have levy authority, which permits them to proceed on their own initiative and authority to seize the property of a debtor held by a third party. These positions also operate more independently and with more authority in other areas, and generally are more involved in the legal process than previously had been the case. This has required more knowledge of more areas of law, and the exercise of greater discretion in more substantive areas. These positions also require increased knowledge with respect to data processing.

While the duties and responsibilities of these positions have changed significantly, and in a logical and gradual fashion, this is not a sufficient basis for reclassification. The changed duties and responsibilities must meet the criteria for the higher level classification before reclassification is warranted.

The UCS position standard contains the following definitions for UCS 3 and UCS 4:

UNEMPLOYMENT CONTRIBUTION SPECIALIST 3

This is objective, advanced or lead level professional unemployment contribution work in the State Unemployment Compensation Program.

Positions allocated to the objective level function as adjudicators and investigate, determine, and render employer liability decisions, according to State Unemployment Compensation Law. Work is performed under general supervision.

Positions allocated to the advanced level are responsible for collecting delinquent employer contributions. Positions at this level are distinguished from Unemployment Contribution Specialist 2 positions based on the responsibility for initiating legal enforcement efforts. Work is performed under general supervision.

Positions also allocated to this level lead lower level staff at the Unemployment Contribution Specialist 2 level that adjust employer experience rates based on findings of liability or employer payroll changes; or that are responsible for the collection of delinquent employer contributions. Work is performed under general supervision.

UNEMPLOYMENT CONTRIBUTION SPECIALIST 4

This is lead level professional unemployment contribution work in the State Unemployment Compensation Program. Positions allocated to this class lead lower level staff at the Unemployment Contribution Specialist 3 level that function as adjudicators and investigate, determine, and render employer liability decisions; or are responsible a majority of the time for collecting delinquent employer contributions and initiating legal enforcement actions where the employer has failed to respond to collection efforts, according to State Unemployment Compensation Law. Work is performed under general supervision.

The non-supervisory appellants' positions fall squarely within the UCS-3 advanced level allocation, because they "are responsible for collecting delinquent employer contributions...[with] responsibility for initiating legal enforcement actions where the employer has failed to respond to collection efforts." These positions do not satisfy the requirements for the UCS 4 classification because they do not function as leadworkers.

Appellants argue that the UCS 4 definition does not require leadworker status. Their disagreement with respondents on this issue involves the following language from the UCS 4 definition:

Positions allocated to this class lead lower level staff at the Unemployment Contribution Specialist 3 level that function either as:
A) adjudicators, and investigate, determine, and render employer liability decisions; or
B) are responsible a majority of the time for collecting delinquent employer contributions and initiating legal enforcement actions where the employer has failed to respond to collection efforts, according to State Unemployment Compensation Law.

Appellants contend that the language after “or” does not refer to lower level staff being led, but rather, to collection activities carried out by non-leadworker positions at the UCS 4 level. This argument has some force based solely on the quoted language, but creates inherently conflicting results when read in conjunction with the other language in the UCS 3 and 4 definitions.

The first sentence in the UCS 4 definition is: “This is lead level professional unemployment contribution work in the State Unemployment Compensation Program” (emphasis added). Any interpretation of the UCS 4 definition that does not require lead work would be inconsistent with this introductory sentence. Also, the UCS 3 level already covers non-leadworkers involved in collection activities with “responsibility for initiating legal enforcement actions where the employer has failed to respond to collection efforts.” It would not make sense to have the same kind of positions eligible for classification at the UCS 4 level as “responsible a majority of the time for collecting delinquent employer contributions and initiating legal enforcement actions where the employer has failed to respond to collection efforts” (UCS 4 definition, Respondents’ Exhibit 3).

Appellants also rely on a UCS 4 PD for a position that has no leadworker responsibilities (Appellants’ Exhibit 6). However, the classification of this position was changed to AA 4 after respondent became aware of this discrepancy. Its classification as UCS 4 appears to have been based on an error rather than an interpretation of the position standard at odds with the one respondents currently espouse.

Finally, appellants contend their positions should be considered leadworker in nature based on the theory that “referral back, or assignment of cases does, in fact, lead the work process of other units” (Appellants’ post-hearing brief, p. 4). However, this kind of activity does not meet the definition of leadworker: “training, assigning, guiding, instructing and reviewing the work of one or more employes in his/her work unit” (Appellants’ Exhibit 5).

Appellants rely both implicitly and explicitly on the general principle underlying the classification system—see, e.g., Appellants’ post hearing brief at p. 4:

The respondent noted that our case is a good argument for a DER survey that would lead to new positions. [sic] An accurate observation. However, given the power of the Personnel Commission, we seek a reversal of DILHR's decision denying us comparable worth provided in state statutes. State statute 230.09 states a department must classify on the basis of similarity of responsibility, pay range and nature of work. It is to include all positions that are comparable. We requested a reclassification because it was apparent to the majority of us, and to our supervisor and section chief, that there was a disparity between the duties of UCS 3's (Tax Collectors) in the collections unit and other positions similarly classified in the Bureau of Tax and Accounting. Some collectors also had experience in other divisions and departments where positions with less responsibility, scope, and complexity were in higher pay classifications.

Since appellants' positions are accurately described by the UCS 3 definition and do not satisfy the criteria for UCS 4, the Commission cannot rely on these general principles to conclude that respondents erred in denying appellants' request for reclassification to UCS 4. The Commission's appeal authority under §230.44(1)(b), Stats., is limited to review of classification decisions made under §230.09(2)(a), Stats., which covers specific classification decisions based on existing class specifications. Appellants essentially are contending that they are not adequately compensated under the current classification and pay range structure. Addressing these concerns would require changes in these structures. The Commission has no authority to review DER's decisions under §230.09(2)(am) or (b) either to create or change the classifications themselves or to assign or reassign classifications to pay ranges, or to fail to act in this regard. See, e.g., Pope v. DER, 92-0131-PC (8/23/93).

With respect to Mr. Jerdee's position, it clearly does not fit within the UC Sup. 4 definition¹, and to the extent its class level might have benefited from a UCS 4 classification for his subordinates, this will not occur as a result of this appeal.

¹ The UC Sup. 4 definition is as follows:


This is professional supervisory unemployment contribution work in the State Unemployment Compensation Program. Positions allocated to this class are responsible for the statewide employer contribution liability and experience rating activities established by the State

In conclusion, while it is undisputed that appellants' positions have experienced increased complexity, responsibility, and authority over the years, they are still squarely within the parameters of the position standards for their current classifications. Because the scope of the Commission's authority is limited to a determination of whether respondents' decision was correct on the basis of the extant position standards, the Commission must affirm respondents' actions. The Commission cannot reach the question of whether the changes in these positions should justify a change in the position standards or a change in the pay ranges to which these classifications are assigned.


ORDER

Respondents' actions denying these reclassification requests are affirmed and these appeals are dismissed.

Dated: September 17, 1996 STATE PERSONNEL COMMISSION


LAURIE R. McCALLUM, Chairperson

AJT:dpd


DONALD R. MURPHY, Commissioner


JUDY M. ROGERS, Commissioner

Parties:

Joseph Day	Larry Jerdee	Richard Wegner	Jon Litscher,
DILHR Room 347	DILHR Room 347	Acting Secretary, DWD	Secretary
P.O. Box 7946	P.O. Box 7946	PO Box 7946	Secretary, DER
Madison, WI 53707	Madison, WI 53707	Madison, WI	PO Box 7855
		53707-7946	Madison, WI
			53707-7855

† Pursuant to the provisions of the 1995 Wisconsin Act 27 which created the Department of Workforce Development, effective July 1, 1996, the authority previously held by the Secretary of the Department of Industry, Labor and Human Relations with respect to the positions that are the subject of this proceeding is now held by the Secretary of the Department of Workforce Development.

**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