

STATE OF WISCONSIN

STATE PERSONNEL BOARD

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 LYDIA BLACKBURN & RALPH HOESSEL, *
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 Appellants, *
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 v. *
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 SECRETARY, Department of Transportation *
 and DEPUTY DIRECTOR, Bureau of *
 Personnel, *
 *
 Respondents. *
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 Case No. 76-172 *
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PROPOSED
ADDITIONAL FINDINGS

Before:

NATURE OF THE CASE

This is an appeal pursuant to s. 16.05(1)(f), Stats., of a reclassification denial. In an order dated November 15, 1977, the Board took no action on a Proposed Opinion and Order that had been prepared but remanded it to the hearing examiner for the preparation of "additional findings on whether appellants' work involves: ' . . . the application of all motor vehicle registration and licensing laws and departmental policies and procedures in the handling of the complete registration process for all types of vehicles . . .' as set forth in the class specifications for Licensing and Vehicle Registration Representative 3." Subsequent to the entry of this order the appellants requested the preparation of a transcript of the evidentiary hearing, and this was prepared.

ADDITIONAL FINDING OF FACT

In the course of handling the various transactions in their work unit the respondents are required to be familiar with the operations of other units, and

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the appellants' work does involve the application of all motor vehicle registration and licensing laws, and departmental policies and procedures in the handling of the complete registration process for all types of vehicles as defined under these laws.

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James R. Morgan, Chairperson

2. Abandoned vehicles. Appellants provide statutory information to municipalities regarding the handling of vehicles, provide forms to enforcement agencies and process the forms that are submitted, including an audit to determine that the appropriate fees are paid and that they have been executed properly, and they direct data entry to the computer system.

3. Repossessions. The appellants audit the paperwork submitted to determine that the proper forms have been used and that they reflect the proper perfection of lien. In the event that a lien does not appear to appellants to be properly perfected, they may assist the person attempting to perfect the lien or advise on further court proceedings or on the posting of a bond. In this connection they may determine the value of a vehicle. At times they are required to read and interpret judgments to determine the intent of the court with respect to the repossessed vehicle.

4. Junked and reconditioned vehicles. This task frequently involves the exercise of substantial discretion due to the possibility that the transaction may involve a theft. The appellants must check various files and records and question the applicants on various facets of the application and make an evaluation of the applicant's credibility. The appellants must exercise discretion in their evaluation of an application to determine those which contain questionable features and should be looked into in greater depth. With respect to this function the appellants were instrumental in helping to formulate the procedure for application for a new type of title for vehicles which are not yet roadworthy or ready for inspection.

5. Fictitious and double registrations. This task is performed primarily by appellant Blackburn. Fictitious registrations are used primarily by law enforcement agencies for undercover operations. This requires record entries

that are coded in such a fashion that the confidential information concerning the true registration of the vehicle with the enforcement agency is not publicly accessible. Appellants exercise their own discretion to determine whether to grant applications for fictitious registrations from out-of-state enforcement agencies. Double registrations are used for unmarked squad cars and for some officials who use their personal cars for official business. These involve special record entries.

6. Estate cases. This work involves the processing of decedent's titles. In addition to the auditing of forms and making record entries, the appellants must examine court records to determine if the transferor has the claimed authority, must determine in some cases, at the request of the heirs, the appropriate means of transfer, and have frequent telephone contacts with attorneys relative to the processing of transactions.

7. Mechanic's Liens. Appellant Hoessel particularly specializes in this area and handles all the work for the unit which includes the audit of all work done by the Milwaukee Counter, Public Contact and Assistance Section, including the work done by Licensing and Vehicle Registration Representatives 3. If the vehicles value is under \$100, the transaction can be handled through standardized forms which are audited for correctness and completeness. In the case of more valuable vehicles, other documents such as affidavits of notice and of compliance with the lien law must be filed and evaluated by appellants. These affidavits are not on standard DOT forms. The appellants receive inquiries from body shops, garages, and other operations, as well as vehicle owners, and are required to answer basic questions concerning lien priorities and procedures. Appellants must determine if a lien holder or applicant is in

what is considered to be, under the law, the repair business, and are not assisted by objective departmental standards in making these determinations.

8. Lost claim of title. These are cases where vehicles have changed hands without appropriate ownership documentation. The appellants handle most of the DOT cases in this area, which are usually referred from the public contact and assistance counters. The appellants must check routine files for liens and proof of ownership and in some cases question the owner concerning collateral evidence of title such as renewal notices and insurance policies. In a general sense appellants must exercise discretion in evaluating the adequacy of the background information concerning ownership of the vehicle without the benefit of written guidelines. The appellants make decisions on the sufficiency of this background information, decide whether particular cases should be referred to a law enforcement agency, and in some cases decide whether a bond should be required, and its amount. Appellants have been involved in cases involving vehicles of substantial value, for example cranes valued at \$60,000 - \$70,000, which might have emanated from another state where their registration was not required, further complicating the title determination.

9. Bankruptcy cases. This work requires the evaluation of legal documents to determine whether they confer right to title, not just right to possession. They also must make determinations concerning the exempt or non-exempt status of vehicles.

10. Defective vehicle titles. This work involves the audit of applications for proper signature, fees, lien releases, and other required items, coding, and routing.

11. Serial number assignments. Serial numbers must be assigned to vehicles when the numbers have been removed, obliterated, altered, or never existed. Because of the possibility of the connection of criminal activity with such transactions, the appellants must exercise a great deal of discretion in processing the application, depending on the value of the vehicle, its geographical location, and the identity of its state of origin if it is out of state, as well as other factors. In some cases the appellants decide to initiate an investigation by an enforcement officer before assigning a new number. There are no written guidelines for appellants' guidance.

12. Investigations and enforcement. The appellants initiate investigations by the enforcement bureau with respect to cases in their units and also for cases from other units which are reviewed by the appellants' unit. The appellants determine whether an investigation is appropriate, feasible, or unwarranted. The appellants must prepare a written request for the enforcement unit which provides information and special instructions and which includes required documents.

13. Revocation, cancellation, and suspension of titles and registration plates. Appellants must gather the factual background on each case and determine a course of action, including whether to proceed administratively or through judicial action, and under what statutes. The appellants notify the risk management section of possible liability claims against the department. The appellants also prepare orders for the administrator's signature. Appellant Blackburn does less work in this area than Hoessel.

14. Homemade and reconstructed vehicles. The appellants must determine whether vehicles are homemade or reconstructed pursuant to the definitions found

in the Wisconsin Administrative Code, or whether they are altered stock vehicles. These determinations require a relatively large degree of knowledge about the working parts of a vehicle and how the vehicle was originally equipped when new. After making the determinations, the appellant must obtain review, and audit the application form, the title for the basic vehicle, bills of sale for major component parts and work performed, a statement of construction with, if necessary, an indemnifying statement, photographs, state patrol inspection form, and title, license, and sales tax fees. Appellant Hoessel does more of this work than Blackburn.

15. Liability claims. The appellants gather the facts pertinent to potential claims and write a summary for the risk management unit. Prior to this, they attempt to clear up the matter via personal contact and investigation. If this is unsuccessful, they advise the party of the claim procedure set forth in Chapter 333, Wis. Stats.

16. Special projects. This involves work in various other areas on an occasional basis when a particular need is identified.

The appellants work has remained basically unchanged for the years 1975 and 1976. The appellants work highly independently under very general supervision, only initiating consultation with their supervisor in the most complicated situations. As a general rule their files are not checked or reviewed by anyone. Their public contact averages approximately 5 phone calls or personal visits daily for appellant Hoessel and from 5 to 15 for appellant Blackburn. Most of their work comes to them from within the department.

LVRR 3 is the objective level for certain positions at the Milwaukee and Madison counters, Public Contact and Inquiry and Tracing. Employees in

these positions handle a large volume of phone calls and walk-in public contacts, well in excess of 100 daily. Many of the matters they handle are simple and routine; others are more complex. While employees in these positions process to completion many of these matters, many cases are referred to other units, and in Madison involuntary transfers are generally referred to appellants' unit. In addition, the appellants audit for accuracy all the work emanating from LVRR 3 positions at the Milwaukee Counter that relates to their areas of responsibility listed above.

The director had delegated to the department the authority to either reclassify or reallocate appellants' positions to the LVRR 3 level.

CONCLUSIONS OF LAW

Key phrases from the LVRR 2 class specifications are as follows:

"This is complex technical processing and public contact work in the areas of drivers licensing and vehicle registration and licensing . . . Work of the class involves the independent application or interpretation of motor vehicle laws, departmental policies and procedures regarding complex registration and licensing situations; and is performed under general supervision." (emphasis supplied)

The LVRR 3 specifications include in part the following:

"This is highly complex journeyman level processing and public contact work [providing] direct assistance to the public in the broadest application of vehicle registration and licensing activities . . . of a highly complex and difficult nature, and involve the application of all motor vehicle registration and licensing laws, and departmental policies and procedures in the handling of the complete registration process for all types of vehicles as defined under these laws. Work of the class also involves the searching and correcting of computerized registration records, requiring a high degree of problem solving and ability to deal with the public in solving and correcting all types of vehicles registration problems and errors . . . Work of the class involves the independent application or interpretation of Motor Vehicle laws, departmental policies and procedures, regarding complex registration and licensing situations, and is performed with a high degree of independence with supervision required for only the most complex or difficult registration cases." (emphasis supplied) See Board's Exhibit 9.

Based on this record it is concluded that the complexity and difficulty of appellants' work is comparable to or at a higher level than that of the other LVRR 3 positions analyzed and is at the level set forth in the LVRR 3 specifications. A departmental personnel specialist testified at the hearing as to her understanding of the concepts involved in this series and her rationale for recommending denial of the reclassification requests. The factor or criterion she referred to was the greater degree of public contact experienced by the LVRR 3 counter positions. The record does not support the theory that greater quantity of public contact placed the work at a higher level. Much of the public contact involved relatively simple matters and more complex cases could be referred to appellants' unit. Another factor contributing to a conclusion that the level of appellants' work has been at the 3 level is the fact that some of the more complex work performed by employees in LVRR 3 positions at the Milwaukee Counter was audited on a regular basis by the appellants while none of appellants' work was subject to ongoing review. While respondent argues in his post-hearing brief that the comparable LVRR 3 positions handle transactions involving a broader range of subject matter, this is not supported by the record and in any event some of these transactions not performed by appellants involves routine, simple transactions.

Respondent suggests for the first time in his post-hearing brief that while the Department has been delegated the authority to reclassify positions in this series that "it has not been delegated the authority to reallocate the positions within this series." He further argues that since the appellants are not claiming "logical and gradual change" in the duties and responsibilities of their positions but rather an error in the classification of their positions, any correction would have to be by way of reallocation pursuant to § Pers. 3.02

(2)(e), W.A.C., and since the department lacked authority to reallocate, it acted correctly in denying the request for reclassification and should be sustained on that basis in any event.

Laying to one side the question of the correctness of the conclusion, the record lacks a basis for the premises of the argument. Respondent's personnel specialist testified at the hearing that the department had the delegated authority to reallocate the positions in question, there was no other evidence on this issue, and thus on this record no basis for a finding other than the one that was made, which was that "the director had delegated to the department the authority to either reclassify or reallocate appellants' positions to the LVRR 3 level."

Furthermore, the parties agreed at the prehearing conference that the issue was "whether or not appellants' positions should be classified as Licensing and Vehicle Registration Representatives 2 or Licensing and Vehicle Registration Representatives 3." The argument respondent now makes does not run to subject matter jurisdiction and is foreclosed by prior agreement to that issue. See Weaver v. State Personnel Board (George M. Schroeder), Dane County Circuit Court per Currie, reserve Circuit Judge, No. 146-209 (8/28/75).

For the foregoing reasons it is concluded that respondents erred in denying appellants' request for reclassification to LVRR 3 and that appellants are entitled to be reclassified with payment of the salary and benefit differential between the two salary ranges retroactive to October 10, 1976. See VanLaanen v. State Personnel Board, Dane County Circuit Court per Currie, reserve circuit Judge, No. 153-348 (5/31/77).

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ORDER

The actions and decisions of respondents denying appellants' reclassification requests are rejected and this matter is remanded for action in accordance with this decision.

Dated: _____, 1977.

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Laurene DeWitt, Chairperson