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 *
 JAMES SHEPARD, TERRENCE REGAN *
 & EUGENE FREIBURGER, *
 *
 Appellants, *
 *
 v. *
 *
 Administrator, DIVISION OF *
 PERSONNEL, *
 *
 Respondent. *
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 Case Nos. 80-234,237,239-PC *
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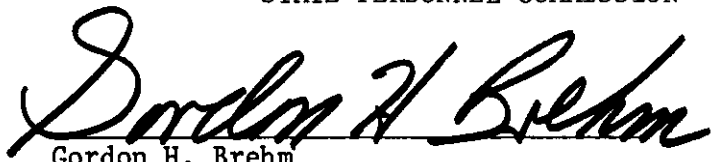
ORDER

The Commission adopts the Proposed Decision and Order, a copy of which is attached, as its final decision of this matter, with the following amendment to the Opinion which is made after consultation with the hearing examiner and in order to conform to the record: on page 11, paragraph 3, the second sentence is amended by deletion as follows:

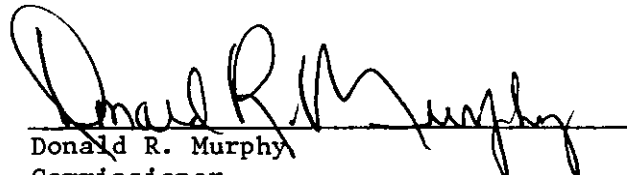
"The respondent provided evidence that the positions had been reallocated erroneously initially."

Dated June 3, 1981

STATE PERSONNEL COMMISSION



Gordon H. Brehm
Chairperson



Donald R. Murphy
Commissioner

AJT:mek
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 * * * * *
 JAMES SHEPARD, TERRANCE REGAN,
 and EUGENE FREIBURGER,
 Appellants,
 v.
 Administrator, DIVISION OF
 PERSONNEL,
 Respondent.
 Case Nos. 80-234, 237, 239-PC

PROPOSED
 DECISION
 AND
 ORDER

NATURE OF THE CASE

These are consolidated appeals pursuant to s.230.44(1)(a). Stats., or the denials of requests for reclassification from Personnel Manager 3 to Personnel Manager 4. In an Interim Decision and Order dated November 24, 1980, the Commission entered an order resolving a dispute as to the issues presented for hearing.

FINDINGS OF FACT

1. The appellants at all relevant times have been employed in the classified civil service in positions classified as Personnel Manager 3 at Fox Lake Correctional Institution (Shepard), Kettle Moraine Correctional Institution (Regan), and Lincoln Hills School (Freiburger), all in the Division of Corrections, Department of Health and Social Services.

2. Each appellant serves as the personnel manager for his institution, (Mr. Regan also serves as personnel manager at the Taycheedah Correctional Institution one day each week).

#. Each position is responsible for a full range of personnel management services for each institution, including payroll and benefits, staffing, training, collective bargaining, labor-management program, performance evaluation program, leave accounting, position classification, affirmative action, and related personnel activities.

4. In addition to the above functions, each of these positions is responsible for the management of the entire institution in the absence of certain other personnel and when assigned to weekend duty; providing input as to the entire institution program, in part through participation in management staff meetings; participating in the institutional budget process; working with the CETA program; and functioning as institutional health and safety officer (Freiburger).

5. Each of these positions report directly to the institutional superintendent and function under general supervision.

6. The approximate number of employes at the institution in question are as follows:

Fox Lake:	230
Lincoln Hills:	224
Kettle Moraine:	220 (plus 125 at Taycheedah)

7. As a result of a personnel manager's survey conducted in 1975 by the then Bureau of Personnel, revised classification specifications for the personnel manager series were effectuated.

8. The class specifications for Personnel Manager 3 (Respondent's Exhibit 17) which were approved by the Personnel Board in September, 1975, and which have been in effect since, contain the following definition:

"This is responsible personnel management work in a state agency or institution. Positions allocated to this class function as: 1) Personnel Manager for a very small state agency which requires the services of a Personnel Manager on a full-time basis; 2) Personnel Manager for a medium-sized state institution characterized by 250-600 employes, a diversified organizational and occupational structure, an ongoing contract administration program involving responsibility for the administration of several contracts, and ongoing classification and staffing programs; 3) Assistant Personnel Manager for a major institution with involvement in all the activities of the personnel program. Depending on the size of the agency or institution these positions may also be involved in training, affirmative action, and payroll activities. With the exception of the Assistant Program Manager, work at this level is performed under the general supervision of an administrative position having responsibility for general service areas encompassing more than the general personnel and employment relations areas."

9: The class specifications for Personnel Manager 4 (Responde's Exhibit 18) which also were approved by the Personnel Board in September 1975, and which have been in effect since, contain the following definition:

"This is responsible personnel management work in a state agency or institution. Positions allocated to this class function as: 1) Personnel Manager for a small state agency characterized by a diversified organizational and occupational structure, an ongoing contract administration program involving responsibility for the administration of several contracts, and ongoing classification and staffing programs; 2) Personnel Manger for a large state institution characterized by 600-800 employes, a diversified organizational and occupational structure, an ongoing contract administration program involving responsibility for the administration of several contracts, and ongoing classification and staffing programs. Depending on the size of the agency or institution these positions may also be involved in training, affirmative action, and payroll activities. Work at this level is performed under the general supervision of an administrative position having responsibility for general service areas encompassing more than the general personnel and employment relations areas."

10. Upon the effectuation of the new class specifications, personnel manager positions at Winnebago and Mendota Mental Health Institutions were reallocated to Personnel Manager 5 (PM 5) despite having substantially fewer employes than called for by the PM 5 class specifications (i.e., these institutions had about 600 employes each and the PM 5 class specifications (Respondent's Exhibit 19) refer to major state institutions "characterized by 800 or more employes. . ."

11. The Bureau of Personnel originally had intended to reallocate these positions to a one-range lower level (PM 4) but proceeded with the PM 5 classification at the request of DHSS personnel, and based on its representation that probable institutional mergers would likely bring these institutions to the PM 5 level with respect to a number of employes.

12. Although the mergers never occurred and the staff size at these institutions remained well below the PM 5 mandated level, the classifications of these

positions has remained the same, notwithstanding two intervening personnel transactions with respect to the Winnebago position in the course of which staffing at the classification was approved by the Division of Personnel.

13. In reliance in large part on a comparison to the classifications of the Winnebago and Mendota personnel manager positions, the Division of Personnel reclassified the personnel manager position at the Grand Army Home at King, Department of Veteran's Affairs, to PM 5 in 1979, despite the fact that that institution has only approximately 550 positions.

14. Subsequent to the filing of these appeals, and prior to the hearing, the respondent notified the agencies involved that the positions at Winnebago, Mendota, and King, as well as the assistant personnel manager position, UW-Green Bay, appeared to be overclassified and did not meet the size criteria contained in the specifications. The respondent indicated with respect to each position that if the classification level was improper and was the result of an error, it would be the position of the administrator that this should be corrected in accordance with s.Pers 3.02(2)(e), Wis. Adm. Code, but that the agencies would have an opportunity to respond before any action would be taken. See Respondent's Exhibits 26-28, letters dated December 12, 1980.

15. The appellants all requested reclassification of their positions to Personnel Manager 4 and all were denied by the respondent on May 9, 1980, on a non-delegated basis following favorable initial recommendations by DHSS, on the ground that the number of employes at their respective institutions did not meet the size criteria set forth in the class specifications.

16. The respondent conducted a field audit only of Mr. Regan's position.

17. Mr. Shepard originally had requested reclassification in 1973.

Following no action by DHSS, he inquired in 1974 and was informed that a decision

would be made in connection with the personnel manager survey.

18. This appellant filed a noncontractual grievance in 1975 when he learned that the Division of Corrections personnel manager had been reclassified, yet there was still no answer to the appellant's reclassification request.

19. DHSS, on April 25, 1975, answered at the third step that the Division of Corrections would act on his reclassification request. See Appellant's Exhibit 3.

20. Following a negative recommendation by DHSS on his reclassification request, Mr. Shepard requested review by the then Bureau of Personnel. By letter dated November 26, 1975, from the deputy director (Appellant's Exhibit 12), Mr. Shepard was informed that his request for reclassification to PM 4 was being reviewed and would be processed as a formal reclassification request.

21. The appellant never received a response to this reclassification request and in 1979 submitted another reclassification request which was, as noted above, denied on May 9, 1980.

22. The appellant's positions do not meet the criteria for classification to the PM 4 level and are better described by the PM 3 rather than the PM 4 specifications.

23. The classification of the personnel manager positions at Mendota, Winnebago, and King, at the PM 5 level, are found on this record to have been the result of errors.

24. Chapter 332 of the respondent's classification manual, Appellant's Exhibit 13, has been developed for and is applicable to agencies acting on a delegated basis for the Division of Personnel and requires that positions be field audited where it appears that a reclassification request may be denied.

CONCLUSIONS OF LAW

1. This matter is properly before the Commission pursuant to s.230.44(1)(a), Stats.

2. Pursuant to an Interim Decision and Order dated November 24, 1980, the following issues are before the Commission on this appeal:

"1. Were the reclassification denials properly made since no field audits were conducted on Mr. Shepard's and Mr. Freiburger's positions?

2. Were the job specifications interpreted by using the size of the institution criteria as the sole reason for denial?

3. Was proper consideration given to the additional responsibilities of the appellants?

4. Are the personnel specifications uniformly interpreted and applied throughout the series?

5. (Pertaining to Shepard only) Was the reclassification denial of Mr. Shepard handled in a timely manner, since his reclassification request was initiated in 1973, and reached the Bureau of Personnel in November, 1975, and to this date his position has not been audited by the Division of Personnel? See Conference Report dated October 9, 1980.

6. Whether or not the denials of the requests for reclassification of appellants' positions from Personnel Manager 3 (PR 1-13) to Personnel Manager 4 (PR 1-14) were correct."

The parties agreed that issues numbered 1-3 were sub-issues of issue number 6.

3. The appellants have the burden of proof as to all issues.

4. The Commission's conclusions as to the aforesaid issues are as follows:

a. The reclassification denials were not improper for failure to have field audited Mr. Shepard's and Mr. Freiburger's positions, inasmuch as there is no legal necessity that the respondent conduct field audits with respect to all reclassification denials.

b. The class specifications were interpreted by using the size of the institution criterion as the sole reason for denial. See finding of fact number 15.

c. Proper consideration was given to the additional responsibilities of the appellants, but on the basis of the class specifications and the additional responsibilities, there was insufficient justification for reclassification to PM 4.

d. The personnel manager specifications have not been uniformly interpreted and applied throughout the series, due to errors, see finding of fact number 15.

e. The reclassification denial of Mr. Shepard was not handled in a timely manner.

f. The denials of the requests for reclassification of appellant's positions from PM 3 (PR 1-13) to PM 4 (PR 1-14) were correct.

OPINION

These appeals raise an important question regarding the significance of the numerical criteria for institution size contained in the personnel manager class specifications. These specifications define the PM 3 level as the personnel manager for a "medium-sized state institution characterized by 250-600 employes," and the PM 4 level as personnel manager for "a large state insititution characterized by 600-800 employes. . ." The appellants' institutions have well below 600 employes.

Class specifications and position standards are the framework for the state's classification system. Once they are approved by the Personnel Board, s.230.09(1)(a) Stats., they provide an objective basis for assignment and reassignment of positions to classifications, s.230.09(2)(a), Stats. The Board also approves the assignment and reassignment of classifications to pay ranges, s.230.09(2)(b), Stats.

Thus, while the administrator has the authority to assign and reassign positions to classifications, the legislature by statute has imposed a system of checks and balances on this process. The classification process must be accomplished within the parameters of a classification structure, provided by the class specifications and positions standards, which has been approved by the Personnel Board.

Once the classification structure has been established, individual personnel transactions occur, subject to review by this Commission pursuant to s.230.44(1)(a), and (b), Stats. These individual reclassification decisions must be made in accordance with the established class specifications. Otherwise, the process circumvents the legislative mandate that the Personnel Board play a key role from a policy standpoint in the establishment of the classification structure, and classification transactions become ad hoc decisions of the administrator.

In analyzing these specifications as they may apply to institutional personnel managers, it is clear that the sole distinguishing criterion between the PM 3 and PM 4 levels is the size of the institutions involved. Except for the size criteria, the language in the specifications applicable to institution personnel managers is essentially identical. In light of this, the Commission cannot agree with the appellants' contention that factors other than size can justify the reclassification of their positions to the PM 4 levels. The appellants argue that the assignment of essentially line, non-personnel functions, such as serving as weekend duty officer, make for a higher level job and justifies the PM 4 classification. See posthearing brief filed January 14, 1981, p.2:

" . . .the appellants are responsible for more than the specifications indicate, and more than can be measured by the numbers of persons employed. They are in charge of the entire institution during certain periods of absence of other staff or when on weekend duty. . .

* * *

Attempts by the respondents to minimize the significance of the positions of the appellants indicates the lack of objectivity used in the classification process. Weight must be given to the testimony of three Institution Superintendents, the Assistant Administrator of the Division of Corrections, the Personnel Director of the Department of Health and Social Services and the former Acting Administrator of the Division of Personnel, all of whom have direct knowledge of the value of the positions of the appellants."

The Commission has no reason to doubt this testimony about the "value" of these positions. The difficulty with this argument is that the appellants have not pointed to any language in the class specifications, and the Commission cannot find any language, which recognizes these additional, non-personnel duties at all. Accordingly, a reclassification based on these duties would be inconsistent with the class specifications and would amount to reclassification on the basis of abstract notions as to the "value" of the positions rather than being based on the established classification structure.

The appellants also argue that the numerical criteria in the specifications are not absolute and that a series of transactions have developed an allocation pattern that in effect supersedes the numbers utilized in the class specifications.

The appellants called as a witness, Mr. Verne Knoll, who was the deputy director and acting head of the Bureau of Personnel in 1975 when the position standards were adopted. He testified, in effect, that at the time the survey was implemented in 1975, the numerical criteria in the class specifications were not strictly adhered to. He further testified that, in his opinion, if in allocating positions to classifications, the specific numerical criteria in the class specifications were not adhered to, this would establish a new allocation pattern, and, if these positions were reviewed in connection with further transactions and kept at the established level, this would reinforce the allocation pattern. He further testified that class specifications were "guidelines" with respect to classification transactions.

Also testifying was Steve Christenson, the Chief of the Classification and Surveys Section of the Division of Personnel, who held a similar position in the Bureau of Personnel in 1975. He testified that, in his opinion, allocation patterns must be developed within the intent of the specifications, and that

allocation patterns can't supersede class specifications.

In the opinion of the Commission, the record does not support the contention that the numerical criteria in the personnel manager class specifications were systematically or deliberately ignored in the reallocations which resulted from the implementation of the survey. Rather, the specific positions identified which were reallocated to a level that appears to be higher than justified by the size of the institutions were done so on the basis of DHSS representations that impending mergers would bring the institutions up to the appropriate size levels. These mergers never occurred, but neither the division nor the bureau followed up on the matter until after these appeals were filed. While in connection with two subsequent personnel transactions affecting the Winnebago position, the respondent approved staffing at the PM 5 level, there was testimony from Marian Walluks, a lead worker in Mr. Christenson's unit, that it was not unusual for the classification level review for subsequent transactions to be somewhat perfunctory once the original reallocation decision has been made.

Robert Belongia, supervisor of a team of analysts in Mr. Christenson's section, had approved the reclassification of the personnel manager's position at the Grand Army Home at King to the PM 5 level, based in large part on a comparison to the Winnebago and Mendota positions. With these three positions in the back ground, he recommended reclassification of appellants' positions to PM 4. He felt at the time that the classifications of these other three positions constituted evidence of a new or revised allocation pattern. However, he also testified that, in his opinion, if the other positions had been placed at their level as a result of error, then there would be no authority to deviate from the specifications.

The appellants question the failure of the respondent to have initiated

corrective action with respect to these positions prior to December, 1980. The respondent's employees, Mr. Christenson and Mr. Calcese, testified that the questionable nature of the classification of these positions did not come to their attention until after the appellants filed these appeals, which was in July, 1980, and that there was follow-up activity before the letters in question, Respondent's Exhibits 26-28 were sent.

The appellants in their post-hearing brief further argue that:

". . .the appellants view the timing of this action 6 days before the hearing as an attempt at intimidation. The issuance of the letters on 12-12-80, by the Division of Personnel to justify their action in the case of the appellants and in other cases still pending are a first in Wisconsin Civil Service."

There is not a basis on this record for a finding that the sending of these letters by the respondent was an attempt at intimidation. The respondent provided evidence that the positions had been reallocated erroneously initially and that Mr. Christenson was not aware of this until after these appeals were filed. Since the respondent felt that there was a strong likelihood that these positions were still wrongly classified, it would seem to the Commission that he had a strong reason to proceed as he did. To fail to act could well result in further classification transactions occurring in reliance on the classification level of these positions.

The appellants also argue that the Shepard and Freiburger denials were improperly made since there were no field audits of their positions. There is no requirement in the personnel code (Subchapter II of Chapter 230, Ch. Pers., Wis. Adm. Code) for field audits. The appellants appear to suggest that the respondent should be bound by its classification manual, Appellant's Exhibit 12, which requires a field audit where it appears that a reclassification request may be denied.

However, there was un rebutted testimony that this manual was established only for agencies acting on a delegated basis pursuant to s.230.05(2), Stats., and that the Division of Personnel expected that transactions reaching it would already have been studied by the employing agency. See s.Pers 3.03(3), Wis. Adm. Code.

There can be little question on this record that Mr. Shepard's reclassification request was not handled in a timely manner. Mr. Braunhut testified that he understood that the denial of the reclassification request would be conveyed in the reallocation notice. However, this was not done and there was no explanation of why Mr. Shepard never received a denial. If Mr. Shepard had been successful on this appeal, it would seem that he would be entitled to an effective reclassification date of January 4, 1976 (see Appellant's Exhibit 12; it appears that the January 4, 1975, date therein is a typographical error). However, since he has not established that the respondent's decision denying his reclassification request was incorrect, he is not entitled to any independent relief on the basis of the delay in decision.

One final matter concerns the respondent's post-hearing brief. This was due on February 17, 1981. The brief was not filed in a timely manner and no request for extension of time in which to file was requested until a February 20, 1981, letter, which stated that the "preliminary research and first draft of the brief has been completed" but that "several pressing and urgent matters" have prevented its completion. The appellants object to any extension, pointing out that at the hearing the respondent objected to two appellants' exhibits, which consisted of sections of the Division of Personnel classification manual, on the ground that they had been submitted one day late under s.PC 2.01, Wis. Adm. Code.

In the opinion of the Commission, the respondent failed to provide a satisfactory explanation for at least not having made a timely request for an extension.

The appellants' objection is sustained and respondent's brief has not been considered.

ORDER

The respondent's actions denying these reclassification requests are affirmed and these appeals are dismissed.

Dated _____, 1981

STATE PERSONNEL COMMISSION

Charlotte M. Higbee
Chairperson

Donald R. Murphy
Commissioner

Gordon H. Brehm
Commissioner

AJT:mgd

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