

STATE OF WISCONSIN

PERSONNEL COMMISSION

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 JOE HARRIS *
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 Appellant, *
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 v. *
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 Secretary, DEPARTMENT OF *
 EMPLOYMENT RELATIONS, *
 *
 Respondent. *
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 Case No. 86-0115-PC *
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DECISION
AND
ORDER

NATURE OF THE CASE

This is an appeal pursuant to §230.44(1)(b), stats., of the reallocation of appellant's position, following a survey, from Unemployment Benefit Specialist 4 (PR12-04) (UBS 4) to Unemployment Benefit Specialist 3 (PR12-04) (UBS 3). This appeal was held in abeyance pending final resolution of a companion charge of discrimination (No. 86-0069-PC-ER) and another case arising out of the survey (McCabe v. DER, No. 86-0059-PC). A hearing was held on this appeal on October 24, 1989.

FINDINGS OF FACT

1. As a result of a survey, appellant's position was reallocated from UBS 4 (PR12-04) to UBS 3 (PR12-03), a newly-created classification, effective March 30, 1986. This transaction did not involve a decrease in either appellant's salary or pay range.
2. At all relevant times prior to the reallocation, appellant was employed in the Random Audit Section, Unemployment Compensation Division, Department of Industry, Labor and Human Relations (DILHR) in a position with a working title of Random Audit Investigator. The "position summary"

of appellant's position as set forth in the position description (PD), Respondent's Exhibit 2, signed by appellant on March 3, 1986, is as follows:

Through detailed, in-person interviews, audit the accuracy of a randomly selected sample of benefit payments to determine if the information provided by and/or the actions of the claimant, employer(s) and the agency were correct and complete. Identify the causes of improper payments and, except where prohibited by statute or agency policy, take the necessary actions to effect a correct payment. Such actions may include amending the monetary computation or issuing Initial Determinations or Redeterminations. Apply the Administrative penalty provisions or recommend criminal prosecution in cases of fraudulently obtained benefits. Prepare detailed files documenting each audit and the reasons for finding a payment proper or improper. The results of each audit represent thousands of individual payments as only a very small number of payments are actually audited. As such, attention to detail and accuracy of information is vital. The ability to work independently is essential as audits are conducted statewide and extensive overnight travel is required.

(The impact of this position is to identify the types, causes and estimated effect of improper payments of the UC Reserve Fund. During the 4 quarters ending March, 1984 more than \$427,876,000 in benefit payments were made from this fund.)

3. The UBS position standard which was developed by the survey in question and which served as the basis for the reallocation of appellant's position to UBS 3 contains the following definitions of UBS 3 and UBS 4:

UNEMPLOYMENT BENEFIT SPECIALIST 3

(PR 12-04)

This is objective or lead professional unemployment benefit work in the State Unemployment Compensation Program.

Positions allocated to the objective level function as adjudicators and investigate, determine, and render disputed claimant eligibility decisions; or verify the accuracy of benefit payments according to State and Federal Unemployment Compensation Law. Work is performed under general supervision.

Also allocated to this level are positions that conduct office investigations, determine or re-determine and render decisions involving fraudulent activities. Work is performed under general supervision.

Leadworkers of Unemployment Benefit Specialist 2 positions that are collecting claimant overpayments and initiating legal enforcement actions where the claimant has failed to respond to collection efforts are also allocated to this level. Work is performed under general supervision.

UNEMPLOYMENT BENEFIT SPECIALIST 4

This is advanced or lead professional unemployment work in the State Unemployment Compensation Program.

Positions allocated to this class at the advanced level conduct the most complex field investigations, determine or re-determine, render decisions, and present for prosecution, fraudulent benefit cases such as those where employer and claimant collusion may exist. Work is performed under general supervision.

Positions also allocated to this level are responsible for leading staff at the Unemployment Benefit Specialist 3 and lower levels that adjudicate claimant eligibility issues: or lead staff engaged in the verification of benefit payment accuracy. Work is performed under general supervision.

4. Dan Morris occupied a position essentially identical to appellant's in the Random Audit Section. This position also was reallocated from UBS 4 to UBS 3 effective March 30, 1989, as a result of the survey. This position subsequently was reallocated to UBS 4 effective January 31, 1989, by DILHR acting on a delegated basis from DER pursuant to §230.04(lm), stats. This reallocation occurred after appellant had transferred out of the Random Audit Section. The stated reason for the transaction as set forth on the reallocation notice (Appellant's Exhibit 6) was the correction of an error pursuant to §ER3.01(2)(e), Wis. Adm. Code. Attached to the reallocation notice was the following note from William F. Komarek, DILHR Personnel Bureau Classification Section Chief, who was responsible for the reallocation:

"During a recent classification review of a Quality Control Specialist position, it became apparent that an error was made in the assignment of the Unemployment Benefit Specialist 3 classification to your position.

Therefore, your position is being reallocated effective 1-29-89 to an Unemployment Benefit Specialist 4 to correct the previous error. Your copy of the reallocation notice will explain how your salary was determined."

5. Mr. Komarek testified that the "error" in the assignment of this position as set forth in the foregoing note was not a reference to the March 30, 1986, reallocation, but rather referred to the classification review that occurred in connection with the reorganization that occurred when the Random Audit Section was changed to the Office of Quality Control. At that time, certification requests were prepared and classification levels were approved (including UBS 3 for this position) for filling the new positions by transfer of the previous incumbents. While appellant expressed his disagreement with this contention by Mr. Komarek, there is no evidence on this record to contradict said testimony, and the Commission finds that the error Mr. Komarek sought to correct by the January 31, 1989, reallocation was as he testified.

6. A comparison of Mr. Morris's PD's dated January 9, 1986 (Appellant's Exhibit 3) and March 6, 1989 (Appellant's Exhibit 5) show the following significant changes:

- a) The Random Audit Section became the Office of Quality Control
- b) The agency working title of the position changed from Random Audit Investigator to Quality Control Investigator.
- c) Goal A ("Audit of the information provided by and actions of claimants, employers, and other parties outside the agency"), which is 40% on both PD's, contains this added function on the 1989 PD:

"A5. Detect patterns of payroll practices that effect [sic] tax rates. Detect employer/claimant collusion in areas of fraudulent reporting of earnings, ownership interests, leased employment and other practices established to effect [sic] tax rates."

d) The 1989 position description has added Goal B ("Audit of the information provided by and actions of claimants") - 10% - some of which was subsumed in Goal A in the 1986 PD but which also contains two new activities:

"B2. Statutorily empowered to require claimants to answer benefit eligibility questions and provide demographic information that may be needed, and may take necessary action if a claimant fails to comply.

B3. Identify potential barriers to employability from PEO records."

e) The goal of "audit of the accuracy of agency actions or inactions" has been changed from Goal B - 20% - in the 1986 PD to Goal C - 10% - in the 1989 PD. The 1989 PD also contains these additional activities:

"C4. Identify procedural, policy or system problems and make recommendations of benefit process modifications.

C5. Review and verify the accuracy PEO records such as referral results, hires and reassignment of DOT codes."

f. Goal C on the 1986 PD ("Evaluation of claimant, employe and agency actions or inactions, including appeal Tribunal Decisions" - 15%) was changed to Goal D - 10%.

g. Goal D on the 1986 PD ("correction of improper benefits payments" - 10%) was changed to Goal E - 5%.

h. Goal E on the 1986 PD ("communication with Random Audit Unit" - 5%) was changed to Goal F (communication within the office of Quality Control - 15%). Activities changed or added to this goal were:

1) E2. ("Prepare clear, concise and accurate reports when procedural or other problems are discovered which cause improper payments.") was changed to F2. ("Prepare clear, concise and

accurate reports when procedural or other problems, identified in Goal 'D,' are found, regardless of whether an improper payment results.") (emphasis added).

i. In Goal F in the 1986 PD ("Communication with other work units.") activity F1. ("Prepare clear and concise reports of individual audits for District Directors") was changed to G1.: "Prepare clear and concise reports of individual audits for Unemployment Compensation Division Managers." (emphasis added).

j. The 1989 PD had the following addition to "SKILLS, KNOWLEDGES AND ABILITIES":

"Expected to attain and maintain a level of knowledge and performance consistent with an Unemployment Benefit Specialist III level adjudicator."

7. Fred L. McCabe II occupied a position essentially similar to Mr. Morris's in the same office (Mr. McCabe's position includes a 5% affirmative action representative function). Mr. McCabe's position was reallocated in the same manner as Mr. Morris' position (except with an effective date of July 3, 1988) and had essentially the same changes in its PD from January 1986 (appellant's Exhibit 7) to September 1988 (Appellant's Exhibit 9) with the 5% affirmative action function displacing 5% of the audit function (Goal A).

8. The rationale for the reallocation of the foregoing two positions (Morris and McCabe) from UBS 3 to UBS 4 was as follows:

a) Subsequent to the survey that had resulted in the reallocation of these positions and appellant's position to UBS 3 effective March 30, 1986, a reorganization had occurred which resulted in the

elevation of the Random Audit Section to the Office of Quality Control, which is equivalent to bureau status.

b) The head of the Office of Quality Control took the approach that since the positions in question (Morris and McCabe) were reviewing and could overturn adjudicators' decisions even without identifying legal errors, the positions should be at the same level as the adjudicators' leadworkers.

c) There were a number of changes in the duties and responsibilities of the positions that contributed to, but did not constitute the sole basis for the classification change, as follows:

1) Consistent with the changes in the percentages devoted to the various goals on the PD's, the emphasis of the job changed from a focus on the identification of specific errors to more of a focus on the reason for errors, on patterns of errors, and on errors that would affect a number of claimants, not just the claimant selected for the random audit. Related to this shift in focus is a change in spending less time on interviewing complainants and employers, and more time spent analyzing data and findings.

2) The positions moved to doing a good deal more analysis of job service referrals and began doing what amounted to QPI (Quality Performance Index) reviews of these transactions.

3) The positions were impacted by newly-enacted statutory authority to enforce compliance with the quality control process by issuing subpoenas for employer records or suspending claimants' benefits.

4) The skill, knowledges and abilities (SKA) required for the positions in question were enhanced by the imposition of a formal requirement by the federal regulation that the incumbents in these

positions be qualified at the journeyman adjudicator (UBS 3) level.

Formerly, this apparently had been an unwritten requirement for permanent employment in these positions. The SKA section in the 1989 PD specifically identifies a QPI role that had not been required or authorized previously.

9. Mr. McCabe filed an appeal (No. 86-0059-PC) with this Commission pursuant to §230.44(1)(b), stats., following the reallocation of his position to UBS 3 effective March 30, 1986. Following a hearing, the Commission entered a decision on December 18, 1986, holding that DER's decision to reallocate the position to UBS 3 was not incorrect, and pointing out that 75% of Mr. McCabe's position involved UBS 3 level adjudication activities.

CONCLUSIONS OF LAW

1. This matter is properly before this Commission pursuant to §230.44(1)(b), stats.

2. Appellant has the burden of proof and must establish the necessary facts by a preponderance of the evidence.

3. Appellant having failed to sustain his burden, it is concluded that respondent's decision to reallocate appellant's position to UBS 3 effective March 30, 1986, was not in error.

DECISION

When appellant's position was reallocated to UBS 3 effective March 30, 1986, it was accurately described by the UBS 3 definition based on its PD at the time. This is not disputed by appellant. Rather appellant's case is based essentially on the following:

1) Effective January 31, 1989, DILHR reallocated the UBS 3 positions in his old unit occupied by Mr. McCabe and Mr. Morris to UBS 4.

2) The rationale for the reallocation decision as set forth on the reallocation notice was the "correction of an error" pursuant to §ER 3.01(2)(e), Wis. Adm. Code.

3) Appellant contends there were no intervening classification transactions affecting these positions between the March 30, 1986, and the January 31, 1989, reallocations.

4) Appellant contends there were no significant changes in either the duties and responsibilities or the required KSA's for these positions between the March 30, 1986, and the January 31, 1989, reallocations.

5) Therefore, appellant argues, the only conclusion that can be drawn is that the January 31, 1989, reallocation to UBS 4 was to correct an error that had occurred when the positions were reallocated to UBS 3 effective March 30, 1986, and since he had been in an identical position, he was also entitled to a reallocation to UBS 4.

Appellant is unable to sustain his case because of problems with premises 3) and 4), above. Appellant called as a witness William Komarek, the Classification Chief of DILHR Personnel, who was responsible for the 1989 reallocations. He testified that the positions had been reviewed for classification purposes at the time of the reorganization, which occurred subsequent to the 1986 reallocation, when certification requests were approved for filling the positions at the UBS 3 level. He testified that the mistake that was sought to be corrected by the 1989 reallocations was the determination to fill the jobs at the UBS 3 level in connection with the reorganization, not the 1986 reallocations. There simply was no evidence in the record to contradict these assertions by Mr. Komarek, who had sole responsibility for the 1989 reallocations. Furthermore,

Mr. Komarek's testimony was reinforced by the fact that the Personnel Commission decision in Mr. McCabe's appeal, rendered December 18, 1986, held that the UBS 3 reallocation of March 30, 1986, was not erroneous. It does not make sense that three years later DILHR would upgrade these positions to UBS 4 by reallocation on the theory that the 1986 transactions had been erroneous.

Appellant argued that the "correction of an error" by the 1989 reallocations had to refer to the 1986 reallocation transactions because there had been no reclassifications or reallocations of the positions subsequent to March 30, 1986. However, there is no reason why the approval of the UBS 3 classification level at the time of approving certification requests in connection with the random audit/quality control reorganization cannot be considered an error in the assignment of a position so as to bring into play §ER 3.01(2)(e), Wis. Adm. Code, as testified by Mr. Komarek.

With respect to appellant's contention that the positions remained basically the same between 1986 and 1989, there obviously was disagreement among the witnesses — Mr. Komarek on the one hand and Mr. McCabe and Mr. Johnson, the DER personnel specialist, on the other — as to whether there had been substantial changes in the positions. However, while Mr. Komarek testified the changes had not been significant, he did testify that there had been some changes and that these changes, along with other factors, contributed to the 1989 reallocations. Mr. McCabe, who was in an excellent position to know, having served in one of these positions throughout the time frame in question, testified convincingly to a number of changes that impacted the class level of the position. Mr. Johnson testified that in his opinion the changes in the duties and responsibilities were significant enough to have justified a reclassification in 1989 rather than a reallocation. The bottom line is that there were changes


that occurred subsequent to the March 30, 1986, reallocations, and regardless of whether one concludes the changes should be characterized as "significant," "substantial," "appreciable," etc., there is no question on this record but that they impacted the 1989 reallocation decision. One of the factors that entered into the 1989 reallocation decision — the change in the bureau director's philosophy concerning the positions — presumably would have been just as applicable to the positions immediately prior to the 1986 reallocation. However, it would be against the weight of the record evidence to conclude that the 1989 reallocation would have occurred without the changes that occurred after 1986. Even Mr. Komarek, whose testimony was most favorable to appellant in this regard, testified that the reallocation was based on a combination of factors including the changes in duties and responsibilities. Again, Mr. Komarek testified, as the person who was solely responsible for the 1989 reallocation, that the 1989 reallocation was not meant to correct any perceived error in the 1986 reallocation. This testimony was uncontradicted on this record.

In conclusion, appellant's position in 1986 was clearly identified by the position standard at the UBS 3 level, he has been unable to demonstrate that the 1989 reallocations were effectuated in order to correct an error that occurred when the positions were reallocated in 1986, and the 1986 reallocation of his position to UBS 3 must be upheld.

ORDER

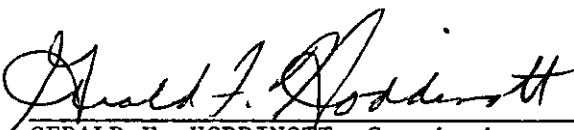
Respondent's action reallocating appellant's position to UBS 3 effective March 30, 1986, is affirmed and this appeal is dismissed.

Dated: December 14, 1989 STATE PERSONNEL COMMISSION


LAURIE R. McCALLUM, Chairperson

AJT:gdt
JMF04/2


DONALD R. MURPHY, Commissioner


GERALD F. HODDINOTT, Commissioner

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