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JULIE ANN SCHMIDT,
 Appellant,

v.

Secretary, DEPARTMENT OF
 EMPLOYMENT RELATIONS,
 Respondent.

Case No. 90-0246-PC

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DECISION
 AND
 ORDER

Nature of the Case

This is an appeal pursuant to §230.44(1)(b), Stats. of a reallocation action taken by respondent as part of a personnel management survey. A hearing was held before Gerald F. Hoddinott, Commissioner, and the parties were permitted to file briefs.

Findings of Fact

1. Effective June 3, 1990, respondent implemented a personnel management survey it had conducted of approximately 500 positions, including appellant's, at the Department of Revenue (DOR). Pursuant to this survey, appellant's position was reallocated from Tax Representative 1 to Revenue Agent 3 (RA 3). (Respondent's Exhibit 2) Appellant filed a timely appeal of this reallocation with the Commission.
2. As a part of the survey process, DOR managers and supervisors familiar with the relevant program areas selected 95 positions they considered representative of these program areas and of DOR's organizational subunits (such as district offices and the central office). Each of the remaining positions were matched with one of these 95 positions based on the managers' and supervisors' assessment of the comparability of duties and responsibilities. Each of the incumbents of the 95 representative positions was asked to complete a questionnaire which solicited detailed information on the duties and responsibilities of his or her position. The completed questionnaires, as

well as the position description for the position, was then reviewed with the position incumbent by a staff member from DER or from the DOR personnel unit to assure that both these documents were complete and accurate. From this information, respondent prepared an initial composite detailing the duties and responsibilities of each of the 95 positions. These initial composites were then presented to the incumbents of each of the matched positions for their review and comment. This was the opportunity for these employees to add or make other changes to the composite to reflect the duties and responsibilities of their positions. Based on the information provided by the employees, a revised composite was developed. These revised composites as well as position descriptions and program descriptions were then provided to a DOR rating panel. The members of the rating panel independently rated each of the revised composites on each of the 10 rating factors of the Wisconsin Quantitative Evaluation System (WQES). These ratings were analyzed by a computer software program which, among other things, clustered the positions into logical groupings. Based on this clustering, respondent developed the classification specifications for the surveyed positions. Once these specifications were developed, respondent reviewed each of the approximately 500 position descriptions and classified each of these positions based on the new specifications

3. Appellant's position was not one of the 95 positions to which questionnaires were sent. Appellant's position was matched to the Brad Wood position. The Wood position was classified at the Tax Representative 3 level prior to the implementation of the survey; was located in the Central Compliance Section, Sales Tax Office Audit Unit; had previously been located in the Registration Unit of the Central Compliance Section; had a working title of Temporary/ Concessionaire Specialist; and was responsible for conducting a program of registration and tax collections relating to itinerant and part-time retailers, e.g., retailers who sell products at swap meets, craft fairs, flea markets, etc. Appellant did not feel that the Wood position was an appropriate match for her position and brought her concerns to the attention of her supervisor Julie Lawrence, the Supervisor of the Registration Unit of the Central Compliance Section. Appellant did not bring her concerns to the attention of respondent or the DOR personnel unit. The matching of appellant's position to the Wood position was not changed and appellant reviewed and filed written comments based on the initial Wood position

composite which described her duties and responsibilities as a leadworker in the withholding tax program area.

4. James Haugen, Chief of the Central Compliance Section; Compliance Bureau; Income, Sales, Inheritance & Excise Tax Division; DOR, was of the opinion, at the time the matching decisions were made, that appellant's position was properly matched to the Wood position. Ms. Lawrence brought to him her concerns relating to the matching of appellant's position as well as the matching of other positions in the Registration Unit. Mr. Haugen stated these as general concerns to Tom Marx of the DOR personnel unit but did not specifically advise Mr. Marx that appellant's position was mismatched nor request that appellant's position be sent a questionnaire or be matched to a different position. As the result of his statement of general concern, an additional position in the Registration Unit, the Glen Bille position, was sent a questionnaire. Mr. Haugen did not recommend that appellant's position be matched to the Bille position. Appellant's position was not matched to the Bille position.

5. Mr. Haugen also served as a member of the DOR rating panel. In Mr. Haugen's opinion, the program complexities and technicalities are greater in the sales/use tax area than the withholding tax area.

6. At the time of the survey, appellant's position functioned as a lead worker to a Tax Representative 1, a Program Assistant 1, and four Clerical Assistant 2 positions and was primarily responsible for answering general and specific inquiries relating to withholding tax and researching withholding tax issues.

7. At the time of the survey, the Bille position was classified as a Tax Representative 2, functioned as a lead worker for two Tax Representative, one Tax Representative Assistant, one Program Assistant 3, one Program Assistant 2, one Program Assistant 1, and two Clerical Assistant 2 positions; was primarily responsible for answering general and specific inquiries relating to sales/use tax and researching sales/use tax issues; and was the senior position in the unit and responsible for unit operations during the supervisor's absence.

8. The Revenue Agent position standard developed as a result of the subject survey provides as follows, in pertinent part:

I. INTRODUCTION

E. Definition of Terms

Persons - Includes all taxable entities such as sole-proprietorships, partnerships and corporations.

Field Tax Collection - Performing collection activities both within and outside of an agent's assigned office.

Complex Field Tax Collection - Performing examinations of books and records, resolving employe-employer disputes, representing the department at speaking engagements and training other revenue agents.

Complex Bankruptcy Review - Performing work involving interpretations of state law as it relates to federal law, defending claims after objections have been filed and reviewing bankruptcy plans, under the various chapters of the federal bankruptcy code

F. Classification Factors

Individual position allocations are based upon the general classification factors described below.

- 1 The freedom or authority to make decisions and choices and the extent to which one is responsible to higher authority for actions taken or decisions made;
2. Information or facts such as work practices, rules, regulations, policies, theories and concepts, principles and processes which an employe must know and understand to be able to do the work,
- 3 The difficulty in deciding what needs to be done and the difficulty in performing the work;
- 4 The relative breadth, variety and/or range of goals or work products and the impact of the work both internal and external to the work unit,
5. Type of supervision received;
6. Organizational status as it relates to the level of responsibility, and

7. The nature and level of internal and external coordination and communication required to accomplish objectives.

II. DEFINITIONS

REVENUE AGENT 3

This is either experienced entry, progression (developmental) or objective level work performing tax collection, registration, revocation or liability determination. Positions allocated to this class may function in one of the following capacities: (1) Positions allocated to this class, as an objective (full performance) level, perform out-of-state collections, sales/use tax or withholding tax office audit review, specialized review and adjustment of delinquent tax accounts, personal liability determinations, permit revocation or nonrenewal, registration, and/or state temporary and concessionaire sellers work. These positions also provide taxpayer assistance in their area of expertise. Work is performed under general supervision; (2) Positions allocated to this class, as a progression (developmental) level, are responsible for field tax collection and taxpayer assistance. Work is performed under limited supervision; (3) Positions allocated to this class, as a progression (developmental) level, are responsible for reviewing tax liabilities of persons involved in bankruptcy. Work is performed under limited supervision; (4) Positions allocated to this class as an advanced level, are responsible for performing the more complex and larger sales/use tax and/or withholding tax adjustments and/or other withholding tax activities including office audit reviews and providing general information assistance. These positions also lead other Revenue Agents in performing reviews of sales/use adjustments and/or withholding tax activities including adjustments. Work is performed under general supervision.

REVENUE AGENT 4

This is objective or advanced level work involving field tax collection, bankruptcy or sales/use tax activities. Positions allocated to this class may function in one of the following capacities: (1) Positions allocated to this class, as advanced level, are responsible for performing and leading complex projects related to sales/use tax which are statewide and/or national in scope. These positions also lead other Revenue Agents in performing sales/use registration and sales/use office audit functions. Work is performed under general supervision; (2) Positions allocated to this class as objective (full performance) level, perform complex field tax collection

activities and taxpayer assistance. Work is performed under general supervision; (3) Positions allocated to this class, as objective (full performance) level, perform complex reviews of tax liabilities of persons involved with bankruptcy. Work is performed under general supervision.

9. The duties and responsibilities of appellant's position are better described by the language of the RA 3 specifications than those of the RA 4 specifications.

Conclusions of Law

1. This matter is appropriately before the Commission pursuant to §230.44(1)(b), Stats.
2. The appellant has the burden to show that the decision by respondent to reallocate her position to Revenue Agent 3 instead of Revenue Agent 4 was correct.
3. The appellant has failed to sustain this burden
4. The decision by respondent to reallocate appellant's position to Revenue Agent 3 was correct.

Opinion

The basic authority for classifying positions is the relevant position standard, and the Commission has consistently held that they will give primary consideration to the clear language of the classification specification. Zhe et al. v. DHSS and DP, 80-285-PC (11/19/81); aff'd by Dane County Circuit Court. Zhe et al. v. PC, 81-CV-6492 (11/02/82). The RA 4 classification specification identifies positions which, at an advanced level (it appears to be undisputed that appellant's position functions at an advanced level), "are responsible for performing and leading complex projects related to sales/use tax which are statewide and/or national in scope," and "lead other Revenue Agents in performing sales/use registration and sales/use office audit functions." It is clear from the record that the primary focus of appellant's position is in the area of withholding tax, not sales/use tax, and, as a result, the RA 4 specification does not provide a good fit.

In contrast, the RA 3 specification identifies positions which, at an advanced level, "are responsible for performing the more complex and larger sales/use tax and/or withholding tax adjustments and/or other withholding tax

activities including office audit reviews and providing general information assistance," and "lead other Revenue Agents in performing reviews of sales/use adjustments and/or withholding tax activities including adjustments " It is clear from the record that the primary focus of appellant's position is providing general information assistance in the area of withholding tax and leading another Revenue Agent in withholding tax activities, and, as a result, the RA 3 specification provides a good fit for the duties and responsibilities of appellant's position. Although there is testimony from appellant and her supervisor that the duties and responsibilities of appellant's position are comparable to those of the RA 4 Bille position, the clear language of the classification specifications cannot be ignored.

Appellant's primary theory in this case is that, as the result of being matched with the dissimilar Wood position instead of the similar Bille position in the subject survey, the characteristics and the strengths of appellant's position were overshadowed and muddied and, as a result, not susceptible to proper consideration by the rating panel. Further, appellant alleges that the rating panel erred in assigning a higher classification level to positions performing advanced level work in the Registration Unit in the sale/use tax area than to those performing advanced level work in the Registration Unit in the withholding tax area.

Several problems with appellant's theory are apparent. First of all, appellant is asking the Commission to second-guess the discretionary decisions made by program managers in matching positions and in rating duties and responsibilities using the 10 WQES factors. The Commission does not intend to substitute its judgement for that of these program managers because these are exactly the types of discretionary decisions the survey process and its statutory underpinnings leave to DER and to the program managers and other program experts who assist DER. It is interesting to note that, even if the Commission were in a position to second-guess such decisions, the record here does not show that a clear or obvious error has been made. Although there was testimony from appellant and her supervisor that the withholding tax area was as complex, if not more complex, than the sales/use tax area, this opinion was not shared by Mr Haugen or by Don Davis, the Director of Technical Services for the Income, Sales, Inheritance and Excise Tax Division. The record also does not show that the appellant/Wood position match was not an appropriate match at the time it was made, i.e., before the Bille position was

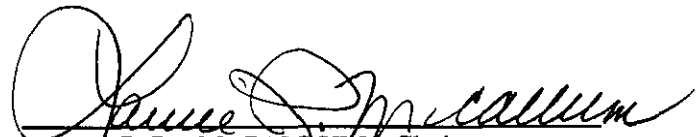
selected for completion of a questionnaire; or that the duties of appellant's and the Wood position were so dissimilar as to "dilute" the characteristics or strengths of either position.

Based on the above, the classification specification for RA 3 best describe the duties and responsibilities assigned to appellant's position.

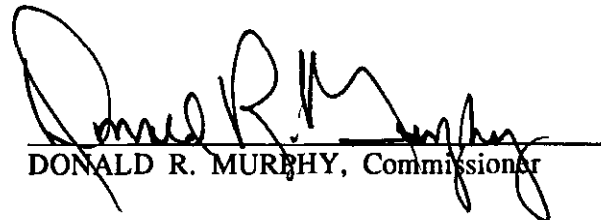
Order

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

Dated: March 10, 1993 STATE PERSONNEL COMMISSION


LAURIE R. McCALLUM, Chairperson

dkd


DONALD R. MUREHY, Commissioner


GERALD F. HODDINOTT, 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 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.