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RODNEY R. PHELPS,

Appellant,

v.

Secretary, DEPARTMENT OF
REVENUE, and
Secretary, DEPARTMENT OF
EMPLOYMENT RELATIONS,

Respondents.

Case No. 91-0003-PC

* * * * *

DECISION
AND
ORDER

This matter is before the Commission as an appeal from a classification decision. The appeal raises three areas of dispute: 1) classification level, i.e. Fiscal Supervisor 2, Fiscal Supervisor 3 or Fiscal Administrative Officer 2, 2) reallocation versus reclassification, and 3) effective date. After the completion of the hearing and oral argument by the appellant, the parties filed briefs.

FINDINGS OF FACT

1. During the period prior to a reorganization which occurred in November of 1985, the appellant served as the Revenue Accounting Supervisor in the Collections and Accounting Section of the Department of Revenue's Compliance Bureau. The appellant, along with another supervisor, James Warner, reported to Eugene Fitzgerald, who held the position of Section Chief and was classified at the Administrative Officer 2 level. The section had responsibility for both accounting of the various tax revenues that were filed with DOR and initial processing of the tax documents upon their receipt.

2. The appellant's position description signed by his supervisor, Mr. Fitzgerald, on March 22, 1983, listed the classification of his position as Fiscal Supervisor 1, effective April 17, 1983. The position description sets forth the following summary, goals and worker activities:

The major goal of this position is to supervise seven program activities in the unit, three of which have separate supervisors as

subordinates to this position. Direct responsibilities include contractual-liaison duties between DOR and the State's depository bank in Milwaukee, co-ordinating the ordering of revenue stamps (cigarette and liquor) with the contract vendor, liaison with equipment vendors and/or maintenance contracts on collection-processing equipment, development of administrative rules, policies, and procedures in respect to collections processing, development of objectives for future processing programs, and co-ordinating document workflow between the Collection & Accounting section and other work units in the Department.

- 50% A. Administrative duties and responsibilities associated with the planning, organizing, directing, and controlling the work for which the Collection Unit and the Section is responsible.
- A1. Monitor, analyze, and determine staffing requirements to meet fluctuating workload demands.
 - A2. Analyze and determine whether certain tasks should be performed by permanent or limited-term employees.
 - A3. Determine and prepare schedules for the hiring, training, working, temporary layoffs, and release of limited-term employees in accordance with workload demands and budget constraints for the annual processing of income tax returns.
 - A4. Monitor and analyze the productivity and accuracy of limited-term employees, and take necessary action in respect to substandard performance.
 - A5. Coordinate the work with that of the Data-Processing Bureau as required.
 - A6. Develop bid specifications and processing procedures for the State's working-bank contract that relate to the lock-box processing of withholding tax, motor-fuel tax and aviation fuel-tax returns. Work with the bank in Milwaukee during the contract period to monitor and amend the contract when necessary.
 - A7. Assist with the development of bid specifications for excise-tax revenue stamps. Determine anticipated order amounts, delivery schedules and projected budget costs for the program.
 - A8. Develop bid specifications for the purchase of various collection-processing machines. Work with equipment vendors (sales personnel and repairmen) in the design and application of tax processing programs through the use of automated office equipment.

- A9. Sufficiently train and direct an assistant in all phases of work performed in the unit to assure the proper processing of remittances in absence of other employees, and to assist the incumbent of this position whenever necessary.
- A10. Make decisions regarding various processing problems referred by personnel from other work areas.
- A11. Prepare special revenue-account transfers.
- A12. Prepare special refund vouchers.
- A13. Correspond with taxpayers regarding processing problems, especially those involving remittance processing.
- A14. Provide necessary direction and control in respect to renewals and releases of sales-tax security deposits.
- A15. Correspond with financial institutions and/or taxpayers concerning sales-tax security problems for which the Section is responsible.
- A16. Act as the forms coordinator for the section, including the control, revision, and reorder of printed forms.
- A17. Develop procedures and coordinate the Department's involvement with "Unclaimed Property" (ch. 177, Stats.) as it relates to sales-tax security deposits
- A18. Gather and compile productivity and statistical data, and prepare reports and schedules as requested by the Section Chief.
- A19. Work on special projects assigned by the Section Chief or Bureau Director.

10% B. General Supervisory activities.

* * *

8% C. Supervision of Cashiering Activity.

- C1. Coordinate the work of the Cashier Unit with that of the Validation Unit to assure timely and accurate deposit of remittances and gathering of statistics.

* * *

8% D. Supervision of Validation Activity (one range 1-09 supervisor plus 4 clerical employes).

- D1. Coordinate the work of the Validation Unit with that of the Cashier Unit to assure timely and accurate deposit of remittances and gathering of statistics.

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8% E. Supervision of Microfilming Activity (one range 1-06).

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8% F. Supervision of Mail-Opening Activity (one range 1-07 supervisor plus 9 clerical employees).

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3% G. Supervision of Excise-Tax Collection and Accounting Activity (one range 1-10, plus one clerical position).

* * *

G3. Render necessary direction and control in respect to ordering revenue stamps from the contract vendor, the accurate inventorying of revenue stamps, and maintaining budget records for revenue-stamp expenditures.

* * *

3% H. Supervision of Account-Reconciliation Activity (one range 1-10 position).

H1. Coordinate the work of this sub-unit with that of the Cashier Unit in respect to proper accounting and reporting of tax revenues.

H2. Render necessary direction and control in respect to the monthly and year-end accounting routines, especially reconciling and adjusting DOR revenue-accounts with the State's central-accounting system.

* * *

2% I. Supervision of Motor-Fuel-Tax Accounting Activity (clerical duties performed by position mentioned in "E").

3. In November of 1985, the Compliance Bureau was reorganized. The responsibilities of the Collections and Accounting Section were split and the appellant was designated as the section chief for the newly created Revenue Accounting Section, while Mr. Warner was designed the section chief of the newly created Document Review Section. These two sections, along with other components from the prior Compliance Bureau, were placed into the

newly created Processing Bureau. Mr. Fitzgerald's position as chief of the Collections and Accounting Section was abolished.

4. As a direct consequence of the reorganization, the appellant was assigned approximately 70% of the responsibilities which had previously been held by Mr. Fitzgerald.

5. Because of the reorganization, a "Certification Request/Report" was prepared for the appellant's position. The report showed that the position would retain the Fiscal Supervisor 1 classification, and included the following comment: "Lateral Transfer to implement reorganization." Copies were sent to both the Department of Administration and the Department of Employment Relations for approval prior to implementation. The transaction was approved. The appellant did not receive a copy of the report.

6. The appellant and his supervisor signed a new position description position on February 7, 1986. This document refers to the working title of the position as Chief, Revenue Accounting Section, identifies the classification level as Fiscal Supervisor 1 and sets forth the following position summary, goals and worker activities, which reflect the duties appellant assumed as a consequence of the reorganization:

Plans, directs, organizes, and coordinates the work of a staff of employees whose primary responsibilities are the accounting for and the collection and reporting of taxes received by the Department of Revenue in its administration of the State of Wisconsin, income, sales and excise tax laws.

35% A. Management of Processing Revenue Collections

A1. Provide necessary direction and control in respect to the prompt deposit of revenue received with approximately 2.2 million income tax returns, 1 million withholding, 800 sales and use tax and 68 thousand corporations, annually.

a. Direct and control the annual procedures to be used for the deposit of revenues.

b. Coordinate processing procedures with other work units such as:

- (1) Shipping and Mailing Section
- (2) Document Review Section
- (3) Data Processing Bureau

(4) Inheritance and Excise Tax Bureau

- c. Work with the Bureau Director in the analysis of LTE funds budgeted versus the anticipated LTE hours.
- d. Plan the LTE staffing needs for the section in conjunction with what has to be done versus LTE funds available.

A2. Provide necessary direction and control in respect to validation and partial processing of tax documents.

A3. Maintain an effective liaison and working relationship with the following offices in respect to processing certain tax documents through the "lock-box" in Milwaukee.

- a. First Wisconsin National Bank of Milwaukee (State's "working bank")

- b. State Treasurer

- c. State Investment Board

A4. Work closely with DOR's Data Processing units (Programming, Data Entry and Operations) in respect to the annual processing of income tax returns.

25% B. Management of Accounting for Tax Revenues

B1. Provide necessary direction and control to accurately account for all tax revenues by type of tax program, for which the Division is responsible.

B2. Provide necessary direction and control to accurately account for certain revenues by "INITIAL, DELINQUENT AND ADDITIONAL".

B3. Perform a thorough and accurate reconciliation of DOR's revenue accounts with DOA's central accounting records at the close of each fiscal year.

B4. Recommend accounting changes to DOA's Bureau of Financial Operations, and implement approved changes.

- B5. Maintain an effective liaison and working relationship with the following offices in respect to proper accounting for tax revenues.
 - a. Bureau of Financial Operations (DOA)
 - b. State Treasurer
 - c. Legislative Audit Bureau

- 5% C. Supervision of Unit Supervisors and Section Functions
 - C1. Render direct supervision to an Audit Specialist 2, an Account Specialist 2, 2 Program Assistant Supervisors and 1 Fiscal Clerk.
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- 10% D. System Studies and Improvements
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- 5% E. Miscellaneous Administrative Duties
 - E1. Prepare the Section budget and monitor expenditures after the budget is approved.
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- 5% F. Management of Taxpayer Inquiries and Complaints
 - * * *

- 5% G. Management of Miscellaneous Activities
 - G1. Provide necessary direction and control in respect to cigarette and liquor tax stamp purchasing via a contract printer and the dispensing of revenue stamps to cigarette wholesalers and bottlers of liquor sold in Wisconsin.

Although it was not reflected on his position description, the appellant also was assigned the responsibilities for the Property Tax Loan Deferral Program which previously had been performed by Mr. Fitzgerald.

7. Between the time of the reorganization and when he submitted a request to reclassify his position in August of 1990, the appellant assumed

certain additional duties which were related to his existing duties. These additional duties included the following:

- a. Additional lock-box agreements due to new tax programs;
- b. Processing of corporation tax returns by appellant's section, including the functions of maintaining estimated tax payments, reviewing refund and billing notices, maintaining a system of accounts, answering taxpayer correspondence and maintaining assessment files;
- c. Introduction of GAAP standards to the section's accounting. GAAP is a uniform set of accounting rules which result in comparability of financial statements among like entities.
- d. Additional accounts due to new taxes/credits.

8. The appellant's position description signed by his supervisor, Ms. Hardt, on July 13, 1990, sets forth the following summary, goals and worker activities:

Under the general direction of the bureau director, plan, direct, organize, and coordinate the work of a staff of 26 employees whose primary responsibilities are the accounting for and the collection and reporting of taxes received by the Department of Revenue (DOR) in its administration of the State of Wisconsin income, sales, and excise tax laws. Also, manage the Corporation Processing Unit which processes all corporation franchise/income tax returns and documents.

25% A. Management of Processing Revenue Collections

- A1. Provide necessary direction and control in respect to the prompt deposit of revenue received with approximately 2.2 million income tax returns, 1 million withholding tax returns, 800,000 sales and use tax and 130,000 corporation franchise tax documents annually.
 - a. Direct and control the annual procedures to be used for the deposit of revenues.
 - b. Coordinate processing procedures with other work units such as:
 - (1) Shipping and Mailing Section
 - (2) Document Review Section
 - (3) Data Control Unit
 - (4) Inheritance and Excise Tax Bureau
 - (5) First Wisconsin, Milwaukee
 - c. Work with the bureau director in the analysis of LTE funds budgeted versus the anticipated LTE hours.

- d. Plan the LTE staffing needs for the section in conjunction with what has to be done versus LTE funds available.
- A2. Provide necessary direction and control in respect to microfilming, validation and partial processing of tax documents.
- A3. Maintain an effective liaison and working relationship with the following offices in respect to processing certain tax documents through the "lock-box" in Milwaukee.
 - a. First Wisconsin National Bank of Milwaukee (State's "working bank")
 - b. State Treasurer
 - c. State Investment Board
- A4. Work closely with DOR's Data Processing units (Programming, Data Control and Operations) in respect to the annual processing of income tax returns.

25% B. Management of Accounting for Tax Revenues

- B1. Provide necessary direction and control to accurately account for all tax revenues by type of tax program, for which the division is responsible.
- B2. Design, install, and maintain new accounting systems to meet legislative initiatives (e.g., county sales tax, lottery setoff, drug tax, recycling fee, additional credits).
- B3. Develop and maintain accounting controls in large scale computer systems.
- B4. Develop and maintain complex accounting reports and financial statements for statewide reporting of tax revenues.
- B5. Implement appropriation and class codes in the Revenue accounting system and DOA system of accounts for newly created appropriations.
- B6. Provide necessary direction and control to accurately account for certain revenues by "INITIAL, DELINQUENT AND ADDITIONAL."
- B7. Perform a thorough and accurate reconciliation of DOR's revenue accounts with Department of Administration's (DOA's) central accounting records at the close of each fiscal year.
- B8. Direct, coordinate, and approve the monthly distribution of county sales taxes to Wisconsin counties.
- B9. Recommend accounting changes to DOA's Bureau of Financial Operations, and implement approved changes.

- B10. Maintain an effective liaison and working relationship with the following offices in respect to proper accounting for tax revenues.
 - a. Bureau of Financial Operations (DOA)
 - b. State Treasurer
 - c. Legislative Audit Bureau

25% C. Management of Corporation Processing

- C1. Provide necessary direction and control in respect to the processing of approximately 70,000 corporation tax returns and 60,000 estimated tax vouchers annually.
- C2. Coordinate processing procedures with other work units such as:
 - a. Shipping and Mailing
 - b. Corporation Office Audit
 - c. Corporation Technical Services
- C3. Provide necessary direction and control in processing approximately 11,000 refunds issued annually.
- C4. Act as project leader in rewriting the corporation processing system. This involves coordinating programmers and users in the design and implementation of a new computer processing system.

10% D. Supervision of Unit Supervisors and Section Functions

- D1. Render direct supervision to one Account Specialist Supervisor 3, one Account Specialist 2, two Program Assistant Supervisors, one Administrative Assistant 3, and one Fiscal Clerk.

10% E. Management of Miscellaneous Activities

- E1. Provide necessary direction and control in respect to annual cigarette tax and drug tax stamp purchasing via a contract printer and the dispensing of stamps to cigarette wholesalers, and drug dealers.
- E2. Properly account for quarterly liquor tax collections and for the transfer of funds for DOR related administrative fees.
- E3. Provide necessary direction and control to the Property Tax Deferral Loan Program activities and approve loans to program participants.

5% Miscellaneous Administrative Duties

9. On August 1, 1990, the appellant filed a formal reclassification request with the DOR's Personnel Services Section. The respondent ultimately decided that the appellant's duties were best described at the Fiscal Supervisor 2 classification, but that the change in the classification of his position arose from the duties he was assigned as a consequence of the 1985 reorganization. Therefore, the respondent decided to reallocate, rather than reclassify, the appellant's position to the FS 2 level, and established an effective date of August 12, 1990. The reallocation notice stated the following reasons for the reallocation:

ER 3.01(2)(e) The correction of an error in the previous assignment of a position;

ER 3.01(2)(g) A permanent change in the level of accountability of a position such as that resulting from a reorganization when the change in level of accountability is the determinant factor for the change in classification.

10. The specifications for the Fiscal Supervisor 1 classification include the following class description:

Definition:

This is supervisory and advanced professional accounting work as the head of a major accounting or fiscal function in a large state agency. Positions responsible for supervising a group of professional and/or non-professional subordinates engaged in providing all fiscal and related services for a large department having a relatively stable fiscal program, or for the major divisions within the largest of state agencies, are typical of this level. Major responsibilities of the work in this class generally include the establishment of appropriate accounting procedures, interpreting and applying agency accounting policy, and preparation and control of major operational budgets. Employees receive general direction and guidance through consultation with supervisors and periodic audits of accounts and records.

11. The specifications for the Fiscal Supervisor 2 classification include the following class description:

Definition:

This is supervisory and highly advanced professional accounting work. Positions typical of this level are as follows: 1) the chief accountant for a large department having a wide vari-

ety of complex programs requiring recurring adaptations and the full range of accounting services 2) as the controller for the largest state university campuses 3) as the supervisor of the state's largest and most complex accounting specialties, such as systems research and design. The work involves the design, installation and maintenance of large scale accounting systems and plays a key role in the development and evaluation of accounting policy. The work is performed under administrative direction and employees are expected to exercise considerable professional judgment in the process of fiscal administration. Supervision is received through audits, evaluation of statements and reports, and a review of the effectiveness of the results achieved.

Examples of Work Performed:

[S]upervise subordinates engaged in researching system weaknesses, adopting state accounting requirements to EDP, and coordinating EDP output with agency requirements.

Supervise, interview, hire, discipline, and recommend promotions and probationary completions for a subordinate staff, both professional and non-professional.

Develop, install and direct the maintenance of complex accounting systems of a varied nature, involving the analysis of data requirements, the creation of the account structure, and the establishment of internal operating procedure.

Make policy decisions in regard to funds, procedures, invoices, and other accounting matters.

Supervise the preparation of general ledger accounts and the reconciliation of all records, tabulating runs, and reports.

Participate in management conferences regarding fiscal management policy and general agency operating procedures.

Participate in the development of the agency's operating budget, program analysis, and in the interpretation of the fiscal impact of past or future programs

Perform related work.

12. The specifications for the Fiscal Supervisor 3 classification include the following class description:

Definition:

This is responsible administrative and supervisory professional accounting work. Employees in this class are either 1) responsible for supervising the total accounting program for a major state department, 2) responsible for supervising a major section in the state's central accounting operation, or 3) responsible for supervising a significant section within the central accounting operation of the largest of state agencies. The work involves the design, installation and maintenance of accounting systems and the development and evaluation of important accounting policy as well as the supervision of a number of professional and non-

professional employes engaged in the maintenance of accounting records or the pre-audit of financial transactions. The work is performed under administrative direction and employes are expected to exercise considerable professional judgment in carrying out work assignments.

Examples of Work Performed:

Supervise a complex and varied accounting program for a major state department or a comparable division of the largest of state agencies.

Develop and evaluate accounting policy and procedures, and supervise the design, installation and maintenance of major accounting systems.

Supervise, interview, hire, discipline, and promote professional and non-professional employes, usually working through unit heads.

Represent the agency at meetings and hearings involving fiscal policy and practice.

Conduct special fiscal studies and direct the development and preparation of complex fiscal reports.

Direct the preparation of various phases of the budget; interprets broad budgetary policies in development and control of the budget.

Establish and maintain effective working relationships with other state agencies and the public.

13. The specifications for the Fiscal Administrative Officer 2 classification include the following class description:

Definition:

This is very responsible fiscal administrative work in a large state department. Employes in this class serve as controllers, and are responsible for the development and administration of the financial management programs of the department which include budget policy, budget analysis, budget administration and control, accounting systems, and auditing. Positions in this class differ from those identified as Fiscal Supervisors in that the former are responsible for the entire financial management program including budget development and analysis etc., whereas the latter provide professional services in a narrower area such as the departmental accounting program. Administrative duties such as developing, planning, organizing and coordinating complex and important financial matters are the most important aspects of the work in this class. Employes in this class are considered to be part of the top level staff of the agency concerned, and often participate in developing broad programs and policies. Employes in this class receive administrative direction from the top departmental administrators.

Examples of Work Performed:

Direct and administer the financial affairs of a large state department.

14. The appellant's position is comparable, from a classification standpoint, to the position of Richard Beal, who serves as the Chief Accountant for the State of Wisconsin Unemployment Trust Fund and is classified at the Fiscal Supervisor 2 level. The position summary from Mr. Beal's position description reads:

Under the general direction of the Accounting and Finance Section Chief this position is responsible for planning, organizing, directing, coordinating and evaluating the operation of the State Unemployment Reserve Fund General Accounting Unit in accordance with generally accepted principles of accounting. Responsibilities include development, implementation, and maintenance of policies, procedures, automated and manual accounting systems and financial reporting formats for an operation which functions totally outside the state central accounting system, and whose annual revenue and expenditure volume is approximately \$775 million.

Mr. Beal supervises 6 Fiscal Clerk 3's, an Account Specialist 1, an Account Specialist 2, and Account Specialist 3, three Accountant 1's, an Accountant 4 and an Accountant 5. Mr. Beal also developed his unit's implementation of GAAP standards.

15. The Department of Revenue and all other state agencies follow a policy for determining the effective date of reclassifications and reallocations which is found in ch. 332 of the Wisconsin Personnel Manual and reads:

Both delegated and nondelegated reclassification regrade actions and reallocation regrade actions taken under ER 3.01(2)(e), (f) or (g) will be made effective at the beginning of the first pay period following effective receipt of the request.

CONCLUSIONS OF LAW

1. This Commission has jurisdiction over this matter pursuant to §230.44(1)(b), Stats.

2. The appellant has the burden of proof to show that his position is better described at the FS 3 level or the FAO 1 level than at the FS 2 level, that

the decision to reallocate rather than reclassify his position from FS 1 to FS 2 was incorrect, and that some date after November 1, 1985 is a more appropriate effective date than August 12, 1990.

3. The appellant has failed to sustain his burden.

4. The respondent's decision reallocating the appellant's position from FS 1 to FS 2 effective August 12, 1990, was correct.

OPINION

As noted above, this appeal raises several classification issues, including the proper class level, whether the transaction is more properly designated a reallocation or a reclassification, and effective date. The Commission will discuss these issues in that sequence.

The appellant contends that his position should be classified at the Fiscal Supervisor 3 or Fiscal Administrative Officer 2 level rather than at the Fiscal Supervisor 2 level. In deciding this issue, the Commission places primary reliance on the class definition found at each level. The FAO 2 definition expressly requires that positions at that level be "responsible for the development and administration of the financial management programs of the department which include budget policy, budget analysis, budget administration and control, accounting systems, and auditing." The appellant has no budget responsibility beyond the confines of his own section so he clearly is not responsible for DOR's entire financial management program. The responsibility for the expenditure side at DOR rests with another employe, Blanca Rivera.

The appellant also argues that his position is better classified at the Fiscal Supervisor 3 level. This class definition includes the general description of "responsible administrative and supervisory professional accounting work," but it also establishes three allocations, and requires that FS 3 positions fit one of those allocations:

Employees in this class are either 1) responsible for supervising the total accounting program for a major state department, 2) responsible for supervising a major section in the state's central accounting operation, or 3) responsible for supervising a significant section within the central accounting operation of the largest of state agencies.

The appellant has failed to establish that his position fits into any one of these three allocations. He clearly is not responsible for the total accounting program at DOR, he does not work in the state's central accounting operation, which is DOA, and DOR does not qualify as the "largest of state agencies." The appellant spent a great deal of time showing that much of his work was comparable to many of the work examples set forth at the FS 3 level. However, the class definition, rather than the work examples, is determinative in classification decisions. The appellant also failed to submit any position descriptions of FS 3 positions.¹

Finally, there is nothing which excludes the appellant's position from the FS 2 classification. He performs "supervisory and highly advanced professional accounting work," his work "involves the design, installation and maintenance of large scale accounting systems" and he plays "a key role in the development and evaluation of accounting policy." The only comparison position in the record, that of Richard Beal who serves as chief accountant for the State of Wisconsin Unemployment Trust Fund, is classified at this level. Mr. Beal's position, though certainly not identical to the appellant's, is comparable in terms of accounting responsibilities. Mr. Beal is responsible for coordinating the development and implementation of all of his fund's accounting records and financial reports, and he provides the necessary technical expertise for the design, implementation and maintenance of all of the monetary aspects of the fund's automated tax and accounting system. Mr. Beal's subordinate employees include an Accountant 4 and an Accountant 5. These Accountant positions are considered to be at a professional level, while the Account Specialist series, which is the classification for the appellant's highest level subordinates, is considered para-professional. In contrast to the appellant, Mr. Beal reports to a section chief (Brian Bradley) classified at the FS 3 level, although Mr. Beal testified that Mr. Bradley serves more the role of a deputy bureau director. The appellant has more varied non-accounting re-

¹The only reference in the record to a FS 3 position is that of the Accounting and Finance Section Chief in DILHR. That position is filled by Brian Bradley and supervises the Richard Beal position which heads the general accounting unit and is described in finding of fact 14, and a second position which heads the employer accounts unit. Mr. Beal testified that Mr. Bradley serves more as a deputy bureau director.

sponsibilities than Mr. Beal.² However, the appellant's non-accounting responsibilities cannot be the basis for differentiating between the various class levels at issue here. The Fiscal Supervisor series is designed to classify positions on the basis of their accounting responsibilities, not other non-accounting duties.

The second question raised by this appeal is whether the change in the appellant's classification from Fiscal Supervisor 1 to 2 should have been accomplished via reclassification rather than by reallocation. Respondent DER has, in §ER 3.01, Wis. Adm. Code, issued administrative rules which define the terms "reallocation" and "reclassification":

(2) Reallocation. "Reallocation" means the assignment of a position to a different class by the secretary as provided in s. 230.09(2), Stats., based upon:

- (a) A change in concept of the class or series;
- (b) The creation of new classes;
- (c) The abolishment of existing classes;
- (d) A change in the pay range of the class;
- (e) The correction of an error in the previous assignment of a position;
- (f) A *logical* change in the duties and responsibilities of a position; or
- (g) A permanent change in the level of accountability of a position such as that resulting from a reorganization when the change in level of accountability is the determinant factor for the change in classification.

(3) Reclassification. "Reclassification" means the assignment of a filled position to a different class by the secretary as provided in s. 230.09(2), Stats., based upon a *logical and gradual* change to the duties or responsibilities of a position or the attainment of specified education or experience by the incumbent. (emphasis added)

The question here is whether the appellant has shown that his position has undergone a "*logical and gradual*" change so as to require reclassification

²However, like the appellant, Mr. Beal also monitors a banking arrangement maintained with First Wisconsin Bank, which includes a lock-box.

rather than reallocation to the higher level. If the change has been logical but not gradual, the proper classification action is a reallocation, pursuant to §ER 3.01(2)(f). If a position's level of accountability changes as a result of a reorganization so as to cause a change in class level, reallocation is also the proper personnel action under §ER 3.01(2)(g).

The reallocation vs. reclassification issue can be readily resolved by reviewing the appellant's own testimony. The appellant stated that the net effect of the 1985 reorganization on his position was that he was assigned what had been 70% of Mr. Fitzgerald's duties (as reflected on Mr. Fitzgerald's pre-reorganization position description), which then became 80% of appellant's own duties (as reflected on the appellant's post-reorganization position description) once the reorganization was implemented.³ The appellant then went on to describe various programs which were added to the Revenue Accounting Section and to the appellant's responsibilities in the years subsequent to the reorganization. These are set out in finding 7. In describing these activities, the appellant stated: "I don't believe these additions would increase the classification level." The changes resulted primarily from legislation which created additional tax programs. These programs increased the number of revenue accounts and lock-box agreements overseen by the appellant and his section, but they were "more of the same" rather than duties of a different nature from a classification standpoint. The implementation of the GAAP standards falls within the reference in the FS 2 definition to "design, installation and maintenance of large scale accounting systems." The appellant testified that his corporation processing duties have "very little to do with actual

³The appellant also testified that he did not assume these new duties all at once. He stated that he had performed some of these duties prior to the reorganization, but had done them under Mr. Fitzgerald's supervision and "for his consideration and approval." The change in accountability means that the appellant cannot be considered to have been responsible for this group of duties prior to the reorganization. The appellant also contended that because many of the duties he obtained from Mr. Fitzgerald's position due to the reorganization were performed at various times during the one year tax cycle, *he must be considered to have gradually assumed those added responsibilities during the course of the 12 month period, rather than all at once.* Taken to its logical extreme, this theory would mean that no one could ever assume more than one duty at a time, because they couldn't start working on more than one new responsibility at any one instant. The Commission rejects the appellant's contention and analyzes this case in terms of when the duties were assigned to the appellant, not when he first performed them.

accounting," so this additional responsibility cannot be relied upon to justify a change in the appellant's classification after the 1985 reorganization.

In summary, the key changes to the appellant's position occurred as a result of the reorganization so they cannot be considered "gradual" and re-classification is inappropriate. Given that the appellant's position is now properly classified at a higher level than it was prior to the reorganization, the basis for that change was the new duties (and accompanying change in the level accountability) which were assigned to the appellant pursuant to the reorganization. These are the changes which justify a higher classification for the appellant's position and they meet the requirements for a reallocation under both §ER 3.01(2)(f) and (g). The respondent's failure to have recognized the effect of the change in 1985 for classification purposes was an error. Respondents have properly invoked §ER 3.01(2)(e) to correct that previous classification error.

The final issue raised by this appeal relates to the proper effective date. In the conference report issued on April 4, 1991, this issue was proposed as follows: "If reallocation is the appropriate action, should the effective date be August 12, 1990, or is some date after November 1, 1985 more appropriate." In a letter dated April 17, 1991, the respondent objected to this issue, stating that because the appellant did not exercise his appeal rights after he received the *certification request/report on or about February 3, 1986, he should not be able to seek such an effective date as a consequence of his 1990 reclassification request.* There are two problems with the respondent's objection. First, the Commission has previously held that the proper effective date is a part of the reclassification issue under §230.09(2)(a), Stats., and is appealable under §230.44(1)(b), Stats. Popp v. DER, 88-0002-PC, 3/8/89 In that regard, the respondent's argument runs to the merits of issue, rather than the Commission's jurisdiction. Second, the appellant testified that he never received a copy of the certification request/report until after he filed this appeal with the Commission and there was no contrary evidence offered. The Commission will, therefore, proceed to address the issue of the proper effective date.

The respondent bases its effective date decision on a policy which all state agencies follow and is set forth in Finding 15. According to this written policy, "reallocation regrade actions taken under ER 3.01(2)(e), (f) or (g) will be made effective at the beginning of the first pay period following effective

receipt of the request." In Popp, the Commission found that administrative economy and convenience served as a rational basis for the policy and went on to uphold the decision to reclassify Ms. Popp's position to the Program Assistant 3 level, effective in 1987, even though the letter which granted the reclassification explicitly stated that a decision in 1985 to reclassify the position to the PA 2 level was erroneous and that the position should have been made a PA 3 at that time:

There are over 35,000 classified civil service employes and over 2,000 classifications which DER must administer, directly or indirectly. DER's policy on effective date ultimately puts the onus on the employe to come forward with a reclassification or reallocation request if he or she believes reclassification or reallocation is warranted and sees nothing forthcoming from the appointing authority or DER. This policy protects DER from having to attempt to trace back, perhaps for many years, the development of a position prior to the date the reclassification/reallocation request presumably brings into sharp focus the duties and responsibilities of the position that are seen as supporting the higher level classification. At the same time, an employe who is aware of his or her rights under the civil service law (a presumption which the law recognizes, see Jabs v. State Board of Personnel, 34 Wis. 2d 245, 251 (1967)) can always protect his or her interests in the classification level of his or her position by submitting a reclassification or reallocation request and thus freezing the effective date of any subsequent classification transaction.

In an individual case, of course, the general considerations underlying a policy may not be present. This is the case here, where given the analysis done in deciding the 1987 classification request for classification review, there was no dispute or question as to whether Ms. Popp's position was at the PA 3 level in terms of its duties and responsibilities as of August 18, 1985, the earlier requested effective date. However, the fact that a particular case does not raise the policy concerns that underlie a general rule does not render the general rule irrational.

In the present case, even though the appellant did not receive a copy of the certification request/report which was prepared for his position as a consequence of the reorganization, he did sign a revised position description on February 7, 1986, reflecting both his new duties as chief of the Revenue Accounting Section and a classification level of Fiscal Supervisor 1. He clearly was on notice at that time of both the change in his duties and responsibilities and the classification level which the respondents had assigned to those duties.

He could have initiated a reclassification or reallocation request at any time once he was assigned the new responsibilities in order to "freez[e] the effective date." He didn't do so until nearly 5 years later. When respondents finally received the appellant's reclass request, they applied the policy set forth in Finding 15. This is the same policy which was upheld under very similar facts in Popp. The policy provides that the 1990 decision to correct the previous error in classifying the appellant's position is to be effective at the beginning of the first pay period after effective receipt of the request. That date is August 12, 1990, so the respondent's decision must be affirmed.

ORDER

The respondents' decision reallocating the appellant's position from Fiscal Supervisor 1 to 2, effective August 12, 1990, is affirmed and this appeal is dismissed.

Dated: May 20, 1993 STATE PERSONNEL COMMISSION


LAURIE R. McCALLUM, Chairperson

K:D:Merits-recl/reall (Phelps)


DONALD R. MURPHY, Commissioner

Parties:

Rodney R. Phelps
626 Whitehall Drive
Madison, WI 53714

Mark D. Bugher
Secretary, DOR
P.O. Box 8933
Madison, WI 53708-8933

Jon E. Litscher
Secretary, DER
P.O. Box 7855
Madison, WI 53707-7855

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.