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STATE OF WISCONSIN

PERSONNEL COMMISSION

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DAVID K. RANDBY, MARILYN
ODEGARD, GARY MILLER, and
RANDY HAYWARD,

Appellants,

v.

Secretary, DEPARTMENT OF
EMPLOYMENT RELATIONS,

Respondent.

Case Nos. 94-0465, 0476, 0483, 0506-PC

* * * * *

RULING ON
MOTION
FOR
SUMMARY JUDGMENT

These matters are before the Commission on respondent's motion for summary judgment with respect to appellants' appeals from respondent's decisions reallocating their positions effective August 7, 1994, to the classification of Area Administrator. Appellants contend their positions are more properly classified at the Administrative Officer 2 level. Respondent's initial motion, filed on June 19, 1995, was premised upon position descriptions dated prior to August of 1994. Appellants responded to the motion by stating that their duties were not accurately reflected in these position descriptions. The parties then agreed to grant respondent an opportunity to review revised position descriptions for appellants' positions. Respondent conducted a review and on August 23, 1995, renewed its motion for summary judgment. Briefs on the motion have been filed.

The position descriptions for all four appellants include the following identical language:

Under the broad general direction of the Director, DES Bureau of Employment and Program Operations (based in Madison), the Area Administrator based in the Regional Office is the primary management representative of the Division of Economic Support. This position functions independently as the first line of contact for a highly complex human service delivery system, including local Departments of Social/Human Services, Community Program Boards, Child Support Agencies, County Boards and Committees, County Executives/Administrators/Chairpersons, public schools, JOBS Administrative Agencies, Judges and County Court Commissioners, Clerks of Courts, Community Action Agencies,

Refugee Mutual Assistance Associations, Private Industry Councils, private non-profit organizations, tribes and employment systems. The Area Administrator provides administrative, management, fiscal and program direction to this wide variety of entities. Programs of these organizations often require special modifications to adjust to highly individualized conditions and characteristics at the local level.

Each Area Administrator has responsibility for the implementation, interpretation, direction, oversight, and monitoring of state contracted programs delivered by the network of agencies. In this capacity, the Area Administrator has the responsibility to coordinate Department program resources and assure effective delivery of these complex and diverse programs at the local level. The Area Administrator supervises, plans, directs and coordinates the activities of the regional staff who provide technical assistance, program support, monitoring and evaluation. The Area Administrators collectively oversee budgets in excess of \$150 million in a diversified network of agencies including the following: 72 County Economic Support Agencies, 72 Child Support Agencies, 58 JOBS Administrative Agencies, 53 Food Stamp Employment and Training programs and agencies, 16 Community Action Agencies, 11 Tribes, and 10 Refugee Mutual Assistance Associations. The Area Administrator maintains a key role in the interpretation and shaping of policy in these complex programs.

The Area Administrator is responsible for assuring that quality services are available, accessible, integrated and efficiently delivered to eligible people in need and for assuring that the department's mission of responsible management of public resources is met locally and at the regional level.

TIME% GOALS AND WORKER ACTIVITIES

20% A. Provision of administrative, fiscal and program direction to local providers in economic support, child support, employment programs, welfare reform initiatives, and human service programs and operations.

* * *

25% B. Monitor and provide direction to complex Economic Support, Child Support, Employment, and Human Service programs in a variety of diverse settings which are state supervised and county/locally administered.

* * *

25% C. Provision of technical assistance to and in partnership with county, non-county, and tribal

economic support agencies in a wide variety of complex and diverse programs and initiatives.

* * *

- 15% D. Supervision. Plan, organize, direct and supervise the regional Area Administration team and staff to ensure resources are allocated according to the need, the work plan, so that work is done efficiently and effectively.

* * *

- 10% E. Policy development, refinement, and reporting/communicating.

* * *

- 5% F. Management of the regional office operation for the Division in coordination with other Division units and with the Division of Community Services.

All four position descriptions refer to the "agency working title of the position" as "Area Administrator." Mr. Randby works in the Ashland regional office of the Bureau of Employment and Program Operations in the Division of Economic Support. Ms. Odegard works in the Green Bay regional office, Mr. Miller in the Madison regional office and Mr. Hayward in the Waukesha regional office. Three other employees fill positions with working titles of "Area Administrator" in Milwaukee, Rhineland and Eau Claire.

Prior to August 7, 1994, six of the seven area administrator positions were classified at the Administrative Officer 1 level. The Milwaukee position was classified at the Administrative Officer 2 level.

Effective August 7, 1994, respondent created a new classification of "Area Administrator" and reallocated all seven positions to the new classification.

The Area Administrator class specifications read, in pertinent part, as follows:

B. Inclusions

The positions in the classification are supervisory positions located within the Department of Health and Social Services in either the Division of Community Services or the Division of Economic

Support. Positions allocated to this classification spend the majority of time providing program, administrative, and fiscal supervision of local agencies in a geographic area for the provision of human services or the provision of economic support and child support services. Positions recommend hiring, transfer, suspension, layoff, recall, promotion, discharge, assignment, evaluation, discipline, and adjustment of grievances of subordinate employees.

C. Exclusions

Excluded from this classification are the following types of positions:

2. Regional positions which are not responsible for the oversight of the full range of a division's programs in that region.

* * *

II. DEFINITIONS

AREA ADMINISTRATOR

Positions in this classification serve as the local representative of either the Division of Community Services or the Division of Economic Support and function as liaison between local agencies and the central office in a significant geographic area of the state. These positions provide program, administrative and fiscal supervision to departments of social services, human services or community programs and tribal and other agencies for whom the division has oversight responsibility for...the provision of economic support services in the areas of Aid to Families with Dependent children (AFDC), Food Stamps (FS), Medical Assistance (MA), Relief to Needy Indian Persons (RNIP), general relief and employment programs as well as child support services. These positions have responsibility to coordinate program resources to assure that services or programs are provided in an integrated, accessible, efficiently-delivered and effective manner and consistent with the state and/or federal guidelines governing the delivery of such services or programs at the local level; and supervise and direct the staff providing technical assistance, program support and monitoring and evaluation activities with the local agencies. Work is performed under general supervision.

Representative Positions:

Division of Economic Support: Reports to the Director, Bureau of Employment and Program Operations, and is the primary management representative of the division in the region. Provides local agencies and tribes with information, program and policy interpretation and technical assistance in implementing state-supervised economic support and child support programs; develops the regional work plan to assist counties in the implementation and maintenance of high quality services for AFDC, FS, MA, RNIP, general relief and employment programs and new state initiatives; reviews and analyzes local program delivery and administration to identify strengths and weaknesses; assists agencies in planning and implementing corrective action to improve local program delivery; promotes coordination and communication between county agencies and the central office; implements the contracting process between the local agencies and the central office; provides information to the division for policy and program improvement; and supervises staff of the regional area administration team.

The Administrative Officer 2 class specifications read, in pertinent part, as follows:

Definition:

This is highly responsible and difficult administrative work in a major state agency. An employe in this class is responsible for providing all administrative and managerial services for the agency, including directing such staff services as personnel, budget preparation, fiscal management and purchasing; and/or for administering a complex departmental program. Employes exercise broad supervision and control over large numbers of technical, professional and clerical people. An employe in this class often serves as the principle advisor to the department head in developing departmental policies and rules and in promoting needed legislation. Within a broad framework of laws, rules, and policies, employes are responsible for many decisions affecting the department's program. The work is performed with a high degree of independence subject to administrative review by the department head.

All positions allocated to this class must meet the definitions of "Confidential" and "Supervisor" as contained in s. 111.81 Stats.

Areas of Specialization:

Staff services, general administration, specialized program administration, or any comparable specialization or combination thereof.

Examples of Work Performed:

Plans and directs the major staff services of a large department, such as personnel and fiscal management, budget analysis and preparation, purchasing, and public relations; utilizes these staff services to develop and evaluate departmental programs.

Directs management studies for the establishment of valid quantitative and qualitative standards of measurement, and directs the development of operation methods and procedures.

Plans and directs departmental programs involving administrative operation of considerable diversity and complexity.

Develops departmental policies and regulations, and participates in the development and revision of legislation.

Develops programs to educate and inform the public of important departmental plans and programs which require public acceptance and cooperation.

Maintains effective working relationships with legislative committees, management executives of other departments, communications media, and organizations interested in the policies and activities of the department.

Performs related work as required.

Comparing the duties and responsibilities listed on the appellants' position descriptions to the two classification specifications at issue here, it is apparent that the Area Administrator specification provides a very close fit for the appellants' positions and that the representative position in the Division of Economic Support closely identifies the appellants' duties. In contrast, the Administrative Officer 2 classification is much more general. The latter specifications are written in such a way as to suggest that a position should have agency-wide responsibilities, rather than to be assigned only to a geographic portion of the state. This reading of the specifications is supported by the references in the specifications to "providing... all services for the agency," and to "administering a complex departmental program." Yet it is

undisputed that prior to the establishment of the Area Administrator, the position assigned to Milwaukee was classified at the Administrative Officer 2 level.

It is clear from the specifications and the position descriptions that the best fit for the appellants' positions is the Area Administrator classification. Where one of the two specifications in question is more specific and directly applicable to the appellant's duties, the Commission will affirm a decision to classify the appellant's position at the more specific classification. Coequyt v. DER, 92-0189-PC, 8/11/93; Steinhauer et al. v. DER, 90-0216-PC, 3/30/93.

Appellants Odegard, Miller and Hayward have made three arguments in opposition to respondent's motion. In the first, they contend there "are remaining issues of material fact in dispute."

The Appellants maintain and have always maintained that the definitions of Regional and Area used in these documents varies at the whim of DER and thus their responsibilities are expanded or diminished depending on the whim of the moment. The words in the specifications for the Area Administrator and for the Administrative Officer are subject to interpretation and DER seeks to deny the Appellant the opportunity to argue that issue.

* * *

DER's arguments assume that the position standard and description are the only evidence in this matter. They completely discount the testimony of those people who would testify to the actual way the job is done and what the words mean in the contents of a specific job. This overly narrow reading of the evidence is necessary to arrive at the conclusion that there is no dispute. But as long as there are lawyers and linguists, there will be debates as to the meaning of words and their application to any given situation. There are disputes in this case as to the meaning and the application of the standards to the job duties of the Appellants and summary judgement should not be granted.

Summary judgment should only be granted in clear cases. See Grams v. Boss, 97 Wis. 2d 332, 338-39, 294 N.W. 2d 473 (1980) (citations omitted):

On summary judgment the moving party has the burden to establish the absence of a genuine, that is, disputed, issue as to any material fact. On summary judgement the court does not decide the issue of fact. A summary judgment should not be granted unless the moving party demonstrates a right to a

judgment with such clarity as to leave no room for controversy; some courts have said that summary judgment must be denied unless the moving party demonstrates his entitlement to it beyond a reasonable doubt. Doubts as to the existence of a genuine issue of material fact should be resolved against the party moving for summary judgment.

The papers filed by the moving party are carefully scrutinized. The inferences to be drawn from the underlying facts contained in the moving party's material should be viewed in the light most favorable to the party opposing the motion. If the movant's papers before the court fail to establish clearly that there is no genuine issue as to any material fact, the motion will be denied. If the material presented on the motion is subject to conflicting interpretations or reasonable people might differ as to its significance, it would be improper to grant summary judgment.

However, the mere assertion of a factual dispute will not defeat an otherwise proper motion for summary judgment:

[T]he "mere existence of some alleged factual dispute between the parties will not defeat an otherwise properly supported motion for summary judgment; the requirement is that there be no genuine issue of material fact." (emphasis in original). A factual issue is genuine "if the evidence is such that a reasonable jury could return a verdict for the nonmoving party." Baxter v. DNR, 165 Wis. 2d 298, 312, 477 N.W. 2d 648 (Ct. App. 1991) (citations omitted).

In the instant case, based on the showing made on this motion, a reasonable fact-finder could not rule in favor of appellants. The class specifications have been promulgated by the Department of Employment Relations. The appellants' position descriptions were signed by them as accurately describing their responsibilities. Nothing in the appellants' submissions indicate they feel their new position descriptions are inaccurate. In addition to its title, the Area Administrator class specifications refer to positions in the Division of Economic Support which serve as the "primary management representative of the division in the region." The class specifications clearly are not tied to a definition of "area" that is inconsistent with the term "region." The Commission has consistently held that it lacks the authority to revise class specifications. Zhe et al. v. DHSS & DP, 80-0285-PC, etc., 11/19/81, affirmed by Dane County Circuit Court, Zhe et al. v. Pers. Comm., 81-CV-6492, 11/2/82.


The appellants also contend that if the Commission grants summary judgment in these matters it would permit DER to serve as "the judge and the jury as well as the decision maker in every classification matter" and would eliminate all classification appeals to the Commission. The problem with this argument is that in the present cases, the Commission is dealing with very specific class specifications which were clearly written to include the appellants' positions, and position descriptions for the appellants that are consistent with the specifications and are not disputed by the appellants. Under these circumstances, the trip through the administrative hearing procedure is unnecessary, because there are no material facts in dispute. Under other circumstances, a hearing may show that a classification decision by DER was erroneous.

ORDER

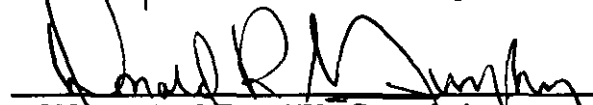
The respondent's motion is granted and these appeals are dismissed.

Dated: October 16, 1995

STATE PERSONNEL COMMISSION


LAURIE R. MCCALLUM, Chairperson

K:D:MSJ-reall (Randby et al.)


DONALD R. MURPHY, Commissioner


JUDY M. ROGERS, Commissioner

Parties:

David K. Randby
601 W. Main St.
Ashland, WI 54806

Marilyn Odegard
816 Posey Court
Green Bay, WI 54313

Gary Miller
4977 Hahn Road
DeForest, WI 53532

Randy Hayward
3336 North 57th St.
Milwaukee, WI 53216

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 (except an order arising from an arbitration conducted pursuant to §230.44(4)(bm), Wis. Stats.) 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.

Pursuant to 1993 Wis. Act 16, effective August 12, 1993, there are certain additional procedures which apply if the Commission's decision is rendered in an appeal of a classification-related decision made by the Secretary of the Department of Employment Relations (DER) or delegated by DER to another agency. The additional procedures for such decisions are as follows:

1. If the Commission's decision was issued after a contested case hearing, the Commission has 90 days after receipt of notice that a petition for judicial review has been filed in which to issue written findings of fact and conclusions of law. (§3020, 1993 Wis. Act 16, creating §227.47(2), Wis. Stats.)

2. The record of the hearing or arbitration before the Commission is transcribed at the expense of the party petitioning for judicial review. (§3012, 1993 Wis. Act 16, amending §227.44(8), Wis. Stats.)

2/3/95