

STATE OF WISCONSIN

PERSONNEL COMMISSION

* * * * *

WILLIAM J. DORSEY, et al.
(Debra K. Tribbey and
Clifford D. Doro)

Appellants,

v.

Secretary, DEPARTMENT OF
EMPLOYMENT RELATIONS,

Respondent.

Case Nos. 94-0471, 0477, 0478-PC

* * * * *

FINAL
DECISION
AND
ORDER

A proposed decision and order was issued in these matters on December 4, 1995. The proposed decision concluded that respondent's decisions reallocating the appellants' positions to the Transportation District Business Supervisor (TDBS) classification should be affirmed and the appeals dismissed. Appellant Debra Tribbey responded to the proposed decision by sending a memo dated January 2, 1996, to the hearing examiner. The memo stated in part:

I do not agree with the conclusions drawn, however it doesn't appear that I have any reasonable alternatives....

The fact that a DER witness purposefully lied under oath at the hearing, and that the analysis and process that DER used to develop the TDBS specification in the first place was inadequate will not get addressed. The TDBS spec is flawed, therefore action using the spec is flawed. However, challenges to bring those facts to light are not open to myself or others, which leaves a state employe absolutely no viable alternatives to right a grievous wrong, and creates a very bitter situation. It's unfortunate that the civil service system is working this way.

I firmly believe that DER exceeded and abused its decision-making authority by not performing an adequate analysis in developing the spec; that the spec does not substantially describe my position's responsibilities; and that it does more appropriately describe positions that are subordinate to mine. I recognize it's a mute [sic] point, but it needed to be said.

A disagreement with DER concerning the way class specifications have been drafted is outside the Commission's subject matter jurisdiction. Section

230.09(2)(am), Stats., provides that DER "shall establish, modify or abolish classifications as the needs of the service require." The Commission has no statutory authority to review the actions that DER takes under §230.09(1)(am). Rather, the Commission's material appellate jurisdiction, §230.44(1)(b), Stats., is limited to DER's actions under §230.09(2)(a), Stats., to allocate, reclassify or reallocate positions. The Commission has no authority to reject or modify class specifications, but must review reallocation decisions on the basis of the class specification as written. See, e.g., Zhe et al. v. DHSS & DP, 80-285-PC, 11/19/81; affirmed by Dane County Circuit Court, Zhe et al. v. PC, 81-CV-64932, 11/2/82.

In response to Ms. Tribbey's statement that a "DER witness... lied under oath," respondent requested the Commission to direct her "to identify which witness she references and exactly what the alleged lie (or lies) were" so that DER could conduct an investigation. Ms. Tribbey did not respond to respondent's request.

The Commission notes that DER's request is for the Commission to take action in the Commission proceeding in order to assist that agency in carrying out *its own* investigation. This case is now at the stage where the Commission is ready to enter its final decision and order. There is no reason to believe that respondent's investigation of this allegation could have any bearing on the outcome of this proceeding. Under these circumstances, the Commission declines to enter the order respondent requests.¹

Therefore, the Commission will adopt the proposed decision, a copy of which is attached, as the final decision in this matter.

¹There is nothing to prevent Ms. Tribbey from voluntarily providing the information in question to respondent, nor to prevent respondent from pursuing this matter in some other fashion.

ORDER

The proposed decision and order shall serve as the final decision and order in this matter. Respondent's motion for the Commission to direct Ms. Tribbey to provide certain information is denied.

Dated: January 23, 1996 STATE PERSONNEL COMMISSION


LAURIE R. McCALLUM, Chairperson

KMS:kms
K:D:temp-1/96 Dorsey et al.


DONALD R. MURPHY, Commissioner

Parties:

William J. Dorsey
3116 Oneida Lake Road
Harshaw, WI 54529

Debra K. Tribbey
1251 School Drive
Waukesha, WI 53186

Clifford D. Doro
8210 Glenwood Road
Wisconsin Rapids, WI 54494

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

STATE OF WISCONSIN

PERSONNEL COMMISSION

* * * * *

WILLIAM J. DORSEY, et al.
 (Debra K. Tribbey and
 Clifford D. Doro)

Appellants,

v.

Secretary, DEPARTMENT OF
 EMPLOYMENT RELATIONS,

Respondent.

Case Nos. 94-0471, 0477, 0478-PC

* * * * *

PROPOSED
 DECISION
 AND
 ORDER

The three appellants serve in positions in three of the eight districts of the Department of Transportation, Division of Highways. In various portions of the record, the appellants' positions are referred to as District Business Supervisors, District Business Managers and District Administrative Chiefs. Their positions were reallocated as part of a classification survey, effective August 7, 1994, to the classification of Transportation District Business Supervisor (TDBS). Appellants contend their positions are better described at the Administrative Officer 3 (AO 3) classification level.

Appellant Doro is Administrative Chief in District 4 and Appellant Dorsey in District 7. The position summary of their position descriptions (Resp. Exh. 6 and 7) state:

As a line member of the management team, the District Chief of Administrative and Management Services develops, manages and assesses all administrative programs as required by Department policy and as directed by the district director. In so doing, the position functions as administrative policy advisor to the district director and administrative program authority to district section chiefs.

The goals and activities listed in the position descriptions for Mr. Doro and Mr. Dorsey are also substantially similar and refer to managing the district's human resources program, labor relations, budgets and fiscal services, administrative programs, hazardous materials program, information technology program, risk and safety management programs (a total of 90% spread between 8

goals) as well as establishing program goals and objectives (10%). Mr. Dorsey is also responsible for the district's public information program. Mr. Dorsey supervises approximately 8 positions in three units (office unit, data processing and maintenance) while Mr. Doro supervises the same number of positions directly, but also serves as a second level supervisor for approximately 4 other positions.

All three appellants report to the director for their district.

Appellant Tribbey is the Administrative Chief in District 2, the largest of the various districts. A reorganization of District 2 was authorized by the Secretary of DOT in June of 1994, while the classification survey which resulted in the reallocation of Ms. Tribbey's position was still underway. The reorganization was still being implemented as of the August 7, 1994, effective date of the survey. The effects of the reorganization on Ms. Tribbey's work unit included moving the clerical and the records management responsibilities outside of her authority as well as rearranging some responsibilities among three units within her authority and renaming two of those units.¹

Ms. Tribbey prepared a revised position description (App. Exh. 27) for her position as a consequence of discussions she had with her supervisor on January 3, 1995. The position description was not prepared and signed by her supervisor until four months later, approximately a week prior to the hearing in this matter. The position summary for Ms. Tribbey's position reads as follows:

Under general direction off the District Director, and through agency delegated authority this position functions with a great deal of independent, judgement, and discretion, acting as the District's Business Manager in this State Agency's Transportation

¹Respondent took the position that the reorganization in District 2 had not become effective as of the date of the hearing in these matters because DOT's central personnel office had not received updated position descriptions and certification requests for the various changes effectuated by the reorganization. DER's personnel specialist testified that DER had a written policy to the effect that a reorganization does not become official until the certification process has been completed and that until the time of the certification approval, any assignment of duties is temporary rather than permanent. There is no dispute that the certification process had not been completed as of the date of hearing. Because the Commission concludes that, even with the changes caused by the reorganization, Ms. Tribbey's position is still better classified at the Transportation District Business Supervisor level, it is unnecessary to decide the issue raised by respondent.

Highway District. The multiplicity of functions directed and managed has significant direct impact on the employing units 390 permanent, seasonal, and project positions; 100 [approx.] limited term positions; a \$20 million annual operating budget; and the organization's mission to produce a \$400 million highway improvement program.

It is a line member of the division's management team, responsible for planning, development, and management of complex administrative programs required by state and federal law and department policy. With respect to organizational, budgetary, administrative program and general business management principles and practices, this position provides policy development, analysis and or advisory consultative service to District, Bureau, Division, and Agency Management staff and serves as district representative on departmental or divisional or task forces. Additionally, it provides leadership to three functional administrative supervisory service units consisting of 30 professional, technical, and paraprofessional positions.

The position description shows Ms. Tribbey spends 55% of her time on "management policy, supervision and program development, which includes the activities of "manag[ing] district administrative units through leadership of three first-line supervisors who function to administer business management services" and "direct[ing] development of internal operating policy and procedures and standards." According to this position, the remaining 45% of Ms. Tribbey's time is spent directing and managing the following programs for District 2: human resources, AA/EEO, risk and safety management, labor relations, employe training and career development, the distributed data center and asset management (which includes fiscal, property and procurement services and the budget.)

The Transportation District Business Supervisor specifications include the following language:

B. Inclusions

This classification encompasses professional supervisory positions located within the Department of Transportation which function as Transportation District Business Supervisors in one of the eight districts in the state. Positions allocated to this classification supervise and direct the district's support services, including human resources, personnel, labor relations, budget, fiscal operations, property management, purchasing, fleet, records management, space management, information technology, hazardous material, risk and safety management, clerical, communi-

cations, training, and public relations programs; and meet the statutory definition of supervisory as defined in Wis. Stats. 111.81(19). Positions in this classification are also responsible for program planning, policy and procedure input and development, budget development, and supervision of staff within their respective program area.

* * *

II. DEFINITIONS

TRANSPORTATION DISTRICT BUSINESS SUPERVISOR

Positions allocated to this classification function as the Transportation District Business Supervisor in one of eight Transportation districts within the state. These positions supervise and direct the district's support services, including business management, budget, fiscal, purchasing, property management, information technology, human resources, personnel, labor relations, fleet management, space management, communications, clerical, safety and risk management, hazardous materials, training and public relations programs. These positions report to the Transportation District Directors.

The Administrative Officer 3 class specifications provide, in relevant part:

Definition:

This is highly responsible administrative and managerial work in providing highly complex executive liaison, and staff functions and services. An employee in this class is responsible for major management functions including program development and evaluation. The work involves responsibility for management functions as they affect the programs of numerous complex organizational segments with professional or technical programs, and for the evaluation and improvement of such operations in any management area. An employee develops departmental policies and regulations, recommends the establishment and revision of legislation, and makes responsible management decisions within a broad framework of laws, rules and policies which have a great effect upon departmental programs. The work is performed with a high degree of independence, subject only to administrative review by the department head....

Examples of Work Performed:

[1] Plans and directs the major staff services of a large department, such as personnel and fiscal management, budget analysis and preparation, purchasing, public relations, and the departmental program development and evaluation.

[2] Initiates and directs management studies throughout the department for the establishment of valid quantitative [sic] and qualitative standards of measurement, and directs the development of operational methods and procedures.

[3] Plans and directs major departmental programs involving administrative operations of great diversity and complexity.

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

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

[6] 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.

The Department of Transportation is organized so that while the various transportation districts have substantial independence, there is an effort made to insure that activities are not inconsistent between districts.

DOT's central personnel office has delegated the authority for certain reclassification actions to each district personnel staff, but has retained it for other classifications. This delegated authority is identical from one district to the next.

Michael Lovejoy serves as the director of the Office of Highway Management within the Division of Highways. This office provides certain services to the administrator of the Division of Highways, and focuses on 1) development and monitoring the budget and 2) unusual personnel transactions. The office also includes individuals who provide certain coordination in the areas of physical plant activities, affirmative action/EEO activities and training.² Mr. Lovejoy is not in the supervisory chain above the appellants.

In deciding state-wide issues, the Division of Highways attempts, to the extent possible, to get input from the districts. Most division-wide management and administrative policy must be reviewed and approved by the Division's management team consisting of the division administrator, three bureau level managers and two office level managers, including Mr. Lovejoy. Mr. Lovejoy represents the appellants' programs on the Division's manage-

²The position summary in the position description for Carrie K. Malach, a subordinate of Mr. Lovejoy in the Office of Highway Management (Resp. Exh. 33) provides in part: "Supervise staff responsible for division-level training, personnel and AA/EEO activities and administrative support services."

ment team. Mr. Lovejoy also has some independent authority to approve implementation of policies suggested by the district administrative chiefs. The Division also convenes a state-wide team and designates it the "Administrative Forum" to deal with administrative program issues, problem resolution, and policy development that have division and state-wide impact. This group meets quarterly, or more often as needed and has representatives from all of the division's bureaus. It includes, on a rotating basis, two of the eight individuals serving as the district administrative chiefs, i.e. appellants' positions.

The districts are allowed to create their own administrative procedures and operating culture if they are not inconsistent with established divisional policy.

The eight administrative chiefs also meet as a group to work on matters of mutual interest. Mr. Lovejoy participates as a guest.

Each of the appellants and the other five district administrative chiefs have regional, i.e. district, responsibilities and collectively they have certain state-wide responsibilities. As to the latter, each appellant is limited to participating in, evaluating and proposing.

Ms. Tribbey acknowledged that she did not perform work examples 1, 2, 3 and 6 in the Administrative Officer 3 classification on a department-wide basis. One example she provided in her testimony to support her contention that she developed departmental policies and regulations was her role as a member of a department-wide committee which developed the entry in the agency's administrative manual on the subject of limited term employe hiring (App. Exh. 38). Ms. Tribbey testified she spent less than 5% of her time performing work example 5 relating to the development of programs to educate and inform the public of departmental plans and programs.

Ms. Tribbey also acknowledged she supervised and directed district support services in the areas of human resources, personnel, labor relations, budget, fiscal operations, property management, purchasing, fleet, space management, information technology, communications and training, but not the areas of records management, clerical or public relations.³ She agreed her position met the statutory definition of "supervisory," is responsible for

³This testimony reflected Ms. Tribbey's responsibilities after the reorganization.

program planning, policy and procedure input and development and budget development. She agreed her position supervised supervisors and as a consequence met the reference in the TDBS specifications to supervising staff.

Mr. Lovejoy testified that none of the appellants' work falls outside of the Transportation District Business Supervisor specifications.

DISCUSSION

The appellants' positions fit within the confines of the TDBS specifications which were specifically developed to identify their positions. They do not have the department-wide responsibilities that are reflected in the work examples at the AO3 level. Even though the appellants have identified some positions classified at the AO3 level which do not have state-wide responsibilities (App. Exh. 6 and 7)⁴ those comparables do not mean that the appellants' positions are better described at that level when it is obvious that the positions of appellants Doro and Dorsey are so clearly identified at the TDBS level and that appellant Tribbey has the same functional responsibilities. Service on various state-wide committees does not mean that the appellants have responsibility for state-wide policy and program development. Their responsibilities are focused on their own districts and while they do have input into state-wide policy development, so do others and others also have authority for approval. Even so, the TDBS specification does include a reference to being responsible for "policy and procedure input and development."

In their posthearing brief, the appellants contend that the TDBS specification "is not descriptive of the authority, responsibility and nature of the work" of the appellants' positions. As an example, the appellants point out that the specifications do not reference the confidential nature of their decision making role in labor relations issues such as grievances, discipline, arbitrations, bargaining and negotiations. At least some of the appellants' responsibilities in this area are encompassed by the reference in the specifications to their roles as supervisors. The fact that they also may sometimes be ap-

⁴App. Exh. 6 is the position description for Jack Mitchell of the Bureau of Building Management in the Department of Administration. Mr. Mitchell's responsibilities only extend to DOA's buildings in central Madison, and are not state-wide. Jan Richardson, App. Exh. 7, is Associate Director of UW-Madison's Business Services/Purchasing Services. Her responsibilities are limited to UW-Madison and are not state-wide.

proached to serve on the collective bargaining team does not take them out of the TDBS specification and place them into the AO3 specification. It is always the case that specifications can be more complete but the TDBS specifications adequately describe the bulk of the appellants' duties. The appellants also contend that "at best," the TDBS specifications could describe in "summary form" the first-line supervisory or staff positions that report to the appellants. However, these positions, which report to the appellants, cannot meet the clear classification requirements that they serve as the Transportation District Business Supervisor in their district and report to the district directors.

Appellants interpret Mr. Lovejoy's testimony as supporting their contention that they have policy making responsibilities that are properly described at the AO3 level. However, Mr. Lovejoy testified that all the language in the inclusions portion of the TDBS specifications applied to the appellants and there was nothing that the appellants did that was not covered by the specifications. Mr. Dorsey also testified that nothing in the TDBS specification was inapplicable to his position.

Another question raised by these appeals relates to the possibility of characterizing their positions as "management."

The TDBS specifications refer to the definition of "supervisory" in §111.81(19), Stats., but they do not refer to "management" defined in §111.81(13), Stats. The definitions are as follows:

(13) "Management" includes those personnel engaged predominately in executive and managerial functions, including such officials as division administrators, bureau directors, institutional heads and employes exercising similar functions and responsibilities as determined by the [employment relations] commission.

* * *

(19) "Supervisor" means any individual whose principal work is different from that of the individual's subordinates and who has authority, in the interest of the employer, to hire, transfer, suspend, layoff, recall, promote, discharge, assign, reward or discipline employes, or to adjust their grievances, or to authoritatively recommend such action, if the individual's exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

According to §111.81(intro.), those definitions are applicable to subch. V, ch. 111, Stats. The AO 3 specifications do not specifically reference either definition, although there are references in the specifications to "managerial" and "management." In their post-hearing brief, the respondent contends the appellants are not at the "Bureau and above level" as set forth in the statutory definition of management. In their brief, the appellants contend they have demonstrated they are "employees exercising similar functions" to the levels specified in the statute,⁵ "based on our organizational structure and decentralized operations and delegated authority for management action." Although the specifications involved in this case are not expressly differentiated in terms of meeting or not meeting the statutory definition of "management," the Commission will address the parties' contentions that this distinction should have a bearing on the outcome of the case.

Even though the TDBS specifications do not specifically refer to the statutory definition of "management," the specifications do include responsibilities which may fall within that definition. As noted above, the last sentence of the "Inclusions" portion of the specifications reads:

Positions in this classification are also responsible for program planning, policy and procedure input and development, budget development, and supervision of staff within their respective program area.

The responsibilities identified by the appellants as being "management" are consistent with this language as it applies to the appellants' program area of administrative support. To the extent the appellants do perform

⁵Appellants do not function as a division administrator, bureau director or institutional head. The question in the present case relates to the reference in the definition to "similar functions and responsibilities." The Wisconsin Employment Relations Commission has provided some guidance in interpreting this phrase:

[M]anagerial status must be demonstrated by a showing that the holder of the position in question participates in a significant manner in the formulation, determination and implementation of management policy or that the holder of such a position has the effective authority to commit the... employer's resources. Wis. Federation of Teachers, Local 3271, AFT, AFL-CIO v. State of Wisconsin, Case XXVIII, No. 16176, SE-63, Decision #11885-M (WERC, 11/23/82). (citations omitted)

"management" functions, those responsibilities are not inconsistent with a classification at the TDBS level.

Generally, a class specification which specifically describes the duties and responsibilities of a position provides a closer fit than a specification which only generally describes such duties and responsibilities. Steinhauer et al. v. DER, 90-0216-PC, 3/30/93. Here, the TDBS specifications very specifically describe the appellants' responsibilities. The TDBS specifications were drafted with the appellants' positions in mind which buttresses the conclusion that they are more appropriately classed at that level. Schermetzler v. DER, 94-0342-PC, 4/17/95. The AO 3 specifications provide that a position classified at that level "develops departmental policies and regulations" and the work is "subject only to administrative review by the department head." The appellants' positions do not meet these aspects of the AO 3 definition. In terms of a "best fit" analysis, the appellants' positions are better described at the TDBS level than at the AO 3 level.

ORDER

Respondent's reallocation decisions are affirmed and these appeals are dismissed.

Dated: _____, 1996 STATE PERSONNEL COMMISSION

K:D:Merits-reall (Dorsey et al)

LAURIE R. MCCALLUM, Chairperson

DONALD R. MURPHY, Commissioner

JUDY M. ROGERS, Commissioner

Parties:

William J. Dorsey
3116 Oneida Lake Road
Harshaw, WI 54529

Clifford D. Doro
4920 Auburn Avenue
Wisconsin Rapids, WI 54494

Debra K. Tribbey
1251 School Drive
Waukesha, WI 53186

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