

U.S. Office of Personnel Management
Office of Merit Systems Oversight and Effectiveness
Classification Appeals and ELSA Programs



Dallas Oversight Division
1100 Commerce Street, Room 4C22
Dallas, TX 75242

**Classification Appeal Decision
Under Section 5112 of Title 5, United States Code**

Appellant: [The Appellant]

Agency classification: Labor Relations Specialist
GS-233-11

Organization: [Location] Patrol Sector Headquarters
Office of the Regional Director
Central Region
Immigration and Naturalization Service
Department of Justice
[A Large City]

OPM decision: Labor Relations Specialist
GS-233-11

OPM decision number: C-0233-11-01

Bonnie J. Brandon
Bonnie J. Brandon
Classification Appeals Officer

January 30, 1998
Date

As provided in section 511.612 of title 5, Code of Federal Regulations, this decision constitutes a certificate that is mandatory and binding on all administrative, certifying, payroll, disbursing, and accounting officials of the government. The agency is responsible for reviewing its classification decisions for identical, similar, or related positions to ensure consistency with this decision. There is no right of further appeal. This decision is subject to discretionary review only under conditions and time limits specified in the Introduction to the Position Classification Standards, appendix 4, section G (address provided in appendix 4, section H).

Decision sent to:

[The appellant]

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Introduction

On August 8, 1997, the Dallas Oversight Division of the U.S. Office of Personnel Management (OPM) received a classification appeal from Ricardo [the appellant]. His position is currently classified as Labor Relations Specialist, GS-233-11. However, he believes his position should be classified at the GS-12 level. In June 1997, the appellant's position was reclassified by the servicing personnel office from Labor Relations Specialist, GS-233-12, to Labor Relations Specialist, GS-233-11. The appealed position is assigned to the El Paso Border Patrol Sector Headquarters, Office of the Regional Director, Central Region, Immigration and Naturalization Service (INS), Department of Justice, El Paso, Texas. We have accepted and decided this appeal under section 5112 of title 5, United States Code.

Position information

The appellant's position serves as the principal advisor to El Paso Sector management in labor and employee relations matters. He is responsible for evaluating, proposing, implementing, and administering a Labor Relations/Employee Relations program. The appellant prepares, organizes, and either presents or advises on management's cases before professional labor arbitrators. He serves as a principal spokesperson or technical advisor for Sector management in the negotiation of supplemental collective bargaining agreements at the Sector level. He serves as the technical advisor and expert in the processing and handling of formal disciplinary and adverse actions taken against Sector employees. He handles and processes agency and union contract grievances. He also researches and responds to Congressional inquiries. The appellant supervises one Employee Relations Assistant.

The El Paso Sector is made of the headquarters office, located in El Paso, and 12 border patrol stations, located throughout West Texas and New Mexico. The size of the border patrol stations ranges from approximately 250 employees to 15 employees. The stations exist in locations that have differing environmental conditions, such as mountains, the [a large river], sparse populations, and heavily populated cities.

The Sector has a bargaining unit of the National Border Patrol Council (Council) of the American Federation of Government Employees, which is covered by the national agreement between INS and the Council. The number of employees in the bargaining unit is approximately 1000, the majority of which (80 percent) is border patrol agents. Although the agreement is nationally negotiated, changes to working conditions are negotiated at the local level. Also, grievances are handled locally.

The appellant advises and works with top Sector management and supervisors and managers throughout the Sector. These management officials include the Chief Patrol Agent, Deputy, and six Assistant Chief Patrol Agents located at Sector headquarters and Patrol Agents in Charge and Assistant Patrol Agents in Charge at border patrol stations. About 128 individuals make up the supervisory/managerial ranks of the Sector. The appellant deals with local union officials, including 7 bargaining unit officers and 28 stewards. The appellant is supervised by an Assistant Chief Patrol Agent and the Deputy.

Series and title determination

The GS-233 Labor Relations Series covers positions that involve the administration, supervision, evaluation, or performance of technical work concerned with labor relations in the Federal service. This includes establishing and maintaining effective relationships with labor organizations that represent Federal employees; negotiating and administering labor agreements and otherwise conferring with labor organizations on behalf of management; and providing guidance, consultation, and staff assistance to management on a variety of labor relations matters. Some positions covered by this series also involve advising management on grievances and appeals, adverse actions, employee discipline, and related matters when these are dealt with as an integral part of the labor relations program. Positions covered by this series require as their paramount qualifications a knowledge of the Executive Orders, regulations, principles, practices, and techniques of labor relations; and a knowledge of the objectives, principles, policies, and procedures of personnel management in the Federal service.

The appellant is the Sector management's principal advisor on labor relations and employee relations matters, and is responsible for evaluating, proposing, implementing, and administering a Sector-wide Labor Relations/Employee Relations program. Knowledge of the labor relations field is the paramount requirement for this position. The appellant does not disagree with the series or title determination of his position and we agree that the GS-233 series and Labor Relations Specialist title are appropriate.

Standard and guide determination

The position is graded using the GS-233 Labor Relations Series standard. The appellant supervises one Employee Relations Assistant (OA), GS-203-07. However, his supervisory duties and responsibilities regarding this assistant position are not evaluated against the General Schedule Supervisory Guide, since this work does not meet the requirements for coverage under the guide. The specific reasons are that the supervisory duties do not occupy at least 25 percent of the appellant's overall time or meet the intent of the requirement concerning the supervisory authority exercised.

Grade determination

The GS-233 standard provides grade level criteria through two factors, nature of assignment and level of responsibility. Our evaluation with respect to those factors follows.

Nature of assignment

This factor measures the scope and complexity of the work assignments and the extent of knowledge of labor relations and personnel management principles, methods, and techniques required to do the work. The GS-11 and 12 levels are evaluated according to four criteria: 1) organizational

complexity, 2) union-management relationships, 3) typical problems dealt with by the labor relations (LR) specialist, and 4) management advisory services provided by the specialist.

1. LR specialists at the GS-11 level typically service an organization that is moderately complex in terms of the variety of missions, production objectives, number and kinds of employees, and working conditions that affect the knowledge and judgment required. Specialists at the GS-12 level service an organization or segment which is more complex than that at GS-11, as described in the following examples.

A. At the GS-11 level, the bargaining unit(s) serviced include employees in several organizational segments in which the missions and work production goals are easily understood and relatively stable. In contrast, bargaining unit(s) serviced by GS-12 specialists include employees in a substantial number of organizational segments, several of which have distinctive and diverse missions requiring a knowledge of goals and objectives in several functional areas.

The appellant's position services the El Paso Border Patrol Sector. The Sector consists of the headquarters office and 12 border patrol stations. The headquarters office has top level management officials who are responsible for directing the Sector's activities. Throughout the Sector are various units, including the antismuggling unit, intelligence unit, drug education, canine unit, vehicle seizure, and special operations. The border patrol stations have agents performing varying kinds of patrol activities under differing environmental circumstances. The headquarters office and the border patrol stations are working toward the overall goals of preventing aliens from illegally crossing the U.S. border and apprehending aliens who illegally entered the U.S. These organizational segments are equivalent to the GS-11 level in terms of the mission and goals being relatively straightforward and stable throughout the Sector. The GS-12 level is not met in that the border patrol stations and headquarters office do not constitute a substantial number of organizational segments having distinct and diverse missions.

B. The GS-11 specialist services a single bargaining unit covering a preponderance of an organization of moderately small size (e.g., 1000 - 2000 employees). At the GS-12 level, the specialist services a single bargaining unit covering a preponderance of an organization of moderate size (e.g., 2200 - 3500 employees).

The appellant's position services a single bargaining unit that covers about 1000 employees. The Sector is comprised of approximately 1140 individuals. This meets the GS-11 level but not the GS-12 level.

C. For LR specialists at the GS-11 level, the employees in the units serviced are in a variety of occupations, most of which are either white collar or trades and crafts. The working conditions of several of the occupations add a moderate degree of complexity (e.g., shift work, overtime assignments, standby time, or environmental pay differential). For specialists

at the GS-12 level, the employees in the unit(s) serviced are in a wide variety of occupations, normally including mixtures of both GS and wage grade, or professional and non-professional, many of which have substantial differences in working conditions and occupational practices. An example of this level is an industrial activity where the units serviced include a wide variety of trades and crafts employees, engineers and technicians, cafeteria workers, clerical employees, guards, and firefighters. Many of these units have different problems involving shift operations, standby duty, overtime, environmental pay, promotional opportunities, etc.

The bargaining unit serviced by the appellant includes a variety of occupations, such as GS-1896 Border Patrol Agents, GS-1802 Law Enforcement Communication Assistants and Detention Enforcement Officers, GS-1811 Criminal Investigators, GS-856 Electronics Technicians, GS-2181 Aircraft Pilots, WG-5823 Automotive Mechanics, WG-4749 Maintenance Mechanics, WG-8852 Aircraft Mechanics, and some clerical and administrative positions. About 80 percent of the unit's positions are in the border patrol agent occupation. As at the GS-11 level, a few of the jobs have working conditions that are unique. These include the border patrol agents who work on two or three rotating shifts; have 24 hour operations; receive administratively uncontrollable overtime (AUO) pay; and have opportunities for various details. Automotive mechanics at the headquarters location also have a different work schedule, which is two shifts on a 4/10 alternative work schedule. The criminal investigators receive law enforcement availability pay and work unique kinds of hours. The other occupations within the Sector have relatively standard working conditions. The overall working conditions do not meet the GS-12 level where a good number of employees occupy a *wide variety* of occupations, with *many* of these occupations having substantially different working conditions.

D. At the GS-11 level, employees in the units serviced are typically at one physical location. At the GS-12 level, many of the employees in the units serviced may be in several geographically dispersed locations.

The bargaining unit employees within the appellant's Sector are geographically dispersed, located at the headquarters office and at border patrol stations in two states. This meets the GS-12 level.

E. At the GS-11 level, there is some instability in the organization in that there are occasional changes in workload; staffing requirements; and/or changes in technology which result in some realignment of work assignments, retraining of employees, or minor reductions in force. At the GS-12 level, the missions of the organizational segments in which the units serviced are located are relatively dynamic, resulting in frequent changes in personnel policies, working conditions, and employment levels (e.g., major realignments of duties, positions, and employees; changes in technology requiring substantial retraining of employees; or relatively frequent reductions in force.)

Within the appellant's Sector, the mission is relatively stable, although there are increasing numbers of border patrol agents. As a whole, the U.S. Border Patrol is gaining personnel, and the El Paso Sector has had a steady gain in agents over the last several years. As a result, the Sector has had to expand office spaces or move into new buildings to accommodate larger numbers of personnel. These circumstances meet the GS-11 level. The Sector is not characterized by the level of instability described at the GS-12 level.

In summary, four of the subelements of organizational characteristics and complexity are evaluated at the GS-11 level and one is evaluated at the GS-12 level. Therefore, the overall evaluation of this element is GS-11.

2. At the GS-11 level, the unions involved are active in their dealings with management, frequently raising substantive issues in agreement negotiations, in policing the application of the negotiated agreements, and in conferring with management on changes in personnel policy and working conditions. However, the relationships between the unions and management are characterized as cooperative in that there is a willingness of both parties to resolve problems through consultation and compromise. Problems are usually resolved through consultation and compromise, and few issues go through third-party procedures for resolution. Issues are primarily of local concern, and union officials receive little direct assistance from their national headquarters.

At the GS-12 level, the unions are active in raising substantive issues in all phases of their dealings with management, as at the GS-11 level. However, the union-management relationship is more difficult for the specialist at the GS-12 level because of such factors as (1) the unions assume more of an adversary role, being more likely to take a hard-line position on a variety of issues, with a significant number going through third-party procedures for resolution; (2) the local union officials often obtain the advice and assistance of professional, highly knowledgeable representatives from a national headquarters staff in negotiations and third-party proceedings; and (3) there is a significant turnover in the organization's management and supervisory personnel and/or there is a general resistance by management to constructive bilateral consultation and cooperation.

The Sector is operating under the Partnership concept and has a Partnership Council in place. The highest levels of management within the Sector, the Chief Patrol Agent and the Deputy Chief Patrol Agent, exhibit a willingness to confer and be flexible with the union in many Sector matters. Although not all managers and supervisors are as willing to deal with the union on some issues, most understand and accept the Sector's goal, which is to take steps toward making the Partnership work.

The appellant deals with a very active union which frequently raises substantive issues. Within the last two years, approximately 24 changes to the working conditions have been initiated or negotiated. These include such matters as expanding office space, cross-training for border patrol agents, adding shifts to a station, maintaining/improving officer safety, relocating training to a different building, and transferring volunteer border patrol agents to a new station. One of these negotiations for changes to the working conditions, the Santa Teresa case involving the move of volunteer border patrol agents to the new station, resulted in arbitration proceedings. Within the same two-year timeframe, there

have been about 186 disciplinary actions proposed and taken against Sector employees, with approximately 4 of these going to the arbitration phase for resolution. Only one disciplinary action case has gone to the Merit Systems Protection Board (MSPB) within the last couple of years. There have been about eight unfair labor practice (ULP) charges filed recently, dealing with allegations such as the failure to notify of a change in training practices for dog handlers and the inappropriate cancellation of a detail of a local union official. The last ULP charge resulting in a hearing was several years ago. Several grievances have been raised, dealing with such matters as an agent determining his or her own AUO status and coverage under the Fair Labor Standards Act for electronics technicians.

Most of these matters are of local concern, with the appellant primarily negotiating and dealing with local management and local union officials. There have been a couple of instances where the national union has taken over or initiated grievances (the AUO and Santa Teresa cases) against the Sector because of the potentially broad impact. Considering the number of issues being resolved or negotiated without third-party proceedings in relation to the overall picture and the appellant's primary dealings with local union officials, this element is closest to meeting the GS-11 level. Several aspects of the GS-12 level are not met in that a significant number of issues do not go through third-party proceedings for resolution, the union's national headquarters staff are not often involved in local negotiations, and the Sector's management ranks have not undergone significant turnover nor do they generally resist cooperating with the union.

3. The typical problems dealt with by GS-11 LR specialists are issues for which guidelines and precedent decisions are available but require considerable interpretation and adaptation to develop solutions for the local situation; issues which have a significant impact on production, cost to the organization, or the effective operation of the organization represented; and problems which normally have few difficult subproblems that must be broken out and separately considered. In contrast, the GS-12 specialists are confronted with controversial issues with no precedent decisions or with conflicting precedent; controversial issues frequently involving large numbers of employees; issues which frequently have a potentially serious impact on mission accomplishment and the organization's budget; and problems which have several interrelated subproblems.

The range of issues dealt with by the appellant involves relocating to new office space or expanding current space; adding work shifts to particular stations; pay for border patrol agents (AUO, overtime); disciplinary actions such as suspensions, removals, or reprimands; lawsuits filed against individual border patrol agents and the Service; officer safety; mobility of agents (Operation Hold the Line); management's right to assign work; details and cross-training of border patrol agents involving different stations and patrol activities; entitlement to per diem or travel expenses during details; and ULP charges of failure to negotiate in good faith, failure to notify of changes to the working conditions, or wrongful cancellation of a union officer's detail.

Consistent with the GS-11 level, there are typically guidelines available in the form of Federal regulations, INS administrative manuals, the union contract, or precedent decisions that directly or indirectly apply to the issues handled by the appellant. He may be required to use considerable

interpretation or creativity in making these guides useful or applicable to the situation at hand. The issues often have significant impact on border patrol station operations and the cost of doing business. Issues can affect groups of border patrol agents, consisting of 20 to 250 individuals. Some cases involve interrelated subissues, such as details involving travel, overtime pay, and per diem expenses; the move of volunteer agents to a new station, involving relocation expenses, funds for new positions, and an exception to merit promotion procedures; agents determining their own AUO status, with implications for adding a new shift and discontinuing the AUO pay of other agents at a station; and disciplinary cases where an agent and the Service are sued for violating the civil rights of an alien. The issues dealt with by the appellant do not fully meet the GS-12 level in that they do not *typically* involve unique problems which have no applicable guidelines or precedents or which seriously impact the Sector's mission accomplishment and budget.

4. Advisory services to management provided at the GS-11 level include conducting planned, systematic studies to develop management positions and to respond to union demands at the bargaining table; advising negotiating committee members on the applicability and interpretation of arbitration and precedent decisions to the local situation; and communicating agency and Governmentwide labor relations policies and procedures to management and staff. At the GS-12 level, LR specialists are recognized for their technical competence and soundness of judgment in labor relations matters. Specialists may be assigned to serve as the principal spokesperson for management in agreement negotiations for bargaining units with complexities at the GS-11 level, or, if not the spokesperson, their views and recommendations on management positions and negotiating techniques for more difficult negotiations have a major impact on the approaches taken by management. This same level of participation is also true for third-party proceedings such as unfair labor practice hearings and arbitration hearings.

The appellant provides the advisory services mentioned at the GS-11 level and also serves in a capacity described at the GS-12 level. The appellant analyzes management's proposals for disciplinary actions and for changes to the working conditions, developing cases and implementing negotiating strategies for management. The appellant, Patrol Agent in Charge (at the border patrol station level), or Assistant Chief Patrol Agent may serve as the lead negotiator with the union in negotiations involving changes to the working conditions. Within the last couple of years, the appellant has represented management in arbitration proceedings involving disciplinary actions and served as a technical representative in an MSPB hearing. Although the appellant has not been involved in a ULP hearing within the last couple of years, the Deputy believes that in future hearings, the appellant would serve *at least* in the capacity of technical advisor. Since the appellant is recognized for his technical competence and has represented management before third-party proceedings and in negotiations, this meets the GS-12 level.

In summary, the organizational complexity, union-management relationships, and typical problems dealt with by the appellant are evaluated at the GS-11 level. The appellant's management advisory services meet the GS-12 level. Because the GS-12 level is not fully met, the nature of assignments is evaluated at the GS-11 level.

Level of responsibility

This factor covers the kind and degree of supervision received, the degree of judgment and independence required, and the nature of the person-to-person contacts involved in the position.

At the GS-11 level, LR specialists receive assignments in terms of overall purpose and scope, without specific instructions as to the methods and techniques to be used. Specialists develop the plan, procedures, and operating methods for the assignments. The supervisor is available for assistance on unusually difficult or controversial problems or on matters of a policy nature. Completed work is reviewed for conformance with applicable policies and guidelines and for overall effectiveness. At the GS-12 level, specialists receive assignments in terms of broad objectives and are expected to plan and carry out work independently. Whereas the GS-11 specialists receive assistance from the supervisor on difficult and controversial problems, the GS-12 specialists resolve most such problems independently, except for those of a policy nature. The supervisor is kept informed regarding sensitive issues and other matters of interest. Completed work is reviewed for results attained and conformance with the overall policies and objectives of the activity and the agency.

The appellant performs his work independently, receiving overall direction and guidance from the Deputy, Assistant Chiefs, or Chief Patrol Agent. He handles difficult or controversial problems, but also may discuss these types of issues with specialists in the Region. The appellant's work is reviewed for overall conformity with established policies and practices, with the exception of his cases involving serious disciplinary actions. Although the Sector is not under the Region's control, the appellant's written proposals for serious disciplinary action are closely reviewed for legal sufficiency by specialists and attorneys in the Region. The supervision received by the appellant is equivalent to the GS-11 level. It does not meet the full intent of the GS-12 level in that his work is assigned with more direction and structure and some of his completed work is more closely reviewed than at this level.

Personal contacts at the GS-11 level involve consultation and negotiation with local union officers and stewards, and with management officials at all levels of the local organization, concerning difficult and controversial issues and problems. Contacts at this level often involve discussions with labor relations specialists at higher level headquarters to obtain advice and assistance on matters of agency or Governmentwide scope. In addition to this, personal contacts at the GS-12 level include consultation and negotiation with officials and district or regional representatives of the national headquarters of unions as well as those of the unions' locals; frequent advice and assistance to top management of the local organization on unusually difficult and highly controversial problems; and discussions with representatives of policy-making agencies and labor relations specialists from other agencies on controversial issues and on the application of conflicting or vaguely applicable precedents to difficult problems.

The appellant's contacts mainly involve negotiation and consultation with local union officials and meetings with the Sector's top management. His contacts also include employees, arbitrators, LR specialist counterparts in other sectors or INS District Offices, INS regional and national level LR

specialists, and congressional offices. The appellant also has occasional contacts with attorneys from INS or the U.S. Attorneys office, national union officials or representatives, investigators or representatives with the Department's Office of Inspector General or the Federal Labor Relations Authority, EEO counselors, and representatives of the Federal Mediation and Conciliation Service. These contacts are consistent with the GS-11 level. The appellant's contacts do not include regular negotiations and consultation with national union officers or frequent advice and assistance to top management on unusually difficult and highly controversial problems, as at the GS-12 level.

At the GS-11 level, specialists typically take part in negotiations as an equal member of the management team, although in a few instances, they may be designated as the chief negotiator. Specialists often take part in third-party proceedings, such as arbitration hearings and proceedings involving unfair labor practice charges, as a technical advisor and witness for management. As at the GS-11 level, GS-12 specialists take part in third-party proceedings as a technical advisor to management or as spokesperson. However, the issues are more complex, requiring a greater degree of judgment and knowledge in presenting management's position effectively and in rebutting the union's arguments.

The appellant serves as lead negotiator or as an equal member of the management team in negotiations with the union involving changes to working conditions, represents management in disciplinary action cases going to arbitration proceedings, and acts as a technical advisor in ULP and MSPB hearings. Considering the complexity of the typical issues, as evaluated earlier, this aspect meets the GS-11 level but not the GS-12 level.

In summary, the appellant's level of responsibility meets the GS-11 grade level.

Summary

Because the appellant's position meets the GS-11 level for both the nature of assignment and the level of responsibility, GS-11 is the appropriate overall grade for the position.

Decision

The appellant's position is properly classified as Labor Relations Specialist, GS-233-11.