

DEPARTMENT OF EMPLOYMENT RELATIONS,
DIVISION OF PERSONNEL,

Petitioner,

vs.

WISCONSIN PERSONNEL COMMISSION,
STATE OF WISCONSIN
(Judith Saviano),

Respondent.

MEMORANDUM DECISION

Case No. 79CV3720

This proceeding is brought by petitioner, Division of Personnel (hereinafter the "Division") pursuant to ch. 227, Stats., for review of a decision and order of the Wisconsin Personnel Commission (hereinafter the "Commission"), which determined that the Division had erred in denying a request that Judith Saviano's classified civil service position be reclassified from that of Job Service Assistant 3 to that of Job Service Assistant 4.

The facts are as follows. Saviano has been employed since August, 1973, by the Work Incentive Program (WIN) Bureau, within the Job Service Division of the Wisconsin Department of Industry, Labor and Human Relations (DILHR). She works in the Employment Contract and Job Development section, which is responsible for the administration of various WIN employment contracting programs. Saviano's supervisor is Thomas Dichraff, Job Service Supervisor V. David Graves, Job Service Specialist V, is also employed within the Employment Contract and Job Development section.

In June, 1976, Saviano's classification was changed from JSA 1 to JSA 3. When this reclassification was made Saviano asserted that her position should properly be classified at a higher level, but took no appeal from the decision.

In late 1977 the State WIN administrator sought reclassification of Saviano's position as JSA 4. After an audit of Saviano's duties, DILHR's Assistant Personnel Director rejected the request on the basis that the position was appropriately classified at the JSA 3 level, and because there had not been a significant change in Saviano's duties since the June, 1976, reclassification which would warrant reclassification under existing regulations. The State WIN Director subsequently requested that the rejection of the reclassification request be reviewed by the Bureau (now Division) of Personnel. The request was reviewed by Division Personnel Specialist Virginia Hutkowski. Hutkowski analyzed Saviano's current position description, the organization chart for the WIN Bureau, and the existing position standards for the JSA 3 series. She discussed the matter with the person who had previously audited the position and conducted a field audit, speaking to Saviano, Dichraff and Graves concerning Saviano's duties. Hutkowski discovered that, in addition to those duties listed in her 1977 position description, Saviano spent approximately 10% of her time developing WIN manual materials and various WIN forms. The field audit also revealed that Saviano was involved in training field personnel in proper procedures, and had the independent authority to organize her work area as she saw fit. Hutkowski then reanalyzed all of the documentary information

available to her in light of the audit information, the position standards and of position descriptions reflecting the duties of representative positions at the JSA 3 and 4 levels in order to arrive at the recommendation which became the Division's decision. The Division, based on Hutkowski's analysis, rejected the request that Saviano's position be reclassified to the higher level. Specifically, the Division concluded that Saviano was performing "advanced clerical work characterized by the application of a wide variety of complex, inter-related Job Service program policies and procedures," as identified in the position standard for the JSA 3 level.

On May 3, 1978, Saviano filed an appeal pursuant to s.230.44(1)(a), Stats., of the denial of the reclassification request with the Wisconsin Personnel Commission. The matter was heard before Commissioner Charlotte Higbee, acting as hearing examiner, on December 21, 1978 and January 4, 1979. On or about March 20, 1979, the examiner issued her proposed decision, concluding that Saviano had carried her burden of proving that the JSA 4 classification was proper for her position and that the Division had erred in refusing to reclassify her at that level. The examiner's proposed decision contained the following findings of fact:

2. (Saviano) is responsible on a daily basis for the movement of employment contracts and employment-related documents through the WIN Bureau, including review for completeness and accuracy, in accordance with the Bureau policies and procedures as set forth in the Win Manual, and routing of completed contracts to the DIIHR Bureau of Financial Management for computer input. Sometimes as many as 30-40 of these documents come in from the 43 local WIN offices in a single day; the average number is about 15 per day.

3. (Saviano) spends about a third of her time each day responding to phoned-in questions from the field offices, largely procedural in nature. About half of these questions are from the clerical staff who prepare and send the WIN invoices (Appellant's Exhibit 7) to her and half from the professional staff, job developers whose classifications range from Job Service Specialist 1 (JSS 1) to JSS 5 and J S Supervisor.

4. There are at various times from 100-200 such job developers who work with public and private employers in setting up contracts for the employment of WIN clients. They have the manual available in the field and are responsible for the accuracy of the contracts.

5. Although the WIN manual sets forth the guidelines for determining the appropriate contract to be used, namely Public Service Employment (PSE), On-the-Job-Training (OJT) or Intensive Follow-up (IF), as well as some specific provisions within each contract relating to such subjects as fringe benefits, in-kind employer contributions, institutional training and transportation, it does not cover all problem areas in depth. There is nothing in the manual about the hard-to-place client, about which (Saviano) gets an average of 2 calls per week and to which she responds based on her experience without consulting with supervisors.

6. (Saviano) has in-depth knowledge regarding procedures and the movement of WIN employment documents.

7. About one-third of the contracts come in to (Saviano) with errors, which (Saviano) returns with notation of errors on the correction form which she designed (Appellant's Exhibit 7).

8. (Saviano's) supervisor (Dichraff), chief of the Employment Contract and Job Development Section of the WIN Bureau, is responsible for the development and revision of Chapter 12 of the WIN Manual. He in turn delegates the writing of each specific section to the employe who has the expertise for that portion; in the case of the WIN Employment Contracts section this was (Saviano's) co-worker, (Graves) a contracting specialist who drafted most of the policy sections and who, along with (Saviano), worked on drafts of the procedural portions. (Saviano) had a "considerable" or "big" role on procedural sections, as the person most involved with the movement of documents through the WIN bureau, and possessing an in depth knowledge of their handling.

9. About 40-60% of the JSS 5's time is spent in answering questions from the field, including policy and procedural questions, complaints, and calls from employers about payments. Whereas (Saviano) handled largely procedural

questions, he handled primarily policy matters; he could authorize deviations from manual procedures if circumstances warranted, whereas (Saviano) could not, although she could authorize contract extensions within the guidelines.

10. When the section supervisor and the JSS 5 were both out of the office, (Saviano) conducted all of the section's normal functions and all questions regarding employment contracts were referred to her. Based on her knowledge and experience, (Saviano) responded to virtually all such questions, including policy matters; according to the JSS 5, she did a very good job. There are no specific functions of the JSS 5 which (Saviano) did not perform in his absence other than authorize deviations from manual procedures.

11. On December 20, 1977, the State WIN Director "appealed" reclassification denial by DILHR personnel with the statement that: "Based on her training and experience she has progressed in her job and is able to handle not only the routine aspects of her job but is able to handle the exceptional cases. She is relied upon to identify contractual items which are out of compliance with WIN policy and take independent corrective action."

. . .

12. (Saviano) devotes 10% of her time to the ongoing process of WIN manual revisions, recommending changes and assisting in the development of procedures and forms for which her supervisor has the primary responsibility. This task is not included in her position description.

13. (Saviano) sets her own priorities and works largely without contact with or direction from her supervisor.

14. (Saviano) maintains her own files and control system and initiates and prepares monthly statistical reports relating to WIN employment contracts.

15. (Saviano) does a minimum of typing (5% of her time), solely as related to her own monthly reports and correspondence with field offices.

16. (Saviano) serves as liaison between DILHR's Bureau of Financial Management and the Federal Payment Bureau.

17. At the time of the review, (Saviano) had been trained as back-up for WIN Institutional contracts.

18. The WIN Bureau organizational chart (Respondent's Exhibit 6), which was considered as part of the current audit labels (Saviano's) position as "PARA" for paraprofessional (as contrasted with "PRO") for professional.

19. In agreeing to the request for reclassification of (Saviano's) position to JSA 3 on July 8, 1976, the personnel specialist noted:

"Although we are aware that many of Ms. Saviano's position functions were previously assigned to positions classified in the Old Manpower Specialist series (comparable pay range as Job Service Specialist), the position descriptions for the Manpower Specialist positions indicated that these positions were also assigned professional level functions not assigned to Ms. Saviano. These positions were classified based upon the professional level functions assigned."

"The primary functions assigned to Ms. Saviano's position are considered to be advanced sub-professional functions (emphasis provided) appropriately classified at the Job Service Assistant 3 level..." (Respondent's Exhibit 19).

20. (Saviano's) position description dated 3/30/76, which was audited in relation to both the 1976 and current reclassification requests, contained the following Job Summary:

"Under the general supervision of the Section Chief this position provides support services to the WIN Employment Contract Specialist. This specialized position provides a control and review of all WIN/OJT, IF and PSE contract documents on a statewide basis requiring a thorough knowledge of the WIN employment contracting policies, guidelines and procedures. Exercises independent judgment in reviewing contract documents for accuracy and completeness. Takes independent corrective action using a considerable amount of discretion. Communicates with Employment Contract Specialist, local office staff at 30 (then) different WIN offices, DILHR Financial Management, and the State Bureau of Personnel in carrying out responsibilities of the position."

"Maintains a complex recordkeeping system on the financial status of contracts and prepares a variety of statistical reports." (Respondent's Exhibit 5).

21. At the time of the current audit, (Saviano) performed all of the same duties plus assisting in the writing and revision of the WIN manual, development of forms, training of field personnel in procedures, and serving as back-up for Institutional Contracts.

After the filing of timely objections to the proposed decision by the Division, The Commission issued its final decision adopting, with minor modifications, the findings of fact, conclusions of law, order and opinion of the examiner. The Division subsequently initiated this proceeding for judicial review.

The issues before the Court are: (1) Whether all of the Commission's Finding of Fact No. 10 is supported by substantial evidence; (2) Whether the Commission committed an error of law by replacing The JSA 4 position standard definition of "responsible paraprofessional" with a standard dictionary definition, (3) Whether, as a matter of law, The Commission's Findings of Fact require the conclusion that Saviano's position be classified at the JSA 3 level; and (4) Whether The Commission erred by failing to apply Wis Adm Code s. Pers 3.02 (4)(a).

For the reasons discussed below, the Court finds: (1) That a portion of Finding No. 10 is unsupported by substantial evidence, (2) That the Commission did not replace the JSA 4 position standard definition of "paraprofessional" with a standard dictionary definition; (3) That, based on its findings, The Commission could reasonably conclude that Saviano should be classified at the JSA 4 level; and (4)(a). The Commission's decision is affirmed.

DISCUSSION

The first issue is whether Finding of Fact No. 10, to the extent The Commission found that "appellant conducted all of the section's normal functions" and that "There were no specific functions of the JSS 5 which appellant did not perform in his absence", is unsupported by substantial evidence. The Court agrees with petitioner

that this language is not adequately supported. As noted by petitioner, the answers upon which this finding is based were given in the context of testimony concerning Saviano's responsibility for taking all phone calls relating to employment contracts during the absence of Graves and Dichraff. This testimony does not support the conclusion that Saviano performed all of their duties in their absence, some of which, for example, involve road trips for purposes of contract monitoring or job training. The above-cited language is therefore not supported by substantial evidence. However, since this language is not dispositive of the action, no action can be taken under s.227.20(6), Stats.

The second issue is whether the commission erred by replacing the JSA 4 position standard definition of "paraprofessional" with a standard dictionary definition. As stated earlier, the procedure followed by petitioner when it received Saviano's reclassification request was to analyze her current position description, her 1976 position description, her actual duties as reflected in a field audit, position descriptions for representative positions at the JSA 3 and 4 levels, and the position standards for JSA 3 and 4 positions. The position standards for JSA 3 and 4 provide:

JOB SERVICE ASSISTANT 3

Definition

This is entry-level paraprofessional or highly responsible clerical job service work in the Department of Industry, Labor and Human Relations.

Under close supervision, paraprofessional positions at this level provide direct services to clients and employers or support services to professional staff requiring the exercise of considerable discretion and judgment in tailoring services to meet client/employer needs and Job Service program objectives.

Under general supervision, clerical positions at this level (1) perform advanced clerical work characterized by the application of a wide variety of complex, inter-related Job Service program policies and procedures and may train staff in area of specialty; . . . Clerical work at this level is performed in accordance with established Job Service program policies and procedures.

JOB SERVICE ASSISTANT 4

Definition

This is responsible paraprofessional job service work in the Department of Industry, Labor and Human Relations. Staff positions at this level provide direct services to clients and employers or support services to professional staff requiring the exercise of considerable discretion and judgment in tailoring services to meet client/employer needs and Job Service program objectives.

Lead work positions at this level guide: (1) a medium clerical unit in complex and varied Job Service program activities, (2) a large clerical unit engaged in complex specialized Job Service program activities. Major responsibilities include coordinating activities internally and with other work units, setting priorities and recommending new methods for accomplishing work.

The procedure followed by petitioner was in accordance with the applicable statutes and rules. The documents used by petitioner were introduced in support of its position before The Commission. Petitioner contends that when reviewing the Division's decision, however, The Commission failed to apply the language in the JSA 4 position standard defining "responsible paraprofessional" work and replaced it with a standard dictionary definition.

Petitioner argues that in Finding of Fact No. 22 The Commission deleted the JSA 4 requirement that support services provided "(require) the exercise of considerable discretion and judgment in tailoring services to meet client/employer needs and Job Service program objectives. Petitioner also notes that in its opinion The Commission cites a standard dictionary definition for "paraprofessional" and

concludes therefrom that it failed to consider the position standard definition of "paraprofessional", thus erroneously ignoring or amending the position standard definition.

The Court agrees with petitioner that the Commission was required to apply the definition of paraprofessional contained in the JSA 4 position standard rather than a dictionary definition. However, contrary to the petitioner's contentions, the Court does not find that the Commission applied an incorrect definition.

First, the Commission did not delete the qualifying phrase in Finding No. 22. The Commission simply used the words "as above" (referring to the JSA 3 position standard definition cited immediately above) to indicate the remainder of the definition, moreover, the Commission used the dictionary definition of paraprofessional in its opinion simply to see if it coincided with the phrase "advanced sub-professional", as used by the petitioner in 1976 to describe Saviano's job. (Resp. Exh 19) The Commission apparently found that by calling Saviano an "advanced sub-professional" in 1976, the Division meant that she was a paraprofessional as that term is used in the JSA 3 position standard definition. The definition of paraprofessional functions at the two levels is that an individual operating at the JSA 3 level operates under close supervision.

The Commission's use of a dictionary definition for this purpose does not prove that this dictionary definition was the complete definition it applied. Moreover since, as discussed below, findings made by The Commission demonstrate that Saviano's duties and duties similar to Saviano's have been classified as paraprofessional

in the past. The Court cannot find that the Commission applied an erroneous definition.

Petitioner's next argument is that the Commission's Findings of fact mandate the conclusion that her job be classified at the JSA 3 level. Essentially, petitioner is arguing that as a matter of law, applying the definition of paraprofessional contained in the JSA 4 position standard to the Commission's findings, a JSA 4 level classification is not the "best fit" for Saviano's duties.

In considering questions of law, a reviewing Court is required to give great weight to the agency's interpretation of the law. Sec. 227.20(10), Stats; City of Milwaukee v. WERC, 71 Wis 2d 709, 714-715, 239 NW2d 63 (1976). Given the fact that the Commission was authorized to hear the present classification decision and is the agency whose action is reviewed, the Court finds that it, and not the petitioner, is the agency entitled to deference here.

Applying this rule here, the Court finds that the Commission's findings of fact support its conclusion that a JSA 4 classification is the best fit for Saviano. In reaching this conclusion the Court, like the Commission, has considered not only the bare language of the JSA "paraprofessional" definition, but has also considered the manner in which it has been interpreted and applied in the past. In Finding of Fact No. 18 the Commission found that Saviano's position had been labeled as paraprofessional on the WIN organizational chart. In Finding No. 19 it found that the Division had labeled Saviano an "advanced sub-professional" in 1976. In Finding No. 20 it found that Saviano "Exercises independent judgment in reviewing contract documents

for accuracy and completeness. Takes independent corrective action using a considerable amount of discretion."

Contrary to petitioner's contentions, Findings 18 and 19 are material since they show how Saviano's duties have been viewed in the past. The description of Saviano's duties in Finding 20 is also material since Finding No. 21 states that she still performed these duties at the time of the current audit, as well as new tasks.

The Commission also examined "comparables" (Comm. op., p. 7) and concluded that there were substantial similarities between Saviano's duties and those of other JSA 4's. The Commission, like the Division, is entitled to consider these comparables because they demonstrate how the definitions contained in position standards have been applied in the past.

Based on the above, the Commission concluded that its findings demonstrate that Saviano is a paraprofessional as that term has been applied in the past. This conclusion is especially reasonable in light of the fact that the Division itself called Saviano an advanced sub-professional in the past. Since the Commission also found that Saviano works under general, rather than close, supervision, it could reasonable conclude that she was a JSA 4 paraprofessional rather than a JSA 3 paraprofessional or advanced clerical worker.

Petitioner's last argument is that the Commission erred by failing to apply Wis Adm Code s. Pers. 3.02(4)(a), which requires "A logical and gradual change to the duties and responsibilities of a position" before a reclassification can occur. The Court finds that the Commission applied this standard here. In Finding of Fact No. 21 the Commission stated:

"At the time of the current audit, the appellant performed all of the same duties plus assisting in the writing and revision of the WIN manual, development of forms, training of field personnel in procedures, and serving as back-up for Institutional Contracts."

In addition, the opinion itself demonstrates the Commission's consideration of this requirement:

"Not only had appellant worked at the JSA 3 'entry level' paraprofessional classification for almost two years at the time her request for reclassification was denied, but also there had been some additions to her responsibilities which were not reflected in her position description. These include her assignment as back-up for Institutional Contracts, Participation in the ongoing revisions of the WIN manual and development of forms, and assisting in the training of field personnel regarding WIN contract procedures. These additional duties combined with the reliance of Job Service professionals on her expertise evidence her progression from entry level to responsible paraprofessional job service work." (Emphasis added)

On the basis of the above discussion, The Commission's decision is affirmed.

Dated this 2d day of December.

BY THE COURT

William D. Byrne

Circuit Court Branch 9
William D. Byrne