

STATE OF WISCONSIN

PERSONNEL COMMISSION

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 GERMAINE ARNDT and
 WILLIAM GOEHRING,
 Appellants,
 v.
 Administrator, DIVISION OF
 PERSONNEL,
 Respondent.
 Case No. 82-251-PC
 * * * * *

DECISION
 AND
 ORDER

NATURE OF THE CASE

This is an appeal, pursuant to §230.44(1)(a), Wis. Stats., (1981-82) of respondent's denial of appellants' request to reclassify their positions from Area Services Specialist 5 to Area Services Specialist 6. The issue for hearing was:

Whether the administrator's decision to deny the request for reclassification of appellants' positions from Area Services Specialist 5 (PR 1-13), to Area Services Specialist 6 (PR 1-14) was correct.

Hearing in the matter was held on April 18, 1985 and May 10, 1985 before Dennis P. McGilligan, Hearing Examiner. The parties completed their briefing schedule on June 19, 1985.

FINDINGS OF FACT

1. At all times material herein, appellants have been employed in the classified civil service with the working title of Prehearing Investigator in the Bureau of Economic Assistance (BEA), Compliance Monitoring Section, Division of Economic Assistance, Department of Health & Social Services (DHSS). At the time of hire, appellants' positions were classified as Area

Services Specialist 5. Appellants submitted their reclassification requests in the fall of 1982. On September 28, 1982, James Federhart, Bureau of Personnel and Employment Relations, DHSS, conducted an audit of appellants' positions. Subsequently, on October 19, 1982, DHSS recommended that appellants be reclassified to the Area Services Specialist 6 level. That recommendation made the following observation with respect to appellants' work:

Based on our review and analysis, we have concluded that there has been sufficient logical and gradual increase in the complexity of work performed and degree of independence and discretion exercised by the Prehearing Investigator positions to warrant reclassification to Area Services Specialist 6 and concurrent regrading of the incumbents. Since January, 1981, Ms. Arndt and Mr. Goehring have fully developed the prehearing investigation process and have investigated increasingly complex appeals, involving a wide variety of income maintenance program issues. They have had increased contact with higher level managers and staff in the central office of BEA and in the largest county social service agencies in the State. In several cases, based on their investigations, they have recommended policy and procedural changes which have averted potentially costly retroactive benefit payments involving large numbers of clients.

However, said recommendation also noted the following:

In the updated position descriptions for Ms. Arndt and Mr. Goehring submitted with their reclassification requests and during discussions with the incumbents and their supervisor, reference is made to new duties and responsibilities in the areas of ensuring compliance by county agencies with fair hearing orders issued by the Office of Administrative Hearings and by Federal Courts; conduct of specific program reviews and public hearings on programs/policies; and investigation of the extent of civil rights violations and psychological mistreatment and abuse of clients by local agency staff. From our review of the original Area Services Specialist 5 position descriptions for Ms. Arndt and Mr. Goehring dated January, 1980, and other positions in the BEA, it appears that duties and responsibilities of this nature are not a logical outgrowth of duties originally assigned to the Prehearing Investigator positions and as such, cannot be considered as justification for reclassification.

2. Thereafter, Anthony Milanowski, personnel specialist, Division of Personnel, spoke with Federhart about the DHSS recommendation. Milanowski conducted a review of the appellants' positions. This review included a discussion of the positions' duties and responsibilities with the appellants

and their supervisor, Louise Bakke, followed by a comparison of these duties and responsibilities to the class specifications and to other positions in state service. Milanowski concluded that the appellants were appropriately allocated to the Area Services Specialist 5 level. Subsequently, by memo dated November 24, 1982, respondent turned down appellants' reclassification requests. Said memo explained, in part, the reasons for the denial as follows:

The positions were also not considered to be appropriately allocated to the Area Services Specialist 6 class. Allocation of this type of position to the class could only be based upon ". . .unsupervised responsibility for highly sensitive liaison with local officials, community leaders, etc." (See copy of Area Services Series specification, attached.) Based on our discussion with the position's supervisor, the liaison responsibilities of the positions cannot be described as unsupervised, nor is liaison with local officials or community leaders the primary purpose of the positions. Nor does the position compare with other positions in PR 12-06, or in counterpart pay ranges. For example, the Social Services Specialist 1-Confidential "Grievance Examiner" positions in the Division of Care and Treatment Facilities (copy attached) are considered to have greater impact and complexity, and require a greater degree of knowledge, because they are responsible for making actual decisions on client complaints and have to take facts about medical and psychological conditions of clients, as well as administrative procedures and laws into account. This requires knowledge of patient treatment modalities as well as explicit laws and regulations governing provision of treatment services.

Allocation of positions to the Area Services Specialist 1-5 classes is based on comparisons with other positions in that series and with specifications for more specific classes. Comparable positions at the Area Services Specialist 5 level are those of Caryl Peterson, in the Division of Community Services, and Michael McCloskey, in the Division of Economic Assistance. (Copies attached.) These positions are considered comparable in scope and impact, and, though the level of complexity is greater, the more difficult personal contacts necessary in Ms. Arndt's and Mr. Goehring's position is counterbalancing. These personal contacts, however, are not considered to raise the positions beyond the 12-05 level, because a wide variety of other positions at that level also have such contacts, such as Probation and Parole Agents and Psychiatric Social Workers, all allocated to the Social Worker 3 (PR 12-05) level. These social worker positions also require a greater degree of knowledge in the treatment area and are confronted with problems where there are fewer guidelines and more need for individual judgement than in the Arndt and Goehring positions.

It should also be noted that similar work is performed by positions in the Equal Rights Officer 3 and 4 classes (PR 12-04 and 12-05, respectively). Review of the specifications for those levels (copies attached, relevant portions underlined) shows that such positions are involved in similar investigation, mediation, liaison, analytical, and decision making activities.

In the absence of any comparable positions or classes at the 12-06 level, these comparisons suggest that the positions are appropriately allocated to their present PR 12-05 level....

3. On December 27, 1982, appellants filed a timely appeal of said decision with the Personnel Commission.

4. Appellants were hired as prehearing investigators in late 1979. From late 1979 through 1981, appellants helped to develop the prehearing investigation program under the direction of their supervisor, Louise Bakke, Chief-Compliance Monitoring Section, BEA. The program was essentially in place in 1981. Changes and refinements in the program continue, as part of appellants' basic level of responsibility.

5. Under the general supervision of Bakke, appellants function as field representatives to review, investigate and analyze formal client/agency disputes regarding various income maintenance programs including AFDC, Food Stamps, Medical Assistance and SSI/MA discontinuances. Appellants' duties are to resolve or expedite complaints, to evaluate Fair Hearing requests and informal complaints and to make recommendations for improved program policies, procedures or monitoring. Appellants also monitor compliance with court orders, making a judgement, when appropriate, to recommend a disallowance be taken to ensure such compliance, and to maintain and update a statistical record and reporting system.

6. Appellants do not have responsibility for supervision of other professional staff.

7. The following findings are with respect to appellants' responsibility for development of the prehearing investigation program:

- a. Louise Bakke, as head of the Compliance Monitoring Section, had administrative responsibility for the development of the prehearing investigation program.
- b. Appellants had "hands-on" responsibility for the development of the aforesaid program.
- c. Appellants not only supplied information and recommendations concerning procedural changes but also were responsible for proposing substantive changes in the program as well. Examples of procedural and substantive changes effectively recommended by appellants include, but are not limited to, the following:
 - 1) Practice in Milwaukee County of not reinstating or continuing benefits when a case is going to hearing--This practice was identified by appellant Goehring. In response Bakke asked him to investigate the extent of the practice. Depending on what appellant Goehring found, the agency would take corrective action.
 - 2) Progress reports were made on the activities of the prehearing investigators. As part of these evaluations, program changes were recommended which appellants effectively participated in. For example, in the report dated September 18, 1981, the idea of establishing an ombudsman in Milwaukee due to the peculiarities (and number) of the appeal load there was discussed and proposed. This recommendation was also discussed in several other reports.

- d. Appellants were delegated authority to effectively recommend disallowances in 1981 because they were primarily out in the field investigating allegations made by clients on appeal and making contacts in the county social services systems to assure that correct and appropriate service was provided to clients of the agencies. (disallowances represent dollar errors in case processing by counties for which they may not be reimbursed)

8. The following findings are with respect to appellants' contacts with agencies, local officials and community leaders:

- a. Appellants had generally unsupervised responsibility for sensitive liaison with politically visible and active advocacy groups, as well as with county agency heads and department heads and other local officials and community leaders.
- b. As the prehearing investigation program became more acceptable, the highly sensitive nature of the appellants' local contacts decreased somewhat, particularly with respect to certain advocacy groups. However, the sensitive nature of appellants' liaison work continued depending on the nature of the case, the issue and parties, etc. In addition, as the program fell into place, appellants were given greater freedom in their contacts with higher level local agency executives and officials.

9. Although Bakke had final administrative responsibility for the prehearing investigation program as chief of the Compliance Monitoring Section, appellants had a great deal of discretion and independence in carrying out the program's functions. Bakke might set some goals and

guidelines for appellants but they were pretty much left on their own to implement and to administer the program. Generally, appellants worked under very loose supervision from Bakke in performing their duties.

10. The Area Services Specialist position standard provides, in relevant part, as follows:

Area Services Specialist 1, 2, 3, 4, 5

In general, duties include specific levels of professional services, also requiring acceptance by the people served and special understanding of unique problems of the neighborhood. Services may be in any of the professional fields required by the program.

Duties include unique requirements as described above and appropriate level professional services in the required field of work, labor market services, social work, counseling, etc.

Area Services Specialist 1	12-01
Area Services Specialist 2	12-02
Area Services Specialist 3	12-03
Area Services Specialist 4	12-04
Area Services Specialist 5	12-05

Area Services Specialist 6

Duties include all of the responsibilities described above, plus responsibility for supervision of other professional staff, development of the program, administrative responsibility, and/or unsupervised responsibility for highly sensitive liaison with local officials, community leaders, etc.

Area Services Specialist 6	12-06
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Qualifications

Specialized or unique understanding, acceptance and communication skill, plus a reasonably parallel training and/or experience requirement related to the standard class for the type of service, level and salary range. Training and experience equivalencies shall also provide recognition for the additional specialized area expertise.

11. From a classification standpoint, the appellants' positions are at a lower level than the Compliance Monitor positions which are classified two pay ranges higher than appellants. In this regard the record indicates that although appellants and the compliance monitors share some responsibilities

and similarities in duties, i.e. both positions have identical discretion to effectively recommend disallowances as sanctions against agencies, the scope and complexity of their work differ. While appellants were required to investigate and analyze formal client/agency disputes in the income maintenance area, Compliance Monitors investigated whether the agency as a whole was in compliance with federal and state laws, regulations and manuals pertaining to income maintenance programs. The scope and impact of the Compliance Monitor's decisions were often broader than the appellants. While appellants dealt with individuals interfacing the counties' systems, the Compliance Monitors worked with the counties' income maintenance systems regarding the overall administration of their programs in this area.

12. The following findings are with respect to appellants' duties as compared to the Social Services Specialist 1-Confidential "Grievance Examiner" positions in the Division of Care and Treatment Facilities, Department of Health and Social Services, compensated at a pay level which is a one-level higher comparable pay range to appellants:

- a. The complexity of issues involved and the constant rate at which modifications to policies and procedures must be assimilated by appellants' positions, compare favorably to the grievance examiner position.
- b. The appellants and grievance examiners are both part of a formalized legal process which, although differing in some respects, is similar in many ways as follows:
 - 1) Both positions conduct a form of hearing. Parties may be unrepresented or represented. Appellants frequently deal with attorney advocates. Grievance examiners do not permit attorneys to represent parties to the grievances

but do permit other advocates, including union representatives.

- 2) The appellants make decisions substantially similar to the way in which the grievance examiner makes decisions. Both positions look at documentary evidence, both positions receive information from all sides of the controversy, directly from those involved, after participants have had opportunity to present facts and arguments. Neither position permits parties to the dispute to cross-examine each other, but rather asks for information to be given directly to the decision maker.
- 3) Neither position has the ability to order employee discipline as part of a remedy. Both positions can effectively recommend remedial sanctions for failure to comply with their recommended conclusions.
- 4) In conducting their proceedings and writing decisions, both appellants and grievance examiners do legal research where necessary and both have to know all applicable laws and regulations regarding their fields of expertise.
- 5) Both the grievance examiner and the appellants can try to negotiate resolutions of the disputes before them.

Based on the above, the Commission finds that from a classification standpoint, the appellants positions are at the same level as the grievance examiners.

13. From a classification standpoint, the appellants' positions are at a higher level than the following positions:

- a. Michael McCloskey occupied a position with the classification of Area Services Specialist 5 in the Division of Economic Assistance, DHSS. McCloskey conducted agency management and administrative performance reviews in the income maintenance area in thirty-eight (38) counties. In doing this, McCloskey would make positive as well as negative findings and would recommend corrective action. Essentially, he studied how the agency ran their income maintenance programs. In carrying out this responsibility, McCloskey functioned as a team member utilizing a rather structured and focussed approach in his reviews. McCloskey also prepared "assigned segments of preliminary county written performance review report for team leader." McCloskey did not have the difficult personal contacts in his job which were necessary to appellants' positions.
- b. Caryl Peterson occupied a position with the classification of Area Services Specialist 5 in the Division of Community Services, DHSS. Peterson developed planning strategies for analysis of agency compliance with Title XX regulations; evaluated state and local plans including recommendations for corrective action; provided technical assistance in this area including training workshops and coordinated the development "and preparation of Q.C. information using advanced statistical techniques." Again, Peterson did not have the difficult and sensitive contacts in performing her work that appellants did. Essentially her duties involved organization analysis and management study involving the programs noted above.

14. From a classification standpoint, the appellants' positions are at a higher level than positions allocated to the following classes:

- a. Positions allocated to the Social Worker 3 (PR 12-05) have the same type of difficult client contact. These positions require knowledge in the treatment area so that they may make treatment decisions such as which program to enroll the client or a particular type of therapy to be used. They apply general social work principles to particular cases where no guidelines apply. Yet, they are supervised more closely than appellants. They also do not have the same authority as appellants to recommend changes in the program, participate in its development or administer it.
- b. Similar work was performed by positions assigned to the Equal Rights Officer 3 and 4 classes (PR 12-04 and 12-05, respectively). Both positions "enforce" laws of similar complexity, perform investigations with difficult personal contacts, and are involved in similar analytical and mediation type activities. However, the Equal Rights Officer positions function under closer supervision, interpret fewer laws and regulations, do not have the same complex program and administrative responsibilities. Said positions also do not have highly sensitive contacts with local officials and community advocates.

15. The duties and responsibilities of appellants' positions are more accurately described by the class specifications for an Area Services Specialist 6 and appellants' positions are more appropriately classified as Area Services Specialist 6.

16. The parties have stipulated, and the Commission finds, that the effective date of reclassification is July 12, 1982.

CONCLUSIONS OF LAW

1. This matter is appropriately before the Commission pursuant to §230.44(1)(a), Stats. (1981-1982)
2. The appellants have the burden of proof of establishing that the respondent's decision denying reclassification of their positions was incorrect.
3. The appellants have sustained their burden.
4. The respondent's decision to deny the request for reclassification of the appellants' positions was incorrect.

OPINION

In order to reclassify a position, there must be logical and gradual changes in the duties or responsibilities. ER-Pers. 3.01(3), Wis. Adm. Code. When applied to the facts of the case, this requires the appellants to show that their positions changed sufficiently so as to resemble the duties and responsibilities of an Area Services Specialist 6 more closely than those of an Area Services Specialist 5.

According to the class specifications, an Area Services Specialist 6 has all of the duties of an Area Services Specialist 5 plus "responsibility for supervision of other professional staff, development of the program, administrative responsibility, and/or unsupervised responsibility for highly sensitive liaison with local officials, community leaders, etc."

It is undisputed that the appellants do not supervise other professional staff. The parties differ, however, over the extent of the appellants' responsibility for development of the prehearing investigation program. Tony Milanowski testified on behalf of the respondent that at the time of his audit, the appellants had at best minor responsibility for the development of the aforesaid programs. The record as a whole, however, supports an opposite

conclusion. In this regard the record indicates that in late 1979 when appellants were hired they helped implement the program with comparatively close supervision from their supervisor, Bakke. As time went on Bakke gave appellants more independence to run the program. By 1981, prior to their reclassification request, said program was essentially in place. During this period of time appellants supplied information and recommendations concerning procedural and substantive changes in the program. Even after the program was essentially in place appellants retained effective authority to recommend changes in the program. Over time, as appellants' expertise was developed, they were given more and more discretion to make decisions concerning the functioning of the program with respect to selection of cases, with respect to design of their work plans, and with respect to their unsupervised contacts with all levels of the county systems as well as with other community leaders and with advocacy programs. In sum, appellants had to develop and carry-out the pre-investigation program although Bakke, as chief of the Compliance Monitoring Section, had final administrative responsibility for the development of the program.

With respect to the third factor in the class specifications, "administrative responsibility", the record is clear that Bakke, their supervisor and a section chief in the state civil service, had administrative responsibility for the program. In contrast, appellants had "hands-on" responsibility for carrying out the program.

Finally, the record supports appellants' contentions that they had unsupervised and highly sensitive contacts with local agencies, clients, and advocacy groups. With respect to advocates, these contacts were especially difficult in the beginning as the program was new and somewhat controversial. These contacts were "unsupervised" in the sense appellants were under general

supervision by Bakke--a loose and unrestrictive manner of supervising appellants according to Bakke's manner of running the program. Respondent argues that it is a requirement of reclassification of the positions that liaison with community leaders be a primary purpose of the appellants' positions. However, the class specifications do not specifically require this.

Neither the class specifications nor respondent's experts state with any clarity how many of the classification factors set out in the Spec. 6 description must be present to support reclassification. Milanowski did admit, however, that his reading of the actual language was that one factor was sufficient. As noted above, appellants satisfied at least two of the factors at the time of their reclassification request.

The parties also differ over whether appellants' jobs compared with other positions in the 12-06 pay range or other counterpart pay ranges. Of particular interest is the Social Services Specialist 1-Confidential "Grievance Examiner" positions in the Division of Care and Treatment Facilities, DHSS, compensated at the PR 12-06 pay level. The parties argue mainly over the differences in the type of hearing conducted and the type of decision rendered by the respective positions in order to support their contentions. (Appellants contend their positions are comparable to the grievance examiners while respondent takes the opposite position.) More persuasive, in the opinion of the Commission, are the similarities between the positions as noted in the Findings of Fact. For this reason, the Commission finds that from a classification standpoint, the appellants' positions are at the same level as the grievance examiner.

The other positions discussed by the parties in support of their contentions are noted in the Findings of Fact. The reasons said positions are not comparable to appellants' are basically set forth in the Findings. In

sum, appellants' positions are at a higher level than the two other ASS 5 positions in DHSS because of the amount of independence and discretion utilized by appellants in carrying out their functions and because of the difficult personal contacts made by appellants not only with clients but also community advocates and other leaders. The comparison of appellants' positions to that of Equal Rights Officers also shows appellants to be at the higher level. In this regard the record indicates that although there are some similarities between the two positions appellants function with more independence and discretion; have greater responsibility for development of the program and have more difficult contacts with local officials and community leaders. For basically the same reasons, appellants' positions are not comparable to positions allocated to the Social Worker 3 (PR 12-05) level.

Both Bakke and Goehring testified persuasively to the manner in which the current functioning level of the appellants' positions evolved. The functions were new at the time Bakke hired the appellants. Over time, as appellants' expertise was developed, they were given more and more discretion and responsibility to make decisions concerning the functioning of the program and with respect to their sensitive contacts with all levels of the county systems as well as with other community leaders and with advocacy programs. Additionally, because appellants were primarily out in the field, they also were eventually given certain additional responsibilities by the OAH, which were recognized by their supervisor and incorporated into their position descriptions on a permanent basis. (R.Ex. 1, 1a, 2) Appellants were delegated authority to effectively recommend disallowances in 1981. Appellants also began to serve in a consulting capacity to county agencies because they were available to the counties in the field, and because they had the required knowledge to carry out the function. The development of

their positions was gradual and logical from 1980 through 1982 when they requested reclassification to ASS 6.

ORDER

The respondent's reclassification decision is rejected and this matter is remanded for action in accordance with this decision.

Dated: September 13, 1985

STATE PERSONNEL COMMISSION


DENNIS P. MCGILLIGAN, Chairperson


LAURIE R. MCCALLUM, Commissioner

DPM:vic
VIC001/1

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*Pursuant to the provisions of 1983 Wisconsin Act 27, published on July 1, 1983, the authority previously held by the Administrator, Division of Personnel over classification matters is now held by the Secretary, Department of Employment Relations.

CONCURRING OPINION

It is clear from the language of the Area Services Specialist position standard that, in order to be classified as an Area Services Specialist 6, a position must perform in addition to the responsibilities required for classification at a lower level within the series, one or more of the following:

- 1) supervision of other professional staff
- 2) development of the program
- 3) administrative responsibility
- 4) unsupervised responsibility for highly sensitive liaison with local officials, community leaders, etc.

Contrary to respondent's assertion, it cannot fairly be implied from the language of the position standard that one or more of such factors must constitute the primary emphasis of a position in order for the position to be classified at the 6 level.

It is clear from the record that appellants do not supervise other professional staff or have administrative responsibility for the program.

In my opinion, appellants are not responsible for program development. Although appellants have responsibility for carrying out the program and for recommending changes in the program based upon the experience they have gained working with the program, these responsibilities are not equivalent to program development responsibilities which, it is clear from the record, rest with Ms. Bakke.

However, it is also my opinion that appellants have unsupervised responsibility for highly sensitive liaison with local officials, community leaders, etc. The existence of this responsibility appears to result from the fact that appellants spend much of their work time physically removed from their supervisor and from Ms. Bakke's management style which encourages and

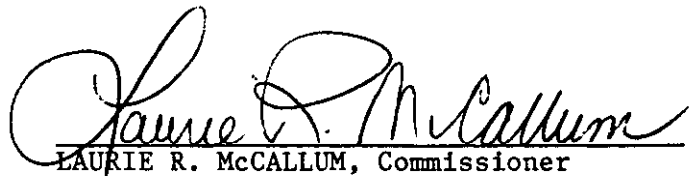
requires independence on the part of the appellants in carrying out their responsibilities under the program.

Respondent argues that basing a reclassification to the Area Services Specialist 6 level solely on the fact that the position has unsupervised responsibility for these highly sensitive liaisons would render the classification specifications useless in terms of distinguishing levels because any position with liaison responsibilities would have to be classified at the Area Services Specialist 6 level. Since I have relied, for my analysis, on the clear language of the position standard, this problem perceived by the respondent necessarily results from the manner in which the language has been drafted, not the manner in which it has been interpreted.

The language of the classification specifications is the controlling factor in any reclassification decision and, in the instant appeal, the governing specifications do not appear overly general or subject to more than one interpretation. The use of comparable positions, therefore, is not necessary.

Dated: September 13, 1985

STATE PERSONNEL COMMISSION


LAURIE R. McCALLUM, Commissioner

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