

STATE OF WISCONSIN

PERSONNEL COMMISSION

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 *
 VICKI FREDRICK,
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 Appellant,
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 v.
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 Secretary, DEPARTMENT OF
 EMPLOYMENT RELATIONS,
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 Respondent.
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 Case No. 84-0204-PC
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FINAL
ORDER

This matter is before the Commission following service of the hearing examiner's proposed decision on the parties.

The Commission has considered the objections and arguments of the parties and has consulted with the examiner. As and for its final disposition of this matter, the Commission adopts and incorporates by reference the proposed decision and order, a copy of which is attached hereto, and adds the following opinion:

In regard to the request by appellant to reopen the hearing, it is noted by the Commission that such a remedy was granted by the Commission in Blid v. DOT, Case No. 81-290-PC. However, the elements relied upon by the Commission in the Blid case in reopening the hearing are not present in the instant case; i.e., the appellant here was not unrepresented, and evidence critical to appellant's case was not excluded by the examiner. Furthermore, in Blid the appellant had a reasonable basis to have believed that the excluded document would be admitted, because it was entitled "Practitioner's Report on Accident or Industrial Disease in Lieu of Testimony," albeit it was a form prepared for use in a worker's compensation

proceeding that was governed by different statutory provisions than the Commission proceeding.

The Commission agrees with the examiner's decision dated February 26, 1986, not to grant appellant's request to reopen the hearing for the reasons cited in her decision.

The Commission notes in regard to the merits of the appeal that:

1. There is not only a quantitative difference between appellant's consulting duties and those of the Krueger position but a qualitative difference as well; i.e., the Krueger position's consulting duties cover a wide spectrum of subject areas while appellant's are generally limited to the writing assessment area.


2. The percentages of time assigned to the consulting duties of appellant's position and the Krueger position in the proposed decision are intended to represent time spent consulting "on-site" with LEAs. This is consistent with the hearing record, i.e., in his testimony, Mr. Allen specifically stated that the percentages of time he was citing for appellant's position's and the Krueger position's consulting duties represented time spent consulting "on-site" with LEAs. There is no evidence in the record to indicate that either party had any different understanding or was citing percentages or comparing percentages in some other context.

Dated: April 17, 1986 STATE PERSONNEL COMMISSION


DENNIS P. MCGILLIGAN, Chairperson

LRM/AJT:jmf
ID 3
Attachment


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LAURIE R. MCCALLUM, Commissioner

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PROPOSED
 DECISION
 AND
 ORDER

NATURE OF THE CASE

This is an appeal pursuant to §230.44(1)(a), Stats., of the denial of the appellant's request for the reclassification of her position. A hearing was held before Laurie R. McCallum, Commissioner, on May 23 and June 24, 1985, and the briefing schedule was completed on November 14, 1985.

FINDINGS OF FACT

1. At all times relevant to this appeal, appellant has been employed in the classified civil service in the Education Specialist series in the Pupil Assessment Section, Bureau for Assessment and Testing, Division for Instructional Services, Department of Public Instruction (DPI).

2. Effective January 10, 1982, appellant's position was reclassified from Education Specialist 3 (ES 3) to Education Specialist 4 (ES 4). It was noted by the Department of Employment Relations (DER) at that time that a position classified at the ES 4 level is considered to be at a developmental level within the ES progression series if the duties of such position involve a full range of research and evaluation functions as described

in the ES position standard. DER went on to note that, as long as the duties of appellant's position involved only one research and evaluation function, i.e., assessment, the ES 4 level would be considered the objective level for her position.

3. At the time of the 1982 reclassification decision, appellant's position performed the following duties:

- 60% A. Development of objective-referenced tests for the Wisconsin Pupil Assessment Program and the Local Option Testing Service.
- 30% B. Development of customized-reference tests for local school districts.
- 10% C. Performance of general program-related activities, including assisting in the writing, editing, proofreading, and production of program publications; answering telephone inquiries regarding general aspects of the assessment program; and presenting the purposes and products of the Pupil Assessment Program to professional organizations and groups outside the agency.

4. The Pupil Assessment Section no longer develops customized objective-referenced tests for local school districts.

5. During 1984, appellant requested a reclassification of her position from the ES 4 to the ES 5 level. This request was denied by the DPI in a memo dated June 4, 1984. DPI's denial was re-reviewed by DER and DER concurred with such denial in a memo dated September 21, 1984. Appellant filed a timely appeal of such denial with the Personnel Commission.

6. The position description signed by appellant on August 24, 1983, and submitted as part of her reclassification request summarizes the duties and responsibilities of appellant's position as follows:

- 40% A. Design and development of objective-referenced test instruments to be used in the Wisconsin Pupil Assessment Program and by LEAs (Local Education Agencies equal Local School Districts) through the Local Option Testing Service.
- 25% B. Design, development, and implementation of hand scoring procedures to be used for essay-type test items/exercises.

25% C. Preparation of written technical reports about the Wisconsin Pupil Assessment Program and Local Option Testing Service for dissemination to LEAs and the general public.

10% D. Performance of general program-related activities.

D.1 Review and critique materials developed by other staff members

D.2 Present the purposes and products of the Assessment Program to professional organizations and groups outside the agency. Describe the test development process and respond to questions from the audience.

D.3 Attend workshops and conferences to gain further knowledge and keep current in the area of testing and test development.

D.4 Respond to inquiries regarding the Assessment Program and Local Option Testing Service.

7. In preparing for the hearing in the instant appeal, appellant prepared a "position summary" which summarizes the duties and responsibilities of appellant's position as follows:

30% A. Design and development of objective-reference test instruments and scoring procedures to be used in the Statewide Assessment Program and by Local Education Agencies (LEA's) through the Local Option Testing Service.

25% B. Develop, direct, and coordinate operations of the Statewide Assessment Program and the Local Option Testing Service.

B.1 Identify and analyze specific issues related to local school district testing needs and practices.

B.2 Participate in developing policy and providing direction to the Statewide Assessment Program and the Local Option Testing Service.

B.3 Develop test administration guides detailing the procedures to be followed by LEA's during test administration to standardize Statewide Assessment and Local Option Testing.

B.4 Direct and implement the process of securing a scoring and reporting contractor and evaluate contractor's proposals.

B.5 Develop policies and procedures to be followed and materials to be used by the scoring contractor for conducting the Statewide Assessment Program and the Local Option Testing Service.

- B.6 Coordinate, supervise, and approve the activities and products of the scoring contractor throughout the preparation period, test administration, scoring sessions, and reporting of test results to the DPI and LEA's.
- B.7 Train the scoring contractor in the methods of hand scoring essay-type tests to ensure inter-rater and intra-rater reliability and validity.
- 25% C. Preparation of written technical reports about the Statewide Assessment Program and the Local Option Testing Service for dissemination to LEA's, the state legislature, the governor, other states' assessment programs, and other interested persons or groups nationally.
- 20% D. Consultation with and provision of technical assistance to local school districts and assessment programs in other states in the use of state assessment tests and the development of assessment programs.
 - D.1 Act as the Wisconsin Public Assessment Program's resource person in the area of essay-type testing by providing technical assistance, inservice presentations, training workshops, and written articles for DPI personnel, LEA's, and other interested individuals and organizations nationally.
 - D.2 Consult with local school districts and others to provide information about the products and purposes of the Statewide Assessment Program and the Local Option Testing Service.
 - D.3 Assist local school districts in coordinating LEA testing activities and DPI statewide assessments.
 - D.4 Assist LEA's and assessment programs in other states to analyze their needs in order to design testing programs to meet their needs.
 - D.5 Attend workshops and conferences to provide information about the Statewide Assessment Program and the Local Option Testing Service and to gain further knowledge from innovative research which may be of benefit to the Program.

8. The primary distinction between the position description (Finding of Fact #6) and the position summary (Finding of Fact #7) is the representation in the position summary that 20% of appellant's position's time is devoted to "consultation" duties.

9. For purposes of the instant appeal, "consultation" means evaluating the needs of a particular program and providing technical assistance

regarding how those needs can be met by exploring alternatives and making recommendations.

10. The record describes four occasions since February, 1982, when appellant "consulted" with an LEA to advise the LEA of what testing options were available in the writing assessment area taking into account the particular needs and curriculum of the LEA. Appellant's work with programs in other states was limited to describing the Wisconsin Pupil Assessment Program and the local option testing service, not "consulting." These four "consultations" described in the record were:

Whitewater - February, 1982
Milwaukee - March, 1982
Waukesha - December, 1982
Dodgeville - record does not indicate date

11. Positions in the ES series offered in the record for comparison purposes include the following:

(a) John Thoman - ES 4:

60% A. Preparation of competency shelf tests in mathematics, reading, and language arts for grades 3, 7, and 10.

30% B. Coordinate activities in the development of the shelf tests with the development of the item bank.

10% C. Performance of general program-related activities.

C1. Attain additional university training, participate in out-of-state training programs, and read current publications to gain further knowledge applicable to the functioning of this position.

C2. Review and comment on materials developed by other staff members. Assist in the writing, editing, and proofreading of program publications.

C3. Respond to questions from the public, either by letter or over the phone, about the assessment program or testing in general.

C4. Present the purposes and products of the Competency-Based Testing Program to interested individuals outside

the agency. Describe the test development process and respond to questions.

- C5. Participate in workshops for school district staff who are participating in the Competency-Based Testing Program.
- C6. Write general program correspondence for the signature of the Competency-Based Testing supervisor.
- C7. Assist other staff members as directed by the Competency-Based Testing supervisor.

(b) Rajah Farah - ES 4:

- 50% A. Design and development of objective-referenced test instruments to be used in the Wisconsin Pupil Assessment Program and by LEAs through the Local Option Testing Service.
- 35% B. Preparation of written technical reports about the Pupil Assessment Program and Local Option Testing Service for dissemination to LEAs and the general public.
- 15% C. Performance of general program-related activities.
 - C1. Attend workshops and conferences to gain further knowledge and keep current in the area of testing and test development.
 - C2. Review, edit, and critique materials developed by other staff members.
 - C3. Respond to questions from the public, either by letter or over the phone, about the assessment program or testing in general.
 - C4. Present the purposes and products of the Pupil Assessment Program to interested individuals outside the agency. Describe the test development process and respond to questions.

(c) Charlotte Oinonen - ES 5:

- 25% A. Development, design, coordination, and management of the Parker Project.
- 25% B. Plan and conduct research in the assessment of the establishment of a base of information regarding the preparation of the secondary student for the world of work.

- 20% C. Assessment of the future needs of business, industry, and society and the capability of secondary schools to meet these needs in 1990 and 2000.
- 20% D. Development and dissemination of reports on Phase 1 and on the Futures activities of Phase 2.
- 10% E. Provision of Public Information, Public Relations, liaison, and staff services.

The duties and responsibilities of this position involve extensive planning; budgeting; locating and negotiating with funding sources; survey development; hiring and supervising project staff; planning, developing, and conducting conferences; and making policy recommendations.

(d) John Scott - ES 5:

- 20% A. Coordination and management of the Teacher Preparation Project including preparing and monitoring budget, preparing project timetables, preparing research plans, identifying personnel and resources to conduct needed research, and coordinating data gathering activities of project personnel.
- 15% B. Review current programs of preparation for professional educators including identifying and analyzing trends.
- 20% C. Project the need for teachers and other professional educators, 1985 - 2000.
- 20% D. Develop recommendations for changes in preparation of teachers and other professional educators.
- 20% E. Provision of staff services.
- 5% F. Participation in Bureau, Department, and Division meetings.

(e) David Krueger - ES 5:

- 30% A. Consultation with local school districts and CESAs to provide technical assistance in the development of local assessment programs and use of state assessment instrumentation.
- 30% B. Develop, direct, and coordinate the operation of the Wisconsin Pupil Assessment Program's Local Option Testing Services for Wisconsin school districts and private schools.
- 30% C. Design and development of test instrumentation to be used in the Wisconsin Pupil Assessment Program and by LEAs in the Local Option Testing Service.

10% D. Preparation of written reports about the Wisconsin Pupil Assessment Program for dissemination to local school districts and the general public.

12. The position standard for the ES series provides in pertinent part:

F. Definitions

The following definitions describe the basic functions of each position category by area of specialization:

1) Research and Evaluation - This area describes positions which are responsible, in varying capacities, for collecting and analyzing data used for making decisions concerning the relative value of various educational programs and projects. The work normally includes conducting field reviews of programs and projects, and providing technical assistance in the use of evaluation methods and statistical data to other staff members and to local education officials. Employees in this area perform evaluation and assessment duties in planning, testing, needs analysis, and related areas.

G. Classification Factors

Because of the wide variety of educational programs and activities and the range and scope of the duties and responsibilities which may be assigned, every combination of duties and responsibilities cannot be addressed and expressed in the class descriptions. As such, when allocating a position to a classification level within this series, the same classification factors which were used to establish the classification levels in this standard should be used to compare the position to other previously identified positions in this and other classification series. The general classification factors are:

1) Responsibility/Accountability - This general factor relates to the finality and the consequence of error of the decisions made and the functions performed. Some specific aspects of this factor are:

- a. the nature and type of supervision received;
- b. The availability of other professional staff who have the responsibility for the most difficult and unprecedented decisions and tasks;
- c. the degree of impact decisions and work efforts have on end results;
- d. the magnitude of the program area;
- e. the latitude of the employe to determine work priorities and to select alternative methods of accomplishing work;
- f. the extent to which the position's responsibilities are shared with other positions.

- 2) Scope/Complexity - relates to the nature, number, variety, and intricacy of tasks, steps, processes, or methods in the work performed; the difficulty in identifying what needs to be done; the difficulty and originality involved in performing the work; and the effect of the work product or service both within and outside the organization. Some specific factors to be considered are:
 - a. the diversity of the variables considered in decision making;
 - b. the specificity, applicability, and availability of program guidelines;
 - c. the amount of uncertainty that must be analyzed and eliminated prior to making decisions;
 - d. the degree to which the work involves establishing performance criteria and precedents;
 - e. the relative degree of influence which the position has over the behavior and activities of the program's clientele.
3. Other factors:
 - a. The nature and level of internal and external coordination and communication required to accomplish objectives.
 - b. The total program knowledge required to achieve objectives.

II. CLASS DESCRIPTIONS

Education Specialist 4

- 2) Research/Evaluation or Program Review - This is a progression level for specialists functioning in a developmental capacity in either of these areas of specialization. Employees perform work of a more than routine nature, under limited supervision, for progression to a higher level.

Education Specialist 5

- 2) Research Evaluation - This is the full-performance level for positions performing complex duties in project evaluation and pupil assessment as described in the "Definitions" section of this position standard.

13. Russell Allen, Supervisor of the Wisconsin Pupil Assessment Program, is appellant's first-line supervisor. Mr Allen testified that 2-4% of appellant's position's time is devoted to "consulting" with LEAs. Mr. Allen testified that 33% of Mr. Krueger's position's time is devoted to "consulting" with LEAs. The Commission finds that 2-4% of appellant's

position's time is devoted to "consulting" with LEAs and that 30-33% of Mr. Krueger's position's time is devoted to "consulting" with LEAs. Such "consulting" duties constitute a significant part of the duties and responsibilities of the Krueger position but do not constitute a significant part of the duties and responsibilities of appellant's position.

14. As described in the record, appellant's telephone responses to inquiries from LEAs usually do not exceed 10 minutes in length.

15. The primary distinction between positions classified at the ES 4 level and those at the ES 5 level is the scope and complexity of the duties performed. Due to the fact that the percentage of time appellant's position devotes to duties other than assessment duties is not substantial (2-4%), the duties of appellant's position are more closely comparable to the duties of the ES 4 positions offered for comparison purposes than to those of the ES 5 positions offered for comparison purposes and the duties of appellant's position do not have the scope or complexity necessary for classification at the ES 5 level. Appellant's position is more appropriately classified at the ES 4 level.

CONCLUSIONS OF LAW

1. This matter is properly before the Commission pursuant to §230.44(1)(a), Stats.

2. The appellant has the burden of proving that respondent's decision denying the reclass of appellant's position from ES 4 to ES 5 was incorrect.

3. The appellant has failed to meet that burden.

4. Respondent's decision denying appellant's request for reclassification was correct.

OPINION

Both the language of the ES position standard and the comparison of positions classified at the ES 4 and ES 5 levels indicate that the primary distinction between positions classified at the ES 4 and ES 5 levels is the scope and complexity of the duties performed.

The duties and responsibilities of the Oinonen position, (see Finding of Fact #9c) involve extensive planning; budgeting; locating and negotiating with funding sources; survey development; hiring and supervising project staff; planning, developing and conducting conferences; and making policy recommendations. The duties and responsibilities of the Scott position (see Finding of Fact #9d) involve extensive planning; budgeting; trend analysis; needs analysis and projections; research; coordination of activities of project personnel; and making policy recommendations. The duties and responsibilities of appellant's position are much narrower in scope and complexity than those of the Oinonen and Scott positions. The vast majority of appellant's position's time (96-98%) is devoted to duties directly related to the Wisconsin Pupil Assessment Program and the Local Option Testing Service. In carrying out these duties, appellant operates within policies and procedures established by her supervisor and others. Appellant's position is not responsible for determining the procedures to be followed in developing objective-referenced tests -- appellant's position follows established procedures in working with subject matter experts to develop such tests; appellant's position is not responsible for determining the purpose of nor the type of information to be included in the reports she participates in preparing -- these are established by the Legislature or supervisors within the DPI and appellant's position follows a pre-established format in preparing such reports; appellant's position does not coordinate, lead, or supervise the work of other positions;

appellant's position may recommend changes in operating procedures but she is not responsible for making policy recommendations; appellant's position is involved in planning how the day-to-day responsibilities of the position will be carried out but is not involved in project or program planning; and 96-98% of appellant's position's time is devoted exclusively to assessment duties -- only 2-4% of appellant's position's time is devoted to other research/evaluation duties as described in the position standard.

The duties and responsibilities of appellant's position more closely resemble those of the Krueger position (see Finding of Fact #9e). The primary distinction is that 30-33% of the Krueger position's time is devoted to "consulting" duties, i.e., evaluating the needs of and providing technical assistance to LEAs, and only 2-4% of appellant's position's time is devoted to such duties. Although appellant testified that she had reviewed Mr. Krueger's travel records for the period March, 1982, to March, 1984, and, although she didn't recall the exact number, she thinks that he made 8 to 10 visits to LEAs, appellant is not the custodian of such records, and the Commission found in Finding of Fact #13 that the best evidence of the percentage of time the Krueger position spends on such consulting duties is the 30-33% figure given by Mr. Allen in his testimony. Such "consulting" duties, if they constitute a significant portion of the duties of the position, would definitely increase the general scope and complexity of the duties and responsibilities of the position. Appellant contends that 20% of her position's time is devoted to such "consulting" duties. However, it is not possible to reconcile this with the fact that the record describes only four occasions since February, 1982, when appellant "consulted" with an LEA (see Finding of Fact #8). Although appellant receives phone inquiries from LEAs, the average duration of such calls is

10 minutes which clearly indicates that such calls do not involve the type of complex evaluation or technical assistance duties encompassed within the term "consulting" as that term has been used in the instant appeal. Such "consulting" duties constitute a significant part of the duties and responsibilities of the Krueger position but do not constitute a significant part of the duties and responsibilities of appellant's position.

The scope and complexity of the assessment duties of the appellant's position are comparable to the scope and complexity of the duties of the ES 4 positions offered for comparison purposes (see Findings of Fact #9a, 9b). In particular, 100% of the duties of the Farah position are assessment duties directly related to the Wisconsin Pupil Assessment Program and the Local Option Testing Service. Although appellant's position is involved with the hand-scoring of writing assessments tests because of her specialization in the writing assessment area, and the Farah position is not, these duties are assessment duties directly related to the Wisconsin Pupil Assessment Program and the Local Option Testing Service and do not represent a significant increase in the scope or complexity of appellant's position.

Appellant's position is more appropriately classified at the ES 4 level.

ORDER

Respondent's action is affirmed and this appeal is dismissed.

Dated: _____, 1985 STATE PERSONNEL COMMISSION

DENNIS P. MCGILLIGAN, Chairperson

LRM:jmf
SHG/1

DONALD R. MURPHY, Commissioner

LAURIE R. McCALLUM, Commissioner

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