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MARGE HAAK,

Appellant,

v.

Secretary, DEPARTMENT OF
HEALTH AND SOCIAL SERVICES,
and Secretary, DEPARTMENT OF
EMPLOYMENT RELATIONS,

Respondents.

Case No. 85-0130-PC

* * * * *

DECISION
AND
ORDER

NATURE OF THE CASE

This is an appeal from respondents' decision denying the reclassification of the appellant's position from Clerical Assistant 2 to Program Assistant 1. At the prehearing conference held on July 26, 1985, before Anthony J. Theodore, General Counsel, the parties agreed to the following issue for hearing:

Whether respondents' decision to deny reclassification of appellant's position from Clerical Assistant 2 (PRO2-05) to Program Assistant 1 (PRO2-06), and the commensurate regrade of the incumbent, based on a determination that the changes in the duties and responsibilities were not logical and gradual, was correct.

Hearing in the matter was held on October 10, 1985, before Dennis P. McGilligan, Chairperson. The parties completed their briefing schedule on November 25, 1985.

FINDINGS OF FACT

1. At all times material herein, the appellant has been employed in the classified civil service by the Department of Health and Social Services as a Clerical Assistant 2 in the Management Services Unit at the Bureau of

Social Security Disability Insurance (BSSDI).

2. According to appellant's October 1978 position description the duties appellant was to perform consisted of 50% bureau receptionist duties, 35% clerical support services to Bureau management staff and 15% miscellaneous office activities.

3. According to appellant's six month performance review dated February 4, 1980 appellant had "taken on the assignment of calling the work sample report into the Regional Office once a week. . . ." Also in 1980 according to appellant's performance planning and development report dated August 4 appellant had "assumed additional responsibilities over the last year in terms of backing up the secretaries of the Assistant Directors and doing more typing on your own."

4. According to a performance review dated February 12, 1981, covering the period of 7/80 to 6/81 appellant continued to perform well as chief BSSDI receptionist while picking up an additional responsibility of keeping "tallies on and made several reports to the AD-Operations on the volume of teledictated reports, breaking them down by type."

5. According to a performance review dated February 14, 1983, appellant was to be given additional work as follows:

We discussed some areas of added work for you at this time. This is being done both for your own development and so that there is more backup capability in the unit. You will now be responsible for preparing the card needed for the MCI liaisons to obtain a pool card. . . . You will also be taking care of the leave accounting printout when it comes. . . . You will also be doing the typing and other work generated by the Professional Relations Officer. You are currently taking care of his follow up files and you will now be gathering feedback for him and routing it to him on the appropriate date, following up with those who may not have submitted their feedback timely.

A "mid-point" performance review dated November 9, 1983 stated that appellant was doing a very good job in the performance of her new duties as follows:

. . . You have assumed more roles in the recent months including performing many functions for the Professional Relations Officer. You maintain his follow-ups, do all of his typing, gather feedback when he is requesting it from staff members, and work with the teledictated reports. . . .

You also perform typing projects, etc. for the Chief Medical Consultant and I have noted that you are willing to help him in whatever way you can, including making suggestions and giving instructions to him when appropriate.

6. On May 24, 1984, appellant's supervisor, Pearl Feddema, requested that appellant be reclassified to a Program Assistant 1 (PA1). In her reclassification request Feddema indicated that appellant was performing secretarial service to Dr. Handy, the Chief Medical Consultant, typing performance evaluations, filing confidential materials and transcribing a wide variety of types of materials. Feddema also noted that:

Marge was initially hired as the Bureau receptionist and her duties were much more limited at that time than they currently are. The increase in duties has been gradual and logical in that the increase has come about as a result of a significant increase in Bureau staff size, more work being directed (appropriately) to Management Services but without an increase in the size of the MS Unit. In addition to this, we will shortly be adding several new supervisors to the staff which will again increase the amount of work coming to this unit.

7. The position description attached to the aforesaid May 1984 reclass request changed appellant's agency working title from Bureau Receptionist to Secretary to Chief Medical Consultant. The duties consisted of 55% secretarial services to the Chief Medical Consultant and the bureau receptionist duties were reduced to 20%. The duties also included 15% clerical support services to Bureau administrative and management staff including assisting in the scheduling of interviews and 10% miscellaneous office activities.

8. By memo dated May 31, 1984, Division Personnel Manager Dennis Feggestad denied appellant's reclass request on the ground that not enough of the position's duties and responsibilities were at the PA1 level. Feggestad

also indicated in the memo that if appellant did not agree with the denial, she could request a review of this denial by the Bureau of Personnel and Employment Relations (BPER). The appellant did not request a review of this denial by BPER. The aforesaid position description was never submitted to BPER to be placed in appellant's personnel file.

9. In June of 1984 Pearl Feddema left her position as supervisor of the Management Services Unit and her vacant position was abolished. Thereafter, in August of 1984 Gail Smith assumed the supervision of the aforesaid Unit. In September 1984, the two Program Assistants in appellant's Unit, Anola Popp and Phyllis Fleming, left. These positions were later refilled in October 1984 by Joanne Howe and Ellen Greenwold.

10. In December of 1984, BSSDI moved to a new location and also had a change in their telephone equipment.

11. On April 18, 1985, appellant's supervisor, Gail Smith, requested that appellant be reclassified to Program Assistant 1. In her request Smith indicated that appellant was gradually performing more program-related duties due to changes in the Management Services Unit including "elimination of the Program Assistant Supervisor position which supervised the Management Services Unit and due to the change in Administration at this bureau." Smith listed changes that "occurred over the last year" as follows:

1. Change in telephone equipment and bureau policies regarding the responsibilities of the receptionist has reduced the amount of time spent in these functions. At the same time, these duties have taken on more importance due to our new security system. Tasks and time percentage under B have therefore changed accordingly.
2. The elimination of the Program Assistant Supervisor position made it necessary for Marge to learn the Personnel functions in order to have sufficient coverage of those tasks. This was logical in that she had more time available and the other MS positions performed these kind of functions. Goal C is therefore reflected in her new PD.

3. As time went on, we attempted to make the positions in the MS unit more equitable and so they all share in the unit duties. Thus, Marge took on some of the report duties, Goal D.
4. Since Marge had more time available, she was able to increase the amount of administrative support she provides under Goal A.

Finally in her request Smith indicated that over the past year appellant had spent less time on receptionist duties and that her duties had become more complex and responsible as she "had time to become involved in more of the program-related and administrative support type functions of the unit."

12. The position description (April, 1985) that was attached to the request for reclassification described appellant's duties and responsibilities at that time. According to this position description appellant spent 45% of her time providing support services to the administrative staff; 30% coordinating the communications system for administrative and supervisory personnel; 10% in the maintenance of agency personnel records and system; 10% in the performance of clerical support functions and 5% in the preparation of state and federal data/reports.

13. The above reclass request was recommended for approval by the Division's Personnel Manager, Dennis Feggstad, on April 29, 1985, and forwarded to BPER. Review of this request for reclass was assigned to Joanne Brockmann who is a Personnel Specialist 5 with BPER.

14. Brockmann reviewed the position description attached to the reclass request and compared it to the aforesaid October 1978 position description for any changes. She found the following changes:

- Goal A, support services to administrative staff was basically all new and showed a 45% change in duties.
- Goal B, the receptionist duties went from 50% to 30%.
- Goal C, maintenance of personnel system records was new.

-Goal D, preparation of state and federal data were new duties.

-Goal E, clerical support for bureau staff went from 15% to 10%.

She considered these changes to be drastic.

15. Brockmann next compared the new position description (April, 1985) to the class specifications. In Brockmann's opinion at least 60% of the duties reflected in the new position description were at the Program Assistant 1 level. Brockmann also felt that all of appellant's duties at the Program Assistant 1 level were new duties.

16. Brockmann then compared the new position description to the position descriptions of the current Program Assistants in Haak's unit. She found that more than 50% of what was on the comparison position descriptions was also on Haak's new position description.

17. Brockmann later determined that an audit was necessary and set up a meeting with Smith and appellant. The purpose of the meeting was to confirm the duties that appellant was performing and identify how the new duties were assigned to appellant. Brockmann was advised that the move to the new building and the new telephone equipment caused some of the changes. Brockmann was also informed that when Feddema left, Haak took over her personnel responsibilities.

18. Thereafter, Brockmann determined that Program Assistant 1 was the proper class level for the position. Brockmann also determined that the changes which occurred in appellant's new position description were not logical and gradual. Brockmann concluded that a new position had been created and must be filled by competition.

19. Brockmann prepared a memo dated June 6, 1985 from William Kuntz, Team Leader, BPER, to Gerald Berge, Administrator, Division of Community Services, denying the reclassification/regrade request and indicating that

the position should be filled by competitive examination. A copy of this memo is attached hereto and incorporated by reference as if fully set forth as a part of this finding.

20. By memo dated June 25, 1985, the appellant filed a timely appeal of this decision to the Commission.

21. The position standards for the Clerical Assistant and Program Assistant series provide, in material part, as follows:

CLERICAL ASSISTANT 2

(PR2-05)

This is lead and/or advanced clerical work of moderate difficulty in completing a variety of assigned clerical tasks consistent with established policies and procedures. Positions allocated to this level have some freedom of selection or choice among learned things, which generally follow a well-defined pattern. However, positions at this level are distinguished from the Program Assistant 1 level by the limited degree of personal or procedural control over the nature and scope of the tasks which they perform. The variety and complexity of decisions made at this level are limited. Positions may function as lead workers, directing lower-level positions as well as performing a variety of the more complex clerical operations. Receptionist positions which serve in an informative capacity as the primary or sole public contact for a state facility(s) are allocated to this level. A variety of secretarial functions may be incidentally performed for the professional staff for a small percentage of the time. Work is performed under general supervision.

PROGRAM ASSISTANT 1

This is work of moderate difficulty providing program support assistance to supervisory, professional or administrative staff. Positions allocated to this level serve as the principal support staff within a specific defined program or a significant segment of a program. Positions at this level are distinguished from the Clerical Assistant 2 level by their identified accountability for the implementation and consequences of program activities over which they have decision-making control. Therefore, although the actual tasks performed at this level may in many respects be similar to those performed at the Clerical Assistant 2 level, the greater variety, scope and complexity of the problem-solving, the greater independence of action, and the greater degree of personal or procedural control over the program activities differentiates the Program Assistant functions. The degree of programmatic accountability and involvement is measured on the basis of the size and scope of the area impacted by the decision and the consequence of error in making such decisions, which increases

with each successive level in the Program Assistant series.
Work is performed under general supervision.

22. A prehearing conference was held on July 24, 1985. At this prehearing conference, appellant provided respondent's representative with a copy of the aforesaid position description of May, 1984. Appellant requested that Brockmann review this May 1984 position description and tell her if it changed Brockmann's position on whether the changes had been logical and gradual.

23. Brockmann reviewed the May 1984 position description and compared it to the April, 1985 position description for any changes in the duties and responsibilities. She found that the changes that had occurred were minimal and that the duties on the 1985 position description appeared to be an expansion of the duties listed on the May 1984 position description. Brockmann had no problem with these changes being logical and gradual.

24. Brockmann compared appellant's May 1984 position description to her October 1978 position description for any changes. She found the following changes:

-Goal A, secretarial support to Chief Medical Consultant was basically all new and represented 55% of the position;

-Goal B, bureau receptionist duties had been reduced from 50% to 20%;

-Goal C, clerical support to Bureau staff had been reduced from 35% to 15%;

-Goal D, miscellaneous office activities had been reduced from 15% to 10%.

25. Brockmann found that the duties listed on the May 1984 position description were at the Program Assistant 1 level but that the changes between the October 1978 position description and the May 1984 position description had not occurred logically and gradually.

26. Chapter 332 of the Wisconsin Personnel Manual for Classification,

Compensation, and Administration which was developed by DER to assist in classification decisions provides as follows:

332.010 STATUTORY MANDATE

Section 230.09, Wis. Stats., requires, in part, that the Administrator of the State Division of Personnel:

- A. Allocate, reclassify, or reallocate each position in the classified service to an appropriate class on the basis of its authority, responsibilities, or other factors recognized in the job evaluation process; and
- B. Determine whether incumbents of filled positions which have been reclassified or reallocated should be regraded or the position opened to other applicants.

D. RECLASSIFICATION [ER-Pers 3.01 (3), Wis. Adm. Code]

"Reclassification means the assignment of a filled position to a different class by the administrator as provided in s. 230.09 (2), Stats., based upon a logical and gradual change to the duties or responsibilities of a position or the attainment of specified education or experience by the incumbent."

E. REGRADE [Er-Pers 3.01 (4), Wis. Adm. Code]

"A regrade means the determination of the administrator under 230.09 (2)(d), Stats., that the incumbent of a filled position which has been reallocated or reclassified should remain in the position without opening the position to other candidates."

F. COMPETITION [s. 230.15, Stats.]

Competition means opening a position to other candidates. If it is determined that a filled position should be opened to other candidates, the position could be filled through many different transaction types such as promotion, transfer, demotion, reinstatement, etc. (For the purposes of this chapter, competition is not synonymous with competitive examination.)

332.040 STEPS INVOLVED IN ANALYZING A RECLASSIFICATION OR REALLOCATION REQUEST

- C. Determine the types of changes which have occurred in the duties and responsibilities of the position.

If changes have occurred in the duties or responsibilities of the position and such changes are the reason for changing the classification of the position, determine whether the changes were logical and if the changes were logical, were they also gradual.

1. Were the changes logical?

- a. Logical changes are changes which are reasonably related to the previous duties or responsibilities of the position. Generally, if the changes are reasonably related to the previous duties, satisfactory performance of the original duties or responsibilities of the position should provide any incumbent with a reasonable expectation that the changed duties or responsibilities will be satisfactorily performed.
- b. If more than 50% of the duties or responsibilities of a position have changed since written notice was last given to the administrator and the employe of changes in assigned duties and responsibilities which may affect the classification of the position, the changes are not a logical change to a position but are the creation of a new position.
- c. Initial assignment or complete removal of leadwork, supervisory or managerial duties or responsibilities are not logical changes.

2. Were the changes gradual?

- a. If the duties which constitute the reason for the class level change were previously at least 26% of the position, the expansion of such duties to 51% of the total position is considered to be a gradual change.
- b. Generally, changes are not gradual if they:

- 1) constitute a significant portion of the position (more than 25%) and occur abruptly (over a period of less than six months);
- 2) result from a reorganization, changes in the equipment used to perform the work, or a reassignment of duties from a vacant or abolished position;
- 3) result from the removal of a supervisory level.

27. The Commission is unable to find, on this record, that the changes in the duties and responsibilities of appellant's position were logical and gradual.

CONCLUSIONS OF LAW

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

2. The appellant has the burden of proving that the respondents erred in denying the reclassification of her position and the regrade of the incumbent (the appellant) to Program Assistant 1 (PRO2-06).

3. The appellant has not sustained her burden of proof.

4. The respondents did not err in denying the reclassification/regrade as aforesaid.

OPINION

In the instant case there is no dispute that Program Assistant 1 is the proper class level for the position. However, respondent denied appellant's reclassification/regrade on the grounds that the job changes had not been logical and gradual. Respondent also indicated that a new position had been created and must be filled by competition. According to §ER-Pers 3.01(3), Wis. Adm. Code, a position cannot be reclassified unless there has been a "logical and gradual change" to the duties or responsibilities of the position.

A great deal of the dispute in this case concerns the fact that no written position descriptions were prepared for this position between 1978 and 1984. In reviewing the reclassification request, DHSS analyzed the question of whether there had been a logical and gradual change almost entirely by examination of the 1978, 1984, and 1985 position descriptions, and concluded, in essence, there had been a drastic change in the position between 1978 and 1984.

The appellant contends there were a number of changes in her position between 1978 and 1984, most of which were documented in her written performance evaluations, that these changes should be considered in determining whether the development of her position was "logical and gradual," and that she should not be forced to suffer because management did not periodically revise her position description to reflect these changed duties and responsibilities.

The respondent has not cited any specific authority that the type of reclassification transaction here in question should be analyzed solely by reference to written position descriptions. In the Commission's opinion, such a restriction is neither warranted by, nor compatible with, the civil service code.

The statutes require that the secretary properly classify all positions in the classified service. Section 230.09(1) provides, in part, as follows:

The secretary shall ascertain and record the duties, responsibilities and authorities of, and establish grade levels and classifications for, all positions in the classified service. . . Each classification so established shall include all positions which are comparable with respect to authority, responsibility and nature of work required. . . ."
(emphasis added)

While the foregoing subsection requires the secretary to "ascertain and record the duties, responsibilities and authorities" of all positions, it

neither requires the development of periodic written position descriptions, nor places this responsibility on the employe.

Section 230.06(1)(c) provides that appointing authorities shall "[p]rovide the secretary with current information relative to the assignment of duties to permanent classified positions in his or her agency." Section 230.09(c) provides in part ". . .appointing authorities shall give written notice to the secretary and employe of changes in the assignment of duties or responsibilities to a position when the changes in assignment may affect the classification of the position." While these subsections require certain actions by appointing authorities, and arguably could be read to impose a duty that they maintain up-to-date position descriptions, there again is no such duty imposed on the employe. Further, and more importantly, it does not follow that if an appointing authority fails in his or her responsibility to maintain up-to-date position descriptions, that the secretary necessarily cannot proceed with the responsibility of maintaining the proper classification of all positions. In a particular case, the absence of position descriptions could render it impossible for the secretary to be able to accurately determine the proper classification of a position, or whether changes had been logical and gradual. However, if the secretary can determine from reasonably reliable sources how a position has evolved, there is no reason why the appropriate classification decisions cannot be made.

In the instant case, while the respondent DHSS did not consider all of the evidence that, in the Commission's opinion, it should have, it does not follow that the appellant was entitled to a reclassification of her position and a concomitant regrade. The appellant has the burden of proof, §PC 3.03(5), Wis. Adm. Code; 2 Am Jur 2d Administrative Law §391, and was required to show that her position in fact had undergone a logical and

gradual change. While she presented some evidence to this effect, there was not sufficient evidence for the Commission to make a finding that there had been a logical and gradual change in her position. This was primarily because of a lack of sufficient information about the specific percentages of the position various changes represented.

The appellant presented evidence, particularly Appellant's Exhibit 12, that many of the duties that DHSS identified as "new" in their June 6, 1985, audit summary, Appellant's Exhibit 5, were in fact not "new," in the sense that they had been acquired in some degree or another prior to 1984 or 1985. However, the appellant only supplied specific percentages of those duties and responsibilities she conceded were actually new. The difficulty with this approach is that this case must evaluate the entire evolution of the position from 1978 through 1985 to determine whether the changes were logical and gradual. The Commission cannot make this evaluation without knowing what the percentage change was for each of these intervening points.

For example, activity A.1. in the appellant's April 1985 position description, Appellant's Exhibit 2, is "Review incoming mail for administrative staff and determine who should get the correspondence or take independent action on delegated basis." This is one of eleven activities under goal A. Goal A is assigned 45%, but there is no assignment of percentages to the eleven activities.

When DHSS audited the position, activity A.1. was categorized as new because it had not appeared on the 1978 position description. Ms. Haak has pointed out that she in fact started performing this function in 1980, on a backup basis and continued it on that basis. Subsequently, due in part to staffing changes, she began performing this activity on a regular, as opposed to a backup basis. The record does not reveal what percentage of the total

this activity constituted in 1980, when she first began performing it, and what percentage it was when it subsequently was expanded.

Another difficulty with appellant's case is that there are certain conflicts between Ms. Haak's evidence and certain statements of her supervisor, Gail Smith. In her April 18, 1985 memo, Appellant's Exhibit 2, requesting reclassification of Ms. Haak's position, Ms. Smith stated in part as follows:

" . . .The Management Services Unit which Marge is a part of has gradually taken on changes due to the elimination of the Program Assistant Supervisor position which supervised the Management Services Unit and due to the change in Administration at this bureau.

The changes have been gradual in that they occurred over the last year. . .

* * *

Over the last year, the amount of time Marge spends on receptionist duties has decreased and at the same time, the duties have become more complex and responsible functions. . ." (emphasis added)

This contradicts the assertion that the new duties were assumed steadily over a five-year period, and is consistent with the likelihood that while Ms. Haak may have begun performing some of the activities in question at an earlier date than is suggested solely from comparison of the 1978, 1984, and 1985 position descriptions, the percentage of time devoted to those duties at the earlier time was rather small, as for example, in the context of backing up other employes.

In Reinke v. Personnel Board, 53 Wis. 2d 123, 137, 191 N.W. 2d 833 (1971), the Supreme Court held as follows:

" . . .the standard to be used by the Personnel Board [now Commission] in making its findings should be that used in ordinary civil actions, to a reasonable certainty, by the greater weight of the credible evidence standard." (emphasis added)

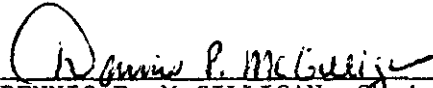
Applying that standard to this case, the Commission is unable to find on this record that the change in appellant's position was logical and gradual. Therefore, while it disagrees with the respondent's failure to have scrutinized those changes which were not reflected in the written position descriptions, it nonetheless must sustain the respondent's action denying the request for reclassification. However, the Commission urges the respondent to re-review this transaction with consideration given to all the changes in the position, perhaps aided by reconstruction of a position description for each year in question.


ORDER

The respondents' action denying reclassification of this position and regrade of the appellant is affirmed, and this appeal is dismissed.

Dated: April 30, 1986

STATE PERSONNEL COMMISSION


DENNIS P. MCGILLIGAN, Chairperson


DONALD R. MURPHY, Commissioner

DPM:vic
VIC02/2

Attachment

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