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JEANINE HILDEBRANDT [SCHINKE],¹

Appellant,

v.

Secretary, DEPARTMENT OF
EMPLOYMENT RELATIONS,

Respondent.

Case No. 87-0139-PC

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DECISION
AND
ORDER

NATURE OF CASE

This case involves an appeal pursuant to §230.44(1)(b), Stats. of respondent's decision to reallocate appellant's position from Employment Security Assistant 3 (ESA 3) to Employment Security Assistant 2. This case was initially one of 14 appeals which had been consolidated for hearing and captioned as Hildebrandt et al. v. DER, Case No. 87-0139-PC, etc

Subsequently, the parties agreed to proceed to hearing only in the case of Olson v. DER, Case No. 87-0169, 3/21/90. The remaining appellants would then review their case in light of that decision and determine if they would proceed. Appellant pursued her case and a hearing was held before Commissioner Gerald F. Hoddinott.

FINDINGS OF FACTS

1. At all times relevant to the issues in this case, appellant has been employed in the Fox Valley Job Service office located in Menasha, Wisconsin. This office is one of a number of field offices in the Job Service Division of the Department of Industry, Labor and Human Relations (DILHR). Appellant's supervisor was a Mr. Thomas Litherland, a Job Service Supervisor 3.

2. As part of a personnel management survey conducted in 1984 and 1985, a new classification series entitled Employment Security Assistant was created by the Department of Employment Relations (DER) to identify positions such as that held by appellant.

¹ At hearing, appellant stated her name as Jeanine Hildebrandt Schinke.

3. Prior to 1986, appellant was classified as a Job Services Assistant 2 with a working title of Leadworker-Support Staff. Effective March 31, 1986, appellant's position was reallocated as part of respondent's survey implementation to Employment Security Assistant 2 with a working title of Leadworker-Unit Support Clerk.

3. The position over which appellant had leadwork responsibility was filled at the time of the survey by Ms. Doris Dix. Ms. Dix's position was reallocated on March 31, 1986 from a Job Services Assistant 2 to an Employment Security Assistant 1 with a working title of Unit Support Clerk.

4. The survey reallocations processed by DER were based on recommendations developed by DILHR. DILHR's recommendations were made by identifying each position included in the survey with a working title, and then allocating this title to one of the new ESA classifications.

5. Ms. Dix appealed her survey reallocation. As a result, the Department of Employment Relations (DER) re-reviewed their decision and determined that Ms. Dix was more appropriately allocated to the Employment Security Assistant 2 (ESA 2) classification.

6. Some time in December 1986 or January 1987, DER re-allocated Ms. Dix to the ESA 2 level. Concurrent with this action, DER re-allocated the appellant to Employment Security Assistant 3 (ESA 3) to recognize her leadwork responsibilities.

7. On January 8, 1987, the Commission issued a decision in the case of Rutowski v. DER, Case No. 86-0076-PC, which affirmed respondent's reallocation of Ms. Elaine Rutowski's position from Job Service Assistant 2 to Employment Security Assistant 1. This decision identified some anomalies in the allocation of positions to the ESA 1 and ESA 2 level, based on the position comparisons introduced at the hearing in the Rutowski case.

8. As a result of the Rutowski decision, respondent initiated a review of the ESA positions in the Job Service Division. This review included a review of position descriptions, job audits of selected positions, and discussions with staff involved in the development of a computerized reporting system. Appellant's position was audited prior to the initial implementation of the survey in 1986, but her position was not selected for audit during the subsequent 1987 review.

9. As a part of respondent's review, DER requested Job Service program managers to redo the position descriptions for employees in positions classified in the ESA series. Appellant, and her supervisor, initialed the current

position description on January 15, 1987. The original date on which appellant signed this position description was July 11, 1986. It was this position description that respondent used to evaluate appellant's position as part of the 1987 review.

10. Appellant's Position Description dated 7/11/86, and initialed 1/15/87, accurately describes the duties and responsibilities of appellant's position as follows:

POSITION SUMMARY

Direct and assist the activities of an ESA 2 and non-funded staff in covering three work stations, performing complex clerical work in a Job Service District Office. Assist applicants and the general public with their inquiries by interpretation and application of established guidelines and procedures in records maintenance, forms processing and direct client services. Determine purpose of the visit or call. Route to appropriate area for service or provide direct services at the outset. Provide appropriate forms(s) to applicants. Schedule applicants for group registration or testing. Explain new registration or testing policies. Politely handle difficult applicants who object to registration, testing or referral procedures. Instruct, assign and monitor non-funded staff performing basic clerical duties.

TIME %

GOALS AND WORKER ACTIVITIES

20%

A. Performance of ESAR Clerk duties.

- A1. Post all hires and non-hires as they occur.
- A2. Place all job orders on hold or close.
- A3. Post job orders on bulletin board.
- A4. Post job orders in log record book on hold or close.

20%

B. Reception of clients entering the Fox Valley District Office.

- B1. Greet all clients entering the office.
- B2. Determine purpose of the visit.
- B3. Respond to general inquiries of the public.
- B4. Give client ES-200, when applicable.
- B5. Route clients to specific areas of the office for services.
- B6. Update client's work record data using CRT.
- B7. Locate ES-200 for all clients being routed to a unit for services.
- B8. Route clients requesting information of their UC claims to another area.
- B9. Provide additional forms to clients as needed for any Job Service program.
- B10. Schedule applicants for group registration.

- B11. Handle difficult/problem applicants in a skillful manner.

- 15% C. Maintenance of files.
 - C1. Determine appropriate files for all WSES-200, test record cards and closed job orders.
 - C2. Monitor work of youth and adult work experience workers assigned.
 - C3. Advise supervisor of quality of work performed by these (sic) employees and their manner and appearance.
 - C4. Assist in training of any new employees assigned to these positions.
 - C5. Control access to files.
 - C6. Purge files.
 - C7. Maintain files via monthly printouts.

- 15% D. Backup and relief telephone operator.
 - D1. Relieve telephone operator for luncheon and rest periods.
 - D2. Route incoming calls to appropriate person of department.
 - D3. Accept telephone messages for staff who may be out of the office or temporarily unavailable.

- 20% E. Provision of direct services to applicants.
 - E1. Referral of applicants to jobs listed on self-service bulletin board.
 - E2. Process and properly code applications after reviewing work history, education, and applicant job preferences of applicants unable to attend group registration sessions.
 - E3. Perform as either test administrator or test monitor for Employment Competency Testing System.
 - E4. Contact employers on occasion to verify job order results.

- 10% F. Provision of leadworker duties.
 - F1. Train ESA 2 and non-funded staff in performance of ESARS duties.
 - F2. Training ESA 2 and non-funded staff in file maintenance and monitor performance.
 - F3. Train non-funded staff in the operation of the telephone switchboard.
 - F4. Backup timekeeper.

11. The position description for Ms. Dix's position (Appellant's Exhibit #4) is almost identical to the appellant's PD. This position description of Ms. Dix, dated 6/16/86, was used as the basis for DER's review. The major

differences between Ms. Dix's and appellant's PD is that appellant has a 10% allocation of time to Goal F - Provision of leadworker duties - and the first line of the position summary of appellant's PD makes reference to "Direct and assist the activities of an ESA 2 and non-funded staff in covering three work stations, ...". Ms. Dix's PD is identical to appellant's in all other regards except that the 10% time allocation on appellant's PD for leadwork has been evenly divided between Goal C-Maintenance of files (15% on appellant's PD versus 20% on Ms. Dix's PD) and Goal D-Backup and relief telephone operator (15% on appellant's PD versus 20% on Ms. Dix's PD).

12. In a letter dated August 3, 1987 (Respondent's Exhibit #1) respondent notified appellant that her position was being reallocated from an ESA 3 to an ESA 2 to correct "an error in the previous assignment" of her position. Appellant also received a reallocation notice (Respondent's Exhibit #1)² along with this letter indicating that the effective date of the reallocation was August 2, 1987. Appellant apparently didn't receive the letter and Reallocation Notice until some time on or after August 11, 1987. Appellant filed a timely appeal of this action with the Commission.

13. At the hearing, appellant produced a position description signed by her and her supervisor (Ms. Litherland) on August 4, 1987. This PD was developed at the request of appellant's supervisor as part of the appellant's annual performance evaluation. The purpose of the PD was to update the information in general as well as to recognize that appellant had been moved to the ESA 3 level in late 1986 or early 1987. The classification title on the PD is ESA 2 and it provides the following:

POSITION SUMMARY

Under general supervision of Employment Assistance Supervisor, performs leadworker responsibilities in the coordination, delivery and evaluation of employment assistance services by training, assisting, guiding, instructions, assigning and reviewing the work of one or more employes in the work unit. Plans, implements and monitors three work stations in the local office. Performs complex clerical functions. Prescreens and selects

² Commissioner Gerald Hoddinott served as the hearing examiner in this case. His signature appears at the bottom of the Reallocation Notice authorizing the transaction for the Department of Employment Relations. The parties were informed of this at the hearing and stated that they had no objection to Commissioner Hoddinott serving as hearing examiner or participating in the Commission's final decision

applicants for jobs. Assists applicants and the general public with direct inquiries by interpretation and application of established guidelines and procedures in records maintenance, forms processing and direct client services. Provides direct service at the outset.

TIME %	GOALS AND WORKER ACTIVITIES
10%	A. Provision of leadworker duties
30%	B. Performance of JSIS clerk duties
35%	C. Provision of diverse job matching services to applicants and employers
20%	D. Reception and registration of applicants and provide information on job seeking skills instruction services on a group or individual basis.
5%	E. Backup and Relief Telephone Operator

The major differences between this PD and the PD used by respondent for its review (Finding #10) is found in Goal C - Provision of diverse job matching services to appellants and employers (35%). This goal incorporates what is found in Goal E - Provision of Direct Services to Clients (20%) in the PD used by DER for its review (Finding #10). The increase in time from 20% to 35% comes from reducing the time allotments for - Maintenance of Files - (from 15% to 10%) and - Backup and relief telephone operator - (from 15% to 5%). In addition, the remaining 10% time allotment and the worker activities for Maintenance of files was incorporated into Goal B - Performance of JSIS³ Clerk duties (30%) of the above PD. Goal D (20%) of this later PD has the same % of time as Goal B - Reception of clients entering the Fox Valley office - of the PD in Finding #10. The specific worker activities under Goal D were expanded consistent with the revised goal statement. The leadworker activities in both PD's are identified as taking 10% of the position's time and identify similar tasks.

14. In a memorandum dated September 28, 1987, (Appellant's Exhibit #3), the PD identified in Finding #13 was returned by the Central office of the Job Service Division for further review and revision because the mix of clerical and professional duties is not what would be expected in either an ESA or professional level position. Specifically, the memo stated, in part:

³ JSIS refers to the computerized system which replaced the manual ESARS system referenced in Goal A - Performance of ESAR Clerk duties (20%) of the PD in Finding #10.

* * *

The PD update is being returned for your further review and revision. The mix of duties included are clerical and professional, which isn't what we'd expect in either an Employment Security Assistant or Job Service Specialist. (If we had insisted that DILHR Personnel class the PD it might have resulted in a JSS -- with the potential of displacing the employe.)

* * *

There is no indication on the record that this PD was ever revised and/or forwarded to the DILHR personnel office or DER for review.

15. The Position Standard for the Employment Security Assistant series, in pertinent part, provides:

I. INTRODUCTION

* * *

B, INCLUSIONS

This series encompasses clerical positions within the Unemployment Compensation and Job Service program areas. Positions in this series perform activities such as taking, maintaining, coding and/or processing records manually and/or through automated record systems; providing general information assistance and/or direction to the public about programs and procedures through personal contact or by telephone, and establishing benefit monetaries or disputed claim records. Positions in this series require procedural knowledge and a general program knowledge in order to perform assigned tasks.

* * *

II. CLASS CONCEPTS

EMPLOYMENT SECURITY ASSISTANT 1

(PR 02-06)

This is clerical work in Job Service and/or Unemployment Compensation Programs. Positions allocated to this class perform routine record maintenance and forms processing activities which require the application of established standardized guidelines and procedures a majority of the time. Work is performed under general supervision.

EMPLOYMENT SECURITY ASSISTANT 2

(PR 02-07)

This is complex clerical work in the Job Service and/or Unemployment Compensation Programs. Positions allocated to this class interpret and apply established guidelines and procedures in records maintenance, forms processing and direct client services. Positions at this level differ from lower level positions in the frequency and variety of applied discretion and judgment situations, a greater procedural knowledge, and a greater diversity and complexity of the assigned activities. Work is performed under general supervision.

EMPLOYMENT SECURITY ASSISTANT 3

(PR 02 08)

This is advanced clerical work or leadwork in the Job Service and/or Unemployment Compensation Programs. Positions allocated to this class perform program support activities that involve broad interpretations of established guidelines and procedures when applied to the varied intricate and interrelated situations presented to the position in such areas as establishing claimant benefit eligibility, employer liability records, or providing direct employment services to clients/or employers. Work is performed under general supervision.

Positions allocated to this class as lead workers are responsible for assigning and reviewing the work of positions at the Employment Security Assistant 2 level.

* * *

This Position Standard contains no listing of work examples or representative positions.

16. Classifying a position at the ESA 3 level on the basis of leadwork would not necessarily depend on having an ESA 2 as a subordinate. The major consideration for a position to be classified at the ESA 3 level is the type of work performed by the position.

17. Appellant's position is better described by the Position Standard for the ESA 2 classification based on the majority of the position's duties and responsibilities.

CONCLUSIONS OF LAW

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

2) The appellant has the burden of proof of showing by the preponderance of evidence that respondent's decision to reallocate her position from

Employment Security Assistant 3 (ESA 3) to Employment Security Assistant 2 (ESA 2) was incorrect.

3) Appellant has not met her burden of proof.

4) Respondent's decisions to reallocate appellant's position from ESA 3 level to ESA 2 level was not incorrect, and appellant's position is more appropriately classified at the ESA 2 level.

DISCUSSION

The issue established for the hearing in this case was:

Whether respondent's decision reallocating appellant's position to Employment Security Assistant 2 instead of Employment Security Assistant 3 was correct.

In determining the correctness of a reallocation action in cases such as this one, the Commission weighs the classification specifications against the actual work performed. It is not uncommon to find that the duties and responsibilities of a position may be described by two or more classification specifications or found in other position descriptions for positions classified at higher or lower levels than the position under review. The most appropriate classification for a position is the one which describes the duties and responsibilities to which the position devotes a majority of time. [Bender v. DOA and DP, Case No. 80-210-PC (7/1/81); Division of Personnel v. State Personnel Commission (Marx), Court of Appeals District IV, 84-1024 (11/21/85); DER & DP v. State Personnel Commission, Dane County Circuit Court, 79-CV-3860 (/21/80)].

The major issue in this case is at what level the work performed by appellant's position the majority of the time should be identified. Appellant argues that the work performed is best identified at the ESA 2 and ESA 3 level. In Olson v. DER, Case No. 87-0169-PC, 3/21/90, which both parties referenced as supporting their position, the Commission stated the following:

... the position standard for the Employment Security Assistant (ESA) series identifies the following differences between the ESA 1, 2 and 3 level under the "Class Concepts" section.

ESA 1

This is clerical work Positions allocated to this class perform routine record maintenance and forms processing activities which require the application of established standardized guidelines and procedures a majority of the time. (Emphasis added)

ESA 2

This is complex clerical work Positions allocated to this class interpret and apply established guidelines and procedures in records maintenance, forms processing and direct client services. Positions at this level differ from lower level positions in the frequency and variety of applied discretion and judgment situations, a greater procedural knowledge, and a greater diversity and complexity of the assigned activities. (Emphasis added)

ESA 3

This is advanced clerical work or leadwork Positions allocated to this class perform program support activities that involve broad interpretations of established guidelines and procedures when applied to the varied intricate and interrelated situations presented to the position in such areas as establishing claimant benefit eligibility, employer liability records, or providing direct employment services to clients/or employers. (Emphases added)

The distinction between these classification levels lies primarily in the degree of interpretation of established policy and procedures, and the amount of judgmental discretion exercised by an employee in applying guidelines and procedures to specific program actions or client services. Specifically, the ESA 1 refers to routine work applying standardized guidelines and procedures a majority of the time. At the ESA 2 level, the emphasis is placed on the frequency and variety of activities involving interpretation of established guidelines and procedures, and use of discretion and judgment in these interpretations. This increased complexity is further identified at the ESA 3 level to involve broad interpretations of established guidelines and procedures and applying these interpretations to program support activities, such as benefit eligibility. The ESA 3 level also identifies positions which have leadwork responsibilities over ESA 2's.

* * *

In looking specifically at appellant's PD (See Finding #10), appellant spends 20% of her time on Goal A - Performance of ESAR Clerk duties, 20% of her time on Goal B - Reception of clients entering Fox Valley District office, 15% of her time on Goal C - Maintenance of files, and 15% of her time on backup and relief telephone operation for a total of 70%. These activities certainly involve some client contact, but they are primarily oriented toward obtaining or verifying information on the client or providing information on jobs and/or services available to the client.

These activities are best described by the ESA 1 specifications as "routine record maintenance and forms processing activities which require the application of established standards and guidelines a majority of the time," and do not involve "direct client services" and the "variety of applied discretion and judgment situation" identified at the ESA 2 level.

This does not mean that appellant does not have to make any decisions or use any judgment, or that her work is somehow routine in the sense that it is repetitive and uncomplicated. As indicated in the Inclusion section of the ESA Position Standard (See Finding #15), positions in the ESA series "require procedural knowledge and a general program knowledge in order to perform assigned tasks." This procedural and program knowledge is what distinguishes these positions from other clerical and related types of positions. Indeed what is "routine" for ESA positions is recognized at a higher level than "routine" work for other clerical positions, because of the specialized procedural and program knowledge required.

While the majority of appellant's position is identified at the ESA 1 level, there are portions of her position that are identified at higher levels. Goal E - Provisions of direct client services (20%) identifies the type of work that is appropriately identified at the ESA 2 level. In addition, the leadwork responsibilities identified in Goal F (10%) are first mentioned in the specifications for ESA 3.

The appellant argues that since the position is a leadworker it deserves to be an ESA 3 on this basis as well as on the basis of the work performed. Respondent argues that the appellant was recognized for her leadwork responsibility when they placed her at the ESA 2 level, which is one level higher than the level at which the majority of her duties and responsibilities are appropriately recognized (ESA 1)

To the extent that appellant is arguing that the function she performs outside of leadwork are at the ESA 3 level, the argument is not supported by the record. There is no indication that appellant spends the majority of her time performing "advanced clerical work" while engaged in "program support activities that involve broad interpretation of established guidelines and procedures ... in such areas as establishing claimant benefit eligibility, employer liability records, or providing direct employment services to clients/or employees."

In this regard, appellant argues further that she is being penalized because her subordinate position (occupied by Ms. Dix) was not made an ESA 2. First, from the record, appellant's position is very similar to Ms. Dix's position (See Finding #11). Since Ms. Dix does not have leadwork responsibilities, even a larger percentage (80%) of her position is appropriately identified at the ESA 1 level. Like appellant, Ms. Dix also has 20% of her job performing tasks at the ESA 2 level (i.e. Goal E - Provision of direct services to applicants).

Respondent points out that it is the type of work that is performed that is most critical. For example, an employee's position could be allocated to the ESA 3 level without having any leadwork responsibility. Additionally, a position could be allocated to the ESA 3 level on the basis of its duties and responsibilities and be a leadworker over an ESA 1. However, if the majority of the work performed by the employee and his/her subordinate(s) is not identifiable at least at the ESA 2 level, the employee's position is specifically excluded by the classification specification from being allocated to the ESA 3 level solely on the basis of leadwork responsibility. Specifically, the specification for ESA 3 provides: ... "Positions allocated to this class as lead worker are responsible for assigning and reviewing the work of positions at the Employment Security Assistant 2 level."

Based on the duties and responsibilities assigned to the appellant in her PD dated 7/11/86, the majority of her job is best identified at the ESA 1 level. Respondent's action to recognize appellant's position at the ESA 2 level appears appropriate from an organizational sense. While not specifically mentioned in the ESA 2 classification specification, identifying a leadworker at this level appears appropriate since appellant's position does not meet the clear language of the specification for ESA 3, based either on the work performed or her leadwork responsibilities.

Appellant's last argument was that her 7/11/86 position description did not accurately reflect her job, and she introduced a position description signed by her and her supervisor on August 4, 1987, which purported to more accurately reflect the duties and responsibilities assigned to her position (Finding #13). In this PD, appellant states that 10% of her time is spent in leadworker duties (Goal A), which is similar to the PD used by respondent in conducting its review (Finding #10). Goal B - Performance of JSIS clerk duties (30%) and Goal E - Backup and relief telephone operator (5%) appear to identify tasks that are best identified at the ESA 1 level. These goals involve tasks similar to those identified in Goal A and Goal D of the PD used by respondent to conduct its review (Finding #10) and are assigned the same percentage of time (35%).

The 35% of time spent on Goal C - Provision of diverse job matching services to applicants and employers in the August 4, 1987 PD could well be identified at the ESA 2 level. The record does not contain much information on what activities are actually involved or how it differs from or is the same as Goal E - Provision of direct services to applicants (20%) on the 7/11/86 PD used by the respondent during its review. Lastly, Goal D - Reception and registration of applicants and provide information on job seeking skills instruction services on a group or individual basis (20%) appears to be an expansion of Goal B - Reception of clients entering the Fox Valley Office (20%) on the 7/11/86 PD (Finding #10).

When this PD was returned by the Central office of the Job Services Division, there was no indication of which job functions they identified as professional and more appropriately assigned to a Job Services Specialist (JSS) classification. The appellant did not argue or present any information that any of the functions in the 8/4/87 PD were professional in nature. Rather, she argued that Goal C (35%) and Goal D (20%) identified functions at the ESA 2 and/or 3 level, and that combined with her leadwork responsibility (10%) result in the majority of her job being at the ESA 3 level which is the level at which leadwork is identified.


If the Commission were to assume that Goal C (35%) identified all ESA 2 work, appellant's position, even considering the 10% time allotment for leadwork, would spend only 45% of her time on ESA 2 and 3 functions. While this would make it a closer case, the Commission would still conclude that the majority of appellant's position's functions fall at the ESA 1 level. Notwithstanding that management has not signed off on this PD, appellant's

argument that Goal D is at the ESA 2 level is not persuasive. Goal D does involve direct client contact, but, based on the information in this record, these functions do not involve the type of direct client services envisioned at the ESA 2 level. As a result, 55% of the job function on the 8/4/87 PD still appears to be best identified at the ESA 1 level, i.e. Goal B (30%), Goal D (20%) and Goal E (5%).

ORDER

The action of respondent to reallocate appellant's position from ESA 3 to ESA 2 is affirmed and this appeal is dismissed.

Dated: June 11, 1992 STATE PERSONNEL COMMISSION


LAURIE R. McCALLUM, Chairperson

GFH/gdt/2


DONALD R. MURPHY, Commissioner

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NOTICE
OF RIGHT OF PARTIES TO PETITION FOR REHEARING AND JUDICIAL REVIEW
OF AN ADVERSE DECISION BY THE PERSONNEL COMMISSION

Petition for Rehearing. Any person aggrieved by a final order may, within 20 days after service of the order, file a written petition with the Commission for rehearing. Unless the Commission's order was served personally, service occurred on the date of mailing as set forth in the attached affidavit of mailing. The petition for rehearing must specify the grounds for the relief sought and supporting authorities. Copies shall be served on all parties of record. See §227.49, Wis. Stats., for procedural details regarding petitions for rehearing.

Petition for Judicial Review. Any person aggrieved by a decision is entitled to judicial review thereof. The petition for judicial review must be filed in the appropriate circuit court as provided in §227.53(1)(a)3, Wis. Stats., and a copy of the petition must be served on the Commission pursuant to §227.53(1)(a)1, Wis. Stats. The petition must identify the Wisconsin Personnel Commission as respondent. The petition for judicial review must be served and filed within 30 days after the service of the commission's decision except that if a rehearing is requested, any party desiring judicial review must serve and file a petition for review within 30 days after the service of the Commission's order finally disposing of the application for rehearing, or within 30 days after the final disposition by operation of law of any such application for rehearing. Unless the Commission's decision was served personally, service of the decision occurred on the date of mailing as set forth in the attached affidavit of mailing. Not later than 30 days after the petition has been filed in circuit court, the petitioner must also serve a copy of the petition on all parties who appeared in the proceeding before the Commission (who are identified immediately above as "parties") or upon the party's attorney of record. See §227.53, Wis. Stats., for procedural details regarding petitions for judicial review.

It is the responsibility of the petitioning party to arrange for the preparation of the necessary legal documents because neither the commission nor its staff may assist in such preparation.