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KRISTINE LEAHY-GROSS and  
DEBRA LANGHOFF,

Appellants,

v.

Secretary, DEPARTMENT OF  
EMPLOYMENT RELATIONS, and,  
President, UNIVERSITY OF  
WISCONSIN SYSTEM (Madison),

Respondents.

Case Nos. 90-0035, 0086-PC

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DECISION  
AND  
ORDER

NATURE OF CASE

This case involves an appeal pursuant to §230.44(1)(b) of the reallocation of appellants' positions to Nurse Clinician 3 as a result of respondents' implementation of a personnel management survey. A hearing was held before Commissioner Gerald F. Hoddinott, and the parties have filed briefs.

FINDINGS OF FACTS

1. At all times relevant to this matter, appellants were employed in the Home I.V. Therapy Unit which is a part of the Regional Services/Community Nursing Department. Appellants work in the Regional Services portion of the Department.

2. Appellants' activities are performed in a unit which is comprised of themselves and two other professional nursing positions all classified as Nurse Clinician 3's (NC3's), and a position identified as Home I.V. Therapy Coordinator classified as a Nurse Clinician 4 (NC4). The incumbent of the NC4 position is Mary Ellen O'Keefe. The employees in this unit report to a clinical nurse manager (Barbara Liegel) who in turn reports to the Assistant Director of Regional Services/Community Services (Karen Musser).

3. In 1989, the Department of Employment Relations (DER) completed the Care and Custody survey which included a study of all nursing positions in

state service. This survey resulted in the creation of a number of classifications including the Nurse Clinician classification series. Effective December 31, 1989, appellants' positions were reallocated to Nurse Clinician 3 (NC3) as part of the implementation of the survey. Appellants filed a timely appeal of this reallocation.

4. At the time the survey was implemented, the appellants' duties and responsibilities were accurately identified by the following position summary signed by the appellants on 12/07/89 (Respondent's Exhibits #4 and #5).

Position Summary:

The Home IV Therapy Nurse Clinician III is an advanced level professional nurse position involving the performance of direct and indirect care. The Nurse Clinician III is responsible for independent management of a complex Home IV Therapy patient population requiring the use of advanced assessment and decision-making skills. The nurse acts as a consultant to unit and department staff regarding Home IV Therapy patients. Relevant knowledge and experience is consistently applied to new patient populations. The NC III directs unit activities to structure resources to meet patient needs and resolves problems across units, divisions, or departments. (S/he) develops specific components or collaborates in a group to plan, implement and evaluate education, quality assurance and standards of care, for the Home IV Therapy<sup>1</sup> populations. Change is initiated resulting in improvement of patient care, practice and system. The Nurse Clinician III performs under the general supervision of a nurse manager.

The appellants' position description contained a listing of ten goals (with accompanying worker activities), but no time percentages were indicated.

5. Appellants drafted a revised position description in June 1990 which made the following additions to the position summary. (Joint Exhibit #8 and #9).

Position Summary

\* \* \*

The Home IV Therapy NC III cares for a caseload of home IV patients by evaluating for appropriateness of home IV

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<sup>1</sup> In Ms. Langhoff's PD a specific reference was made to "pediatric" Home IV Therapy, otherwise the position summaries were identical.

therapy. She/he educates patients, care givers and community providers to safely perform home IV therapy. She/he provides follow up by evaluating effectiveness of therapy and monitoring patient's response to the therapy.

The Home IV Therapy NC III functions independently by assessing the behavioral and physical status, motivation, functional and cognitive understanding of infusion therapies and venous/arterial access devices. She/he has advanced knowledge of resources available to patients in the community and investigates the authorization of payment for home IV therapy. The Home IV Therapy Nurse Clinician III performs under the general supervision of a clinical nurse manager.

This draft position description (PD) contained the same goals as those identified in the 12/07/89 PD, but added the following percentages of time.

<u>TIME %</u>	<u>GOAL</u>
10%	A. Clinical Assessment
20%	B. Clinical Planning
20%	C. Education-Patients
20%	D. Clinical Implementation
10%	E. Clinical Evaluation
10%	F. Leadership
3%	G. Education - Self
3%	H. Education - Peers
1%	I. Education - Students
3%	J. Quality Assurance/Reserved

The worker activities under each of these goals were also revised and expanded to provide further elaboration on the actual tasks performed.

6. Subsequently, in February, 1991, the appellants again revised their position description. While the position summary and goals remained the same, the goals and worker activities were combined as follows:

<u>TIME %</u>	<u>GOALS</u>
60%	I. Clinical (This included Goals A, B, D and E from the June 1990 PD)
30%	II. Education of Patients, Families, Peers, Students, and Self (This includes Goals C, G, H and I from the June 1990 PD with a slight increase in time % from 27% to 30%)
5%	III. Leadership (Same as Goal F on the June 1990 PD with a decrease in time % from 10% to 5%.)

5%

IV. Quality Assurance/Research (Same as Goal J on the June 1990 PD with an increase in time % from 3% to 5%.

The worker activities remained basically the same as those identified on the June 1990 PD.

7. The classification specifications for Nurse Clinician 3 and Nurse Clinician 4 provide the following in pertinent part:

#### NURSE CLINICIAN 3

##### Class Description

##### Definition:

This is advanced professional staff nursing work involving the performance of direct and indirect patient care. Employees at this level are responsible for the independent management of direct care to meet the needs of a complex patient population requiring the use of advanced assessment skills. Employees at this level will also act as a consultant to staff regarding the specific patient population. In addition to the direct patient care responsibility, employees at this level will perform unit planning to structure staff and resources to meet the needs of the assigned patients or patient population; develop specific components of or act as a member of a group responsible for the development, implementation and evaluation of broad staff, patient or family educational programs for the specific patient population; or develop specific components of or act as a member of a group responsible for the planning, implementation and evaluation of quality assurance, research or standards of care projects for the specific patient population. The work is performed under the general supervision of a supervising nurse.

#### NURSE CLINICIAN 4

##### Class Description

This is advanced professional staff nursing work involving the performance of direct and indirect patient care. The primary emphasis of employees at this level is the independent management of the direct and indirect care across practice or program areas to meet the needs of a

complex patient population. Employees at this level will also act as a consultant to staff within or outside the facility utilizing their expertise regarding the specific patient population. In addition to the management of the direct patient care, employees at this level will be responsible for planning, developing, implementing and evaluating care programs and protocols to meet the needs of a specific patient population and the staff using them across practice and program lines; developing programs for staff, patient or family education across practice or program areas relating to the specific patient population, including the incorporation of new directions, recent research results or innovative techniques; identifying the need for, developing, implementing and evaluating quality assurance programs for the specific patient population across practice and program areas; or identifying the need for, planning, developing, applying and evaluating the results of research projects for the specific patient population which cross practice or program areas. The work is performed independently, subject to administrative direction and review of a nursing administrator.

The worker activities remained basically the same as those identified on the June 1990 PD.

8. The following Nurse Clinician 4 PD's were introduced at hearing:

a) Ann Stueck-Discharge Planner University Hospitals and Clinics, Division of community Nursing (Joint Exhibit #6)

The Discharge Planner Nurse Clinician IV is an advanced level professional nurse, involving the performance of direct and indirect patient care to meet the discharge planning needs of the pediatric patient population. The Nurse Discharge Planner works in collaboration with a variety of key health care professionals and serves in a consultative role to nurse managers, CNS's and primary nurses to provide information and expertise pertinent to community-based resources for post-discharge nursing needs. The Nurse Clinician IV is a leadership role having responsibilities for independent planning, implementation and evaluation in staff, patient and family education, standards of care and quality assurance. Based on current concepts, this practitioner initiates change to improve patient care, practice and/or system. contributions are made to the nursing profession in consultation, presentation or publication. Work is performed independently with administrative direction and review from the Assistant Director of Community Nursing.

b) Heidi Norwick-Discharge Planner, University Hospitals and Clinics, Division of Community Nursing (Joint Exhibit #7)

The Discharge Planner Nurse Clinician IV is an advanced level professional nurse, involving the performance of direct and indirect patient care to meet the discharge planning needs of the surgical patient population. The Nurse Discharge Planner works in collaboration with a variety of key health care professionals and serves in a consultative role to nurse managers, CNS's and primary nurses to provide information and expertise pertinent to community-based resources for post-discharge nursing needs. The Nurse Clinician IV is a leadership role having responsibilities for independent planning, implementation and evaluation in staff, patient and family education, standards of care and quality assurance. Based on current concepts, this practitioner initiates change to improve patient care, practice and/or system. Contributions are made to the nursing profession in consultation, presentation or publication. Work is performed independently with administrative direction and review from the Assistant Director of Community Nursing.

c) Mary Ellen O'Keefe, Home IV Therapy Coordinator, University Hospital and Clinics, Regional Service (Respondent's Exhibit #6)

Position Summary:

The Home IV Therapy Nurse Clinician IV is an advanced level professional nurse position involving the performance of direct and indirect patient care occurs (sic) across practice settings to meet the needs of the Home IV Therapy patient population. This practitioner is active in establishing effective collaborative relationships with other disciplines and serves in a consultative role to staff within and outside the institution, in an area of clinical expertise. The Nurse Clinician IV is a leadership role having responsibilities for independent planning, implementation and evaluation in staff, patient and family education, standards of care, quality assurance, and unit program planning. Based on current concepts, this practitioner initiates changes to improve patient care, practice and/or system. Contributions are made to the nursing profession in consultation, presentation or publication. Work is performed independently with administrative direction and review from a nurse administrator.

This position spends 40% of its time performing clinically related duties (i.e., clinical assessment, clinical planning, clinical implementation, and clinical

evaluation); 15% performing leadership functions; 25% in education activities related to patients, peers, students, and self; and 20% performing quality assurance/research activities. While this position performs many of the same functions and activities as appellants', its coordinative role in the overall Home IV Therapy program and organizational placement make it a stronger position from a classification standpoint.

9. Appellants are responsible for all types of patients using the Home IV Therapy program. In addition, they are required to be on call which involves providing assistance to staff and patients with questions about the program. Appellants have also developed some specialized areas of practice, e.g., Ms. Langhoff deals extensively with HIV patients and pediatric patients, and Ms. Leahy-Gross deals with Cardiology and Hematology patients.

10. The following classification guidelines, entitled "Nurse Clinician Career Ladder: Guidelines for Evaluation for Progression," were issued for Nurse Clinician 3 and Nurse Clinician 4 classifications by respondent as part of the implementation of the survey (Respondent's Exhibits 2 and 3)

#### Nurse Clinician 3

On the basis of the class specification, positions must meet all of the following standards to be at this level:

1. Independently manage direct care to meet the needs of a complex patient population requiring the use of advanced assessment skills;
2. Act as a consultant to staff regarding the specific patient population; and
3. Perform at least one of the following major activities:
  - a. Perform unit planning to structure staff and resources to meet the needs of the assigned patients or patient population;
  - b. Develop specific components or act as a member of a group responsible for the development, implementation and evaluation of broad staff, patient or family educational programs for the specific patient population;
  - c. Develop specific components of or act as a member of a group responsible for the planning,

implementation and evaluation of one of the following areas for the specific patient population:

- 1) Quality assurance projects;
- 2) Research projects; or
- 3) Standards of care projects.

Nurse Clinician 4

On the basis of the class specification, positions must meet all of the following standards to be at this level:

- I. Independently manage the direct and indirect care across practice or program areas to meet the needs of a complex patient population;
  - II. Act as a consultant to staff within or outside the facility utilizing their expertise regarding the specific patient population;
  - III. Perform at least one of the following major activities:
    - A. Perform planning, development, implementation and evaluation of care programs and protocols to meet the needs of a specific patient population and the staff using them across practice and program lines;
    - B. Develop programs for staff, patient or family education across practice or program areas relating to the specific patient population, including the incorporation of new directions, recent research results or innovative techniques;
    - C. Identify the need for, develop, implement and evaluate quality assurance programs for the specific patient population across practice and program areas; or
    - D. Identify the need for, plan, develop, apply and evaluate the results of research projects for the specific patient population which cross practice or program areas.
11. Appellants spend approximately 75-85% of their time on direct patient care activities. In addition, appellants have been involved in a



number of educational activities from orientation of hospital staff regarding the Home IV program to specific patient instruction on use of IV equipment.

Ms. Langhoff has been active in outside groups such as Madison Area Network for AIDS (MANA), has developed a brochure on pediatric home care services, has revised or developed discharge criteria sheets in areas such as Home IV Amphotericin and Home IV Antiviral/Antifungal Therapy, and developed instruction for administration of IV medication - Slow Push Method and operation of AVI pumps and accessories.

Ms. Leahy-Gross has been involved in the Continuity of Care organization which addresses considerations related to care once a patient leaves the hospital. In addition, she has revised or developed documents such as Nurse Clinical on-call Guidelines and Home IV Nurse Clinician responsibilities; written discharge criteria such as Home IV Antibiotic Therapy and Home IV Hydration Therapy; written instructions on administration of antibiotics via Central line using a minibag or Buretrol with either a direct AVI pump construction or a pump needle connection; and conducted a quality assurance project addressing the indicators needed to properly monitor patients on Home Antibiotic Infusion Therapy.

12. Appellants' positions are best identified by the Nurse Clinician 3 specification based on the majority of the duties and responsibilities they perform in regard to Home IV patients and the identification organizationally of a Home IV Therapy Coordinator position.

#### CONCLUSIONS OF LAW

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

2. Appellants have the burden of proof to show that respondent's decision reallocating their positions to Nurse Clinician 3 instead of Nurse Clinician 4 was incorrect.

3. Appellants have failed to sustain this burden.

4. Appellants' positions are more appropriately classified as a Nurse Clinician 3.

#### DISCUSSION

The parties agreed to the following issue for hearing:

Whether the decision by respondents to reallocate appellants' positions to the Nurse Clinician 3 (NC3) level was correct.

Subissue: Whether appellants' positions are more appropriately classified at the NC3 or NC4 level.

This case involves a question of whether the majority of appellants' duties are best described by the NC3 or NC4 classification. However, at hearing appellants raised the issue that none of their position descriptions (See Findings 4, 5 and 6) completely and accurately describes the duties and responsibilities of their positions and asked the Commission to make a determination as to what their duties are and what their classification level should be.

The Commission recognizes that management has the right to assign duties. Based on the hearing record established in this case, the dispute does not seem to be over what duties are assigned, but rather what do those duties entail and how are they most appropriately classified. There were several drafts of the position description which the Commission reviewed in this hearing in addition to the appellants' testimony about their job function.

As indicated in Finding #4, the Commission has determined that the December 7, 1989 PD accurately describes what the appellants do. To the extent that the June, 1990, PD (Finding #5) adds time percentages to the appellants' PD and expands on the worker activities, this certainly provides more information about their position much like appellants' testimony did. However, it does not change or add to the actual activities performed which were identified in the 12/7/89 PD. Certainly, if the issue were whether they spent a majority of their time in direct patient care, the June, 1990, PD may have had more significance. In this case, the record shows that the appellants spend the majority of their time in direct patient care and some lesser percentage in indirect care activities. The issue to be resolved then is whether their direct and indirect patient care activities are best identified at the Nurse Clinician 3 or Nurse Clinician 4 level.

It is frequently the case that the duties and responsibilities of a position are described by the language of two or more classification specifications. The classification which "best fits" a position is that which describes the duties and responsibilities to which the position devotes a majority (at least 51%) of its

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 Count Circuit Court, 79-CV-3860 (9/21/80)]. This is also the case here. Certainly, some of appellants' duties and responsibilities are identified at the NC4 level, but, for the reasons stated below, the Commission finds that the majority of appellants' duties and responsibilities are best described by the NC3 classification.

The specifications for both NC3 and NC4 identify "advanced professional staff nursing work involving the performance of direct and indirect patient care." However, the NC4 states that the ... "primary emphasis of employees at this level is the independent management of the direct and indirect care across practice or program areas to meet the needs of a complex patient population...."

By contrast, the NC3 classification states that ... "Employees at this level are responsible for the independent management of direct care to meet the needs of a complex patient population requiring the use of advanced assessment skills...." This distinction in the specification means that at the NC3 level employees independently manage their direct case load, while at the NC4 level employees have, in addition to their direct care responsibility, a significant role in the overall management of a particular unit or function which crosses program and practice areas.

The specifications for NC3 go on further and identify that employees "perform unit planning ...; develop specific components or act as a member of a group responsible ... for educational programs for the specific patient population; ... or develop specific components or act as a member of a group responsible for ... quality assurance, research or standards of care projects ..." This language identifies the scope and the level of responsibility of appellants' positions in that they work as part of a group or on specific components of the indirect care activities in Home IV Therapy as identified by the above language.

By contrast, the NC4 specification states that ... "in addition to the management of the direct patient care, employees at this level will be responsible for planning, developing, implementing and evaluating care programs and protocols to meet the needs of a specific patient population and the staff using them across practice and program lines; developing programs

for ... education ..., including the incorporation of new directions, recent research results or innovative techniques; identifying the need for, developing, implementing and evaluating quality assurance programs ...." Positions at this level have an ongoing responsibility at the programmatic level such as those identified in the comparison positions found in Finding #8. These positions have hospital wide responsibility for discharge planning for a specific patient group, i.e. surgery or pediatric, or are assigned responsibility in a specific program, i.e. Home IV Therapy, to perform these indirect care functions independently and in total as opposed to being a part of a team or working only on a specific component.

Certainly, the appellants work in the areas of indirect care as identified at the NC 4 level in addition to doing direct patient care. Appellants perform their functions in a very pro active fashion. If they observe a problem or identify the need to modify or formalize procedures or instructions, they take the initiative to do it. Many of these procedures and instructions are part of a care program and may even be considered as a protocol. However, the distinction between the NC3 and 4 is not whether an employe does indirect care, but whether it (indirect care) is a major emphasis of the assigned work or a part of the ongoing activities. In the appellants' case, it (indirect care functions) is a part of their ongoing activities and while they are certainly important and a critical part of their job, it is not the major emphasis.

In many cases these indirect care activities are a result of their individual initiative, up to and including becoming involved in community organizations and UW-Hospital Committees. If the Commission decision would be based on an evaluation of performance and initiative, the outcome might be different. However, in a classification case, the Commission decision is based on which classification specification best describes the appellants' duties and responsibilities.

There were a number of arguments made regarding the NC4 positions held by Mary Ellen O'Keefe in the Home IV Therapy unit and the appropriateness of the classification. In reviewing the PD of Ms. O'Keefe, it is noted that she has 15% identified for her leadership goal (as opposed to 10% for appellants on their 6/90 PD) and 20% identified for her quality assurance/research goal (as opposed to 3% for appellants on their 6/90 PD). These difference in time percentages and the language of her position

summary (See Finding #6) which identifies : "establishing effective collaborative relationship with other disciplines ... initiates change to improve patient care ..." appear to identify an overall role in Home IV Therapy which places the position at higher classification level of NC4.

Appellants argue that they do the same work as Ms. O'Keefe's position and that she doesn't provide any direction or guidance to them. While many tasks are similar, Ms. O'Keefe's position is identified as the Home IV Therapy Coordinator. There is no requirement in the specification that an NC4 have any leadwork or other authority over staff. The NC4 identifies the highest level of staff nursing position and encompasses positions with broad program responsibilities. At hearing appellants testified that they consult with other hospital medical staff and outside local groups regarding Home IV Therapy. By contrast, Ms. O'Keefe consulted with another hospital in Illinois about starting a Home IV Therapy program. This distinction in activities performed appears to be the type of difference envisioned by the specifications between an NC3 and NC4 position.

Since the classification of Ms. O'Keefe's position was not before the Commission, any comparison is based on the documents and testimony at hearing and is certainly not dispositive of the appropriateness of Ms. O'Keefe's position's classification. Even if the Commission were to accept appellants' arguments that Ms. O'Keefe's position is misclassified, it would not help their case. The Commission has held that it will not use a misclassified position to in effect misclassify another position.

Lastly, the appellants argue that they should be at a higher level than staff nurses on a unit. While the record does not contain much on what a staff nurse in a hospital unit at the NC3 level does, the jobs appear quite different. Even if appellants could show that their jobs are more responsible, it would not meet<sup>2</sup> their burden of proof to show that they are different than other NC3's. Rather they must show that their positions are appropriately identified at the NC4 level.

Based on the above, the Commission finds that appellants' positions are best identified by the language of the NC3 classification specification.

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<sup>2</sup> The Commission has amended this phrase from the proposed decision and order for purposes of clarification.

ORDER

Respondents' action reallocating appellants' positions to Nurse Clinician 3 was not incorrect, and these appeals are dismissed.

Dated: August 26, 1992 STATE PERSONNEL COMMISSION  
GFH/gdt/2

  
DONALD R. MURPHY, Commissioner

  
GERALD F. HODDINOTT, 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.