

STATE OF WISCONSIN

PERSONNEL COMMISSION

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STEINHAUER et al.,
 (Robert L. Steinhauer, Marlene E. Schiffman, Marian P. Rosenberger, Karen R. Volker, Mary A. Krieger, Bonnie L. Maier, Robin L. Gruchow, Debra A. Myrbo, Jeanette M. Heczko, Bertha E. Lincoln, Lori M. Karcz, and Davilee C. Marble),

Appellants,

v.

Secretary, DEPARTMENT OF EMPLOYMENT RELATIONS,

Respondent.

Case No. 90-0216-PC

* * * * *

ORDER

On February 11, 1993, appellant filed a Notice of Motion and Motion to Vacate Proposed Decision and Order based on

" . . . the apparent forging of Position Descriptions used by the Department of Employment Relations (DER/DMRS) or unknown others in the instant proceedings. "

Since only a Proposed Decision and Order had been issued in the instant matter prior to February 11, 1993, and, as a result, no final action of the Commission had been taken, the Commission interpreted the above-referenced Motion as an additional objection to the Proposed Decision and Order, i.e., as an additional basis offered by appellant for the Commission not to adopt the Proposed Decision and Order as its final disposition of this matter.

It is clear to the Commission, after reviewing the record of the instant proceeding and after consulting with the hearing examiner, that the Proposed Decision and Order did not rely upon the allegedly "forged" position descriptions in any way. In fact, the Proposed Decision and Order relied upon the position description (Appellant's Exhibit 15) prepared by appellants in anticipation of hearing and not the position descriptions in existence at the time of respondent's classification review as the accurate description of the duties and responsibilities of appellant's positions (See Finding of Fact 2) to


which the classification specifications were applied and upon which the "best fit" analysis was based.

Moreover, it is clear from the record that the identity of the signators to the disputed position descriptions or any misrepresentations as to their identity is irrelevant to the question of the accuracy of the duties and responsibilities described in these position descriptions; and that appellant's witnesses themselves testified to such accuracy during the course of the hearing.

Since the hearing examiner did not rely on these position descriptions for the preparation of the Proposed Decision and Order and since the alleged "forging" of supervisor's signatures on such position descriptions has no impact on the decision of the merits of this appeal, the Commission concludes that this objection is not meritorious.

The Commission adopts the Proposed Decision and Order as its final disposition of this matter.

Dated: March 30, 1993 STATE PERSONNEL COMMISSION


LAURIE R. McCALLUM, Chairperson

LRM:rcr


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.

STATE OF WISCONSIN PERSONNEL COMMISSION

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Appellants,

v.

Secretary, DEPARTMENT OF
EMPLOYMENT RELATIONS,

Respondent.

Case No. 90-0216-PC

* * * * *

PROPOSED
DECISION
AND
ORDER

Nature of the Case

This is an appeal of a reallocation decision. A hearing was held on September 17, 1992, before Laurie R. McCallum, Chairperson. Final argument was presented orally to the hearing examiner on October 14, 1992.

Findings of Fact

1. Pursuant to a survey of certain care and custody and related positions, respondent reallocated appellants' positions to the Resident Care Supervisor (RCS) classification effective April of 1990. Appellants filed a timely appeal of these reallocations with the Commission, contending that their positions were more appropriately classified at the Social Services Supervisor 1 (SSS 1) level.

2. At all times relevant to this matter, each of appellants' positions has been assigned to a unit at the Central Wisconsin Center for the Developmentally Disabled, an institution within the Division of Care and Treatment Facilities of the Department of Health and Social Services. The duties and responsibilities assigned to appellants' positions are accurately summarized as follows:

- 55% A. Provision of Supervision of Unit Staff
- A1. Independently schedule and co-ordinate staff for all shifts ensuring adequate staffing is maintained as required by federal standards -
 - a. Assign hours, days off, shift rotation and work assignments to assure active treatment on a continual basis.
 - b. Grant vacation and holiday time.
 - c. Determine the need and grant/require overtime.
 - d. Determine, develop and adjust posted work schedules to ensure program needs.
 - e. Effectively review and validate timesheets of all unit staff.
 - A2. Provide for the orientation of new unit staff.
 - a. Provide for the deemed certification of all R.C.T. staff through on unit orientation and training
 - b. Encourage and promote ongoing continuing education for all staff.
 - A3. Independently interviews and selects new employees for paraprofessional positions.
 - A4. Serve on interview panels to select professional staff.
 - A5. Independently evaluate paraprofessional staff annually using the PPD system. Conduct conferences and planning sessions.
 - A6. Independently gives written and verbal reprimands/effectively recommends suspensions/terminations of paraprofessional staff to the director.
 - A7. Hear and respond to first step grievances.
 - A8. Counsel staff and provide them with guidance and problem solving and resource services.
 - A9. Maintain consistent application of DH&SS work rules, Administrative Orders, and negotiated labor contracts.
 - A10. Independently determine the need and conduct building meetings and ward conferences to ensure program quality assurance. Determine resources needed to foster adequate training and communication.
 - A11. Participate in policy reviews and recommend changes in Administrative orders and Resident living manual.
- 35% B. Management of unit operation.
- B1. Administer unit in absence of unit coordinator.
 - B2. Represent unit coordinator at assigned functions.
 - B3. Assist unit coordinator in determine unit program needs.

- B4. Independently approve/deny routine requests for expenditure of resident funds.
 - B5. Recommend acquisition of capital items to unit coordinator.
 - B6. Prepare and submit reports such as time-keeping, resident population, surveys and repair requests. Assist in gathering and preparing data regarding work unit and/or resident programming.
 - B7. Determine the need to review with staff, procedures relative to infection control, fire, safety, tornado and first aid. Provide for training as needed.
 - B8. Serve as unit liaison to all other departments.
 - B9. Act as a transdisciplinary team member in development and implementation of activities and programs.
- 7% C. Provision of resident services.
- C1. Attend and assign staff for annual interim resident program review, transdisciplinary and other unit meetings.
 - C2. Coordinate resident admissions, transfers and discharges.
 - C3. Arrange for appointments, services and programs.
 - C4. Assign staff to assist in off unit programs.
 - C5. Observe staff during rounds to insure programs effectiveness and goals are being met.
- 3% D. Promotion of DH&SS Affirmative Action goals and objectives in the day to day supervisory activities
- D1. Include Affirmative Action items on agendas of staff meetings at least quarterly to ensure dissemination of necessary information and that staff remain sensitive to Affirmative Action issues.
 - D2. Promote Affirmative Action through encouraging staff participation and attendance at meetings, film viewing, and in-service offerings on subjects related to Affirmative action.
 - D3. Disseminate institution Affirmative Action policies and plans to subordinate staff.
 - D4. Assure that necessary accommodations are made for handicapped individuals.

The program for which these positions perform these duties and responsibilities is the resident living program on a living unit. These positions report to a Unit Coordinator (UC) who has ultimate responsibility for the development, implementation, and evaluation of the resident living program on the unit. The UC is

responsible for supervising the nursing and professional staff on the unit. Appellants' positions are responsible for supervising the paraprofessional staff on the unit which consists primarily of Resident Care Technicians (RCT). These RCT positions were formerly classified as Institution Aides.

3. The primary emphasis of each of appellants' positions is to provide administrative support for the resident living program on the assigned unit and to oversee the implementation of the residents' active treatment plans by paraprofessional RCTs. Both appellants' positions and the UC positions are on call 24 hours a day but are infrequently called at home because most questions or problems which arise outside their work hours are handled by the administrative charge supervisor for the shift. Such calls to the RCSs usually entail questions relating to scheduling or interpretation of the union contract applicable to RCTs. Such calls to the UC usually involve questions relating to patient treatment. The UCs routinely come in to the institution to attend meetings on other shifts but appellants' positions do not have this responsibility. UCs make patient rounds with the Registered Nurses and physicians but appellants' positions do not have this responsibility. An institution such as the Central Wisconsin Center is required to comply with the provisions of federal Title XIX in order that some of the services it renders to its residents qualify for Medical Assistance reimbursement. Pursuant to Title XIX, appellants' positions would be responsible for ensuring that the building safety and maintenance requirements were being met whereas the UC positions would be responsible for ensuring that the care and treatment requirements were being met.

4. The position standard for the Resident Care Supervisor classification states as follows, in pertinent part:

Class Description

Definition:

This is responsible supervisory and administrative work with responsibility for the supervision of a number of units on a shift within an institution. Employees in this class are responsible for ensuring the provision of care and the implementation of individual treatment programming designed to bring about positive change in the patients or residents. Work is performed in accordance with established rules, regulations, policies and individual treatment plans. General supervision is provided by a unit supervisor.

Examples of Work Performed:

Assign, supervise, direct and evaluate work of Resident Care Techs, and others as delegated.

Provide orientation, training, and continuing learning experience of assigned personnel.

Produce and post work schedules, monitor sick leave, vacation, etc.

Ensure safe and appropriate treatment following policies and procedures and in conformance with resident plan care.

Participate as a member of an interdisciplinary treatment team.

Provide health and nutrition services to residents.

Document activities performed and prepare reports as necessary.

5. The position standard for the Social Services Supervisor series states as follows, in pertinent part:

SOCIAL SERVICES SUPERVISOR SERIES

Social Services Supervisor 1 (SR 1-14)

This is the first level of supervisory work. Positions allocated to this level may (1) supervise one of the smaller social services programs or a segment of a major program in a district or region, at the state level or in an institution, or (2) act as an assistant to the district or institution program supervisor.

Representative Positions

Assistant Institution Social Services Chief - Division of Corrections and Mental Hygiene - assist the institution social services chief in the overall supervision of social work programs in the institution.

Assistant Supervisors at the district level - Division of Corrections - act as assistant to the district supervisor in directing probation and parole programs in a district

Institution Social Work Programs Supervisor - Division of Mental Hygiene - directs the social work program activities, including supervision of staff in an established unit of an institution.

Assistant Unit Supervisor, Direct Services - (positions headquartered in regional office) - Division of Family Services -

supervise a staff engaged in direct casework activities in a region.

Specialty Program Supervisors - Division of Corrections - Central office or regional positions responsible for supervising and directing the activities of a staff providing services to offenders placed on probation, released under provisions of the early release program, or paroled.

Student Unit Supervisor - All divisions - responsible for supervising the casework activity of permanent, classified social workers engaged in graduate study, either in the field or in an institution.

Milwaukee Foster Care Supervisor - Division of Corrections

6. An SSS 1 position offered for comparison purposes in the hearing record is the position of Diane Crucius, Assistant Section Manager, Ethan Allen School, Department of Health and Social Services. Ethan Allen School is a facility for juveniles adjudged delinquent where the resident units are organized as cottages. This position functions as the Assistant Section Manager for Section #2 which consists of three cottages and is responsible for overseeing the development, implementation, and assessment of the security, treatment, and specialized programs developed by section staff, including athletics, recreation, education, social, and specialized programs such as a sex offender program, children of alcoholics program, and behavior errors in thinking program (40%); supervision of the development, implementation, and evaluation of treatment plans for each student in the assigned cottages (20%); supervision, evaluation, and investigation of staff (15%); representation of each cottage within the section in the institution's student hearing and disciplinary process (10%); coordination and implementation of staff training and development plans (5%); and representation of Section Manager in his/her absence and at assigned functions (5%). This position supervises 3-4 professional Social Worker positions and 15-20 paraprofessional Youth Counselor positions.

7. Another SSS 1 position offered for comparison purposes in the hearing record is the position of Marline Whitson at the Central Wisconsin Center. The duties and responsibilities of this position are accurately described in a position description signed by Ms. Whitson on July 16, 1991, as follows:

TIME %	GOALS AND WORKER ACTIVITIES
20%	<p>A. Supervision of staff.</p> <p>A1. Supervise activities of professional staff Performs annual evaluations.</p> <p>A2. Meets regularly to review work assignments, review functioning of programs, program policies, current community resources and problems identified by staff.</p>
35%	<p>B. Coordinates Extended Care, Placement, GSA and STC-PA programs.</p> <p>B1. Develops yearly admission/discharge schedule. Coordinate admissions and discharges, monitor client progress and overall program effectiveness. Distribute and collect program evaluation materials from community agencies/parents and distribute to staff.</p> <p>B2. Provide information, consultation and direction to Hospital, medical, therapy and education staff on GSA and STC-PA Programs. Provide program information to supervisors and administrators. Serve as a professional liaison with the DEC Evaluation Coordinator.</p> <p>B3. Coordinates screenings, referrals, evaluation of individuals prior to admission to the Center.</p> <p>B4. Coordinate Center Placement Program. Direct activities of Placement staff. Develop and implement placement initiatives Periodic review of program effectiveness.</p> <p>B5. Serve as a consultant to the community agencies regarding short-term, extended care programs and individuals case planning.</p>
35%	<p>C. Provide case management services to selected extended care/short-term treatment clients.</p> <p>C1. Screen, schedule and coordinate admission, provide family counseling, implement discharge plan.</p> <p>C2. Work with counties on alternate plans for persons referred who are not appropriate for admission.</p>

- 10% D. Other related responsibilities.
- D1. Meet regularly with supervisor to discuss/review programs.
 - D2. Serve on Pre-Admissions Committee, Transfer Committee, Census Committee. Act as liaison to DCTF Centralized Admissions Committee. Participate on DCTF Children's Services Committee, Future Roles of the Center Committee.

This position supervises three (3) professional Social Worker positions and one (1) professional Therapist positions and has responsibility the majority of the time for program development, implementation, and evaluation.

8. The RCS positions at the Northern Center for the Developmentally Disabled and the Southern Center for the Developmentally Disabled, which are counterpart institutions to the Central Wisconsin Center, perform duties and responsibilities essentially identical to those performed by appellants' positions except for the fact that the Northern and Southern Center positions perform these duties for a shift.

9. The duties and responsibilities of appellants' positions are better described by the language of the RCS position standard than that of the SSS 1 position standard and are more comparable to the RCS positions offered for comparison purposes in the hearing record than the SSS 1 positions

Conclusions of Law

1. This matter is appropriately before the Commission pursuant to §230.44(1)(b), Stats.
2. The appellants have the burden to show that respondent's decision reallocating them to the RCS classification was incorrect.
3. The appellants have failed to sustain this burden.
4. Appellants' positions are more appropriately classified as Resident Care Supervisors.

Opinion

In the instant case, the language of each of the relevant classification specifications describes some, but not all, of the duties and responsibilities of appellants' positions. The overlap of two or more job specifications in describing a given position is usual and expected. Once a factual determination has

been made as to the specifics of an incumbent's job, they must be applied to the various specifications. The specification providing the "best fit" is used to determine the actual classification. The "best fit" is determined by the specification reflecting job duties and activities within which the employee routinely spends a majority of his/her time. DER & DP v. PC (Doll), Dane County Circuit Court, 79-CV-3860, 9/21/80; appeal settled, Court of Appeals, 80-1689, 2/9/81.

With one exception, the language of the definition section of the RCS position standard accurately and specifically describes the duties and responsibilities of appellants' position. This exception is the language "of a number of units on a shift." In addition, the "Examples of Work Performed" section of the RCS position standard accurately and specifically describes the work the appellants' positions perform the majority of the time. Although the fit is not perfect due to the inclusion of the quoted language in the specification, it appears to the Commission that the fact that appellants' positions perform this work for all shifts rather than one is counterbalanced by the fact that appellants' positions perform this work for only one unit rather than more than one unit. The Commission concludes on this basis that the RCS position standard provides a very close fit for the duties and responsibilities of appellants' positions.

In contrast to the language of the RCS specification, the language of the SSS 1 classification specification is general, not specific. The usual rule of thumb is that a classification specification which specifically describes the duties and responsibilities of a position provides a closer fit than a specification which only generally describes such duties and responsibilities. In addition, one of the limitations imposed on this analysis is that the language and the description of the representative positions in the SSS 1 specification is so dated that it provides little guidance to the Commission as to how this classification specification relates to the current organizational structure of the Department of Health and Social Services. As a consequence of the general nature of the specification language and its age, the Commission will look to positions currently classified at the SSS 1 level to determine their comparability to appellants' positions.

The two SSS 1 positions offered for comparison purposes in the hearing record are described in Findings of Fact 6 and 7, above. Both of these positions supervise professional positions as well as paraprofessional positions. In

addition, the primary emphasis of these positions is the development, implementation, and evaluation of a variety of programs. In contrast, the primary emphasis of appellants' positions is providing administrative support to the resident living program on a unit and overseeing the implementation of a part of this program by paraprofessional staff. The duties and responsibilities of appellants' positions are not comparable to the duties and responsibilities of these SSS 1 positions.

Those RCS positions offered for comparison purposes in the hearing record include the RCS positions at the Northern and Southern Centers for the Developmentally Disabled, counterpart institutions to the Central Wisconsin Center. The duties and responsibilities of these positions are nearly identical to those of appellants' positions except that they are limited to a single shift. Although it appears from the record that having this responsibility over all three shifts may increase the volume of the administrative support work and perhaps increase somewhat the complexity of the coordinative role, the record does not show and it is not a necessary conclusion that this increases in any substantial way the complexity of either the program or the administrative responsibilities of appellants' positions. Although appellants point to the fact that they are required to be on call 24 hours a day, the record shows that they are called very infrequently and this responsibility has very little overall impact on their positions.

The appellants also argue that they supervise programs as well as staff and this justifies classification at the SSS 1 level. It is clear from the record that appellants' positions do supervise programs. However, the RCS position standard recognizes this responsibility, i.e., positions in this classification "are responsible for ensuring the provision of care and the implementation of individual treatment programming;" work is performed in accordance with "individual treatment plans;" these positions "assign, supervise, direct and evaluate work of Resident Care Techs, and others as delegated;" these positions "ensure safe and appropriate treatment following policies and procedures and in conformance with resident plan of care;" and these positions "participate as a member of an interdisciplinary treatment team."

The Commission concludes that the RCS classification provides a much closer fit for the duties and responsibilities of appellants' positions than the SSS 1 classification.

Order

The action of respondent is affirmed and this appeal is dismissed

Dated: _____, 1992 STATE PERSONNEL COMMISSION

LAURIE R. McCALLUM, Chairperson

gdt

DONALD R. MURPHY, Commissioner

GERALD F. HODDINOTT, Commissioner

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