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STATE OF WISCONSIN

PERSONNEL COMMISSION

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DAN MORAN,
MICHAEL KAESKE,

Appellants,

v.

Secretary, DEPARTMENT OF
EMPLOYMENT RELATIONS,

Respondent.

Case Nos. 90-0372, 0382-PC

* * * * *

DECISION
AND
ORDER

These matters are before the Commission for review of respondent's decisions to reallocate the appellants' positions to the Social Services Specialist 1 level rather than to classify them at the Social Services Specialist 2 level.

The Department of Health and Social Services, Division of Health, Bureau of Quality Compliance, Long Term Care Section conducts licensure and certification surveys of nursing homes, community based residential facilities, facilities for the developmentally disabled and hospital swing beds. Surveyors are divided into 6 teams located in 4 regions of the state. Each region is headed by a field operations manager. The appellants are employed as surveyors in the Green Bay District.

In 1988, the appellants' positions were classified at the Social Worker 3 level. The appellants requested reclassification to Social Services Specialist 2. The reclassification request was denied but the appellants' positions were reallocated to the Social Services Specialist 1 level, as were the 32 other social worker surveyor positions throughout the state. Respondent justified the reallocations as correcting previous incorrect allocations.

The Long Term Care Section employs 34 Social Services Specialists and 64 Nurse Consultants to conduct surveys. Until the early 1980's, survey assignments were made to surveyors without regard to the type of facility being surveyed.

In 1986, DHSS decided that it would only use individual surveyors who were designated as holding Qualified Mental Retardation Professional (QMRP) qualifications to survey facilities for the developmentally disabled. (App. Exh.

12) Twelve Social Service Specialists, including the two appellants, have the QMRP designation. The other 24 Social Service Specialists do not, and these 24 do not, therefore, conduct surveys of facilities for the developmentally disabled.

As a general matter, QMRP designation requires 1 year of experience in treating or working with the developmentally disabled in addition to the typical licensure or educational requirements for a particular health care profession or for social work.

Approximately 15 of the 100 facilities surveyed in the Green Bay District are FDDs. Appellants spend approximately 20% to 35% of their time on FDDs. The remainder of their time is spent surveying nursing homes. Because of their QMRP designation and consequent assignment to survey FDDs, the appellants have received additional training and must apply a separate set of federal regulations and state codes to FDDs than are applied to nursing homes. In addition, a FDD survey is focused on whether the selected sample of patients is receiving "active treatment." This is determined by observing the patients to see whether they are obtaining the services called for in the regulations.

The question raised by this appeal is whether the FDD responsibilities carried out by the appellants justify a higher classification level than that assigned to the 24 surveyors who do not survey any facilities for the developmentally disabled. The class specifications do not specifically mention surveying responsibilities at either the SSS 1 or 2 level, nor does the general definitional language at either level succinctly describe the appellants' duties:

Social Services Specialist 1

This is the first level of responsible program and/or consultative work above the level of senior caseworker. Positions allocated to this level may (1) provide consultative services at the district or community level or at the state level in a limited program area, or (2) act as an assistant to a central office consultant with statewide program responsibility, or (3) carry responsibility for implementing and directing a specialized institutional or training program.

Representative Positions

Licensing Specialists - Division of Family Services - responsible for the licensing activity for child placing and child welfare agencies and institutions. This involves inspecting, ap-

proving and guiding the activities of these agencies and providing program development.

* * *

Institution Program Specialist - All Divisions - serves as a staff specialist and coordinator with responsibility for a specified portion of an institution social services program.

Social Services Specialist 2

This level represents the primary functional area of responsibility for providing social services consultation in specialized program areas. Specialized staff consultative service in a district or region can be included at this level depending upon the organizational relationship, the duties assigned and the depth and scope of the program involved. Central office consultants and program specialists at this level, in addition to their consultative roles, are involved in the planning, development and implementation of service and service related programs under the direction of higher level program supervisors or administrators. A limited number of field consultants are allocated to this level on the basis of providing consultative services in selected program areas which require highly specialized training and skills.

Of the various representative positions listed at the SSS 1 and 2 levels, the closest comparison to the appellants' duties is the Licensing Specialist position identified at the SSS 1 level. The inspection role listed as part of that position's responsibilities are at least roughly comparable to surveying responsibilities.

In addition to the general definitional language and representative positions, the Social Services Specialist specifications also set forth allocation factors:

The State of Wisconsin's involvement in social services at various levels and in different fields creates situations wherein no single allocation or classification factor can be universally applied. For example, it is impossible to develop such a factor which could apply equally to casework supervisors and community consultants since their duties are extremely dissimilar. As a result *the following factors can be applied and reviewed only in terms of similar positions.*

1. Organizational Status - The most revealing and useful allocation factor available is an analysis of the position's relative rank in the organization, in both the departmental and the divisional environment. In general, this factor can appropriately place any position within the classification plan for this series,

allowing a one level margin of error. Further refinement and adjudication depends on the remaining allocation factors.

2. Planning, Policy and Budgeting Responsibilities - This may be the second most encompassing factor since it touches nearly all positions at the higher levels. Positions responsible for program planning and corresponding policy making must be evaluated in terms of their relative influence in the areas of program size, budget, impact, complexity and scope....

3. Program Direction and Employee Supervision - A further refinement of the allocation factors involves the analysis of the elements of program direction and the position's functional relationship in regard to the supervision of employees. Consideration should be given to supervisory responsibilities, number of services offered, program size, complexity and impact and the finances and resources involved.

4. Coordination, Specialization and Consultation Responsibilities - Positions responsible for providing coordinative, consultative and specialized services to the administration of the social services program must be evaluated in terms of the total impact of these services, the exclusivity of the function and the level of decision-making involved. Also an analysis should be made of the type of contacts necessitated in the providing of these services and whether or not the position has line responsibility in addition to its staff role. (emphasis added)

In light of the absence of language in the SSS 1 and 2 definition statements, it is appropriate to focus our analysis on the above general factors. In order to do so, it is crucial to follow the directive to apply the factors to *similar* positions. The other 10 QMRP social worker surveyor positions are obviously the *most* similar. However, this case arises from the initial decision to reallocate the QMRP social worker surveyor positions to the SSS 1 level, and it would be inappropriate to decide the proper classification of the appellants' positions solely by comparing them to the positions of their co-workers who chose not to appeal from the reallocation decision.

The most important comparison is to the 24 social worker surveyors who do not have the QMRP designation, and therefore do not survey the facilities for the developmentally disabled. When comparing the appellants' "QMRP" positions to the non-QMRP surveyor positions in terms of the identified classification factors, there is little basis for drawing a distinction that would justify

different classification levels.¹ All 36 of the Social Services Specialist positions, both QMRP and non-QMRP, are regional positions which report to a field operations manager, i.e. they have the identical rank in organizational terms. None of the 36 have planning, policy or budgeting responsibilities as those terms are used in the specifications. None are involved in program direction² nor do they have any supervisory responsibilities. The only distinction is that the QMRP positions have an additional area of survey responsibility in that they are assigned to survey facilities for the developmentally disabled in addition to the facilities surveyed by the other surveyors. This does require them to have a larger base of knowledge and also requires them to obtain additional training. However, it does not change the impact of their surveys, vis-a-vis the surveys carried out by the non-QMRP surveyors, nor is this a state-wide function exclusive to them. The level of decision-making is also the same. The distinctions that do exist between the QMRP and non-QMRP social worker surveyor positions are not distinctions which are reflected, to any significant extent, in the classification factors set forth in the Social Services Specialist series. While it would certainly be possible to generate some specifications which would identify the additional complexity and scope of carrying out both nursing home and FDD surveys at a higher classification level than carrying out only nursing home surveys, the existing specifications do not do so and it would be in excess of the Commission's authority to attempt to rewrite the existing SSS specifications.

The appellants offered various comparison positions at the SSS 2 level in support of cases. One of those positions (Patricia Kremer) was later found to have been reallocated to the SSS 1 level. Many others are central office positions with statewide responsibilities, placing them within one of the specific SSS 2 allocations. The Fusco (App. Exh. 35) and Jankowski (App. Exh. 40) positions are not especially "similar" to the appellants' positions. Even so, evi-

¹Even if the QMRP responsibilities could be shown to be at a higher level, the appellants did not spend a majority of their time on those responsibilities.

²The QMRP social worker surveyors are designated the survey team leaders for FDD surveys. The team typically includes the social worker surveyor and a nurse surveyor. The team leader's additional responsibilities include reviewing an institution's past surveys before the start of a new survey and assigning an equitable number of residents (comprising the resident sample) to each of the various team members. These responsibilities do not rise to the level of program direction.

dence suggests that they are at a higher organizational level than the appellants' positions.

The Commission notes that both of the appellants testified that the majority of their time is spent performing surveys rather than providing consultation to the facilities they are surveying. The surveying process clearly includes an element of consultation, as reflected in activities 1 and 2 under Goal D of the Kaeske position description (Resp. Exh. 10). However, all of Goal D represents only 5% of Mr. Kaeske's time.³


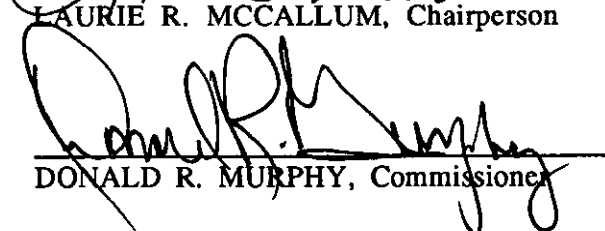
The appellants are regional rather than central office positions and cannot meet the allocation for a central office position.

ORDER

Respondent's reallocation decisions are affirmed and these appeals are dismissed.

Dated: January 11, 1994 STATE PERSONNEL COMMISSION

KMS:kms
K:D:Merits-reall (Moran & Kaeske)


LAURIE R. MCCALLUM, Chairperson

DONALD R. MURPHY, Commissioner

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NOTICE
OF RIGHT OF PARTIES TO PETITION FOR REHEARING AND JUDICIAL REVIEW

³During the period of 1989 that is relevant to these appeals, the appellants were carrying out some additional consultation responsibilities as part of the licensure process for "distinct part" FDD facilities. Although these duties were during the relevant time period, there were merely temporary in nature. Because they were not permanent assignments, they are not entitled to weight in the classification analysis.

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.

Pursuant to 1993 Wis. Act 16, effective August 12, 1993, there are certain additional procedures which apply if the Commission's decision is rendered in an appeal of a classification-related decision made by the Secretary of the Department of Employment Relations (DER) or delegated by DER to another agency. The additional procedures for such decisions are as follows:

1. If the Commission's decision was issued after a contested case hearing, the Commission has 90 days after receipt of notice that a petition for judicial review has been filed in which to issue written findings of fact and conclusions of law. (§3020, 1993 Wis. Act 16, creating §227.47(2), Wis. Stats.)

2. The record of the hearing or arbitration before the Commission is transcribed at the expense of the party petitioning for judicial review. (§3012, 1993 Wis. Act 16, amending §227.44(8), Wis. Stats.)