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SUSAN MORITZ,

Appellant,

v.

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

Respondents.

Case No. 92-0039-PC

* * * * *

INTERIM
DECISION
AND
ORDER

NATURE OF THE CASE

This case involves an appeal, pursuant to §230.44(1)(b), of respondents' decision to deny appellant's request to reclassify her position from Food Service Administrator 3 (FSA 3) to Food Service Administrator (FSA 4). A hearing was held before Commissioner Gerald F. Hoddinott.

FINDINGS OF FACT

1. At all times relevant to this matter, appellant was employed at the Central Wisconsin Center which is one of three centers in the state serving developmentally disabled clients. Central Wisconsin Center is organizationally located in the Division of Care and Treatment Facilities (DCTF) of the Department of Health and Social Services (DHSS).

2. Appellant reports to the Director of Management Services at Central Wisconsin Center (CWC) who, in turn, reports to the Director of CWC. The chain of command above the Director of CWC includes the Administrator of DCTF who reports to the Secretary of DHSS.

3. In September of 1990, appellant requested a reclassification of her position from FSA 3 to FSA 4, which respondent reviewed and denied in December of 1991. Appellant filed a timely appeal of the denial of her reclassification request.

4. Appellant is responsible for the food service operation at CWC. At the time of the reclassification request, the general responsibilities of appellant's position are accurately described by her July 16, 1990, position description (PD) as follows:

Position Summary

This is a highly responsible position accountable for administrative direction and coordination of the Food Service Department of CWC for the DD population with 95% therapeutic diets including 27% on gastrostomy feeding, for staff recruitment, training, development and evaluation.

This position participates in, and encourages staff participation in education, research and public relations as relating to the advancement of nutrition and institutional food services. Plans, develops, and establishes programs and policy in compliance with Federal and State codes.

Supervisory responsibilities include the direct supervision of 11 employees and the oversight and supervision of the Food Service Supervisors responsible for 83 full time and part-time employees.

<u>Time %</u>	<u>Goals</u>
50%	A. Administration of the Food Service Department.
35%	B. Management, supervision and evaluation of Food Service Supervisors, Clinical and office support staff.
10%	C. Provision of professional expertise to community agencies and to staff outside the Food Service Department.
5%	D. Implementation of Affirmative Action within areas of responsibility and compliance with Federal and State Civil Right Laws.

5. The goals identified in the 1990 position description (PD) are similar to the goals identified in appellant's previous PD dated September, 1987.¹ The significant changes between appellant's 1987 and 1990 PD's are the following worker activities identified under Goals A and B in the 1990 PD (Respondent's Exhibit #1):

- A5. Direct or initiate organizational or operational changes whenever changes or additions occur in State or Federal codes and standards.
- A7. Initiate studies and make recommendations for meal service and delivery systems to improve the existing system. Develop specifications for meal delivery system, and lease agreements. Participate in contract and lease negotiations and recommend action.

¹ This was the preparation date of the PD used when the position was vacated. Appellant was subsequently hired using this PD on April 10, 1988.

- A9. Participate in the negotiation of the pharmaceutical/
Nutrition contract.
- A11. Evaluate new products and services and recommend action.
- A12. Review, evaluate/prepare specifications for necessary
large kitchen equipment.
- A13. Review and evaluate specifications for food products and
food service computer programs and effectively
recommend action.

* * *

- B7. Review staff allocations and scheduling to insure Bureau
resources are effectively used.
- B9. Participate in and provide consultation and direction to
subordinates in labor/management relations and areas of
employee discipline.
- B10. Represent management in local labor negotiations and
disputes.

6. As of February 1990, the food service operation at CWC served a resident population of 605 which ranged in age from infant to 70 years old. While the number of residents has continued to decline over the years, the residents have more severe medical problems. This impacts on the meals served to the extent that less than 10% of the residents are on a regular diet. The remaining residents are on one of 20 different diets which can be prepared in 5 different consistencies, including 150 residents who are receiving tube feedings and 160 residents on formula. There are 110 adaptive pieces of equipment used for feeding residents. The residents provide complex dietary problems which must be addressed consistent with the rules and regulations of the Department of Public Instruction and the federal government, such as Title XIX, as well as with state laws.

7. Appellant's administrative responsibilities include:
- a. Personnel/Labor Relations - Appellant is responsible for the entire hiring process once she has received a certification list, and has negotiated local agreements related to changing of work schedules and job sharing.
 - b. Study Groups - Appellant was involved as a member of a study group which addressed the consolidation of food

service operations for CWC and Mendota Mental Health Institute. In addition, she was involved in a study of the prime vendor concept.

c. Budgeting - Appellant prepares budgetary documents and makes recommendations related to the food service biennial budget. Appellant has responsibility for administering her operating budget subject to keeping her supervisor informed of actions taken.

d. Purchasing - Appellant makes recommendations directly to the Division regarding items to be purchased under a state contract, such as canned goods. These recommendations are based on meal patterns and must be projected up to 9 months into the future. Thirty (30) percent of the items purchased in the food service area are purchased outside of the state contract because they involve smaller amounts. Examples include cereal purchases (75% of all cereal purchases are outside of state contract) and formula. Appellant also has authority, subject to institutional review, to purchase capital equipment such as serving carts and dishwashers. Major items, such as ovens, are purchased centrally through the Division.

8. At hearing the following FSA 4 positions were introduced for comparison purposes.

a. Rheta M. McCutchin - UW-Madison, Division of University Housing.

This position reports to the Director of University Housing and is responsible for the food service operations for the residence halls on the UW-Madison Campus. Based on a 1977 PD (Respondent's Exhibit #7), the position had responsibility for a \$4 million budget and a staff which included 109 civil service employees (26 management and 83 hourly), 59 limited term employees, and 450 student employees. The position is responsible for serving approximately 6,800 students and maintaining eight separate food preparation areas. In addition, the position is responsible for planning menus for special events and summer conferences. Administratively, this position is

responsible for the control and administration of an operating budget, including determining menu prices, and is involved as a participant in budget development, building renovation projects, and capital equipment purchases.

b. Guy E. Allen - Director, Bureau of Dietary Services, Division of Wisconsin Veterans Home, Department of Veterans Affairs.

This position was reclassified to the FSA 4 level effective 8/13/89 by the Department of Employment Relations (DER), which is the state's central personnel agency. The pertinent part of the write-up prepared by the classification analyst in DER is as follows:

"JOB HISTORY/BACKGROUND:

The position was classified as a Food Service Administrator 3 when the incumbent was hired in July of 1982.

The position is responsible for overseeing the entire food service program at the Veterans Home at King. Residents are housed in four halls and the Home is licensed as a nursing home. It is one of the most highly regulated of state-run institutions since it is subject to Department of Health and Social Services regulations as well as federal regulations. The position is responsible for production and food service for approximately 700 residents, 75% of whom require a special diet, as well as special parties, guest and relative meals, meetings, portable food stations and a snack bar; planning, developing and establishing programs and policy; evaluation of operations; developing and monitoring the budget; purchasing; and involvement/consultation in planning of new resident facilities.

CHANGES:

The position has not been officially reviewed since 1982. Changes to the position have occurred partly because of programmatic changes, outside influences and the assignment of new duties/responsibilities to the position. Examples are:

- New Prime Vendor program - responsibility assigned to this position.
- Additional responsibilities for negotiation and recommending contracts for leasing certain items needed in the food operation.

- Centralized kitchen and dishwashing operation, with food delivered on trays, as opposed to previous system wherein meals were assembled and dishes washed in each hall.
- Changes in state and federal regulations such as requirement of snack program to ensure adequate nutrition for those who do not or cannot eat adequately at normal meal times.

Additionally, the position has been delegated more responsibility in the areas of administration/management such as budget development, cost control, monitoring of budgets and program effectiveness and labor relations. There has been increased participation in long range management planning and goals for the home.

Another change (not addressed by the agency) is the creation of a separate bureau for the food services at the home during a reorganization in 1987, which was reviewed by DER. The position assumed the role of bureau director, and began to report directly to the Deputy Administrator rather than to an Institution Business Manager. This did not significantly effect the position, however. Duties and responsibilities remained essentially the same, and the position was not one which DER felt needed reviewing at that time.

SPECIFICATIONS:

According to the specifications, the primary difference between positions classified as Food Service Administrator 3 and 4 i[s] the size of the operation. A FSA 3 is responsible for a "large" program, whereas the 4 is responsible for a "major" program. There is no definition of what constitutes large or major; however, the examples of the work provided in the specifications more appropriately describe this position at the 4 level.

It is responsible for the operation of a "major" food service program. It "plans and directs food production and service for a number of complex food production and service units," as opposed to "coordinating the food service program of a large food service operation with other units" (as in the FSA 3 specifications); it "plans and implements studies on food and wage cost control," as opposed to keeping records and making reports; it coordinates menu planning for a number of units, as opposed to preparing or assisting in preparing menus.

* * *

COMPARISONS:

As noted previously, FSA positions are based somewhat on the size of the food operation. However, there are no written definitions as to what large or major constitute.

S. Abraham position - FSA 3 at Central Wisconsin Center, DHSS - PD dated somewhere around April 1988.² This position does not have a comparable level of involvement in management/administrative duties as does the Allen position. For example, it is not involved in vendor contract negotiations or administration, is not as involved in budget development (i.e., it projects future needs and assists in preparing budget statements, whereas Allen plans and develops the budget), does not participate in long-range planning of facilities. Additionally, the Allen position represents management in local labor negotiations and administers a more complex dietary program (the Abraham position plans a "general menu").

R. McCutchin position - FSA 4 at UW, Division of Housing - PD dated 1977. This is the only other FSA 4 position in state service. These positions are similar in that both oversee food service operations in several separate buildings; both have responsibility for planning regular meals as well as special events, a snack bar, etc.; review bids and recommend contracts; and participate in planning of new facilities. The Allen position additionally has responsibility for budget planning and development, must assure compliance with stringent controls, rules and regulations, and represents management in local labor negotiations."

This position directly supervises a Food Production Manager 2 and a Food Service Administrator 1 who, in turn, supervises a total of 92 full- and part-time civil service employes. The position reports to the Assistant Division Administrator (Assistant Commandant) who, in turn, reports to the Division Administrator (Commandant). The Commandant reports directly to the Deputy Secretary of the Department of Veterans Affairs. The Wisconsin Veterans Home is the largest geriatric nursing home in the state.

9. The specifications for Food Service Administrator 2, 3 and 4 provide for the following:

² This is appellant's PD prior to the one developed for submission as part of the reclassification request which is the subject of this appeal. Appellant's last name has changed since the 1988 PD was written from Abraham to Moritz.

FOOD SERVICE ADMINISTRATOR 2

Class Description

Definition:

Under general direction, is responsible for the operation of a medium size food service program including production and distribution; or as an assistant administrator in a major food service program; and performs related work as required. (emphasis added)

Examples of Work Performed:

Responsible for estimating and ordering of supplies.
Assists in developing policies and operating procedures.
Responsible for personnel and payroll reports for the unit.
Plans and conducts studies on food and wage cost control.
Prepares or assists in preparing menus.
Coordinates the food service operation with other units.
Conducts staff meetings.
Keeps records and makes reports.

FOOD SERVICE ADMINISTRATOR 3

Class Description

Definition:

Under direction, responsible for the operation of a large size food service program which includes production and distribution; and performs related work as required. (emphasis added)

Examples of Work Performed:

Oversees and directs large scale ordering of supplies.
Assists in developing policies and operating procedures.
Plans, directs and coordinates the work of employees in the program.
Coordinates the food service program of a large food service operation with other units.
Keeps records and makes reports.
Prepares or assists in preparing the menus.

FOOD SERVICE ADMINISTRATOR 4

Class Description

Definition:

Under general direction, responsible for the operation of a major food service program which includes production and distribution; and performs related work as required. (emphasis added)

Examples of Work Performed:

Oversees and directs large scale ordering of supplies.
Plans and directs food production and service for a number of complex food production and service units.
Coordinates menu planning for a number of units.
Advises unit managers regarding personnel and operating policies.
Conducts staff meetings.
Plans and implements studies on food and wage cost control.

10. At the hearing, the unrebutted testimony of the DER classification analyst was that positions classified at the FSA 2 level (medium size food service program) were found at institutions with a resident population served ranging from 230 to 780, and that positions classified at the FSA 3 level (large size food service operations) were found at institutions with a resident population served ranging from 250 to 980.

11. In their letter denying appellant's reclassification request, respondent indicated the following, in pertinent part: (Respondent's Exhibit #1)

"The changes to the PD seem to be more in the nature of improving the PD as a communication of the expectations of this position. They are good additions but don't weigh on the class level of the position. The accompanying description of Ms. Moritz's active involvement in planning physical layout modifications, purchasing, negotiating and other activities indicate she is a capable and productive member of the management team at CWC. Unfortunately, they do not weigh heavily between whether the position should be classified at the "3" or "4" level.

REVIEW OF FOOD SERVICE ADMINISTRATOR SPECIFICATIONS

The specifications for this series were written in April 1968. Since that time the "3" level has been reassigned from PR 01-13 to PR 01-15, and the "4" level has been reassigned from PR 01-15 to PR 01-17. Size is the primary difference between these levels -- the "3" level is responsible for the operation of a large size food service program, and the "4" is responsible for the operation of a major food service program. While no criteria exist in the specifications for how size is defined, large is generally interpreted as providing daily services for 500 to 999 residents or customers and major as providing daily services for 1000+ residents or customers.

COMPARISON TO OTHER FOOD SERVICE ADMINISTRATOR POSITIONS

There are five FSA 3's in this Department, including the position held by Ms. Moritz, and no FSA 4's. These all exist in DCTF facilities; the three Centers for the Developmentally Disabled and the two Mental Health Institutes. CWC is the largest of the five in terms of numbers of employees in food service and number of residents housed and fed. However, all three DD Centers have close to the same number of employees in food service as follows:

CWC	91	FTE
SWC	78.5	"
NWC	69	"

A position appropriately classified at the FSA 4 level is at the UW-Madison, Division of University Housing. This position administers a much larger food service operation than anything we have. Under this position are 26 management positions, 83 regular staff, 59 LTE's and 450 students. The food service operation this position administers includes responsibility for approximately 6,800 students in 8 separate locations. The number of students served qualifies as major."

* * *

The number used to identify large (500 - 999) and major (1,000+) by respondent were obtained from a payroll statistics publication which used these breakdowns to distinguish between large and major state agencies. The DER classification analyst testified that, in her opinion, this was not an appropriate guide since it was a measure of agency size and not what constitutes a large or major food service operation.

12. Respondent was aware of the Guy Allen position at the time of the reclassification denial but did not give it any significant weight as part of their review.

13. Appellant's position is more appropriately identified at the FSA 4 level as opposed to the FSA 3 level.

CONCLUSIONS OF LAW

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

2. Appellant has the burden to show by the preponderance of evidence that respondent's denial of her request to reclassify her position from FSA 3 to FSA 4 was incorrect.

3. Appellant has sustained her burden.

4. Appellant's position is more appropriately classified as an FSA 4.

DISCUSSION

In reclassification cases such as the instant case, the proper classification of a position involves a weighing of the classification specifications against the actual work performed to determine which classification best fits the position. It is not uncommon to find that the duties and responsibilities of a position may be described by two or more classifications or found in other position descriptions for positions classified at higher or lower levels than the position under review. The classification which "best fits" a position is that which describes the duties and responsibilities to which the position devotes a majority of time. [Bender v. DOA and DP, Case No. 80-0210-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 (9/21/80)]. In determining which classification "best fits" a position, the Commission has consistently held that they will give primary consideration to the clear language of the classification specification. Zhe et al. v. DHSS and DP, 80-285-PC (11/19/81); aff'd by Dane County Circuit Court, Zhe et al. v. PC, 81-CV-6492 (11/2/82). If the specification (or position standard) does not provide a clear basis to distinguish positions, then the Commission will look at comparable positions. Saindon v. DER, 85-0212-PC, 10/9/86.

In the instant case, we are confronted with old specifications (1968) which identify the difference between levels in the FSA classification series based on size definitions of medium (FSA 2), large (FSA 3) and major (FSA 4). Both respondent and DER conceded that there was no definition of what the difference was between large and major.

Respondent used numbers which are included as part of a payroll statistics publication identifying the size of state agencies based on the number of employes, i.e., 500 - 999 employes equals a large agency and 1,000 employes equals a major agency. The classification analyst from DER stated in testimony that while these figures distinguish between large and major it is done for purposes of determining agency size and would not necessarily have any relevance as to what constitutes a large or major food service operations. The Commission would agree that the standard used by respondent in this case is not appropriate.

Rather, the Commission concludes, like the DER classification analyst, that the definitions of medium, large and major in the Food Service Administrator series must include other considerations based on the range of institution sizes found at the FSA 2 and FSA 3 level (See Finding #10). It appears from the record that two institutions which have a similar number of residents could in effect have their food service programs headed by an FSA 2 or an FSA 3.

Certainly prior to the reclassification of the Allen position in the Department of Veterans Affairs (DVA), "major" as used in the FSA 4 specifications was defined by only one position. That position is found at UW-Madison, Division of Housing, and is responsible for a food service operation which served 6,800 students. While the menus for students would certainly be more general and not need to meet the standards for the 700+ geriatric positions served at the Wisconsin Veterans Home, the sheer numbers clearly distinguish, on a size basis, that the UW-Madison position is responsible for a major food service program. Indeed, had the Allen position not been moved to the FSA 4 level, appellant would have considerable difficulty arguing that she should be at the FSA 4 level based on a comparison only to the UW-Madison position.

The basis used by DER for moving the Allen position to the FSA 4 level is that he had assumed a higher level of administrative responsibility in the areas of budgeting, purchasing (prime vendor), and long range planning.

Appellant argues that she has as much administrative responsibility as the Allen position, except in the area of budgeting. In addition, appellant argues that she has a more complex resident population to serve and that her operation also includes other production facilities such as a snack bar/cafeteria and a formula room. While it is recognized that the residents in the DVA institution present complex food service/dietary considerations, the Commission finds that the complexity of appellant's food service/dietary programs is at least as complex, if not more complex. In addition, the general day-to-day operation, facilities and number of residents served are generally the same for both positions.

Appellant argues that with the movement of the Allen position to the FSA 4 level, her position should also be moved to that level based on the similarity in the size of the operation (both staff and residents served), the facilities and type of operations (generally centralized with service to a

number of outlying buildings) and the complexity of the food service/dietary programs. Certainly these arguments, when coupled with the fact that the specifications do not provide any clear definitions of what is large versus major and neither the respondent or DER had a consistent or logical definition or allocation pattern to distinguish between large and major, are persuasive. In fact, comparison positions became the real benchmark against which appellant's position is judged.

The record reflects that the respondent had done no analysis of the Allen position and the DER classification analyst had only the appellant's 1988 position description on which to base the conclusion that Allen's position was at a higher level.

Appellant demonstrated that she was not involved in an operation where she was responsible for a "general menu," as outlined in the DER analyst's write-up for the Allen position. (See Finding #8.) Appellant has also shown that she has administrative responsibilities that are comparable to those for which Allen was given credit and on which his reclassification was based. Specifically, in the purchasing area, appellant purchases 30% of her items outside of the state contract. The Allen position uses a "prime vendor" concept which allows him to purchase his items on a local level. Appellant argues that this makes the purchasing easier because there is no need to plan as far in advance as she does when orders are placed on a state contract.

There were no examples of long-range planning for which the Allen position was given credit, but certainly appellant's involvement in the study of the prime vendor concept and the consolidation of food service operations with Mendota appear to be comparable kinds of activities.

The budgeting responsibilities of the Allen position are somewhat greater primarily because he has less of a bureaucracy between him and the Department Secretary. However, appellant argues that she makes the same kinds of analyses and has to consider the same variables as the Allen position does in arriving at a budget. While the Allen position has fewer levels of review, appellant argued that he still does not have the final word and that there is a review of any recommendations he makes both at the Division and Department level.

This argument is persuasive when taken in light of appellant's supervisor's testimony that he provides only very general directions and oversight to appellant. Appellant's recommendations on purchasing and

budgeting are accepted and passed on to the institution's management. In some cases, like the provision of information on meal patterns and determining needs to be met under a state purchasing contract, appellant works directly with the division. While the organizational structure above the Allen position is more limited, the record in this case does not show that these reduced levels of bureaucracy are of such significant impact to warrant having the Allen position at a higher classification level than appellant's position.


The record does show that scope and complexity of the food service/program, including the administrative responsibilities, of both positions are comparable. The differences between the Allen position and appellant's are not significant enough to overcome the fact that the majority of the duties and responsibilities of both positions are essentially the same. This, coupled with the fact that the classification specifications provide no clear delineation between large and major, makes the comparison position most critical to the Commission's analysis.

Based on the above, the Commission concludes that appellant's position is more appropriately classified at the FSA 4 level based on the comparison positions introduced into the record.


ORDER

The respondent's decision to deny appellant's request for reclassification to FSA 4 is rejected and this matter is remanded to respondent for action consistent with this decision.

Dated: March 10, 1993 STATE PERSONNEL COMMISSION


LAURIE R. McCALLUM, Chairperson

GFH:rcr


DONALD R. MURPHY, Commissioner


GERALD F. HODDINOTT, Commissioner