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LINDA BOXRUCKER,
 Appellant,

v.

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

Respondents.

Case No. 92-0040-PC

* * * * *

INTERIM
 DECISION
 AND
 ORDER

NATURE OF THE CASE

This is an appeal pursuant to §230.44(1)(b), Stats., of the denial of a request for reclassification from Therapy Assistant 2 (TA 2) to Therapy Assistant (TA 3).

FINDINGS OF FACT

1. Appellant has been employed at all relevant times in the classified civil service at Central Wisconsin Center (CWC).
2. The relevant time frame for the reclassification request in question is the period since the reallocation of her position from Institution Aid 2 to TA 2, effective October 25, 1987, until the date this reclassification request was filed on May 25, 1990.
3. During the period in question, appellant's position was assigned to the Sherman Academy program, which primarily provided adult vocational education training to adult CWC residents and a few clients from the community.
4. The Sherman Academy program included a number of components -- Bakery, Clerical, Arts & Crafts, etc.
5. Sherman Academy utilized a transdisciplinary team approach, under which a team consisting of teachers, TA's, and vocational staff would evaluate clients and decide on the client's placement within the components of the Sherman Academy program. The team did not design the programs in the particular areas to which the clients were assigned. The specialists in the

specific areas, such as appellant, decided on and designed the programs specific to their areas.

6. Up until December 1988, appellant and Jeanette Reeve, another employe in a TA 2 position, were involved in the Sherman Academy Arts and Crafts Program. However, on December 12, 1988, Ms. Reeve voluntarily demoted to a different position, and appellant took over sole responsibility for this program area.

7. Appellant's position description (PD) dated June 22, 1990 (Appellant's Exhibit 7), is essentially accurate. It includes the following "position summary:"

"[u]nder the general supervision of the on-grounds vocational supervisor, develops and maintains an Arts and Crafts program for an assigned client population."

This PD also includes the following "goals and worker activities:"

- 20% A. Provide Job Procurement and Materials Control
 - A1. Participate in job procurement and materials development by inspecting equipment for safety and repairability; and modifying existing equipment for safety and/or simpler operation.
 - A2. Monitor quality control by: collection and compilation of data; determining feasibility and cost effectiveness of job; inventory control and supply management.
 - A3. Evaluate product merchandising by: determining the marketability of product soliciting test sites; and handling logistics and scheduling craft sales.
 - A4. Participate in the evaluation and periodic assessment of residents to determine needs, functional level and skill performance.
 - A5. Participate in the development of age-appropriate, developmental goals for assigned clients.
 - A6. Organize individual and group programs based on written objectives and client evaluations.
 - A7. Complete necessary reports on client progress and goal accomplishments.
 - A8. Request materials and supplies as needed.

- 65% B. Provide Vocational/Pre-Vocational Adult Program Services
 - B1. Develop and implement client training and treatment programs, as determined by the Trans-disciplinary Team.

- B2. Use a client-centered, ProActive approach when dealing with residents, and act as a resource to other staff in the proactive approach.
- B3. Use adaptive equipment and materials for training clients, determining which ones facilitate skill acquisition and performance.
- B4. Promote skill development activities which increase client's community acceptance and feelings of self-worth.
- B5. Determine jobs, or job segments, which meet client needs identified on the IPP.
- B6. Compile data/records and prepare reports on client work performance.
- B7. Implement individual client goals and related program objectives, based on assessments.
- B8. Assist in transporting clients to and from program areas.

15% C. Demonstrate Team Leadership [sic] and Participation Skills

- C1. Participate in, and sometimes lead, discussions/team meetings and staffings.
- C2. Lead and instruct other therapy assistants, aides, volunteers and students as assigned.
- C3. Train clients and staff in job set-up and production guidelines.
- C4. Act as liaison between program teams and other staff.
- C5. Provide information regarding adult programming to parents, inservice groups, students, visitors, and others as assigned.
- C6. Participates in the orientation of new staff regarding program areas, schedules, data collection systems, safety, etc.
- C7. Train center staff in the Principle of the ProActive Method.

8. In addition to the change to sole responsibility for the Arts and Crafts program at Sherman Academy, mentioned above, other changes in appellant's position from its previous makeup, as reflected on her 1990 PD, are, in summary, setting up crafts sales, writing out individual purchase orders and work orders, responsibility for annual review narratives for three residents, and responsibility as proactive training coordinator.

9. The foregoing changes in the specific duties and responsibilities of appellant's position set forth in Finding #8 were logical and gradual in nature. The change from shared responsibility to complete responsibility for the Sherman Academy Arts and Crafts Program, set forth in Finding #6, was logical but not gradual.

10. The duties and responsibilities of appellant's position essentially affect only those CWC clients who are assigned to the Sherman Academy program and are assigned to its Arts and Crafts program. The program responsibilities of appellant's position are not center-wide in scope.

11. The TA 2 class specification (Respondent's Exhibit 3) contains the following class description:

Definition:

This is the objective level class of the Therapy Assistant series. Employees engage in therapy, rehabilitative, education and related programs with a minimum amount of direct supervision and guidance. Professional staff members or advanced level therapy assistants provide program guidelines and the individual employe is expected to carry through using his own skills and abilities. Work of this nature may be found in a state institution, or as an adjunct to professional social work or community service projects. Persons in this class supervise and instruct patients or clients in specified activities which are of therapeutic or educational value or participate in a service in a community service program.

Areas of Specilization:

Activity Therapy, Appropriate Education Program, Appropriate Rehabilitation Service, Appropriate Community Services.

Examples of Work Performed:

Supervises and instructs individuals in specified activities which are of therapeutic value or in rehabilitative, educational or community service programs.

Assists in planning and independently carries out an activity or a part of an assigned program.

Plans and supervises special group activities, parties and special events or special program services encouraging individual interest and participation.

Prepares activity area, equipment and supplies for the daily program and special events

Maintains and makes minor repairs to equipment used in the program.

Escorts patients to and from activity areas observing safety precautions and assumes responsibility for personal needs and control of patients while in the activity area.

Attends and participates in therapy staff and interdisciplinary patient staffings or in program staff conferences.

Plans and carries out special projects and activities as assigned.

May assist in supervising and training other assistants, aids and volunteers.

Observes, records and reports individual behavior, reactions and progress in the program.
Assists in teaching projects under professional guidance.
Performs social work as a case aid in related capacity.
Makes progress reports.
Conducts surveys and prepares simple analyses.

12. The TA 3 class specification (Respondent's Exhibit 4) contains the following class description:

Definition:

This is advanced semi-professional work, involving program responsibility for therapy, rehabilitation, and related programs. Employees guide a complete section or area of the therapeutic, rehabilitation, treatment, or training program. In addition, employees in this class function as group leaders assisting professional staff members in implementing programs and teaching new techniques to less advanced assistants as well as participants of community action or service projects. Work is performed under the general supervision of a professional staff member.

Examples of Work:

Plans, organizes [sic] and carries out activities in the assigned area.
Encourages active participation and interest in the group.
Assumes responsibility for the personal needs and control of those participating in the program.
Leads and instructs assistants, aids, volunteers and others assigned as necessary.
Assists in preparing [sic] the budget for the section or area.
Assumes responsibility for supplies and equipment.
Attends and participates in staff meetings.
Attends and participates in patient or clients staffings.
Evaluates and prepares reports on assigned segments of projects or programs.
Prepares progress reports and maintains all required administrative and clinical records on patients and programs

13. The work examples under each classification to some extent overlap with the other. Appellant performs most of the work examples for each classification, although she does not assist in budget preparation, which is a TA 3 work example. She does not assist in planning activities and assist in supervising and training, as set forth in the TA 2 examples, but has sole responsibility in these areas under very general guidance.

14. Appellant's position fits within the TA 3 class definition as set forth in the TA 3 class specification, Respondent's Exhibit 4.

15. Certain other TA 3 positions at CWC referred to on this record are distinguishable from appellant's position because their program responsibilities are centerwide in scope:

a. The TA 3 position filled by Delores Reese (Respondent's Exhibit 11) "coordinates the entire Developmental Arts and Crafts Program in all Living Units at Central Colony."

b. The TA 3 position filled by Nancy Bernander (Respondent's Exhibit 12) is responsible (30%) for the "[p]rovision of adaptive feeding equipment for residents throughout the Center."

c. The TA 3 position filled by Donald Brereton (Respondent's Exhibit 13) has responsibility on a center-wide basis "for the development, maintenance and monitoring of paid situations."

d. The TA 3 position filled by Jerin Robertson (Respondent's Exhibit 14) provides "center-wide vocational services, specializing in cooking, baking and food production."

16. A TA 3 position at Southern Center filled by William Fendel (Appellant's Exhibit 11)¹ has responsibility for an industrial arts workshop. A borderline classification distinction in a general sense can be made between this position and appellant's position in that Fendel's position, reports directly to the Institutional Treatment Director 3 and is more autonomous than appellant's position to the extent that appellant has a lower-level supervisor who is on-site. However, Fendel's position, like appellant's, does not have center-wide responsibility.

17. Appellant's position is generally comparable to other TA 2 positions at CWC, see "generic" PD dated September 10, 1990, (Respondent's Exhibit 10). This PD provides: "[u]nder the general supervision of the Director of Voc/Ed Services, is responsible for the development and implementation of program activities in assigned areas." It also has lead and guidance type elements, i.e.:

A13. Provide direction on a daily basis to Residential Care Technicians and other staff assigned to the adult program.

* * *

¹ This position description, dated January 31, 1983, reflects an original classification of TA 2. The subsequent TA 3 classification apparently was based at least in part on supervisory autonomy which apparently is not reflected on this PD

- C4. Provide orientation of new staff regarding program content, schedules, data collection system, training procedures, etc.
- C5. Teach other staff how to implement effective program, and as team leaders.

It cannot be determined from this PD whether these positions satisfy the TA 3 requirement of "guide a complete section or area of the therapeutic, rehabilitation, treatment, or training program."

18. Respondent DHSS, acting on a delegated basis from DER pursuant to §230.04(1m), Stats., denied the request for reclassification of appellant's position from TA 2 to TA 3 via a memo dated December 14, 1991. (Respondent's Exhibit 6)

19. Appellant's position is better described by the TA 3 rather than the TA 2 class specification.

20. Appellant's position was not eligible for reclassification because the change in the level of responsibility of her position did not occur gradually as required for reclassification by §ER 3.01(3), Wis. Adm. Code.

CONCLUSIONS OF LAW

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

2. Appellant has the burden of proof to establish by a preponderance of the evidence that respondent's decision to deny the request for reclassification of her position from TA 2 to TA 3 was incorrect.

3. Appellant has sustained her burden in part.

4. Respondents' decision to deny the request for reclassification of appellant's position from TA 2 to TA 3 was incorrect to the extent that respondents erred in determining that her position was better classified at the TA 2 rather than the TA 3 level, and erred in not determining that reallocation was appropriate pursuant to §ER 3.01(2)(f), Wis. Adm. Code.

5. Since the record establishes that appellant's position did not reach the TA 3 level due to a gradual change, as required for reclassification pursuant to §ER 3.01(3), Wis. Adm. Code, appellant is not entitled to the reclassification of her position on remand. However, since there was a logical change, she is entitled on remand to the reallocation of her position to the TA 3 level pursuant to 3.01(2)(f), Wis. Adm. Code. Respondents must determine on

remand whether appellant is entitled to regrade pursuant to §ER 3.01(4), Wis. Adm. Code.

OPINION

While there is a good deal of overlap between the TA 2 and TA 3 class specifications, including the examples of work performed, comparison of the two documents shows an emphasis on independence of action and program responsibility at the higher level. For example, the TA 2 definition refers to carrying out programmatic activities "with a minimum amount of direct supervision and guidance," while the TA 3 definition refers to performing work "under the general supervision of a professional staff member." The TA 2 definition states: "[p]rofessional staff members or advanced level therapy assistants provide program guidelines and the individual employe is expected to carry through using his own skills and abilities." The TA 3 definition does not refer to anyone providing "professional guidelines," but states that there is "program responsibility for therapy, rehabilitation, and related programs," under, as noted above, general supervision of a professional staff member. The TA 2 specification has a work example of "assists in planning and independently carries out an activity or a part of an assigned program." (emphasis added) The TA 3 specification does not refer to assisting in planning, but has as a work example: "[p]lans, organizers [sic] and carries out activities in the assigned area." The TA 2 work examples include: "[m]ay assist in supervising and training other assistants, aids and volunteers." (emphasis added) The TA 3 work examples make no reference to assisting in this area, but rather state: "Leads and instructs assistants, aids, volunteers and others assigned as necessary."

The record reflects that appellant's supervisor, a Teaching Supervisor 2, has no expertise in appellant's program area of arts and crafts, and relies on appellant to independently develop program goals, plan, and execute the program under very general supervision. Appellant does not assist someone else in planning the program, but plans it herself. She does not assist someone else in "supervising and training" others, but rather "leads and instructs assistants, aids, volunteers and others."

Respondents emphasized the guidance appellant supposedly received from the Sherman Academy transdisciplinary team. However, appellant's supervisor testified that the team decided on the client's strengths, needs and interests, and where the clients would be placed in the Sherman Academy

program, but it did not decide the specific program that would be set up in each area. Rather, this was left up to the specialists in each area, such as appellant

In addition to having the kind of programmatic independence that is consistent with the TA 3 level, appellant's position meets all the specific criteria set forth in the TA 3 definition, including the two that respondents contest. The TA 3 definition includes the language: "function as group leaders assisting professional staff members and teaching new techniques to less advanced assistants as well as participants of community action or service projects."² Appellant's PD, as verified by Ms. Sheldon's testimony, provides at §C2.: "[l]ead and instruct other therapy assistants, aides, volunteers and students as assigned."

As noted above, the TA 3 definition also provides: "[e]mployees guide a complete section or area of the therapeutic, rehabilitation, treatment, or training program." From a facial standpoint, it appears that appellant satisfies this criterion. The key relevant terms in this provision are not defined in either the TA 3 class specification (Respondent's Exhibit 4) or the "Glossary of Specification Terminology" (Respondent's Exhibit 2). The common dictionary definitions of these words are as follows:

"Section": "a subdivision of an office, staff, department, bureau, or other organization." Webster's Third New International Dictionary (1981), 2053.

"Area": "any particular extent of space or surface ... the range or extent covered by or included in some thing or concept." id., 115.

"Complete". "possessing all necessary parts, items, components, or elements; not lacking anything necessary." id., 465.

Clearly, appellant's area of responsibility at Sherman Academy was a subdivision or area of one or more of the "therapeutic, rehabilitation, treatment or training program." It also can be characterized as a "complete" section or area in the sense that it was self-sufficient, and appellant carried out its program without requiring program input from another source, such as her supervisor

² The parties contended at length about whether appellant was a lead worker. However, status as a lead worker is not necessary for a TA 3 classification, as respondent conceded and as appears from the TA 3 class specification.

It appears that the only way in which it could be said that appellant's position did not meet this criterion would be under respondents' functional approach to its use, see Respondent's Exhibit 5:

In applying the "3" level language to Central Center's positions, we have only classified positions which have been assigned Center-wide responsibility as an expert in a specialized function or area of responsibility. The specialty also needs to be broad enough so that many residents throughout the Center are affected, and many (if not all) treatment staff need frequent or occasional assistance from the specialist for guidance in technical matters.

In the Commission's opinion, respondents did not provide a convincing rationale for this application of this criterion. Respondents' personnel expert testified that: "[t]he word complete section or area of a program is, we might say, a concept that centerwide could fit into." However, he admitted that the concept could include other things besides centerwide programs. While the Commission agrees that centerwide programs would fit into this criterion, it sees no reason to limit this relatively broad language in the TA 3 class specification in this manner without some kind of more compelling rationale for so doing than respondent has provided, i.e.,:

Harken back to the TA 2 specification, where the areas of specialization aren't put in those same terms, and when we say complete in the TA 3 spec, we're talking about something fairly large in terms of programmatic responsibility. Centerwide would fit that in my opinion

Particularly in light of the emphasis in the TA 3 specification on autonomy, as discussed above, and the definition of "complete" ("possessing all necessary parts ... not lacking anything necessary"), the Commission cannot agree with the injection into this criterion of the requirement of centerwide responsibility.

With respect to position comparisons, the PD's for the other TA 2 positions (Respondent's Exhibit 10)³ do not reflect whether they have the same

³ This September 10, 1990, PD was admitted over appellant's objection, which was based on the fact that it postdated the effective date of the reclassification. While the scope of an appeal of a reclassification decision is appropriately limited to the makeup of the subject position as it was considered by the employer, i.e., essentially up to the date the request was submitted, there is no per se barrier to considering a PD which was signed at a later date as a position comparison. That is, if a position has changed subsequent to the PD which the employer considered in reaching its decision regarding that

degree of autonomy and independence as appellant. The CWC TA 3 positions are distinguishable from appellants on the basis of their centerwide scope. However, since this factor is neither a TA 3 prerequisite nor a class factor as such, this point of comparison is by no means critical to appellant's case. For example, the TA 3 PD for Nancy Bernander (Respondent's Exhibit 12) has a 30% component for the "[p]rovision of adaptive feeding equipment for residents throughout the Center," but it also reflects that it functions under the supervision of, and assists, a supervisory Therapist 2.

Respondents admitted that the position at SWC occupied by William Fendel (Appellant's Exhibit 11) was a borderline TA 3, and varies only slightly from appellant's position in terms of reporting relationship. While it does not have on-site supervision, appellant gets virtually no program input from her supervisor.

In summary, the position comparisons do not really support appellant's case, but they also do not detract from it either. They do not indicate that the identification of appellant's position as a TA 3 based on the face of the TA 3 class specification should be considered suspect.

The primary basis for the TA 3 classification for appellant's position is the change in scope of responsibility which resulted from the voluntary demotion on December 12, 1988, of the TA 2 (Jeanette Reeve) with whom appellant had previously shared responsibility for the Arts and Crafts program at Sherman Academy.⁴ In order to be eligible for reclassification, the changes in the duties and responsibilities of a position have to be "logical and gradual." §ER 3.01(3), Wis. Adm. Code. In its reclassification decision (Respondent's Exhibit 6), respondents did not address the issue of logical and gradual change because of their determination that appellant's position was more appropriately classified at the TA 2 level rather than the TA 3 level.

position's classification, it would go outside the scope of an appeal of that decision to consider those changes. However, a subsequent comparison PD that was considered by respondent in reaching its decision is not subject to this infirmity. The employe is free to argue, under appropriate circumstances, that an earlier comparison PD should be given more weight.

⁴ It is unclear from the record whether appellant attained sole responsibility for her program area after Ms. Reeve's voluntary demotion because Ms. Reeve's TA 2 position was eliminated or not filled, or because it was filled but appellant's supervisor decided that appellant should be given a lead role and full responsibility for the program. However, based on appellant's PD and her supervisor's testimony, it appears that the change in level or scope of responsibility was considered permanent, at least on a de facto basis


However, it is clear from the hearing record both that respondents considered that the staffing change was not gradual, and that they were correct in this conclusion. Prior to the staffing change, the responsibility for the program was shared. After the change, the responsibility was not shared. The transition from shared to sole scope of responsibility did not occur on an incremental basis over a period of time.⁵

Based on the Commission's findings on this appeal, it must be concluded that respondents should have decided that appellant's position was more properly classified at the TA 3 level, and then have gone on to conclude that because of the absence of a gradual change, the position should have been reallocated pursuant to §ER 3.01(2)(f), Wis. Adm Code. Such an approach would have required a further decision under §ER 3.01(4) whether or not appellant should have been regraded "without opening the position to other candidates." Because respondents did not reach this final issue and because it was not addressed in the hearing, respondents must decide this issue on remand.

ORDER

Respondents' action denying the request for reclassification of appellant's position is rejected in part, and this matter is remanded for action in accordance with this decision.

Dated: December 29, 1992 STATE PERSONNEL COMMISSION


LAURIE R. McCALLUM, Chairperson


DONALD R. MURPHY, Commissioner


GERALD F. HODDINOTT, Commissioner

AJT:rcr

⁵ Even if it took some time for appellant's activities to change as a result of the increased responsibility, this would not affect this point, since it involves level of responsibility, which is more or less an abstraction, rather than activities.