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PHYLLIS L. FOSSHAGE,
 Appellant,

v.

Secretary, DEPARTMENT OF
 EMPLOYMENT RELATIONS,
 Respondent.

Case No. 92-0395-PC

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DECISION
AND
ORDER

A hearing for the above-captioned case was held on November 22, 1993. The agreed-upon issue for resolution is shown below.

Whether respondent's decision to reallocate appellant's position to Medical Technologist - Objective instead of Medical Technologist - Senior was correct.

Ms. Fosshage's position was included in respondent's comprehensive survey of all science and science-related positions. The survey resulted in new class specifications for medical technologist (MT) positions, effective April 19, 1992.

The new MT class specifications (R's Exh. 2) contain the following 5 classification levels listed here in ascending order: entry, developmental, objective, senior and advanced. The entry through objective levels are viewed as a progression series. Progression to the senior level could occur either by competition or through certain job experiences. The advanced level is achieved only through competition. Respondent considers the objective level to be the full-performance level.

Ms. Fosshage worked at the University of Wisconsin Hospitals and Clinics. She was one of three MTs who worked in the GYN/Endocrine Section of the Clinical Laboratories. She and a co-worker, Wanda Hoeffle, were classified at the MT-Objective level after the survey.¹ The third person in the

¹ Ms. Hoeffle's duties changed after the survey as shown in respondent's exhibit 5, and such changes warranted upgrading to the MT-Senior level.

section, Lynn Boehnlein, was a lead worker and was classified at the MT-Advanced level after the survey.² Ms. Fosshage worked in this lab since 1983, and retired in early 1993.

The class specifications define the MT-Objective level as objective-level professional medical technologist work. A representative position is given as a clinical or institutional laboratory worker performing standard laboratory tests a majority of time. The position also would perform more complex tests in a specialized area and/or train students and others in basic techniques.

Ms. Fosshage's position compares favorably to the MT-Objective level. She performs standard tests a majority of time (about 70% of her time). She has responsibility for phase microscope and semen testing which meet the complex testing factor in the class specifications. Also, she rotates with the two other staff in the section to provide training to students.

The class specifications define the MT-Senior level as senior-level professional medical technologist work. A representative position is given as a clinical laboratory worker performing a "significant amount of time" on: 1) advanced, complex laboratory tests; and/or 2) training students and others in special techniques and instrumentation; and/or 3) responsibility for a specified area or system. Performance of routine tests still is expected at the MT-Senior level, but to a lesser degree than at the MT-Objective level. The MT-Senior level also is described in the class specifications as follows:

Positions at this level are differentiated from the lower levels by the following additional duties and responsibilities: responsible for a larger instrument system, including troubleshooting, maintenance, inservice training, and documentation; being a team leader in an analytical area; methods or instrument evaluation; functioning as the shift coordinator; having primary responsibility for the teaching/training program in a specified area of a laboratory; and/or perform specialized testing within

There is no copy in the record of Ms. Hoeffle's PD showing duties performed at survey time.

² There is no copy in the record of Ms. Boehnlein's PD showing duties performed at survey time. The only PD in the record for her is dated after the effective date of the survey. (See R's Exh. 7).

a specific area of expertise. Positions at this level may also function as a senior-level laboratory certification specialist. (Emphasis added.)

Ms. Fosshage performs troubleshooting, maintenance, inservice training and documentation, but the majority of such work does not relate to a "larger instrument system", as required in the class specification language cited in the prior paragraph. She does work with an IMX, which is considered to be a larger instrument system; but another worker was responsible for the care of the instrument and testing methods used, including issues of quality control and the ordering of supplies.

Ms. Fosshage is not a team leader or shift coordinator. Nor does she function as a senior-level lab certification specialist.

Ms. Fosshage performed some degree of instrument evaluation by calibrating standards for the ISO-DATA gamma counter. This was an unassigned duty which she performed on her own initiative. The task took 4-12 hours every 3 months.

Ms. Fosshage does teach lab techniques, etc., to students. She rotates with the other two MTs in her unit for 3-month periods. One day a week is spent teaching students during the 3-month rotating period, leaving no teaching of students during the following 6-month period when her two co-workers rotate to teaching. The student-teaching duties at the time of survey involved fewer hours than listed here because the students did not come until April, 1992. Ms. Fosshage also provides instruction/guidance as needed to others (including doctors) who rely on the services of the laboratory. Ms. Fosshage estimated that on a year-round basis, she spends about 2 hours per week on all training activities.

Ms. Fosshage performs specialized testing within a specific area of expertise. Her specialty relates to her work with anti-sperm antibodies. This specialty area is linked to her teaching duties, thereby sharing the same time estimate of 2 hours per week.

Ms. Fosshage did not spend a significant amount of time performing duties at the MT-Senior level. Therefore, the MT-Objective class specifications are the best-fit for her position.

The parties disagreed on the amount of time Ms. Fosshage spent performing routine or standard duties. Ms. Fosshage signed a position

description (PD) knowing it would be used for survey purposes, with the PD showing 70% of her time spent in routine duties. She redrafted her PD after the survey to show 50% routine duties when she learned that a senior level classification would not be possible in her job with more than half of the position's time spent performing routine duties.

The examiner found Diane DeVos to be more helpful than Ms. Fosshage in assessing routine versus complex duties. Ms. DeVos supervises the entire clinical laboratory at the UW Hospital and Clinics. She, therefore, had knowledge of the wide variety of testing performed. Ms. Fosshage also may have known of the testing performed outside of her section, but the examiner felt she lacked objectivity in her assessment of the complexity of the tests she performed. Specifically, Ms. Fosshage defined a complex test to include all work performed in her unit based on the special handling and storage required for the samples they test. Ms. DeVos, on the other hand, recognized that all lab positions performed routine tests to some degree. Ms. DeVos also was able to review a variety of PDs (including Ms. Fosshage's PD) and to provide a more reliable estimate of routine versus complex work.

A dispute also existed over the amount of time required to meet the MT-Senior class specification language that a "significant amount of time" be spent in the listed activities. Respondent conceded the term did not necessarily require more than half of the time spent in those listed activities if the individual performed some of the expected senior-level duties and if the individual worked at the highest level of independent supervision. The supervisory levels are noted on the front page of the PDs, and include close supervision, limited supervision and general supervision.

Ms. Bidner testified as respondent's classification specialist. She indicated that individuals classified at the MT-Objective level could be supervised either at the limited or general levels, but that individuals classified above the objective level must be at the general level of supervision. It would have been clearer if such a blanket interpretive rule exists to include this requirement in the language of the class specifications. However, the class specification scheme does lend some support to this interpretation. Also supportive was Ms. Bidner's testimony that she is unaware of any MT-Senior position which does not operate at the general level of supervision. Ms.

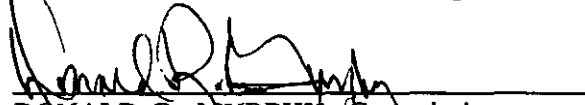
Fosshage is at the limited supervisory³ level due to testing errors associated with her performance which make some supervisory oversight necessary. Therefore, her supervisory level also would have presented a bar to being classified at the MT-Senior level.


ORDER

Respondent's classification of appellant at the MT-Objective level is affirmed and appellant's appeal is dismissed.

Dated March 31, 1994. STATE PERSONNEL COMMISSION


LAURIE R. McCALLUM, Chairperson


DONALD R. MURPHY, Commissioner


JUDY M. ROGERS, Commissioner

Parties:

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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

³ The word change was made to clarify that reference is being made to the supervisory level for appellant's position, rather than to the classification level.

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.)