

STATE OF WISCONSIN

PERSONNEL COMMISSION

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SUSAN ROBBINS,

Appellant,

v.

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

Respondents.

Case No. 92-0795-PC

* * * * *

DECISION
AND
ORDER

This matter is before the Commission on appeal of a decision by the Department of Health and Social Services to deny reclassification of the position held by Sue Robbins from Administrative Assistant 5 (AA 5) (PR-01-15) to Administrative Officer 1 (AO 1) (PR-01-16). The following discussion and conclusions are based on evidence presented at a hearing on this matter April 28, 1993, and the filing of post-hearing briefs, which was completed June 7, 1993.

Sue Robbins, appellant, has occupied the subject classified civil service position in the Division of Community Service (DCS), Department of Health and Social Services (DHSS), since May 22, 1988. She is the Early Intervention Coordinator for the Birth to Three Program. The Birth to Three Program is a federally funded program, operating under state and federal statutes, rules and regulations, and designed to coordinate a network of early intervention for children under the age of three who have a physical or mental condition which might result in developmental delay.

Federal statutes enacted in Public Law 99-457, Oct. 8, 1986, and federal regulations -- 34 CFR Part 303 -- promulgated in 1989, created grants to state and local governments to develop a system of early intervention services for handicapped infants and toddlers. Wisconsin developed a statewide system as required, with DHSS as the lead agency and an Interagency Coordinating

Council (ICC), appointed by the governor from the public and private sector, also as required by law to advise and assist the lead agency.

Initially, responsibilities for coordinating Wisconsin's Birth to Three Program were shared by three staff positions in the Division of Health (DOH), Division of Community Services (DCS), DHSS, and the Department of Public Instruction. Also, DHSS's Office of Policy and Budget provided some staff support. Between August 1988 and July 1989, staff vacancies and changes in DOH and DPI caused a shifting of responsibilities for the program to DCI. By January 1990, these staffing changes resulted in DCI becoming solely responsible for coordinating the program.

In October 1990, Robbins submitted a request for reclassification of her position from AA 5 to AO 1. The reclassification request included Robbins' revised Position Description (PD), which in part is as follows:

- 65% A. Responsible for the overall policy development and implementation of the complex state supervised county administered early intervention program including the development of the necessary legislation, administrative policies and procedures, development and analysis of complex sources of data and monitoring and supervision of programs as required under P.L. 99-457 Part H.
- 15% B. Responsibility for the grant development, administration, and fiscal management of the early intervention program as described under Public Law 99-457 Part H.
- 10% C. Responsibility for coordination and facilitation of interagency planning and staff activities with administration and line staff in the Division of Health, Office of Policy Budget, Department of Public Instruction, the Wisconsin Council of Developmental Disabilities.
- 10% D. Principle staff advisor to the Division of Community Services Administrator of the early intervention system and the implementation of P.L. 99-457, Department representative with federal, state, and county agencies; elected officials and the general public. Principle staff advisor to the Interagency Coordinating Council.

According to the organization chart, Robbins' first line supervisor was Dennis Harkins, Director of Community Programs of DCS. Harkins' position

was equivalent to that of a section chief. Robbins' time sheets and Performance Planning and Development reports were signed by Paul Ansay as supervisor. Ansay, a Social Services Supervisor 3, reported to Harkins. Robbins was not a supervisor and her interaction with staff outside her unit was not comparable to that of a supervisor. The Bureau of Personnel and Employment Relations (BPER), DHSS denied Robbins' reclassification request in an August 31, 1992, memo to the DCS administrator. Robbins made a timely appeal of the denial.

The state Classification Specification for the AA 5 Class Description defines work in that class as follows:

This is responsible line administrative and/or professional staff assistance work in a large state agency. Employees in this class direct an important function of the department and/or provide staff services in management areas such as accounting, purchasing, personnel or budget preparation. Employees in this class may be responsible for supervising a staff of technical, semi-professional or professional employees in directing the assigned program. Employees have a great deal of latitude in areas of decision making and initiating action with a broad frame-work of laws and rules. Work is evaluated by administrative superiors through conferences, personal observations and reports.

The state Classification Specification for the AO 1 Class Description defines work in that class as follows:

This is responsible and difficult administrative and/or advanced staff assistance work in a major state agency. Employees in this class are responsible for directing important phases of the department's program and/or for providing staff services in a variety of management areas. Work may involve assisting in the formulation of the agency's policies, the preparation of the budget, responsibility for fiscal management, physical plant, operating procedures, personnel and other management functions. Employees supervise a staff of technical and/or professional assistants and have a wide latitude for planning and decision making guided by laws, rules and departmental policy. Direction received is of a broad and general nature and the work is reviewed by administrative superiors through reports and conferences.

Robbins offered several AO 1 and/or pay range 16 positions for comparison and proof that her position should be classified at that level. Those positions included the following:

1. Jill Hagland, Social Services Specialist 3, DPI, Division for Handicapped Children & Pupil Service, Bureau for Exceptional Children. Position Summary -- Responsible for planning, developing, and implementing an early childhood state plan for a comprehensive delivery system of special education and related services to handicapped children from birth through five years of age. This includes the procedures for the administration of the pre-school discretionary program as well as liason activities to the Department of Health and Social Services relative to programs for handicapped children under the age of three.
2. Kathleen McCleave, AO 1, DHSS, Division of Vocational Rehabilitation. Position Summary -- Under the general supervision of a Program Support Section Chief¹, employe is responsible for the implementation of a three year (plus two one year extensions) Federal grant to expand knowledge of and access to assistive technology services and devices (ATS/D's) on a statewide basis. Employe directs the planning, development, and implementation of a model service delivery system of assistive technology for individuals with disabilities. Employe develops issue studies, carries out policy analysis, develops procedures and cooperative agreements, develops procedures and policy for the formation of the Inter-agency coordinating council, and the Consumer Board, serves as staff advisor to these groups, allocates and monitors the annual budget, submits annual continuation applications, coordinates activities with universities, contractees, insurance companies, service providers, private and public agencies to effect statewide change in the provision of assistive technology.
3. Cynthia M. Nolen, AO 1, Educational Communications Board. Position Summary -- This is a professional level position serving as director of K-12 instructional radio and television production development. The position is responsible for managing all ECB elementary/secondary and teacher inservice production development, including materials produced in Wisconsin and as a result of cooperative projects with other entities outside the state, including the Agency for Instructional Television. Work is performed under little direct supervision.
4. Sandra G. Hall, AO 1, DHSS, DNR. Position Summary -- Under the general supervision of the deputy administrator of the Division

¹ This position was initially classified indicating it was supervised by a Bureau Director. The present incumbent, who testified, said that she is a leadworker and supervised by a section chief.

and as consultant to a Project Advisory Council (two Division Administrators, Executive Director from non-profit organizations, Bureau Director from Dept. of Development), this position is responsible for administering a complex statewide supported employment and transition from school to work programs to meet Federal and State requirements to assist persons with severe disabilities get and retain employment. The supported employment program includes three separate sources of Federal funding and includes the administration of a complex three-year systems change grant. The employee directs the development of Department policies, budget proposals, regulations, and statutory language for supported employment and transition from school to work; develops and implements contracts for services; directs the development of working relationships with local government and other agencies/entities to promote the Department's goals and objectives for supported employment; and supervises specialized consultant in supported employment. This employee is responsible for a budget of \$1.3 million which includes three complex contracts for program implementation, evaluation, and training. This position also impacts the redirection/reallocation of a portion of the \$110 million in the county long-term support system from congregate settings to supported employment. This position is also responsible for the development and implementation of an interagency quality improvement system for supported employment.

As a group these positions reported to a higher level supervisor than Robbins and involved a broader program than the Robbins' position. Representative is the Kathleen McCleave position in DHSS/DVR. This position, as initially approved, was supervised by a bureau director, and provided assistive technology to all ages of individuals with disabilities, and required extensive knowledge in the field of rehabilitation engineering. The Jill Haglund position in DPI is more similar to Robbins' position. Like Robbins' this position is responsible for planning, developing and implementing a delivery system of services to handicapped children. However, this position's focus is special education and relative services and serves a broader group -- handicapped children through age five -- than Robbins' birth-to-3 program. Certain aspects of this position performed for the birth to 3 program existed before the program and are connected with DCS and ICC only through the interagency agreements.

Several positions at the AA 5 classification level (Respondent's Exhibits 16-23) were offered into the record for comparison with the Robbins position. All of these positions are responsible for developing, planning, monitoring, coordinating or evaluating some special program or programs and all, except two, report to a section chief. In those two exceptions, one reports to a bureau director and one to a unit supervisor. Representative of this group is the position of Jane Raymond, DHSS, DCS, Bureau of Aging. Her position description includes the following Position Summary: This position has primary responsibility for the policy development, program planning and coordination of the statewide elderly benefit specialist program funded with state and federal dollars. This involves: direction of the elderly benefit specialist program; development of materials on benefits to be used by the program specialists, regional attorneys and older people themselves; provision of statewide training and consultation; oversight of federal legal services grant activities; and liaison activities to public and private agencies which administer benefits for the elderly. The position also has primary responsibility for the Aging Network Operations Unit and provides direction to area agencies on aging and consultation to other organizations with a primary focus on elderly consumers.

The elderly benefits program is concerned with providing legal services to the elderly. Among other requirements, this position requires: extensive knowledge of Titles XVI, XVIII, XIX, XX Social Security Act ... other federal and state laws which affect older people including those on taxes, supplemental Medicare Insurance, public housing programs, home equity conversion, low-income energy assistance, life care contracts, durable power of attorney, guardianship, and particular services. Position Description: J. Raymond, 5/90.

The Commission believes the Robbins position is more appropriately classified at the AA 5 level. This conclusion has its basis in the position descriptions and testimony on same offered in evidence for comparison. By law class specifications are the basic authority for assigning positions to a given class. However, in some instances, the use of similar terminology make the differences between classes unclear. In these instances such as the

present one, the Commission looked to allocation patterns and position comparisons for guidance. Based on the allocation patterns for the two classifications in issue, the Robbins position fits well within the AA 5 class.

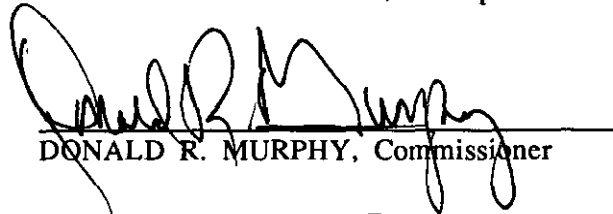
ORDER

Respondent's decision is affirmed and appellant's appeal is dismissed.

Dated: January 25, 1994 STATE PERSONNEL COMMISSION


LAURIE R. McCALLUM, Chairperson

DRM:dkd


DONALD R. MURPHY, Commissioner


JUDY M. ROGERS, 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.

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.)