STATE OF WISCONSIN

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| AL HENDERSON, et al., | * | |
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| Appellants, | * | |
| | * | |
| v. | * | |
| | * | DECISION |
| Secretary, DEPARTMENT OF | * | AND |
| HEALTH AND SOCIAL SERVICES, | * | ORDER |
| and Secretary, DEPARTMENT OF | * | |
| EMPLOYMENT RELATIONS, | * | |
| | * | |
| Respondents. | * | |
| | * | |
| Case No. 92-0804-PC | * | |
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This matter is before the Commission as an appeal from a decision denying the appellants' request for reclassification of their positions from Officer 2 to Officer 3.

The appellants are 5^1 of the 16 officers who rotate between 4 duty posts on 3 shifts at Goodland Hall, a maximum security psychiatric unit located at the Mendota Mental Health Institute. For 2 of the 3 work shifts, there is a Lieutenant on duty. On the third shift, the highest ranking officer on duty is an Officer 2.

Three of the four posts (the "A" officer at the Central Control Station and the officers at the East Control Station and the West Control Station) observe patients via video monitors. These positions also announce "codes" in the event they observe a problem, calling for intervention by members of the institution's treatment staff. The "B" officer at the Central Control Station is in charge of escorting patients on the MMHI grounds, directs the application of restraints to a patient, provides internal perimeter security and responds to

¹There were 13 appellants who signed the initial letter of appeal filed with the Commission. During a prehearing conference held on January 7, 1993, the appellant's representative indicated that five appellants, (Al Henderson, Richard Schaller, Valory Brown, Mike Dowell and Floyd May) were withdrawing for various reasons. Then at the commencement of the hearing, appellant's representative indicated that three other appellants (Robert Riggs, Frank Schiro and Randal Talley) were also withdrawing. Therefore, the remaining appellants in terms of the substantive issue before the Commission are Sara Button, Tyrone Glenn, Gene Larson, Richard Niederwerfer and Dean Paskey.

escape attempts along with the Lieutenant. The East Control Station also serves as the entry port for visitors to the facility.

No one is permanently assigned to any of the four posts. There is at least daily rotation between posts and, in some instances, rotation occurs for portions of shifts.

These duties and the structure involved have been essentially unchanged since 1988.

A classification survey was conducted, new class specifications were adopted and individual positions reallocated effective August of 1989. The appellants subsequently submitted a reclassification request in July of 1991. The denial of that request is the subject of this appeal. Between August of 1989 and July of 1991, there were no changes of any classification significance in the duties assigned to the various appellants. The old position description (Resp. Exh. 7) which was the basis for the classification survey differs from the new position description (App. Exh. 19) which was the basis for the reclassification request only in that one activity was moved from Goal B to Goal A, and the time percentages for those two goals were adjusted accordingly.

The term "reclassification" is defined in §ER 3.01(3), Wis. Adm. Code as the "assignment of a filled position to a different class... based upon a logical and gradual change to the duties or responsibilities of a position...."(emphasis added) There has been no change to the appellants' positions subsequent to the classification survey, effective August, 1989, that allocated the appellants' positions. The process for obtaining review of the reallocation was to appeal that decision, rather than to initiate a reclassification request. The respondents' decision denying the appellants' request to reclassify their positions must be affirmed because there has been no logical and gradual change to the duties performed by the appellants subsequent to the reallocation decision. Henderson et al. v. DHSS & DER Case No. 92-0804-PC Page 3

ORDER

At the request of appellants Al Henderson, Richard Schaller, Valory Brown, Mike Dowell, Floyd May, Robert Riggs, Frank Schiro and Randal Talley, this appeal is dismissed as to them. Respondents' reclassification decision is affirmed as to appellants Sara Button, Tyrone Glenn, Gene Larson, Richard Niederwerfer and Dean Paskey and this appeal is dismissed.

Dated: <u>August</u> 18, 1994

STATE PERSONNEL COMMISSION

R. MCCALLUM, Chairperson

KMS:kms K:D:Merits-reclass (Henderson)

dKd Commissioner

Parties:

Al Henderson, Richard Schaller, Valory Brown, Mike Dowell, Floyd May, Gene Larson, Richard Niederwerfer, Tyrone Glenn, Randal Talley, Frank Schiro, Dean Paskey, Robert Riggs, Sara Button c/o Allen Highman WSEU 5 Odana Court Madison, WI 53719

Gerald Whitburn Secretary, DHSS P.O. Box 7850 Madison, WI 53707-7850 Jon Litscher Secretary, DER P.O. Box 7855 Madison, WI 53707-7855

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.