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KAREN A. MATTHEWS,
 Appellant,

v.

President, UNIVERSITY OF
 WISCONSIN SYSTEM (Platteville),
 and Secretary, DEPARTMENT OF
 EMPLOYMENT RELATIONS,
 Respondents.

Case No. 92-0820-PC

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INTERIM
 DECISION
 AND
 ORDER

This is an appeal of a denial of a request for reclassification from Fiscal Clerk 1 (FC 1) to Fiscal Clerk 2 (FC 2).

Appellant's position is in the Auxiliary Services Accounting Office at the University of Wisconsin-Platteville (UW-P).¹ It reports to the office manager position classified as Account Specialist 1 occupied by Lillian Richert, which in turn reports to the Director of Auxiliary Services Business Operations, an academic staff position occupied by James W. Andersen.

Appellant's position is essentially accurately summarized by the 1991 position description (PD),² Respondents' Exhibit 3. The "position summary" on this document is as follows:

Collect, verify and reconcile all funds for Auxiliary Services. Prepare bank deposits and coordinate their transfer to the University Cashier's Office daily. Count, verify, wrap, and reconcile washer/dryer and vending machine receipts. Determine and prepare funds for cash operations of Auxiliary Services. Maintain records of daily, monthly and year-to-date receipts and deposits. Other duties as assigned.

¹ Appellant left this position prior to the hearing. This decision addresses the position as it was during the period prior to the classification denial.

² While there was testimony in appellant's case that the percentages on this document were not particularly accurate, she did not provide any other percentages, and the Commission accepts the percentages on this PD as generally accurate.

The following goals are set forth on this PD:

- A. 25% Collect, verify and reconcile all funds for Auxiliary Services.
- B. 9% Prepare bank deposits and coordinate their transfer to the University's Cashier's Office daily.
- C. 5% Count, verify, wrap, and reconcile washer/dryer and vending machine receipts.
- D. 8% Determine and prepare funds for cash operations of Auxiliary Services.
- E. 8% Maintain records of daily, monthly and year-to-date receipts and deposits.
- F. 5% Compile and print the Cashier's Manual at the beginning of each semester.
- G. 5% Cash handling and cash register training.
- H. 5% Coordinate work assignments in cashier area of Auxiliary Services Accounting Office.
- I. 5% Verify card cash point and input card cash points.
- J. 2% Maintain and update cash register supplies, cashier forms and cash counting equipment.
- K. 5% Review and is responsible for collection of insufficient funds checks.
- L. 2% Maintain records of bowling locker rentals.
- M. 5% Assist with billing and collection of Accounts Receivable.
- N. 2% Answer incoming calls, and take care of walk-up window customers.
- Q. 2% Assist with other office duties as needed or in the absence of personnel.
- P. 5% Assist with other clerical duties as assigned by the office manager.
- Q. 2% Collect, verify, and reconcile all funds collected for Chicago Bears Summer Training Camp Concessions and Ticket Sales.

Appellant's position directs two students and a limited term employe (LTE).

The evolution of appellant's position goes back to 1984. Ms. Richert, the office manager, at that time occupied the only classified position in the auxiliary services office, which handled only the student center and food services. At Mr. Andersen's recommendation, UW-P consolidated the accounting operation by incorporating other financial programs. Ms. Richert's position was essentially split-up three ways as appellant's and another FC 1 position occupied by Virginia Davis were added. Ms. Richert's PD dated November 6, 1984 (Respondents' Exhibit 8), was structured by Mr. Andersen to include all the functions being performed in the office, because he believed this was consistent with her role as office manager. However, after appellant and Ms. Davis were hired in 1985, they gradually took over many of the activities listed on Ms. Richert's PD. Notwithstanding these changes, Ms. Richert's PD, which served as the basis for the reclassifications of her position from Fiscal Clerk 3 to Account Specialist 1 in 1985, has never been revised to reflect the sharing of some of these activities with Ms. Davis and appellant.

On the basis of their PD's and their description on the office organization chart, it appears that Ms. Davis' position is more responsible for reconciliation while appellant's is more responsible for cash handling. However, this is not reflected in the actual work performed by these positions in the sense that both perform reconciliation at at least similar levels of complexity.

In April 1989, requests for reclassification of these positions from FC 1 to FC 2 were submitted. The request was granted as to Ms. Davis' position, but not as to appellant's position. The main reason for respondents' decision was that they perceived Ms. Davis' position as being primarily responsible for reconciliation and analytical-type functions, while appellant's position was responsible primarily for cash handling and verification of register receipts against register tapes, and that these differences supported different class levels based on the following class descriptions taken from the Fiscal Clerk position standard (Respondents' Exhibit 1):

Fiscal Clerk 1

This is entry and full performance level work of routine difficulty verifying, recording and processing financial and related data. Positions allocated to this class as an entry level carry out established procedures, and apply departmental policies and regulations in maintaining routine fiscal records, including auditing vouchers or

related documents of a restricted variety, checking codes for accuracy, legality and propriety against a set of state or agency standards. Positions allocated to this level as full performance capacity are those positions that operate bookkeeping machines to mechanically post and distribute routine fiscal data or that function as members of a cash collection and disbursements unit accepting fees, payments, issuing refunds or related payment procedures a majority of the time. Work is performed under immediate supervision.

Fiscal Clerk 2

This is full performance work of moderate difficulty verifying, recording and processing of financial and related records and data. Positions allocated to this class exercise individual judgement and initiative in carrying out established procedures and in applying departmental policies and regulations in maintaining fiscal records including: auditing a variety of vouchers or related documents; posting to ledger accounts or journals on a bookkeeping machine; or perform specialized and complex cash collection and verification activities in an organization having an ongoing cash flow. The work is performed within established policy and procedural guidelines. Work is performed under general supervision.

The Commission would agree with respondents' conclusion that appellant's position is not at the FC 2 level, if it only considered the three position descriptions in the Auxiliary Services Accounting Office compared against the above FC 1 and FC 2 class descriptions, as well as the examples of work performed set forth in the FC position standard. However, proceedings of this nature are heard on a de novo basis, see, e.g., Ratchman v. UW-Oshkosh & DER, 86-0219-PC (11/18/87) ("the Commission does not simply review the classification decision on the basis of the evidence that was before the analyst at the time of the decision, but it allows both parties to present at the hearing whatever evidence is relevant to the classification question.").

John Fitzpatrick, UW-P personnel manager, testified at the hearing that he found significant overlap in the position descriptions of appellant, Ms. Davis, and Ms. Richert, and thus he discounted a good deal of appellant's claim to have been involved in substantial amounts of reconciliation, the development of substantive revisions in the cashier's manual, etc., which are activities reflected on the PD's of Ms. Davis and Ms. Richert. In many cases, conflicts in evidence of this nature have to be resolved against the appellant, who has the burden of proof. However, in this case, the apparent conflicts or overlap among the PD's was resolved by Mr. Andersen's testimony. That is, Ms. Richert's initial (and only) PD was drafted to reflect all of the activities

carried out by the office, due to management's perception of the implications of her role as office manager, and the fact that originally hers was the sole position. As the other two positions were added and filled, they gradually took over many of the duties on her PD. For example, Ms. Richert testified that when appellant started she was assisting Ms. Richert in training cashiers, but she gradually took over this function over a period of time.

Mr. Andersen also testified that he saw no overlap between Ms. Davis' and appellant's positions (except to the extent they filled in for each other in the case of absences). Ms. Davis originally handled accounts that then did not involve the use of cash registers, while appellant handled accounts that did involve the use of cash registers. This distinction became blurred as registers were acquired for the former areas. He also testified that in his opinion,³ the level of their reconciliation activity is similar, although they work in different areas.

The evidence provided at the hearing supports appellant's testimony concerning the relatively advanced level of the activities she performs, and also supports the conclusion that the apparent conflict between her PD and Ms. Richert's is due to the latter PD being outdated and not reflective of appellant's increased assumption of responsibility during her tenure in this position. Appellant's position as described at the hearing goes beyond the performance of work of "routine difficulty," as associated with the FC 1 level, and which is defined in the FC position standard as:

The work is usually repetitive and the employe works from detailed instructions. The difficulty is limited to accuracy and speed.

Rather, a large part of her work is consistent with the "moderate difficulty" required at the FC 2 level and defined in the FC position standard as follows:

The employe is confronted with a variety of breadth of duties susceptible to different methods of solution which in turn places a correspondingly higher demand on resourcefulness. Supervisors of employes engaged in routine assignments, journey-level personnel and paraprofessional employes usually perform work of moderate difficulty.

Even in light of the testimony of appellant's supervisors, there are significant portions of appellant's position that appear to be at the FC 1 level.

³ He has a masters degree in accounting.

However, appellant's case receives substantial support from the comparative PD's she placed in evidence. On the other hand, the position comparisons relied on by respondents did not add much to their case.

Respondents used two FC 1 positions -- one at the University of Wisconsin-Stevens Point (UW-SP), and one at the University of Wisconsin-Madison (UW-Madison)(Respondents' Exhibit 13). The first position appears to be much more of a cash handling position than appellant's position,⁴ primarily counting and verifying cash, preparing deposits, preparing simple reports, etc. The only reconciliation mentioned is part of a 5% "other duties" category. The UW-Madison PD does not provide percentages, is only one page, and does not give much detailed information. In addition to apparent basic cash handling activities, it reflects some reconciliation and "bad check" activities, but it is impossible to tell from the PD the amount and extent of these activities.

Respondents relied on one FC 2 PD (Respondents' Exhibit 12), comparison. This is a position in the University of Wisconsin-Eau Claire (UW-EC) bookstore. This position has a 35% allocation for "supervision of cash register operation and bookstore control," and 10% for supervision of student cashiers. It also has a 30% responsibility for providing secretarial and administrative support to the merchandising manager, 15% for "assistance in budget and financial management of general merchandise department." Mr. Fitzpatrick testified at the hearing that the 35% allocation for cash control appeared to be similar to appellant's position, but appellant's position had less involvement in supervision of students compared to 10% on this PD and was not involved in the other activities set forth on this PD. In the Commission's opinion, appellant's position is at least generally comparable to this UW-EC position. While Ms. Richert may have the ultimate responsibility for supervising student cashiers, appellant carries out many of the actual functions in this area in a manner that appears to be comparable to the UW-EC position. Also, the 30% activity of providing secretarial and administrative support to the merchandising manager does not appear to be a fiscal clerk type of activity.

⁴ This conclusion is supported not only by that position's PD, but also by the testimony of Mr. Andersen, who has observed the position's operation on a first-hand basis.

In addition to these PD's, appellant submitted two FC 3 and one FC 2 PD's. Respondent objected to these documents, essentially on foundation grounds, because the only parts of the PD's submitted were the narrative sections -- there were no cover pages with signatures and dates. This objection was overruled. In an administrative proceeding of this nature, the Commission "shall not be bound by common law or statutory rules of evidence...[and] shall admit all testimony having reasonable probative value." §227.45(1), Stats., and "is not bound by the strict rules of procedure and customary practices of courts of law." §PC 5.03(1), Wis. Adm. Code. A sufficient foundation for admissibility was provided by Mr. Andersen's testimony that he obtained these PD's from his counterparts on other campuses in response to his request for information as to their personnel structures. In addition, respondent was served with copies of these documents in advance of the hearing,⁵ and had the opportunity to have presented any appropriate rebuttal evidence.

Appellant's Exhibit E4 is a copy of a PD of an FC 3 position at the University of Wisconsin-Whitewater (UW-W). This position has a 60% goal for University Center cash handling, 10% for maintaining the University Center contingent fund, 10% for maintaining the University Center check cashing service fund, and 25% for miscellaneous tasks. Mr. Fitzpatrick essentially admitted at hearing that this position is comparable to appellant's position, but contended that it does not satisfy the FC 3 description and is misclassified.

The PD for the FC 3 position at UW-EC (Appellant's Exhibit E3) shows the following goals:

- 50% A. Execution of the cash handling operation in Davies Center.
- 15% B. Supervision of cash control activities and personnel.
- 20% C. General management tasks.
- 10% D. Communication of cash control procedures to area supervisors.
- 5% E. Performance of related job duties in service center.

Mr. Fitzpatrick testified that much of this PD appeared to be similar to appellant's, but that this position may be at the FC 3 level on the basis of lead-

⁵ Two of the PD's in question (Appellant's Exhibits E1 and E4) had been submitted to respondents even before this appeal, as part of the audit of appellant's position.

work responsibilities (which are specifically recognized by the definition at that level), and that these kinds of responsibilities at UW-P were the ultimate responsibility of Ms. Richert.

The PD for the FC 2 position at UW-EC (Appellant's Exhibit E1) shows the following goals:

- 60% A. Compilation of daily revenues from specific areas of the University Centers into a single bank deposit.
- 25% B. Maintenance of change fund adequate to meet the various needs of all areas of the University Centers.
- 5% C. Supervision and training of student employes and LTE's.
- 5% D. Promotion of the centralization and security of cash handling in Davies Center.
- 5% E. Miscellaneous duties as assigned.

On balance, the position comparisons of record favor appellant's case. Even if the FC 3 position at Davies Center at UW-W is misclassified at that level,⁶ respondents have not contended it should not properly be at at least the FC 2 level, and the FC 2 position at UW-EC is a good comparison.

The Commission also concludes that the evolution of appellant's position constituted a logical and gradual change. As appellant acquired more training and experience in this position following her appointment, she eventually acquired a number of the more advanced functions that originally had been Ms. Richert's sole responsibility.

While the Commission concludes that appellant has sustained her burden of proof on the basis of the de novo hearing, it should be noted that the PD's for the positions in the Auxiliary Services Accounting Office were not completely current, and Ms. Richert's 1984 PD in particular apparently reflected activities she no longer performs. As noted above, Appellant left the position in question following the reclassification denial; the record does not reflect the level at which her replacement functions vis-a-vis the duties that were nominally Ms. Richert's, pursuant to her 1984 PD, that appellant assumed.

⁶ Since this PD was submitted to respondents as part of the audit process, their failure to address the position comparison in their written denial of the reclass request, and their apparent failure to have taken steps to either audit or reallocate this position, are inconsistent with their contention that it is incorrectly classified.

Finally, appellant stated in her initial post-hearing brief that parts of the hearing were missing from the hearing tape. The entire tape has been reviewed, and there is nothing missing. Appellant may have been listening to a dubbed copy of the hearing tape that for some reason omitted parts of the original tape.

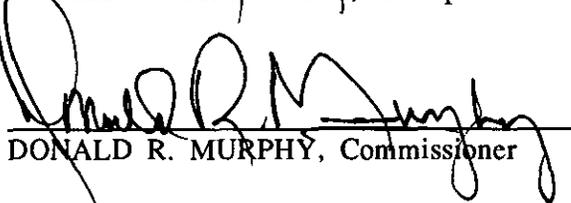
ORDER

Respondents' decision to deny the request for reclassification of appellant's position from FC 1 to FC 2 is rejected and this matter is remanded to respondents for action in accordance with this decision.

Dated: January 25, 1994 STATE PERSONNEL COMMISSION


LAURIE R. McCALLUM, Chairperson

AJT: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.)