

<u>% Time</u>	<u>Goals and Worker Activity</u>
25%	A. Coordination, issuance and assignment of prevailing wage rate determinations for state and municipal public work projects in standard metropolitan statistical areas (SMSA) including Green Bay, Oshkosh, Appleton, Milwaukee, Madison and Fond du Lac. Performing this work in SMSAs is not difficult because unions exist and are familiar with reporting the required information, which is then plugged into an established formula to arrive at the figure used as the prevailing wage rate.
25%	B. Coordination of investigation activities.
25%	C. Administer program support services to section and divisional staff.
15%	D. Coordination and certification of prevailing wage rates for state craft workers. This task basically requires appellant to review union contracts to determine the bargained wage rates, which are then plugged into an established formula to arrive at the figure to be used as the prevailing wage rate and reporting the same to the Wisconsin Department of Employment Relations (DER).
10%	E. Coordination of municipal exemptions.

2. Appellant's position duties changed as shown below from 1989 to 1992, as reflected in the position description (PD) signed by appellant on November 12, 1992, and as reflected by testimony given at hearing. She performed these changed duties for at least the 6-month period prior to November 12, 1992. In or around November 1992, appellant requested reclassification to PA-4, based on the new PD. These changes were logical and occurred gradually.

<u>Time %</u>	<u>Goals and Worker Activity</u>
30%	A. Determination of prevailing wage rates and hours of labor for state and municipal public works construction projects, pursuant to ss. 103.49, 103.50 and 66.293(3), Stats., and Ind 90 and 92, Wis. Admin. Code. This task is similar to Goal A in the 1989 PD, except appellant is now assigned to a geographic area comprised of SMSAs and counties. Determining the prevailing wage rates for counties is more difficult than for SMSAs because individual contractors are expected to submit reports (rather than unions) and those contractors are less

familiar with the reporting requirements. Therefore, it is not unusual for appellant to have to contact the contractors for information, as opposed to the reliance on complete reports as would be the usual situation when unions report. Also, the computer is more likely to contain wage information for SMSAs but not for counties for the same reasons already identified. Once appellant has all needed information from the contractors, that information is plugged into an established formula to determine the figure used as the prevailing wage rate.

- 15% B. Coordination and certification of prevailing wage rates for state craft workers. This task is similar to Goal D in the 1989 PD, except appellant's level of knowledge had increased leading to responsibility from start to finish for specific assigned crafts (boiler makers, iron workers, painters and tile/marble/terrazzo finishers).
 - 10% C. Preparation of special reports and publications. This is a new task which involves the collection of data, analysis, write-up and/or editing functions related to wage-rate reports for which accuracy is important.
 - 10% D. Administers program support services to section staff. This task is essentially the same as Goal C in the 1989 PD.
 - 10% E. Coordination of municipal exemptions. This task is the same as Goal E in the 1989 PD.
 - 10% F. Coordination of investigation activities. This task is the same as Goal B in the 1989 PD.
 - 5% G. Promotion of a better understanding of prevailing wage rate laws and administrative rules by responding to inquiries from the general public, union officials, employers, employees and others. This is a new task assigned to appellant based on the knowledge she gained in working on the job.
 - 5% H. Performance of special assignments for section chief or lead investigator. Specifically, appellant may function as part of a team conducting seminars on prevailing-wage issues which may be attended by employer, local union officials and/or the general public. This is a new task assigned to appellant based on the knowledge she gained in working on the job.
 - 5% I. Continuation of self-education.
3. There are four levels to the PA classification series, from PA-1 (lowest) to PA-4 (highest). The appropriate level for any position is

determined by analyzing the following four factors: i) accountability, ii) know-how, iii) problem-solving and iv) working conditions. These four factors include a consideration of the following:

- a. The diversity, complexity and scope of the assigned program, project, staff responsibilities, or activities;
- b. The level of responsibility as it relates to type and level of supervision received, status within the organization and degree to which program responsibility and accountability are delegated and/or assigned;
- c. The degree to which program guidelines, procedures, regulations, precedents and legal interpretations exist and the degree to which they must be applied and/or incorporated into the program and/or activities being carried out by the position;
- d. The potential impact of policy and/or program decisions on state and non-state agencies, organizations and individuals;
- e. The nature and level of internal and external coordination and communication required to accomplish objectives;
- f. The difficulty, frequency and sensitivity of decisions which are required to accomplish objectives and the level of independence for making such decisions.

4. The class specifications describe the PA-3 level as follows.

This is paraprofessional work of moderate difficulty providing a wide variety of program support assistance to supervisory, professional or administrative staff. Positions are delegated authority to exercise judgment and decision making along program lines that are governed by a variety of complex rules and regulations. Independence of action and impact across program lines is significant at this level. Positions at this level devote more time to administration and coordination of program activities than to the actual performance of clerical tasks. Work is performed under general supervision.

5. The class specifications describe the PA-4 level as follows.

This is paraprofessional staff support work of considerable difficulty as an assistant to the head of a major program function or organization activity. Positions allocated to this class are coordinative and administrative in nature. Positions typically exercise a significant degree of independence and latitude for decision making and may also function as leadworkers. Positions at this level are differentiated from lower-level Program Assistants on the basis of the size and scope of the program involved, the independence of action, degree of involvement and impact of decisions and judgment required by the position. Work is performed under direction.

6. The following definitions apply to the PA class specifications:

Paraprofessional: A type of work closely relating to and resembling professional level work, with a more limited scope of functions, decision-making and overall accountability. A paraprofessional position may have responsibility for segments of professional level functions, but is not responsible for the full range and scope of functions expected of a professional position.

Moderate Difficulty: 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.

Considerable Difficulty: Refers to duties which require independent judgment [where] many factors must be considered and weighed before a decision can be reached. Usually positions requiring the planning, development or coordination of activities or programs or part thereof and the direction or coordination of employes fall into this category.

General Supervision: The employe usually receives general instructions with respect to the details of most assignments but is generally free to develop own work sequences within established procedures, methods and policies. The employe may be physically removed from the supervisor and subject to only systematic supervisory checks.

Direction: The employe usually receives only a general outline of the work to be performed and is free to develop own work sequences and methods within the scope of established policies. New, unusual or complex work situations are almost always referred to a superior for advice. Work is periodically checked for progress and conformance to established policies and requirements.

7. While the changes in appellant's position lead to a degree of decreased supervision, the decrease did not arise to a movement from "General Supervision" to "Direction" as those terms are defined in the class specifications. Rather, general supervision continued and supervisors continued to review appellant's work but supervisors felt they could depend more on the accuracy (quality) of appellant's work due to the knowledge she gained from working in the position. The change to "Direction" which did not occur here is required at the PA-4 level.

8. While some aspects of appellant's job became more complex in 1992 (as previously discussed), the changes were not great enough to

characterize as "Considerable Difficulty" as that term is defined in the class specifications and as required for the PA-4 classification.

9. Appellant felt her job duties were more difficult than (or at least as difficult as) duties performed by an Equal Rights Officer 1 (ERO-1). The duties of the ERO-1 PD in the record as shown below.

<u>Time %</u>	<u>Goals and Worker Activity</u>
50% A.	Investigation of employer payroll records pursuant to ss. 103.49(5) and 66.293(3)(i)(m), Stats., which may require on-site inspections. Includes making the initial determination of compliance or non-compliance, with appropriate follow-up action. Appellant does not perform these tasks.
35% B.	Determination of prevailing wage rates and hours of labor for state and municipal public works construction projects, pursuant to ss. 103.49, 103.50 and 66.293(3), Stats., and Ind 90 and 92, Wis. Admin. Codes. This task includes duties performed by appellant in Goal A of her 1992 PD, plus some advanced functions which she does not perform, such as using statistical techniques. The ERO position also makes recommendations in contested wage-rate cases, which appellant does not do.
5% C.	Preparation of special reports and publications This task is similar to Goal C of appellant's 1992 PD.
5% D.	Promotion of a better understanding of prevailing wage laws and administrative rules. This task is the same as Goal G of appellant's 1992 PD.
5% E.	Continuation of self-education. This task is the same as Goal I in the appellant's 1992 PD. This is a division standard now included in every PD.

10. Appellant never requested reclassification to the ERO series because she did not feel her position was appropriate to the ERO series.

11. Appellant's position involves duties which have some similarities with the ERO-1 position, but differences exist as previously noted in paragraph 9 above. Also, half of the ERO-1 position involves duties which appellant does not perform (Goal A on the ERO-1 PD). Further, appellant did not show that tasks performed solely by her positions (and not by the ERO-1 position) were as complex as tasks performed solely by the ERO-1 position.

CONCLUSIONS OF LAW

1. This matter is properly before the Commission pursuant to s. 230.44(1)(b), Stats.
2. The appellant has the burden to show that respondent's decision to deny her request to reclassify her position was incorrect.
3. The appellant has not met this burden.
4. The respondent's decision to deny appellant's request to reclassify her position from Program Assistant 3 to Program Assistant 4 was not incorrect.

DISCUSSION

Changes in duties performed in a position do not automatically warrant reclassification to a higher level. There is a such a concept as growth within the same classification, which occurred here.

Part of appellant's hearing arguments involved her opinion that DILHR failed to recognize the details or nature of changes which occurred in her position. This decision, of course, is not limited to the information which DILHR might have had at the time the reclassification was denied. Instead, the hearing provided appellant with the opportunity to present all information she desired, including any items she felt were overlooked previously. All such information in the record was considered in writing this decision.

Appellant strongly believes the duties her position is at least as complex as the duties performed by ERO-1 positions. However, little evidence was presented to support the contention. The PD for the ERO-1 position was offered by respondents. It did not contain sufficient information to support appellant's contention because more than half of the ERO-1 duties were not performed by appellant, leaving the record without testimony from an ERO-1 position (or someone equally as familiar with the job) to "flesh-out" the words in the ERO-1 PD. While the examiner may have felt appellant was sincere in her belief, the appellant simply did not prove this point by a preponderance of the evidence.

A portion of respondents' post-hearing brief referenced Appellant's Exhibit 8, which Commission files indicate was not identified, offered, or accepted as part of the hearing record. Counsel for respondents should notify the Commission if, after double-checking her notes, she determines that the

exhibit was accepted as part of the hearing record. Appellant may respond as well if her notes indicate that the exhibit was accepted as part of the hearing record. Any such response should be included with the parties' written objections to this proposed decision and order.¹

Appellant wrote as follows in her post-hearing brief:

"Additionally, the treatment of my witness, Ms. Patricia A. Schultz by Ms. Randal was unprofessional. Ms. Randal's unnecessary rudeness and belittlement of Ms. Schultz (sic) qualifications regarding her position and expertise on the position were uncalled for."

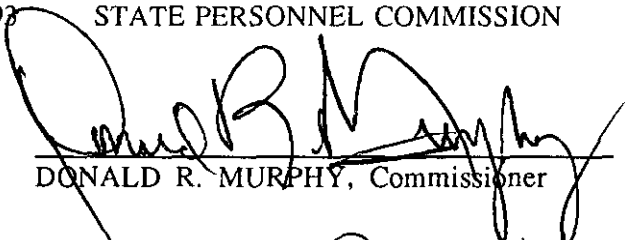
The hearing examiner wishes to note that she observed no basis for appellant's statement. Attorney Randal conducted an appropriate cross examination which was not confrontational, rude, belittling or unprofessional. The questions asked by Attorney Randal were probative and elicited information which the examiner found helpful.

ORDER

Respondent's action denying the request for reclassification of appellant's position from Program Assistant 3 to Program Assistant 4 is affirmed and this appeal is dismissed.

Dated: August 23, 1993

STATE PERSONNEL COMMISSION


DONALD R. MURPHY, Commissioner

JMR


JUDY M. ROGERS, Commissioner

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¹ Respondent subsequently wrote and agreed that this document was not part of the record.

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.