

STATE OF WISCONSIN

PERSONNEL COMMISSION

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KATHLEEN LINDAS, \*

Appellant, \*

v. \*

Secretary, DEPARTMENT OF \*

EMPLOYMENT RELATIONS, \*

Respondent. \*

Case No. 93-0102-PC \*

\* \* \* \* \*

DECISION AND ORDER

This matter is before the Commission as an appeal from a reclassification denial.

During the relevant time period, the appellant was employed in the Bureau for Student Assessment in the Department of Public Instruction (DPI). The appellant sought reclassification of her 60% position from the Education Specialist 5 level in February of 1992. That request was denied by DPI in April of 1992, and appellant sought review by respondent Department of Employment Relations (DER). Before a decision was rendered by DER, appellant submitted a second reclass request in October of 1992 which was denied by DPI in March of 1993. Appellant again sought review by DER and in a decision rendered in June of 1993, respondent denied both requests.

Appellant contends that her position was more properly classified at the Education Program Specialist level. The parties agreed that the effective date of the transaction before the Commission is during November of 1992. The parties further stipulated that there is no issue in this appeal regarding the appellant's right to be regraded in the event her position was, as of November of 1992, properly classified at the higher level.

The Bureau for Student Assessment had overall responsibility for the planning, development and implementation of a series of statewide assessment programs. In 1974 this was called the Wisconsin Pupil Assessment Program and the Bureau developed a wide variety of tests in various subjects and at various grade levels. In 1981, Wisconsin changed to Competency Based Testing (CBT), and the Bureau developed tests for use at 3 grade levels for a number of years and developed an item bank which served as a resource for local dis-

districts. Late in the 1980's, the Third Grade Reading Test (TGRT) was established. Again, the Bureau developed this test which was implemented on a statewide basis. These were the major activities of the Bureau during the period ending in the summer or fall of 1991, when the Bureau first contracted with an outside vendor to develop the TGRT.

The procedure for developing these tests included the following: 1) identifying the intended purpose and use of the test; b) selecting the grade level and content areas; c) creating specifications to govern the objectives/outcomes/competencies to be addressed by the test; d) identifying the types of item specifications to be developed to govern the actual production of test items; f) writing the test items; g) field testing; h) conducting a statistical analysis of the responses; i) reviewing the test items for bias; j) conducting a second round of field testing; k) planning the reporting system to be used; and l) writing the interpretive guides and materials relating to the test. These tests generate results which are supplied to the individual students and to the school districts, and often result in comparisons, not only between schools but between school districts.

In April of 1992, legislation was enacted which replaced the Competency Based Testing program with the Wisconsin Student Assessment System (WSAS). WSAS had three main components: 1) performance assessment, 2) knowledge and concepts, and 3) portfolio. The implementation of these components was to be staggered. Performance assessment was to be developed through a contract with the Wisconsin Center for Educational Research at the University of Wisconsin. The knowledge and concepts tests were "shelf tests" already available from American College Testing, with testing to commence right away. The portfolio effort had not been funded and while some planning was underway, implementation was not scheduled until 1996-97.

In addition to the state assessment efforts identified above, the bureau was involved in the National Assessment of Educational Progress (NAEP).

Appellant's primary area of responsibility, i.e. between 60% and 70% of her time, was in serving as DPI's coordinator for NAEP, "a congressionally sponsored program that monitors the knowledge and skills of America's elementary, middle, and high school students." App. Exh. 12. NAEP contracts with various testing services to develop tests for the assessment of students. The tests are given to samples of students in each of the participating states and

the results provide a basis for comparing, between the states, the learning levels of their students. NAEP is designed to generate statistics for comparison between states. However, NAEP does not report results by individual student, school or even school district.

The appellant only has peripheral involvement in the development of the tests used by NAEP. According to App. Exh. 11:

From its inception, NAEP has developed assessments through a consensus process. Classroom teachers, scholars, and citizen representatives of diverse constituencies and points of view design objectives for each subject area assessment, and propose general goals they feel students should achieve in the course of their education. Working from these approved objectives, item writers develop assessment questions.

NAEP utilizes contractors for test development purposes as well as for administering the tests. On one occasion, for a period of several hours, the appellant attended a meeting conducted by NAEP in Washington which was designed to obtain input from the various participating states in terms of the appropriateness of questions being considered for use on the reading portion of a NAEP test. Appellant participated because she had a background in reading and because she was already in Washington to attend another portion of the NAEP meeting. Also in attendance from DPI at the session regarding the reading test was Jacque Karbon, a reading consultant. This was the appellant's sole experience relating to NAEP test writing.

NAEP required each participating state to organize and conduct regional training sessions to bring together representatives of those local schools that were to be part of the sample drawn by NAEP. NAEP hired people to come into the state to actually conduct the in-depth training session, but it was the appellant's role, as state coordinator, to insure the districts were informed of the training session, to make necessary hotel and related logistical arrangements and to give an introduction at the sessions.

The appellant's NAEP responsibilities are accurately and extensively described in the memo written by the DPI personnel analyst who reviewed the appellant's reclassification request.<sup>1</sup> Resp. Exh. 7.

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<sup>1</sup>Less than eight months after writing the memo, the personnel analyst, who had retired in the interim, was hired on a part time basis to perform many of the NAEP duties formerly performed by the appellant who had been laid off

Appellant approached her supervisor sometime after July 1, 1992 and asked to be more involved in the new WSAS activities. Over the next several months, the appellant's primary WSAS areas of emphasis were arts testing, social studies testing and portfolio assessment. The social studies testing and portfolio assessment areas were in very preliminary planning stages at this time. Although the arts testing was an ongoing effort, the appellant's predominant role there was because of her familiarity with NAEP in terms of NAEP's efforts to initiate its own arts tests.

Other than persons in program support, there were no other DPI employees at or below the appellant's classification who were working on WSAS.

The appellant was not spending a majority of her time on WSAS. Because her NAEP responsibilities were cyclical, she did have additional time during the fall of 1992 to devote to WSAS. If one looked solely at the fall of 1992, one might find that the appellant spent more than 50% of her time on WSAS work. However, the time analysis must be made in terms of the entire NAEP cycle, and the evidence was that appellant spent 60 to 70% of her time on NAEP duties during this cycle. Therefore, even if one concluded that her WSAS duties were at the EPS level<sup>2</sup>, the appellant does not meet the burden of establishing that the majority of her time was spent performing EPS level duties if the appellant's NAEP duties are correctly classified at the ES 5 level.

The Education Specialist classification includes the following language:

A. Purpose of the Position Standard

This position standard is intended to be used to classify professional positions responsible for analyzing, monitoring, evaluating, and coordinating statewide educational programs and projects....

B. Inclusions

... The majority of these positions' time is spent in line functions of delivery of educational services to students, parents, teachers, or local educational administrators.

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from her position earlier in the year. The analyst testified that this experience performing NAEP duties reaffirmed his classification conclusion.

<sup>2</sup>Of the various individuals listed on the WSAS organizational chart, App. Exh. 4, (other than secretaries listed as providing program support), the appellant had the lowest classification level.

\* \* \*

#### F. Definitions

The following definitions describe the basic functions of each position category by area of specialization:

\* \* \*

2. Program Coordination - This area describes positions responsible for providing articulation, procedural direction, liaison, and technical assistance in a statewide program area. The work involves the planning, promotion, and coordination of services in a particular educational program area, and involves frequent external contacts to provide or exchange information.

\* \* \*

#### EDUCATION SPECIALIST 4

This is a progression, full-performance, or advanced level depending upon the following areas of specialization:

\* \* \*

3) Program Coordination - This is the full-performance level for a position functioning as the coordinator of a statewide educational program of moderate scope and complexity, with primary emphasis on providing liaison and informational services to local education officials. Program coordinators in this class usually function within well-defined program guidelines and have limited authority to develop new program proposals, directions, or projects. The work normally does not include the evaluation or approval of projects or grants.

#### EDUCATION SPECIALIST 5

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The work at this level differs from work at the Education Specialist 6 level in any of the following ways: the variety and complexity of assignments; the extent to which the decision-making responsibilities are shared with other staff; the extent of the impact of the program administered on the state's educational process; and the consequence of error in decisions made.

#### EDUCATION SPECIALIST 6

This is an advanced level Education Specialist functioning in one of the following capacities:

\* \* \*

4) Program Coordination - A position at this level functions as the coordinator of a large statewide program or of several smaller programs, such as vocational employment and training programs, with primary emphasis on reviewing and approving program operations, expenditures, and projects.

In all cases, the work at this level includes responsibility for frequently making the most difficult and unprecedented decisions in the program area. Most recommendations made at this level are readily accepted by program administrators and usually have the effect of establishing precedents and performance criteria for program clientele. In addition to performing the analytical and decision-making functions of the program, employees in this class provide a significant amount of technical assistance to local education officials in developing and improving program services. The work is performed under general supervision.

The Educational Program Specialist classification was created in November of 1991. One effect of the EPS series was to effectively eliminate the ES 6 level, which was redefined and became the EPS classification. The EPS specifications include the following language:

#### B. Inclusions

... Positions allocated to this classification typically are responsible for analyzing competency-based testing (CBT) technical issues; developing statistical models for use in evaluating CBTs; designing and performing needs assessments regarding testing for school districts and CESAs [Cooperative Educational Service Agency]... ; developing, implementing and evaluating the Equivalency Clock Hour program; providing technical assistance and coordination to school districts participating in the Competency-Based Testing program; developing the Standard Third Grade Reading test and program test instruments....

\* \* \*

#### E. Classification Factors

Individual position allocations are based upon the ten Wisconsin Quantitative Evaluation System (WQES) factors; Knowledge; Discretion; Complexity; Effect of Actions; Consequence of Error; Personal Contacts; Physical Effort; Surroundings; Hazards; and Leadwork/Supervisory Responsibilities....

#### F. How To Use This Classification Specification

This classification specification is used to classify professional positions as described under Section B of this classification specification. In most instances, positions included in this series will

be clearly identified by one of the classification definitions which follow below in Section II. However, a position may evolve or be created that is not specifically defined by one of the classification definitions. In classifying these positions, it would be necessary to compare them to the classification definitions based on the factors described [above].

## II. DEFINITIONS

### EDUCATION PROGRAM SPECIALIST

This is specialized professional work in the Department of Public Instruction.... Positions in this class are responsible for analyzing, developing, coordination, monitoring, and providing technical advice in areas such as competency-based testing, programming for the educationally disadvantaged, and needs assessment. Positions in this class carry out their assigned responsibilities within established guidelines, using independent judgement in deciding how to accomplish goals in the provision of service. Time frames and results are established by the individual employees in the positions within program parameters. The work is performed under general supervision.

Appellant argues that the reference in the EPS definition statement to "analyzing, developing, coordination, monitoring, and providing technical advice" represents five separate examples of work which may be performed at that class level. Appellant then goes on to cite §ER 2.04(3), Wis. Adm. Code, which includes a statement to the effect that not all stated work examples must be performed in order for a position to be classified at a certain level. It is clear that the classification definition language referenced by appellant is not a listing of work examples. Rather, it serves to list requirements for classification at that level. Therefore, appellant's citation to §ER 2.04 is inappropriate.

One key to this case is the fact that the program which appellant was coordinating was a federal program, with a structure necessarily designed to insure uniformity among the states which participated in NAEP. Uniformity was necessary in order to permit inter-state comparisons, so NAEP was a program with very well-defined procedures developed at the national level rather than at the state level. The appellant's role as state coordinator was to carry out the detailed directives and procedures set forth by the national organization, to insure that the various schedules were met and that materials were available to the participating school districts and were returned to the NAEP contractor.

The limits to appellant's responsibilities are indicated in both the absence of any substantive role in test development and the limited scope of her role at the training sessions conducted for local school districts participating in NAEP.

There is nothing in the record to indicate that any of the various programs specifically identified in the EPS specifications are national programs. Logically, a coordinator for a state program would require a higher level of "analyzing, developing, coordinating, monitoring and providing technical advice" than would be expected for a coordinator of a national program being implemented at the state level. This view is supported by the DeSoto comparison position classified at the ES 5 level. This position has responsibilities which relate to the National Migrant Student Record Transfer System (MSRTS), a federal program which maintains records so that as migrant children move into a school district in any of the participating states, their school records are available. Federal funds are also made available to the school districts.

Also, the specifications at the EPS level refer to specific programs in both the Inclusions section and the Definition statement. The NAEP program was in existence at the time the specifications were drafted and if the appellant's responsibilities were to be considered as meeting that level, one would assume that there would have been a specific reference. Two of those specific references are to Competency Based Testing and the Third Grade Reading Test, both of which provide a good basis of comparison to the appellant's position for classification purposes. At the time the class specifications were developed, the CBT and TGRT programs within the Bureau of Student Assessment entailed internal development of the tests themselves, rather than contracting out for that service with a vendor. While it is true that there were advisory committees which had significant input into this test development, the role of the individuals assigned to these programs included heavy involvement in the test development process and was more complex and required substantially more knowledge and discretion than was required for the appellant's NAEP responsibilities. Even when, after the EPS specifications were written (but before their effective date), a contract was entered into with a testing service for the TGRT test development purposes, the individual assigned to coordinate the process with the contractor had daily and in-depth interaction with the con-



tractor and was reviewing and modifying individual test questions.<sup>3</sup> The record also established that the individual who was assigned responsibility for the knowledge and concepts portion of the WSAS<sup>4</sup> had a much more substantive role in test development than did the appellant with respect to NAEP. These two positions are distinguishable from the appellant's position in terms of the "discretion" and "complexity" classification factors listed in the EPS specifications.<sup>5</sup>

The appellant's responsibilities are also significantly narrower in scope and responsibility than either of two other positions classified at the EPS level: 1) the Haynes position (App. Exh. 31), which provides leadership, consultative and outreach activities for the development of educational programs for homeless children and youth and develops, implements and evaluates state-level programs for that constituency; or 2) the Cooney position (App. Exh. 33), which coordinates DPI's efforts to assist local educators to identify educational needs of academically and economically disadvantaged youth and develops, monitors and supervises those programs.

The appellant's focus was not on "analyzing... testing technical issues" as referenced in the Inclusions section of the EPS classification. Also, any analysis of the ES 5 requirements must be in the context of the language used for describing the ES 4 and ES 6 levels, as the ES 5 level is defined in terms of being something less than an ES 6 level position. The ES 6 language references positions having "primary emphasis on reviewing and approving program operation, expenditures and projects." This was not the appellant's focus. The appellant's coordinative role was in terms of carrying out the very specific procedural requirements established by NAEP. Appellant did not have the discretion indicated for a level higher than ES 5.

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<sup>3</sup>The DPI employe with primary responsibility for the TGRT was Vicki Fredrick. Her supervisor described her as being a "major participant in the entire test development effort" with extensive involvement in the item specifications and in evaluating the items submitted by the contractor, recommending and in some cases insisting that changes be made in those items.

<sup>4</sup>This DPI employe, Rajah Farah, did not provide original test items, but she did review and critique the test prepared by ACT, a testing service.

<sup>5</sup>In light of this conclusion, the Commission does not address the suggestion that the loss of responsibility for developing test questions for positions within the Bureau classified at the EPS level caused them to be mis-classified.

The appellant's position is not specifically identified at the EPS level, nor do the majority of her responsibilities compare favorably with the positions described at that level in terms of the classification factors of complexity, knowledge required and discretion. For those reasons, the respondents' decision must be affirmed.

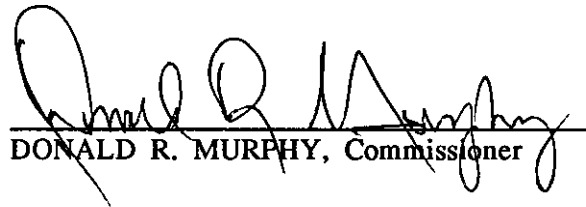
ORDER


Respondents' decision establishing the classification of appellant's position at the Education Specialist 5 level rather than the Education Program Specialist level, as of November of 1992, is affirmed and this appeal is dismissed.

Dated: May 26, 1995 STATE PERSONNEL COMMISSION

  
LAURIE R. MCCALLUM, Chairperson

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

  
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 (except an order arising from an arbitration conducted pursuant to §230.44(4)(bm), Wis. Stats.) 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.)

2/3/95