

\* \* \* \* \*

BARBARA S. MORTENSEN,  
 Appellant,

v.

Secretary, DEPARTMENT OF  
 EMPLOYMENT RELATIONS,  
 Respondent.

Case No. 94-0276-PC

\* \* \* \* \*

\*  
\*  
\*  
\*  
\*  
\*  
\*  
\*  
\*  
\*  
\*  
\*

DECISION  
 AND  
 ORDER

This case is an appeal pursuant to §230.44(1)(b), Wis. Stats., of the reallocation of appellant's position from Real Estate Agent (REA) 4 to Real Estate Specialist (RES) - Senior. Appellant contends her position should have been reallocated to RES - Advanced.

The duties and responsibilities of appellant's position are summarized in her May 23, 1994, position description (PD) (Respondent's Exhibit 3) in the following position summary and goals:

This is an advanced professional level position in the District Real Estate Section, which carries out tasks of high complexity in the discipline of negotiation, appraisal, local public agency monitoring, and project coordinator. The extremely controversial and sensitive nature of most assignments requires specialized knowledge in dealing with political, legal, technical and policy issues. The scope and complexity of work performed carries with it a high level of responsibility and accountability requiring sound judgement and extreme skill in decision-making. Work assignments are performed with the highest level of independence and minimal supervision.

\* \* \*

50% A. Negotiates for the purchase of property rights of all degrees of complexity. Direct and/or monitor the activities of other agents and/or consultants engaged in negotiations on a project or district wide basis.

\* \* \*

20% B. Prepare independent appraisals and nominal value estimates of various types of property including residential, commercial, industrial, agricultural and special purpose properties. Assignments include routine to very

complex appraisals involving severance, change of grade, loss of access and other damages to remainder properties.

\* \* \*

- 10% C. Administration of the District's Local Public Agency (LPA) right of way acquisition program, monitoring local agency activities to the extent necessary to ensure their qualification for State and Federal funding.

\* \* \*

- 10% D. With general supervision from the real estate supervisor, the project agent will coordinate and monitor assigned projects from the planning and design stages through to the successful No. 1 project certification.

\* \* \*

- 10% E. Prepare independent appraisal reviews, approve offering prices and revised offers on parcels that are defined by the Real Estate Program Manual (REPM) as non-detailed with severance of \$2,000 or less.

The RES - Advanced definition as found in the RES series class specification (Respondent's Exhibit 1) is as follows:

This is advanced level real estate work. Employees at this level apply extensive knowledge of the real estate field to the completion of complex, controversial and politically sensitive assignments. Adapts procedures and techniques to meet special needs. Duties and tasks reflect substantial variety and complexity. Serves as a resource to others, districtwide/statewide, in the resolution of complex problems and issues. Relies on substantial experience and judgment to plan and accomplish assigned goals. Orient, train, and check the work of lower level employees. Positions assigned to the Advanced level are differentiated from lower level positions in that positions spend the majority of time: (1) functioning as a district/area coordinator in one or more functional areas AND performing duties in three or more functional areas AND directing, training, and monitoring the activities of other Real Estate Specialists, LPA personnel or consultants in two or more functional areas; OR (2) functioning as a leadworker in one of the following functional areas: appraisal, negotiation, or relocation AND performing the most complex duties in two or more functional areas AND routinely participating in the development and presentation of statewide technical training to Real Estate Specialists, LPA staff, or consultants; OR (3) coordinating/facilitating one or more functional areas on a statewide basis. Work is performed with the highest level of independence and the minimal supervision of a Real Estate Manager, district manager or program manager.

Appellant has the burden of proof and must establish by a preponderance of the evidence that she does satisfy each of these criteria. Tiser v. DNR & DER, 83-0217-PC (10/10/84).

The third allocation is not in dispute; appellant does not coordinate/facilitate one or more functional areas on a statewide basis.

With respect to the second allocation, in order to function as a leadworker, appellant would have to satisfy the definition found at page two of the class specification (Respondent's Exhibit 1): "an employe who has one or more Real Estate Specialists assigned to their area of expertise and who directs, plans, schedules, assigns, evaluates, and reviews the work of assigned employe(s)." Appellant does have a role in providing training and giving advice to other employes, but it is not at the level of being a leadworker. For example, her PD contains activities such as: "A.10 Coach and assist junior agents and consultants in all phases of negotiations," and "B.5 Confer with review appraisers and make revisions/corrections to appraisal reports." However, the provision of this type of on-the-job training is fully consistent with lower level RES's. For example, the relevant RES- Senior representative position includes the following: "Provides on the job training of lower level specialists and may occasionally participate in the development and presentation of statewide training." The RES - Journey definition includes: "Assist in the training and direction of other real estate personnel when these employes are assigned as assistants." Furthermore, appellant's immediate supervisor, Melvin Hoff, who recommended the RES - Senior level for appellant and who testified he concurs that it is the correct classification, also testified that in his opinion, appellant is not a leadworker.

Appellant also does not satisfy the second allocation's requirements of "routinely participating in the development and presentation of statewide technical training." (emphasis added) There is nothing in her PD reflecting this responsibility, and Mr. Hoff testified that while on occasion she participates in statewide training, this is by no means a routine activity. Appellant has not shown that her involvement on committees satisfies this requirement. The most that can be inferred from this is that she has some input in this area, which is consistent with language in the description of the representative RES - Senior position -- "may occasionally participate in the development and presentation of statewide training."

With respect to the first allocation, appellant has not established that she functions "as a district/area coordinator in one or more functional areas." This role requires meeting the definition in the class specification for "coordinator": "An employe who is assigned duties which include planning, organizing, scheduling, tracking, evaluating and directing the flow of work, and completion of projects; as well as handling complex assignments within the area of coordination." Appellant contends she functions as the LPA (Local Public Agency) coordinator. The Commission agrees with respondent's position that this activity is split up to a point that is inconsistent with the characterization of appellant as the coordinator.

Mr. Hoff's PD (Respondent's Exhibit 2) reflects a 20% goal of "Supervise and monitor LPA program." The contractual consultant performs, according to Mr. Hoff's estimate, about 75% of the LPA activity in the district. Appellant has a 10% goal (C) on her PD for administration of the LPA program in the district. While she reviews the contract consultant's completed paperwork and has been handling the relatively complex projects, she is not planning, organizing, scheduling, directing, etc., the flow of work of the contract coordinator. A significant part of this is accomplished by the contract, which is drafted by Mr. Hoff and other personnel in the agency.

Classification at the RES - Advanced level in all three allocations also requires supervision by a "Real Estate Manager, district manager or program manager," while at the RES - Senior level, supervision is by a "Real Estate Supervisor, program manager or district manager." Appellant reports to and is directly supervised by Mr. Hoff, the district Real Estate Supervisor. Appellant testified that she is only nominally supervised by Mr. Hoff, for personnel matters, and that she reported directly to the Real Estate Manager for program purposes. However, this contention was contradicted by Mr. Hoff, and was not corroborated by the Real Estate Manager. Even if appellant does work directly with the Real Estate Manager on some matters, this does not create a supervisory relationship per se. Furthermore, Mr. Hoff testified as to a number of activities for which he is responsible that would be performed by the district RES's if he were not serving as their supervisor.

Appellant contends that she works under very minimal supervision, and that as a practical matter the nature of her work would be essentially the same regardless of her reporting relationship. It is not unusual for experienced, highly competent employes to work very independently.

However, the reporting relationship of a position is a recognized indicator of the level of responsibility of the subordinate, notwithstanding the degree of independence of the subordinate. Furthermore, since the level of supervision is an explicit part of the RES classification definitions, the Commission must apply them as written. See, e.g., Lulling & Arneson v. DER, 88-0136, 0137-PC (9/13/89).

Related to the foregoing is that much of appellant's case runs to disagreement with the job respondent did in drafting the RES class specification -- i.e., disagreement with the survey results. For example, there was testimony that the class specification is deficient in failing to reflect the real world, and that DOT would have to use personnel in an unnatural manner in order to provide career enhancement. However, disputes of this nature are outside the Commission's subject matter jurisdiction. Section 230.09(2)(am), Stats., provides that DER "shall establish, modify or abolish classifications as the needs of the service require." The Commission has no statutory authority to review the actions that DER takes under §230.09(2)(am). Rather, the Commission's material appellate jurisdiction, §230.44(1)(b), Stats., is limited to DER's actions under §230.09(2)(a), Stats., to allocate, reclassify or reallocate positions. The Commission has no authority to reject or modify class specifications, but must review reallocation decisions on the basis of the class specification as written, see, e.g., Zhe v. DHSS & DP, 80-285-PC (11/18/81); affirmed, Dane Co. Circuit Court, Zhe v. WPC, 81CV6492 (11/82).


Another issue in this case involves appellant's comparison of her position to an RES - Advanced position occupied by Ward W. Anderson in Green Bay. Respondent presented evidence that subsequent to the survey and Mr. Anderson's reallocation to the Advanced level, it reallocated his position downward to the Senior level in April 1995. The reason assigned for this action was §ER 3.01(2)(e), Wis. Adm. Code ("correction of an error in the previous assignment of a position"). This position is not supervised by a Real Estate Manager, and does not satisfy the Advanced level in certain other respects. Where a position is clearly misclassified on the basis of the criteria set forth in the class specification, and respondent has acted to remedy the mistake, appellant cannot rely on the initial, mistaken classification to support her case. See, e.g., Augustine & Brown v. DATCP & DER, 84-0036, 0037-PC (9/12/84).

Appellant's position is similar in some respects to some RES - Advanced positions, but not with respect to all the requisite criteria for the Advanced classification, as discussed above.

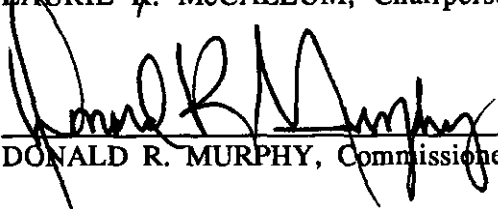
ORDER

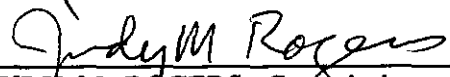
Respondent's action reallocating appellant's position to RES - Senior is affirmed and this appeal is dismissed.

Dated: December 7, 1995 STATE PERSONNEL COMMISSION

  
LAURIE E. McCALLUM, Chairperson

AJT:rcr

  
DONALD R. MURPHY, Commissioner

  
JUDY M. ROGERS, Commissioner

Parties:

Barbara Mortensen  
649 Orchard Drive  
Madison, WI 53711

Jon Litscher  
Secretary, DER  
P.O. Box 7855  
Madison, WI 53707

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