

STATE OF WISCONSIN
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PERSONNEL COMMISSION

LINDA SUNSTAD, *

Appellant¹, *

v. *

Secretary, DEPARTMENT OF *
EMPLOYMENT RELATIONS, *

Respondent. *

Case No. 94-0472-PC *

* * * * *

DECISION
AND
ORDER

A hearing was held in the above-noted case on April 8, 1996, with the parties presenting closing argument at the conclusion of hearing in lieu of submitting written arguments.

The hearing issue was agreed to by the parties at a prehearing conference held on January 5, 1995, as shown below:

Was the respondent's decision to reallocate the appellant's position to Chief, DMV Program Section correct or should the appellant's position have been reallocated to Administrative Officer 2-Supervisor?

FINDINGS OF FACT

Class Specs

1. The classification specification (Class Spec) for positions classified as Chief, DMV Program Section (hereafter, referred to as "DMV Class Spec") is dated August 7, 1994 (Exh. A-1), and contains the following text (reorganized here for clarity):

Purpose of This Classification Specification: This Class Spec is the basic authority under Wisconsin Administrative Code ER 2.04 for making classification decisions relative to positions located at the Department of Transportation (DOT), Division of Motor Vehicles

¹ This case formerly was a group appeal referred to as: Wentz, et. al. v. DER, Case No. 94-0472-PC. Ms. Sunstad was the sole remaining appellant at the time of hearing. The case name was changed as shown in this decision by order of the Commission on April 10, 1996.

(DMV), Bureau of Driver Services (BDS) and Bureau of Vehicle Services (BVS).

DEFINITION: These are responsible professional positions which direct the activities of a section located in the (BDS) or the (BVS). Positions allocated to this classification are responsible for:

1. evaluating legislation relative to section program areas, such as driver licensing, license revocation and restoration, vehicle registration and titling, motor carrier permit and taxation, traffic safety, medical review of driving privileges, driver license and vehicle records, accident records, and related processing programs;
 2. developing and administering administrative rules, policies, and procedures relative to the program area;
 3. developing, recommending, and implementing short-and-long-range operational plans;
 4. developing, recommending, and implementing data processing initiatives;
 5. assisting in the development of the bureau budget and monitoring the section's budgetary allocations; and
 6. supervising and directing section staff through subordinate supervisors.
 7. Work is reviewed through administrative conferences and reports.
2. The Class Spec for positions classified as Administrative Officer 2-Confidential/Supervisor (hereafter, referred to as the "AO2 Class Spec"), are dated April 1982 (Exh. A-2), and contain the following text (reorganized here for clarity):

Definition:

1. This is highly responsible and difficult administrative work in a major state agency.
2. An employe in this class is responsible for providing all administrative and managerial services for the agency, including directing such staff services as personnel, budget preparation, fiscal management and purchasing; and/or for administering a complex departmental program.
3. Employes exercise broad supervision and control over large numbers of technical, professional and clerical people.
4. An employe in this class often serves as the principle advisor to the department head in developing departmental policies and rules and in promoting needed legislation.
5. Within a broad framework of laws, rules and policies, employes are responsible for many decisions affecting the department's program.
6. The work is performed with a high degree of independence subject to administrative review by the department head.

7. All positions allocated to this class must meet the definitions of "Confidential" and "Supervisor" as contained in s. 111.81, Stats.

Areas of Specialization: Staff services, general administration, specialized program administration, or any comparable specialization or combination thereof.

1. Plans and directs the major staff services of a large department, such as personnel and fiscal management, budget analysis and preparation, purchasing, and public relations; utilizes these staff services to develop and evaluate department programs.
 2. Directs management studies for the establishment of valid quantitative and qualitative standards of measurement, and directs the development of operation methods and procedures.
 3. Plans and directs departmental programs involving administrative operation of considerable diversity and complexity.
 4. Develops departmental policies and regulations, and participates in the development and revision of legislation.
 5. Develops programs to educate and inform the public of important departmental plans and programs which require public acceptance and cooperation.
 6. Maintains effective working relationships with legislative committees, management executives of other departments, communications media, and organizations interested in the policies and activities of the department.
 7. Performs related work as required.
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3. Susan Nuttall is a classification specialist at the Department of Employment Relations (DER). She worked with DOT classification specialist, Loretta Dickraft, to identify similar positions (in terms of assigned duties, as well as responsibility for subordinate staff) for development of new Class Specs for certain positions in DOT. This process resulted in the development of of six new Class Specs written by Ms. Nuttall, as follows: 1) DMV Class Spec (Exh. A-1); 2) Chief, DMV Program Development Section (Exh. R-13); 3) DMV Field Services District Manager (Exh. R-16); 4) Chief, DMV Field Business Section (Exh. R-18); 5) Chief, DMV Vehicle Inspection Program Section; and 6) Chief, DMV Dealer Section. Ms. Nuttall's authorship of those Class Specs are shown by the initial "SKN" on the bottom right of each document. All bear the effective date of August 7, 1994.

4. The position held by Ms. Sunstad was identified by Ms. Dickraft as being similar to 10 other positions. Ms. Nuttall looked at the 11 positions (including Ms. Sunstad's) and excerpted the assigned duties common to all the positions with the intent to capture the essence of those positions in the new DMV Class Spec. (Exh. A-1)

Details of Ms. Sunstad's Position

5. Ms. Sunstad's position is located in the Medical/Alcohol Review Section of the BDS in the DMV of DOT, which is a work unit specifically included in the DMV Class Spec.
6. Ms. Sunstad's position description (PD) dated June 22, 1990 (Exh. R-7), was in effect at the time of the reallocation. Her duties are summarized below using the PD format:

POSITION SUMMARY: This position is responsible for administering the Medical Review Program within the DMV. This position functions as the state's principle expert on the medical review aspects of driver licensing; directs activities of the Medical Review Section; evaluates, monitors, implements and assists in establishing legislation, administrative rules, policies, procedures and data processing systems; designs and formulates policies; and assists in the administration of the bureau and the division.

The person directs studies of Wisconsin drivers and the development of state laws and administrative rules for the medical review program in cooperation with outside medical experts and researchers.

The person is the state's representative with the American Association of Automotive Medicine, the American Public Health Association and other national organizations working on highway safety issues. This person consults with other states on the development of their medical review programs.

The person in this position consults with and provides training for health care professionals, such as physicians and nurses; for officers (who include physicians and nurses) and members of organizations, such as the Wisconsin Epilepsy Association or the Wisconsin Diabetes Association; and for driver licensing staff.

The work product affects the driving privileges of 3.2 million licensed drivers and all of the 4.7 million people in Wisconsin. It affects the policy which determines driving privileges of both drivers with medical conditions, physical disabilities and chemical dependency problems.

This work is performed with a high degree of independence in establishing program direction, developing training and study designs, selecting and applying research and analysis techniques and reviewing or consulting on medical cases. The work is carried on statewide in conjunction with health care facilities, statewide organizations, other state and local agencies, and both the Bureaus of Driver Licensing and Field Services.

<u>% Time</u>	<u>Goal and worker activities</u>
60%	<u>A. Develop, administer & evaluate the division's Medical Review Program for people with medical conditions, physical disabilities or chemical dependency problems.</u> A1. Seek input from physicians and other health care professionals to provide direction in the design, implementation and evaluation of the driver licensing medical review program. A2. Direct studies of Wis. drivers conducted in cooperation with the Medical College of Wis., the UW Medical School, the Marshfield Clinic and other organizations able to provide information for policymaking. A3. Direct the evaluation and revision of division medical review programs, policies and procedures through studies and research, including compiling and analyzing statistical data. A4. Identify statutory requirements with administrative or policy problems, provide recommendations for modifications and prepare draft legislation. A5. Direct the preparation of policy issue papers, analyses and other materials for the division's legislative program. A6. Convert statutory requirements, legislative intent and policy goals into more specific criteria for program implementation and administration. A7. Provide background information from research, provide basic concepts and direct study groups in the development of administrative rules.
15%	<u>B. Direction of the activities and staff of the section.</u> B1. Supervise the activities of the staff: assigning, reviewing and evaluating the work of supervisors and support staff. B2. Coordinate the preparation of the section's budget and other short and long term plans for the section. B3. Coordinate section work activities with other sections, districts, bureaus and divisions within the department. B4. Investigate complaints and take any required corrective action. B5. Provide for staff training and development.

- B6. Direct the implementation of new programs and service concepts.
 - B7. Direct the exploration of new technology and the implementation of technology when it is useful and effective in meeting problems or service needs of the section.
 - B8. Encourage Quality improvement efforts and employee participation in the management of the section.
 - B9. Provide for equal employment opportunity and take affirmative action in hiring as appropriate.
- 15% C. Respond to complex problems of driver licensing applicants.
- C1. Discuss with driver licensing applicants their medical conditions, the impact of same on driving and the conditions under which they would be eligible for a restricted or unrestricted license.
 - C2. Provide advice to driver licensing applicants on resources that may assist them in preparing for driving.
 - C3. Review the more complex medical cases and determine eligibility for driver licensing, interpreting reports from physicians and hospitals, state laws and administrative rules, from personal knowledge of medical conditions, methods of treatment, affects of drugs and alcohol, and other factors affecting safe driving.
- 10% D. Assist in the administration of the programs and activities of the bureau.
- D1. Prepare reports relating to program performance and needs.
 - D2. Represent the bureau and division in meetings/conferences with other bureaus or divisions, governmental agencies, the legislature, news media and general public.
 - D3. Participate; in the management of the bureau including counsel on bureau priorities and work programs, counsel on allocation of resources to meet priorities, development of work standards and policies, and counsel in the grievance process.
 - D4. Develop or assist in developing written program, policy and procedural directives.
 - D5. Participate in the development/management of the bureau's budget.

Ms. Sunstad's Position Compared to the DMV Class Spec

7. Ms. Sunstad's PD shows that she performs the following enumerated tasks included in the definition section of the DMV Class Spec (refer to par. 1 above): #1, 2, 3, 4, 6 & 7.

8. Ms. Sunstad's PD does not directly indicate whether she meets the fifth task which pertains to "assisting in the development of the bureau budget and monitoring the section's budgetary allocations". Ms. Sunstad's supervisor, Beverly Larson (Bureau Director), testified that the appellant's role in developing the Bureau's budget is to provide information regarding the resources needed by her section. Ms. Larson further testified that budget monitoring is formally provided by positions other than Ms. Sunstad's as part of DOT's centralized budget monitoring section. However, Ms. Larson also testified that Ms. Sunstad has an assigned duty to review budget statements (such as Exh. R-8) for her section on a monthly basis and that such duty would have added significance if and when Ms. Sunstad's section either: a) runs over budget, b) has significant over time and/or LTE budgets, or c) receives a federal grant. All of the listed items are possible, although they have not yet occurred for her section while Ms. Sunstad has been in the position. The degree of Ms. Sunstad's position's involvement with the budget meets the definition language of "assisting in the development of the bureau budget" and "monitoring the section's budgetary allocations", as used in the DMV Class Spec. This conclusion is further supported by Ms. Nuttall's testimony that she intended by the cited language to include the budgetary duties of Ms. Sunstad's position.
9. The following tasks taken from Ms. Sunstad's PD relate to tasks listed in the definition section of the DMV Class Spec: all of section A (60%), all of section B (15%), and D1, D3, D4 and D5 (about 8%); resulting in the conclusion that about 83% of her position's time is spent on tasks contemplated under the DMV Class Spec.

Ms. Sunstad's Position Compared to the AO2 Class Spec

10. The definition of the AO2 Class Spec is shown in par. 2 above, with seven itemized factors. The duties of Ms. Sunstad's position meet the following factors: 1, 2, 3, 5 and 7. Her position meets the second factor due to responsibility for her section programs which involve "administering a complex departmental program". The duties of her position do not meet the fourth factor because she serves as the principle advisor in her program area to the Division Administrator, although the rare occasion does arise where she provides advice to the "department head". Her

position does not meet the sixth factor because her work is reviewed by the Bureau Director and not by the "department head".

11. The AO2 Class Spec also includes a section entitled "Areas of Specialization". Ms. Sunstad's position involves "specialized program administration", as the term appears in the introductory language. The duties of her position meet the following areas of specialization: 2, 5, 6 and 7. The scope of her position being on the section level is too narrow to meet the third or fourth specialization areas which require involvement on a "departmental" level.
12. A majority of Ms. Sunstad's position's time is spent performing tasks identified in the definition section of the AO2 Class Spec.

DISCUSSION

Classification appeals involve comparing the duties of a position against the Class Specs at issue to determine which Class Spec provides the "best fit" for appellant's position. DER & DP v. PC (Doll), 79-CV-3860 (Dane Co. Cir. Ct. 9/21/80); appeal settled, 80-1689 (Ct. App. 2/9/81); the Circuit Court citing Kailin v. Weaver & Wettengel, 73-124 (Pers. Bd. 11/75) and Luebke v. Wettengel, et al., 74-26 (Pers. Bd. 8/75).

One way to establish the "best fit" is to show which Class Spec describes the job duties and activities which the appellant's position routinely spends a majority of time. DER & DP v. PC (Doll), Id., citing Alsmo, et al. v. Wettengel, 73-107, 108 & 109 (Pers. Bd. 7/75). This test, however, does not dispose of Ms. Sunstad's case because both Class Specs at issue describe the job duties and activities which Ms. Sunstad's position routinely spends a majority of her time. This is not an unusual situation in classification cases. DER & DP v. PC (Doll), Id., stating on page 4: "[I]t is usually the case that the employe's duties and responsibilities overlap in some respects both of the class specifications in question.", citing Kailin, Id. Also see, for example, Steinhauer, et al. v. DER, 90-0216-PC (3/30/93).

The Commission has relied upon other measures of the "best fit" standard in cases where both Class Specs in issue describe the majority of appellant's position's time. In a situation very similar to the circumstances of Ms. Sunstad's case, the Commission held that where the appellant's position adequately met the more specific language of the new classification, it was more properly classified there than in the more general language of the older

classification. Bloom v. DER, 92-0088-PC (8/25/93). In accord, Steinhauer, et al. v. DER, 90-0216-PC (3/30/93) and Cocquyt v. DER, 92-0189-PC (8/11/93).

Whether DER intended in creating a new Class Spec to describe an appellant's position also is a factor which the Commission considers. Schermetzler v. DER, 94-0342-PC (4/17/95), stating: "The conclusion that appellant's position is more appropriately classified at the . . . Senior level is buttressed by the evidence . . . that the . . . Senior specifications were drafted with appellant's position in mind . . .".

The choice in Ms. Sunstad's case is between the DMV Class Spec and the AO2 Class Spec, both of which describe duties routinely performed for a majority of her position's time. Based upon principles recited in the foregoing paragraphs, the DMV Class Spec is the best fit for Ms. Sunstad's position for the following main reasons: 1) the DMV Class Spec was drafted with the intention to describe the duties of appellant's position (which were common to 10 other similar positions), 2) the DMV Class Spec is newer than the AO2 Class Spec, 3) the DMV Class Spec definition lists duties which are all performed by appellant's position (while the same cannot be said of the duties included in the AO2 Class Spec definition), and 4) the DMV Class Spec has a "purpose" section which specifically indicates the intent to include positions in the same bureau as appellant's position is found.

ORDER

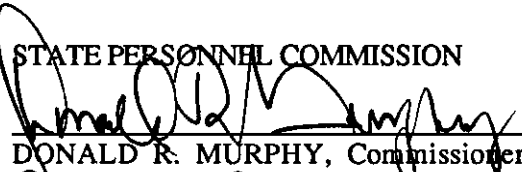

That respondent's action is affirmed and this appeal is dismissed.

Dated May 28, 1996.

JMR

Parties:

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STATE PERSONNEL COMMISSION

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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