

STATE OF WISCONSIN

PERSONNEL COMMISSION

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WILLIAM R. SUTTON, PATRICIA A.
 LEGGETT, STEVEN M. WILLADSEN,
 ROBERT T. KNUTSON, and CHARLENE
 M. SIMONSON

Appellants,

v.

Secretary, DEPARTMENT OF
 EMPLOYMENT RELATIONS,

Respondent.

Case Nos. 94-0556, 0557, 0558,
 0559, 0560-PC

* * * * *

DECISION
AND
ORDER

At all times relevant to this matter, appellants have been employed in the Purchasing Services unit of the University of Wisconsin-Madison. Effective June 26, 1994, their positions, as the result of a personnel management survey, were reallocated to the Purchasing Agent-Senior classification. Appellants appealed such reallocations, contending that their positions should have been reallocated to the Procurement Specialist-Senior classification. A hearing on this appeal was conducted on May 30 1995, before Laurie R. McCallum, Chairperson. The parties were permitted to file briefs and the briefing schedule was completed on September 22, 1995.

On or around January 12, 1995, appellants signed position descriptions which generally accurately describe the duties and responsibilities of their positions. These position descriptions are identical and state as follows, in pertinent part:

65% A. CONTRACT DEVELOPMENT AND ADMINISTRATION--Plan and develop procurements, provide direction and administer various bids and contracts for all food, food equipment and supplies, office supplies, manual food service, in addition to other service contracts.

A1. Research, and develop bids and new contracts; review, update and keep current established contracts. Determine

the need, assess market conditions, abstract, analyze, award and prepare contracts and determine distribution. Train contract administrators. Coordinate, provide consultation and develop Request for Purchasing authority (RPA), Request for Proposals (RFP), and Requests for Waiver of Bid Process for assigned commodity/service areas.

A2. Develop and maintain bidders lists.

A3. Work with internal/external customers or standards committees to develop generic specifications or technical requirements. Incorporate required contract language and develop additional language as needed.

A4. Abstract and analyze RFP proposer's costs and agreements, advise evaluation panels, negotiate with proposers, resolve any problems and award contracts. Conduct proposer conferences. Serve as a procurement representative on RFP committees.

A5. Test and review products and conduct independent research. Make vendor site visits.

A6. Audit contractors and contract activity to ensure contract compliance.

A7. Review, edit and sign contracts on behalf of the Purchasing Services director.

A8. Research and resolve official protests in cooperation with campus users Legal Services and Purchasing Services Director.

A9. Act as liaison between campus users and contractors to resolve any issues that arise.

A10. Issue purchase orders in assigned commodity/service areas and take action to solve problems.

20% **B. COMMODITY/SERVICE RESOURCE**--Provide consultation and guidance to UW-Madison campus, UW-System Administration, other UW institutions, State agencies, other educational institutions and Purchasing Services personnel.

B1. Master State procurement laws, rules and regulations; and University procurement policies and procedures.

B2. Act as a resource for campus staff for State Purchasing Statutes, Department of Administration rules and regulations, UW-System policy, and UW-Madison Purchasing Service policies and procedures.

B3. Mentor and provide support for other professional Purchasing staff. Act as lead worker.

B4. Communicate with campus, Legal Services, UW System and DOA administrators on politically sensitive and highly technical issues.

B5. Prepare and present procurement related topics at System Director's meetings and other professional procurement meetings or training seminars.

B6. Maintain professional relationships with internal customers and vendors.

10% PROFESSIONAL PURCHASING RESPONSIBILITIES--Act independently under general supervision to develop good communications with end users.

C1. OUTREACH--Visit campus departments. Serve as a procurement representative on professional committees. organize committees, develop agenda and chair meetings. Participate in Legal Service meetings. Prepare formal written correspondence and reports.

C2. TRAINING--Attend required DER procurement classes and training courses in Total Quality Management. Take active role in UW System meetings and Standards Committee meetings. Attend professional seminars and trade shows in commodity/service related areas.

5% D. SPECIAL PROJECTS--Coordinate moveable equipment for new building construction and major renovation projects.

D1. Meet and consult with campus staff to assist in the procurement of moveable equipment.

D2. Coordinate with other procurement staff for procurement of moveable equipment.

The appellants' work in the purchasing area is specialized, i.e., each of the appellants is assigned to work with particular commodities/services. The following is a listing of the primary specialty areas:

Sutton: food and beverages, food service equipment, food service supplies, medical records, alcoholic beverages, educational and library supplies, dairy manufacturing plant equipment and supplies, full line office supplies, contractual food service.

Knutson: specialized data processing equipment.

Leggett: computer software, video and telecommunications equipment, electronics, vehicles.

Simonson: contractual service contracts, including academic support; insurance; social and medical-client; professional, technical, management, and support; consultants; construction, maintenance, and support; laboratory and field testing; educational, communication, and travel; janitorial; moving; and rental and leasing services.

Willadsen: scientific research equipment, including equipment related to chromatography, electrophoresis, ultra-high vacuum, laboratories, medical, s-ray, materials science research, electrical and computer engineering, nuclear engineering, linear accelerator, spectroscopy and spectrographic, electronic test and measurement, and imaging systems.

Each of the appellants has developed contracts within their specialty area which have been used by other state agencies on a voluntary basis.

The Definition section of the specification for the Purchasing Agent-Senior classification states as follows:

This is senior level professional purchasing agent work. Positions at this level may have responsibility for a group of commodities or services subject to market changes requiring the development of bids and/or contracts for multiple jurisdictions; and have responsibility for the development and award of Requests for Proposals. This includes assembling evaluation teams, evaluating technical and cost proposals, and negotiating with vendors. Additionally, positions at this level maintain and develop agency-specific contracts and/or vendor lists of unique items; and/or may conduct internal audits of individual agency purchasing programs. The individuals in this class exhibit significant discretion and judgment in the performance of their assigned duties and responsibilities through the interpretation of state statutes and the provision of consultation on purchasing rules, regulations and policies. The work is performed under general supervision.

The Definition section of the specification for the Procurement Specialist-Senior classification states as follows:

This is the senior level work performed by Procurement Specialists in the Department of Administration's Bureau of Procurement. Positions at this level are assigned commodities which are subject to rapid market changes requiring creative approaches to developing contracts; may chair statewide committees to explore bid strategies and contract language; may be assigned to facilitate or participate in task forces to resolve purchasing issues; and participate in the development and

presentation of training and outreach of state agencies and vendors. The work is performed under general supervision.

Examples of Work Performed:

The senior level specialist has significant experience in the primary assigned commodity/service area and is generally perceived as one of the state's experts in the area. Chairs statewide committees to explore bid strategies, specification development and contract language; may be heavily involved in providing guidance on major agency RFPs; alone or in conjunction with legal counsel, conducts contract negotiations with vendors on behalf of the state; facilitates and participates in task forces to resolve purchasing issues and develop statewide policy; and may participate in the development and presentation of training and outreach for state agencies and vendor groups.

The primary distinction between the Procurement Specialist and Purchasing Agent classifications at the Senior level is that a Procurement Specialist position performs purchasing/procurement duties primarily on a statewide basis while a Purchasing Agent position performs similar types of duties primarily for a single state agency.

The record shows that the primary emphasis of appellants' positions is not statewide, i.e., although appellants' positions perform the most advanced level purchasing/procurement duties, including the development, negotiation, and administration of complex contracts; serving as a purchasing/procurement resource; developing purchasing/procurement policies and procedures; and oversight of the purchasing/procurement process, these duties are primarily and almost exclusively performed for appellants' employing agency, the UW-Madison. The development of contracts for the UW-Madison which are ultimately used by other state agencies is not an uncommon practice in state government and is not a statewide function. The only function which appellants perform which is arguably a statewide function is that of serving as a resource person for other state agencies and entities outside the UW-Madison. The record shows, however, that this function consumes only a small percentage of appellants' positions' time and could not, therefore, serve as a basis for classifying appellants' positions at the Procurement Specialist-Senior level.

In contrast with appellants' positions, the Procurement Specialist-Senior positions within DOA's Bureau of Procurement primarily develop contracts within their specialty areas for use by all state agencies, administer

these and other statewide contracts, oversee non-delegated purchasing/procurement activities of multiple assigned state agencies, serve as a purchasing/procurement resource for all state agencies, and perform special statewide projects. The only position outside the DOA Bureau of Procurement which the record shows is classified¹ at the Procurement Specialist-Senior level is a unique position within the Department of Natural Resources which apparently has statewide policy responsibility in the purchasing/procurement area. Appellants have failed to show that the primary emphasis of their positions is the performance of senior level purchasing/procurement duties on a statewide basis and, as a result, have failed to show that their positions meet the requirements for classification at the Procurement Specialist-Senior level.

In contrast, the duties and responsibilities of appellants' positions are well-described by the specifications for the Purchasing Agent-Senior classification and it is concluded that they are properly classified at that level.

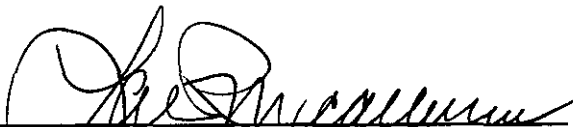
Appellants actually appear to be primarily disputing the classification scheme created by the relevant specifications which places agency purchasing positions in the Purchasing Agent series and DOA purchasing positions in the Procurement Specialist series. If it is appellants' intent in this appeal to challenge the classification specifications per se, it is well-settled that classification specifications cannot be created or modified by the Commission. Somers et al. v. DER, 91-0299, etc.-PC (7/8/92).

¹ The description in the Proposed Decision and Order of this position as "properly" classified was modified to more accurately reflect the record, i.e., that, although the record shows that respondent has approved the classification of this position at the Procurement Specialist-Senior level, there is insufficient evidence in the record from which to conclude that this is the proper classification for this position.

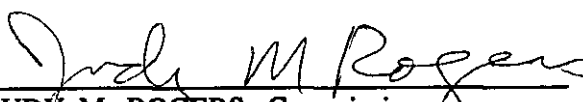
Order

The actions of respondent are affirmed and these appeals are dismissed.

Dated: November 14, 1995 STATE PERSONNEL COMMISSION


LAURIE R. McCALLUM, Chairperson

LRM:lrn


JUDY M. ROGERS, Commissioner

Parties:

William R. Sutton
2518 McKenna Road
Madison, WI 53711

Patricia A. Leggett
213 Richland Lane
Madison, WI 53705

Steven Willadsen
203 Melody Lane
Verona, WI 53593

Robert T. Knutson
2575 Petersburg Circle
Madison, WI 53719

Charlene M. Simonson
210 North Breese Terrace
Madison, WI 53705-4103

Jon Litscher
Secretary, DER
PO Box 7855
Madison, WI 53707-7855

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