

**SUZANNE M. WEBER,**  
*Appellant,*

v.

**Secretary, DEPARTMENT OF  
COMMERCE,<sup>1</sup> and**

**Secretary, DEPARTMENT OF  
EMPLOYMENT RELATIONS,  
*Respondents.***

DECISION AND ORDER

Case No. 95-0168-PC

This is an appeal of a classification action. A hearing was held on September 26, 1996, before Laurie R. McCallum, Chairperson. The parties were permitted to file post-hearing briefs and the briefing schedule was completed on December 16, 1996.

The parties agreed to the following issues for hearing:

1. Whether respondents' decision to reclassify the appellant's position to Community Services Specialist 2 (CSS 2) rather than Community Services Specialist 3 (CSS 3) was correct.<sup>2</sup>
2. Whether respondents' decision to set July 10, 1994, rather than June 10, 1994, as the effective date for the reclassification of the appellant's position was correct.<sup>3</sup>

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<sup>1</sup> Pursuant to the provisions of 1995 Wisconsin Act 27 which created the Department of Commerce, effective July 1, 1996, the authority previously held by the Secretary of the Department of Development with respect to the position that is the subject of this proceeding is now held by the Secretary of the Department of Commerce.

<sup>2</sup> Prior to hearing, the stipulated issue also referenced the Economic Development Consultant (EDC) classification but this EDC classification was withdrawn from consideration by appellant during the course of the hearing.

<sup>3</sup> Prior to hearing, the stipulated issue referred to July 10, 1995, and June 10, 1995. Once the hearing was convened, the hearing examiner pointed out the apparent error and the parties stipulated that the issue should reference dates in 1994, not 1995.

Appellant was first employed by respondent Department of Commerce (DOCom) upon her appointment to a CSS 1 position in the Bureau of Development in the predecessor Department of Development in November of 1990. At the time of her appointment, her position description reflected that her duties and responsibilities included the following, in pertinent part:

- 60% A. Provide general advice and specific technical assistance to small businesses in matters related to business regulation, licensing, organization, start-up planning, financing, and marketing.
- 25% B. Coordinate the flow of information on available industrial sites, industrial buildings, local development organizations, and statewide industrial development contracts in the state.
- 5% C. Provide back-up assistance to Economic Development Consultants, including answering questions, providing preliminary information and other assistance on a wide variety of issues for industrial prospects in the absence of the EDCs; and determining appropriate materials to send out as follow-up to industry and community calls in the absence of EDCs.
- 10% D. Complete special assignments and coordinate conferences.

Beginning in 1993, appellant initiated discussions with her supervisors in an effort to update her position description. A draft which her then-supervisor Dennis Leong completed on or around April 15, 1994, reflected that appellant's duties and responsibilities included the following, in pertinent part:

- 50% A. Provide technical and resource information and assistance to small businesses relating to start-up planning, financing, marketing, and business organization; assisting new and existing small businesses in developing and refining business plans, reviewing for completeness and applicability, and recommending changes when appropriate; providing assistance and information to existing small businesses with financial or other operating difficulties and referring them to the most appropriate resources; and assisting and identifying for existing small businesses any expansion opportunities, new marketing strategies, and new

product lines and services that may help businesses to further prosper and develop.

- 25% B. Provide technical and research assistance to small businesses relating to compliance with state statutory requirements and administrative rules.
- 10% C. Serve as a department representative on various locally-based business development committees and associations and recommend changes in these programs through participation in state and local planning groups; provide information and assistance to professional organizations, trade associations, regional planning commissions, and other development groups in the preparation and promotion of financial economic development programs for small businesses; plan, coordinate, implement, and participate in conferences; establish and maintain working relationships with educational institutions.
- 10% D. Maintain and publish certain department resource information.
- 5% E. Special projects.

The primary changes that this draft position description incorporated related to the elimination of the industry and building siting duties and responsibilities of former Goal B which appellant never performed; and to the increased involvement in the analysis of start-up, financing, organization, and marketing plans of new and existing small businesses. The record shows that such analysis responsibilities were not new responsibilities, i.e., they were reflected in worker activities A2 and A3 on appellant's 1990 position description; and shows that appellant does not spend the majority of her time on non-routine analysis functions.

The classification specifications for the CSS 1 classification state as follows, in pertinent part:

Definition:

This is general advisory and technical assistance work with local units of government and their personnel within the state. Employees in this classification are responsible for providing a broad range of

technical assistance and information to requesting local units in an assigned geographic area. The work includes coordinating the flow of information and services between local governmental units and appropriate state and federal agencies, providing information concerning available federal resources and making recommendations concerning local program development and implementation. Work is reviewed through conferences and staff meetings.

Examples of Work Performed:

Maintain contacts with local government officials in the assigned geographic area and act as a general consultant in all matters relating to community improvement.

Respond to local unit requests for various types of technical assistance, such as: providing information about state and federal aids and programs; making recommendations concerning management and organizational problems; assisting in the preparation and submission of Workable Programs for Community Improvement and applications for federal and state funds; and coordinating and providing information in other areas of community concern and involvement.

Perform a liaison and coordinative function for all of the state and federal agencies which deal directly or indirectly with local governmental units.

Attend local meetings to present information about available state and federal funds and services, make recommendations concerning proposed local programs, point out the need for and the alternative methods of instituting local improvement projects, and gather information about the activities and needs of communities within the assigned geographic area.

The classification specification for the CSS 2 classification states as follows, in pertinent part:

Definition:

This is responsible general advisory and technical assistance work in all matters relating to the operations of local units of government within the state. Employees in this classification are responsible for providing a broad range of technical assistance and information to requesting local units in an assigned geographic area of the state and acting as a statewide consultant in one or more of the specialty areas related to community development and local government operations. The work includes providing technical assistance and

information to local units in the same manner as a Community Services Consultant 1 and for providing specialized information and technical assistance to local governmental units and organizations, state agencies, and other Community Services Consultants on a statewide basis. Requests are acted upon independently and work is reviewed through conferences and staff meetings, primarily for informational purposes.

Examples of Work Performed:

Perform duties similar to a Community Services Specialist 1.

Provide coordination and liaison between state agencies and local units of government and other local organizations in the areas of specialization.

Attend agency staff meetings, conferences, and workshops pertaining to the specialty area(s) and plan and coordinate informational meetings designed for local governmental, state agency, and bureau personnel.

Provide specialty program information to individuals, groups, and agencies upon request.

Abstract and summarize current informational materials in the area(s) of specialization, compile reports, and conduct research or surveys to obtain new data.

Represent the bureau in the various capacities which may be required for a particular specialty, such as attending hearings, reviewing legislation and serving on committees.

The classification specification for the CSS 3 classification states as follows, in pertinent part:

Definition:

This is responsible statewide consultative and technical assistance work in a major area of specialization related to community development. Positions in this class are based in the central office but travel will be required in connection with the activities necessary to serve the community services field consultants, local governmental units, and individuals and organizations throughout the state as the bureau expert in the specialty field. The work includes providing and coordinating information on federal and state programs related to the specialty; assisting local governmental units and organizations in developing appropriate programs and applying for necessary funding; and developing and maintaining working relationships with state and federal agencies. Depending on the specialty field, individuals may

plan, coordinate and implement programs, such as in the area of training or provide technical assistance, such as in the area of housing. Work is performed independently with review for informational purposes only.

Examples of Work Performed:

Advise and assist all types of local governmental units, local and regional organizations, bureau field consultants, and other staff members on available programs and funding sources, technical information and its application, and current problems in matters relating to the area of specialization.

Provide specialized technical assistance to local units in the areas of advance planning, program development, and proposal preparation.

Establish and maintain close working relationships and coordination with state and federal agencies involved with administering and developing programs in the specialty field.

Review existing legislation related to the area of concentration and recommend revisions or additions, as well as recommending new legislation or the approval of current legislative proposals.

Develop programs to facilitate the implementation of legislative directives in the area of expertise.

Act as a clearinghouse for information in the specialized area, including the development of data sources and the coordination of available information.

Recommend and organize research and survey projects in the specialty field in areas where adequate information is not available from other sources.

Plan, coordinate, and implement pre-service and in-service community development training programs for local governmental personnel and elected officials.

Survey training needs, arrange for funding, develop programs, provide for efficient use of all training resources, evaluate training programs, and make recommendations to improve specific training programs and to further the state's overall community services training program.

These specifications were first implemented in 1971 and then revised in 1977.

It is apparent that these specifications were not drafted with the concept of providing services to individual businesses in mind. However, since the Commission is required under the circumstances present here to apply these specifications to the duties and responsibilities of appellant's position, which do not primarily involve providing

information and services to communities as contemplated by the CSS specifications, it is appropriate to determine the general classification factors which distinguish one level in the CSS specifications from another. In this regard, the distinctions among the classifications relevant here primarily relate to whether the position serves as a reactive or proactive resource; the depth, scope, and complexity of analysis of development issues provided; the degree to which the position serves as a generalist or specialist; and the level of programmatic involvement. Specifically, the CSS 1 classification describes a position which is a reactive resource, i.e., provides information upon request; serves as a generalist providing information requiring only cursory individualized analysis of non-complex development issues; and does not have responsibility for program development, policy, or evaluation. The CSS 2 classification describes a position which is a reactive resource; serves as both a generalist and as a specialist providing in-depth analysis of complex issues in a relatively narrow specialty area; and has program development, policy, or evaluation responsibilities in this specialty area. The CSS 3 classification describes a position which is a proactive and reactive resource, i.e., independently targets and makes contacts to provide information and assistance, as well as responds to requests; provides in-depth analysis of complex issues in a major specialty area; and has program development, policy, or evaluation responsibilities in this specialty area. Applying these distinctions to appellant's position, the record shows that appellant is primarily a reactive resource; primarily serves as a generalist providing information requiring cursory analysis of non-complex development issues, but also provides some in-depth analysis of complex small business issues; and has some program development, policy, or evaluation responsibilities in the areas of training and publications. As a result, appellant's position does not satisfy the requirements for classification at the CSS 3 level but does satisfy the requirements for classification at the CSS 2 level. It should be noted here that, in applying these specifications to this position, it would have to be concluded that appellant's position is not a strong CSS 2 position from a classification standpoint.

Given the limitations of the specifications under consideration here which have been described above, it is useful to compare the duties and responsibilities of appellant's position to those of the following positions classified within the CSS series:

CSS 1 - James Holahan - Department of Development [Commerce], Division of Policy and Information, Bureau of Information Services - this position provides comprehensive, independent, professional assistance to new or existing small businesses regarding financing, organization, start-up planning, marketing, available resources, and regulatory matters including permitting and licensing; and manages and coordinates the Business Information Center, including establishing and administering an inquiry response system, developing informational materials, compiling data and authoring reports, and making recommendations relating to Bureau policies. This position is very similar to appellant's position except that appellant provides more in-depth analysis of business issues requiring longer-term follow-up.

CSS 2 - Michael Malcheski - Department of Development [Commerce] - this position provides technical assistance to local units of government and community-based organizations relating to community development strategies and techniques, financing, and identification of resources to develop and implement local business development projects; provides business development assistance relating to market potential and feasibility, business plan development, financial packaging, business structure, and inventory control to entrepreneurs and small businesses located in communities participating in other Division programs, including the Main Street and Development Zone program; and serves as the agency's primary contact on business incubator development and Tax Increment Financing. This position satisfies the requirements for classification at the CSS 2 level, i.e., it appears from the position description to be a reactive resource, it provides generalized technical assistance as well as in-depth analysis, and has some program responsibilities, but is a stronger position than appellant's given the greater scope of responsibilities, i.e., community development as well as individual business development, the in-depth analysis of development issues in both these areas, and the specialization areas of both business incubator development and Tax Increment Financing.

CSS 3 - Michelle Unga - Department of Development [Commerce], Office of Development Finance - this position represents the agency in the design, negotiation, and implementation of local government programs; serves as the bureau expert in reviewing financial statements and pro formas for the Wisconsin Development Fund-Economic



Development (WDF-ED) portion of the HUD-funded community Development Block Grant (CDBG) program; reviews WDF proposals and prepares funding recommendations; and conducts credit analyses and reviews for the agency's Public Facilities Economic Development Program. This position satisfies the CSS 3 requirements by being a proactive and reactive resource; by providing in-depth analysis of complex financing issues; and by having a significant program planning, policy, and evaluation component relating to the WDF-ED program. These factors render this position a significantly stronger one from a classification standpoint than appellant's.

CSS 3 - Mary Strickland - Department of Development [Commerce], Bureau of Business Development - this position provides professional consulting and financial packaging services to small businesses, primarily those that are owned by women, including preparing feasibility studies, preparing and reviewing business plans, providing loan packaging services, and providing general consulting services in the areas of accounting, finance, marketing, management, and micro-computers. This position satisfies the CSS 3 requirements by being a proactive and reactive resource for small businesses, including assisting in the organization and development of the Women's Business Initiative Corporation, and marketing the agency's Women's Economic Development program; by providing in-depth analyses of business issues through not just the review of, but also the actual preparation of, business plans, feasibility studies, financial projections, and loan packages; and by having a significant program planning, policy, and evaluation component relating to the Women's Economic Development program. These factors render this position a significantly stronger one from a classification standpoint than appellant's.

Economic Development Consultant - Sara Burr - Department of Development [Commerce], Small Business Ombudsman - during the hearing, appellant testified that, after she had been in her position for a period of time, her responsibilities and those of this position became "interchangeable." However, this is not borne out by the language of the respective position descriptions. The Burr position has a strong proactive role in seeking out large and small businesses to encourage and facilitate expansion in Wisconsin, marketing the agency's economic development programs, approaching communities to assist them in developing local economic development programs, identifying and assisting state businesses in locating and developing foreign markets, and providing services to international business consultants in order to attract foreign investment. There is little overlap between the two position

descriptions, and it is obvious that the Burr position is a substantially stronger position from a classification standpoint than appellant's.

It is concluded that appellant's position is more appropriately classified at the CSS 2 level than at the CSS 3 level and respondents' decision to reclassify her to the CSS 2 level was correct.

The remaining question is whether respondents were correct in establishing July 10, 1994, as the correct effective date rather than June 10, 1994. Appellant's contention that June 10 is the correct effective date is based on her argument that a packet of information that appellant's supervisor, Dennis Leong, provided to Jill Thomas of the personnel unit of respondent Docom on Friday, June 10, 1994, constituted a formal request for reclassification initiated by her supervisor. This packet consisted of a memo to Ms. Thomas from Mr. Leong dated June 10, 1994; a position description denominated as a "draft;" a list of appellant's proposed modifications to the draft position description; and appellant's description of how her duties and responsibilities had changed since she was first appointed to the position. The memo from Mr. Leong stated as follows, in pertinent part:

On May 17, Hampton Rothwell and I discussed the enclosed PD with Sue Weber. After the conclusion of the meeting, Sue wanted to provide some feedback to me regarding the contents and wording of the PD. This information was provided to me on June 10.

Sue Weber has recommended some changes in the PD. These recommendations are enclosed in separate pages attached to the PD.

I have also enclosed five examples of business plans that Sue has worked with since she has been with this agency. I indicated to her that I would need more work examples if she is to be considered for reclassification. As discussed with Sue Weber, Louie Cornelius and Hampton Rothwell on several occasions, I suggested that she compile examples of her work so that it can be evaluated by personnel. The type of documentation that would be helpful in order to be considered for reclassification are as follows: . . .

Sue also provided background information on the changes that have occurred in her job responsibilities. The description of her

responsibilities does not go into detail or cite examples of her work. I told her that this may be necessary in order for personnel to accurately evaluate her job status. She said she could provide this information to personnel upon request.

When appellant met with Ms. Thomas on Monday, June 13, 1994, she was advised that the submission of June 10 would not be considered a formal request for a supervisor-initiated reclassification request. As a result, appellant filed a written statement with Ms. Thomas on June 13 requesting a reclassification of her position. This was processed by respondents as an employee-initiated reclassification request. The effective date of the resulting reclassification was keyed to the receipt by Docom's personnel unit of an updated position description and a memo describing the changes in appellant's position, both of which had been approved by appellant's supervisor. Neither Mr. Leong nor Mr. Rothwell, who became appellant's supervisor some time in late June or early July of 1994, recommended the reclassification of appellant's position.

Respondent Docom's personnel policies and procedures manual states as follows, in pertinent part, under the general heading "Reclassification/Reallocation:"

The supervisor is responsible for assigning employee duties. Supervisors should ensure that any new assigned duties are a logical and gradual outgrowth of the employee's original position and are properly incorporated into the position description. If job changes cause the supervisor to question the appropriateness of a classification assignment, the supervisor shall request a review/job audit after the duties have been performed for at least six months. Employees may also request a job audit.

To request a review or audit of a position, the supervisor submits an up-to-date position description and a memo describing the changes which have occurred in the position. This request shall be submitted through the appropriate Division Administrator to the Bureau of Personnel and Employee Development.

If the employee requests a job audit, the Bureau of Personnel and Employee Development will request an updated position description and memo describing the job changes from the supervisor.

Appellant's contention that the submission of a position description and a memo drafted by the employee but not approved by the supervisor meets the manual's requirements for a supervisor-initiated request for a classification review or audit of the position defies logic. Although the language of the manual to the effect that, "[t]o request a review or audit of a position, the supervisor submits an up-to-date position description and a memo describing the changes which have occurred in the position." may, in isolation, be subject to more than one interpretation, logic dictates that the documentation supporting a supervisor-initiated reclassification request be approved by the supervisor. The record shows that Mr. Leong did not characterize his June 10 submission to Ms. Thomas as a request for the reclassification of appellant's position, and that the accompanying documentation did not indicate that either the position description or the memo had been approved by Mr. Leong. As a consequence, Mr. Leong's June 10 submission did not satisfy the requirements for a supervisor-initiated reclassification request. The record also shows that Ms. Thomas did not interpret it as such but as a request for an informal review, a not-uncommon request from a Docom supervisor. Such a request is contemplated by the language of the Docom policies and procedures manual, i.e., a supervisor may "request a review or audit of a position" but an employee may only request an audit. The record also shows that appellant had met with Ms. Thomas on several occasions on and prior to June 10, 1994, to discuss the classification of her position and that Ms. Thomas had given appellant information about the reclassification procedure during those meetings; and that appellant was aware on Monday, June 13, 1994, that Mr. Leong had not requested the reclassification of her position. Appellant has failed to show that she was misled by anyone at Docom about the status of the review of the classification of her position, or that the requirements for initiating a formal request for the reclassification of her position were met prior to June 13, 1994. It is concluded as a result that respondents

were correct in not keying the effective date of appellant's reclassification to June 10, 1994.


ORDER

The action of respondents is affirmed and this appeal is dismissed.

Dated: April 24, 1997 STATE PERSONNEL COMMISSION

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LAURIE R. McCALLUM, Chairperson

  
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