

STATE OF WISCONSIN

PERSONNEL COMMISSION

JACK BARKER,
Appellant,

v.

**President, UNIVERSITY OF WISCONSIN
SYSTEM, and
Secretary, DEPARTMENT OF
EMPLOYMENT RELATIONS,**
Respondents.

DECISION
AND
ORDER

Case No. 00-0021-PC

This is an appeal from the decision to deny the appellant's request to reclassify his position from Cook 2 to Food Production Assistant 1. The parties agreed to the following issue for hearing:

Whether respondents' decision to deny appellant's request to reclassify his position from Cook 2 to Food Production Assistant 1 was correct or was appellant's position more appropriately classified at the Food Production Assistant 1 level.

After the hearing, the parties filed post-hearing briefs.

At all relevant times, the appellant has worked as a cook in the kitchen of the Memorial Union at the University of Wisconsin-Madison.

During the relevant time period, appellant's immediate supervisor was Tim Vertein, Food Production Manager 3.

Mr. Vertein also supervises Donald Sparby, a Food Production Assistant 2 (FPA 2). Mr. Sparby was assigned the responsibility to assist Mr. Vertein in supervising the food production staff in the kitchen.

Appellant's responsibilities include food preparation and maintaining his work area and equipment in a clean and sanitary condition. He works in the food production area, and not in the bakery shop, salad area or sandwich area.

Appellant is one of two cooks employed on the 5:00 a.m. to 1:30 p.m. shift. The other cook position has frequently been vacant but, with respect to the other employees on the shift, both cook positions have substantially similar responsibilities.

Appellant has helped train other cooks and staff in the kitchen.

Appellant does not order supplies for the kitchen but he does assist with conducting some inventories.

Other employees sometimes ask appellant for assistance. In some cases this is because they have previously received what they felt to be inappropriate advice from Mr. Sparby. These employees have not been instructed by management to go to appellant for advice.

Mr. Sparby also occasionally gets appellant's opinion on various questions that come up.

Mr. Sparby's responsibilities to assist with kitchen supervision do not extend to "special events" days. Special events include some home football game days and a few holidays. One cook is designated as having primary responsibility for the special event on that shift but additional cooks (including Mr. Sparby) are often scheduled to come in and help due to the special demands of the day. The back-up cooks always defer to the "primary" cook, no matter who is scheduled for back-up and who is scheduled as the primary cook.

Appellant has no input on employee evaluations or on disciplinary actions.

Appellant's position has not been designated as a lead worker and does not function as a lead worker.

Prior to August of 1998, Douglas Creviere was employed as a Food Production Assistant 1 in the Memorial Union kitchen. Mr. Creviere's FPA1 position and Mr. Sparby's FPA2 position existed at the same time and their position descriptions referenced each other as performing "similar" duties. According to the position summary in Mr. Creviere's position description (Resp. Exh. 18), he "[assisted] management in the supervision of the food production staff in the Wisconsin Union kitchen." The Creviere position description also reflects the following worker activities:

A2. Trains full- and part-time employees and provides input on performance evaluations. /

A4. Communicates concerns to student supervisors regarding scheduling, disciplinary actions, work habits and other activities of part-time employees.

A5. Orders food and supplies from storeroom and from contract vendors daily such as dairy products and produce.

A6. Assists with weekly and end-of-month inventories.

The working title for Mr. Sparby's Food Production Assistant 2 position is "AM Production Leadworker." The position summary in his position description (Resp. Exh. 19) reads as follows:

Assists management in the supervision of the food production staff in the Wisconsin Union kitchen. Assures food quality standards are met. Oversees production kitchen in the absence of management chef. Opens kitchen in the mornings.

Appellant seeks reclassification from the Cook 2 classification. The Cook 2 classification specifications include the following language:

Class Description

Definition:

Under supervision, to prepare and cook all types of foods on a production basis; or in large operations perform specialized function; to care for culinary equipment; to direct, instruct and work with employes and kitchen helpers; and to perform related work as required.

Examples of Work Performed:

Guides the activities of assistants in the preparation of food.

Prepares, seasons and cooks meats, soups, desserts, vegetables, sauces, pastries and gravies in accordance with prepared menus.

Combines ingredients in proper proportions necessary for large scale cooking.

Receives and inspects foods.

Trims and slices meats.

Maintains food service equipment utensils.

Observes proper sanitation standards.

May cook and prepare special diet foods.

The Food Production Assistant 1 classification specifications include the following language:

Class Description

Definition:

This is responsible food production lead work. Employees in this class are responsible on a shift for the preparation of food on a production basis when the complexity of the operation and the hierarchical structure does not warrant a supervisory position. Work is performed under general supervision.

Examples of Work Performed:

Assists, instructs and guides kitchen workers in the preparation of food.
Reviews the care and cleaning of kitchen equipment.
Inspects the production area to assure that proper sanitation standards are observed.
Requisitions supplies, food and materials.
Makes out production sheet if so required.
Keeps records and makes simple reports.

Because appellant does not have lead work responsibilities, his position is better described by the Cook 2 classification than the Food Production Assistant 1 classification.

DISCUSSION

The application of classification specifications to a particular position involves first determining the facts as to the position and then exercising judgment as to which classification best describes, encompasses or fits the position. Although that process involves some discretion in weighing factors against each other, it is essentially the application of a standard to a set of facts. *Division of Personnel v. State Pers. Comm. (Marx)*, Court of Appeals District IV, 84-1024, 11/21/85. It is not unusual to find that the duties and responsibilities of a position might be identified in more than one specification as examples of work performed. *Foris v. DHSS & DER*, 90-0065-PC, 1/24/92. Where the appellant's position satisfies elements of both the lower and higher classifica-

tion levels, appellant still has to show that the higher classification was a better fit for his position. *Miller v. DER*, 95-0077-PC, 4/4/96.

The present case is remarkably similar to the situation presented in *Collins v. UW & DER*, 85-0165-PC, 8/20/86.¹ There, the Commission affirmed a decision to deny the reclassification of the Collins position at UW-Madison's Memorial Union from Cook 2 to Food Production Assistant 1. Ms. Collins argued that she performed duties comparable to those of Mr. Sparby, whose position, at that time, was classified at the Food Production Assistant 1 level. However, the Commission concluded that Ms. Collins' duties were not comparable to Mr. Sparby's duties and also held:

In the instant case, the position standard for the Food Production Assistant 1 (FPA 1) classification requires that a position function as a lead worker in order for it to be classified as [a] FPA 1. Although appellant's position does assist, instruct, and guide the work of part-time student assistants and, although appellant is sometimes consulted by the other cooks for advice because of her experience and expertise, this does not constitute lead work for classification purposes. .

A review of the Cook 2 position standard indicates that the primary emphasis of a Cook 2 position is the preparation and cooking of food on a production basis. This is also the primary emphasis of appellant's position and the Commission concludes that appellant's position is more appropriately classified as a Cook 2 than as a FPA 1.

Appellant claims he has the same duties as Mr. Sparby except in terms of ordering. Despite appellant's claims, he does not have the same responsibilities as Mr. Sparby. Appellant has not been designated as a lead worker. Management does not consult with him about employee evaluations or discipline. The record showed that the two cook positions during appellant's shift have substantially similar responsibilities. This fact is totally inconsistent with classifying either position at the FPA1 level which, by definition, performs lead work.

¹ In referencing the decision in *Collins*, the Commission is considering the legal aspects of that decision in terms of its interpretation of the class specifications, rather than relying on that case to make factual determinations in the present case. It would not be appropriate to give preclusive effect to the findings in *Collins* because Mr. Barker was not a party to that proceeding and

The Commission's conclusion that appellant does not have lead work responsibilities is also consistent with its prior decision in *Davidson v. DP*, 81-291-PC, 1/20/93:

The evidence established that the appellant performs some but not all of the functions normally performed by a leadworker. The respondent conceded that the appellant provided both training and technical advice for the other technicians in the unit. Appellant's supervisor testified that the appellant oversaw the work of the other technicians on a part-time basis and provided technical advice on a regular basis on matters relating to her scheduling function.

Although appellant reviews the work of the other technicians when they submit their requests for scheduling and also provides some training, there was no evidence indicating that the appellant assigns work or is accountable for the majority of the work of the other technicians. Therefore, the Commission must conclude that the appellant is not a leadworker as that term is used in the MIT 4 position standard.

The Commission also notes that the few special event days of the year when appellant is the primary cook and Mr. Sparby is the back-up cook do not provide a basis for classifying the appellant's position. As noted in respondent's reply brief, page 2: "Whatever individual happens to be working the shift on which the special event occurs is responsible for directing the activities of the back up workers." This observation is consistent with the record and does not support a classification action that would single out the appellant's position from the other cooks who serve as the primary cook on special events days.


Appellant questions the adequacy of the classification audits performed by respondent UW's Kathy Rockweiler and Trisha Bauer. In an appeal of a reclassification, the proceeding before the Commission is a *de novo* review of the classification of the appellant's position and the procedure followed by respondents in reviewing the appellant's request for reclassification need not be evaluated in order to resolve the appeal. *Klein v. UW & DER*, 91-0208-PC, 2/8/93.

was not in a position to have obtained judicial review of it. *Vakharia v. DNR & DER*, 95-0178-PC, 12/20/96.

ORDER

The respondents' decision is affirmed and this appeal is dismissed.

Dated: January 9, 2002 STATE PERSONNEL COMMISSION


LAURIE R. McCALLUM, Chairperson

KMS: 000021Adec2


JUDY M. ROGERS, Commissioner


ANTHONY J. THEODORE, 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