

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

VICKI FREDRICK, Appellant,

vs.

**Superintendent, DEPARTMENT OF PUBLIC INSTRUCTION, and
Secretary, DEPARTMENT OF EMPLOYMENT RELATIONS**, Respondents.

Case 601
No. 62883
PA(der)-62

(Previously Case No. 01-0027-PC)

Decision No. 30879-A

Appearances:

Randall B. Gold, Fox & Fox, Attorneys at Law, 124 West Broadway, Monona, WI 53716,
appearing on behalf of the Appellant.

Sheri Garvoille, Assistant Legal Counsel, DPI, P.O. Box 7841, Madison, WI 53707-7841,
appearing on behalf of Respondents.

ORDER DENYING MOTION FOR COSTS AND FINAL ORDER

This matter is before the Commission on the Appellant's request for fees and costs under the Equal Access to Justice Act (EAJA), Sec. 227.485, Stats. The underlying appeal arises from the denial of a reclassification request. In an Interim Order issued on April 13, 2004, the Commission rejected the Respondents' decision denying the Appellant's request to reclassify her position from Education Program Specialist to Education Consultant Coordinator, effective in December of 2000.

Dec. No. 30879-A

The Commission makes and issues the following

ORDER

1. Appellant's request for fees/costs is denied.
2. The Interim Order issued on April 13, 2004, is adopted as the Final Order in this matter.

Given under our hands and seal at the City of Madison, Wisconsin, this 26th day of July, 2004.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Judith Neumann /s/

Judith Neumann, Chair

Paul Gordon /s/

Paul Gordon, Commissioner

Susan J. M. Bauman /s/

Susan J. M. Bauman, Commissioner

Department of Public Instruction and Department of Employment Relations

MEMORANDUM ACCOMPANYING ORDER

The Commission's analysis of the Appellant's fee request is premised on Sec. 227.485(3),

In any contested case in which an individual . . . is the prevailing party and submits a motion for costs under this section, the hearing examiner [or agency conducting the hearing] shall award the prevailing party the costs incurred in connection with the contested case, unless the hearing examiner finds that the state agency which is the losing party was substantially justified in taking its position or that special circumstances exist that would make the award unjust.

The term "substantially justified" is defined in Sec. 227.485(2)(f), Stats., as "having a reasonable basis in law and fact." The amount of any costs awarded is to be determined based on the criteria specified in Sec. 814.245(5), Stats.

Respondents' underlying reclassification decision required an understanding of the work assigned to and performed by the Appellant and an interpretation of the classification that had previously been assigned to her position (Education Program Specialist or EPS) as well as the requested classification of Education Consultant Coordinator or ECC.

Appellant submitted a variety of materials to Respondents as part of her reclassification request. Those materials indicated that she served as a team leader responsible for coordinating the work of an advisory board and private-sector contractors relating to the Wisconsin Reading Comprehension Test. 1/ The documents did not suggest that the team included any DPI employees classified as Educational Consultants and the ECC specifications clearly required a position at that level to serve as a team leader for Educational Consultants. Respondents reasonably relied on the materials submitted as part of the reclassification request when they denied Appellant's request for reclassification to the ECC level.

1/ Respondents correctly rejected the Appellant's claim that she should be credited for coordinating the work of individuals employed in the private sector.

It was not until the hearing, when various witnesses called by the Appellant testified that Educational Consultants employed by DPI were, in fact, on the teams Appellant coordinated, that the Appellant provided some evidence on this element that was necessary to her case. The Commission ultimately relied on these witnesses' testimony when it reached its

conclusion to reject the Respondents' decision. Under these circumstances, the Commission finds that Respondents were substantially justified in taking the position that Appellant's position would not be properly classified at the ECC level. This result is consistent with the Personnel Commission's conclusion in VON RUDEN ET AL. V. DER, 91-0149-PC, ETC., 11/17/95 (where the determining factual issue in the case was whether appellants had the requisite supervisory duties, the agency was substantially justified where the documentary evidence lent strong support to its case but the testimony of a witness lent strong support to the appellants' case.)

Respondents' interpretation of the ECC specification also served as a basis for their decision to deny the Appellant's reclassification request. In its Interim Decision, the Commission noted that this interpretation was reasonable from a grammatical standpoint, but the Commission ended up rejecting it for other reasons.

For these reasons, Respondents' decision denying the Appellant's reclassification request had a reasonable basis in law and fact, the Respondents were substantially justified in taking their position and the Appellant is not entitled to fees and costs under the EAJA.

Dated at Madison, Wisconsin, this 26th day of July, 2004.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Judith Neumann /s/

Judith Neumann, Chair

Paul Gordon /s/

Paul Gordon, Commissioner

Susan J. M. Bauman /s/

Susan J. M. Bauman, Commissioner

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