

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

ANDREA KNUTSON, Appellant,

vs.

**Attorney General, WISCONSIN DEPARTMENT OF JUSTICE,
and Director, OFFICE OF STATE EMPLOYMENT RELATIONS**, Respondents.

Case 655
No. 64030
PA(der)-100

Decision No. 31155-A

Appearances:

Andrea L. Knutson, Division of Criminal Investigation, W622B Communications Court, Appleton, Wisconsin 54914, appearing on her own behalf.

Jennifer Sloan Lattis, Assistant Attorney General, Wisconsin Department of Justice, P.O. Box 7857, Madison, Wisconsin 53707-7857, appearing on behalf of Respondent.

DECISION AND ORDER

This matter is before the Wisconsin Employment Relations Commission on Appellant's appeal of Respondent's decision which denied her request to reclassify her position with the Department of Justice from Program Assistant 2 (PA 2) to Program Assistant 3 (PA 3). The appeal was filed on September 21, 2004.

David E. Shaw of the Commission's staff was designated as the hearing examiner. Hearing was held before the Examiner on May 12, 2005. Written briefs were filed by the parties and the record was closed on August 8, 2005 when the final post-hearing briefs and stipulation (Martinelli Affidavit) were received. The hearing examiner issued a proposed decision on April 12, 2006. No objections were filed by the requisite due date of May 12, 2006. For the reasons set forth below, the decision of the Respondent is affirmed.

At the time of hearing, Appellant Andrea Knutson held a position classified as a PA 2¹ with the Wisconsin Department of Justice (DOJ), Division of Criminal Investigation (DCI), in the DCI's Regional Office in Appleton, Wisconsin. She originally held the position of Typist,

¹ The PA series was subsequently eliminated and Appellant's position was reallocated to a new classification of "Office Operations Associate", which Appellant asserts is inappropriate given the duties she actually performs. See footnote 9.

which was later reclassified to Program Assistant 1 (PA 1), and then reclassified to PA 2 in 1986. Appellant's is the only position at the Appleton office assigned to the PA series, other than a part-time LTE PA at the office who performs clerical functions 20 hours per week. There is a PA 2 at each of DCI's regional offices. The Office of State Employment Relations has delegated authority to make certain classification decisions affecting DOJ employees to DOJ.

In March of 2003, Appellant's immediate supervisor, Peter Thelen, the Special Agent in Charge (SAIC) of DCI's Appleton Regional Office, submitted a request on her behalf for reclassification of her position from PA 2 to PA 3, with the Director of the DCI's Narcotics Bureau. That request was apparently not submitted to DOJ's Bureau of Human Resource Services until March 22, 2004, when James Warren, DCI's Administrator, submitted a request for reclassification of Appellant, as well as four other PA's assigned to DCI's regional offices, from PA 2 to PA 3. Along with the request were the position descriptions for those PAs, including Appellant's March 2003 position description signed by her supervisor, Thelen, and herself. In his transmittal letter, Warren explained the basis for the request:

All the aforementioned Program Assistants are currently assigned to regional offices within the Division of Criminal Investigation. I have found that their respective duties in the regional offices have changed considerably, and that they are all performing at a higher level and with greater responsibilities. Further, they have all performed these increased duties and responsibilities in a thoroughly competent and exemplary manner.

Therefore, in my opinion, they are all worthy of being reclassified to higher levels.

The effective date for purposes of reviewing Respondents' reclassification decision is March 22, 2004.

Pat Miller, Human Resource Specialist with the DOJ's Bureau of Human Resource Services, conducted the review of the requested reclassifications. By memorandum of August 20, 2004, Miller advised Warren and the affected employees, including Appellant, of the results of her review and the denial of the requests. It is this denial that is the basis for the appeal in this case.

The March, 2003 position description for Appellant's position submitted with the reclassification request, and signed by Appellant and her supervisor, accurately described Appellant's duties and responsibilities as of the effective date of the request, except as to the

percentage of time allocated to those duties.² That position description provides, in relevant part:

POSITION SUMMARY

This position functions independently and confidentially to provide a wide range of administrative and program support to Division of Criminal Investigation programs. This position provides program support for the Narcotics Bureau, Arson Bureau, Special Assignments Bureau, Financial Crimes Unit, Public Integrity Bureau, and completes program projects developed to support Bureau and Division activities. This is a moderately difficult and challenging multi-tasking position that must prioritize and manage numerous simultaneous and consecutive assignments to meet the various requirements of handling several Bureaus located within a regional field office. This position independently provides a wide range of program and administrative support, including purchasing, training, and security within the field office. The position is relied upon heavily to exercise judgment regarding the administration of the field office. The position reports to the Special Agent in Charge of the regional field office of the Division of Criminal Investigation, and works under general supervision.

30% Provision of administrative and program support to the Special Agent in Charge and Special Agents of the Narcotics Bureau, Arson Bureau, Special Assignments Bureau, Financial Crimes Unit, and Public Integrity Bureau and the administrative staff of the Division of Criminal Investigation within the regional office.

A1. Determine formats and process accurate narrative reports, statistical reports, letters and memoranda on field investigations, interviews, court appearances and John Does, and various DCI reports, from dictated materials, handwritten rough drafts or typed copy and prepare in an accurate and timely fashion. Prepare detailed transcripts verbatim of recorded undercover conversations and fire marshal hearings.

A2. Create, compose, and edit memoranda, reports and correspondence on a routine basis. Complete requirements to initiate state and federal forfeiture actions and process for timely action. Prepare drafts of court orders, affidavits, subpoenas, and

² It is noted that the percentage of Appellant's time allocated to these duties in her position description cannot be entirely accurate, as they add up to 110%.

warrants. Prepare and collate reports for prosecutorial case files.

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- A3. Aid special agents in designing court exhibits, including resumes needed for expert testimony, potential juror questionnaires, etc.
- A4. Design, prepare and assemble training materials used investigative staff presentations to other special agents within DCI/DNE, outside local and state law enforcement agencies, and local schools/colleges; arrange for timely duplication and dissemination of materials.
- A5. Gather and organize statistical data on seizures or purchases, cases, investigative status and case dispositions for inclusion in a monthly report and an annual report.
- A6. Make and/or gather information for travel arrangements for investigative staff for giving or receiving training, or for conference attendance.
- A7. Act as liaison between administration and investigative staff of these regional bureaus with the headquarters and other regional offices. Develop and recommend guidelines and procedures to improve administrative or operating effectiveness of the bureaus.
- A8. Maintain address lists, indexes, sources of information and resource material. Utilize DCIR, Internet and other available sources to provide maps, subscriber information, or resource materials.
- A9. Function as receptionist to the regional office. Respond to telephone and in-person inquiries regarding the bureaus and their services as appropriate; forward calls as necessary and direct persons to appropriate personnel or agency. Answer questions regarding the Divisions via telephone and written correspondence, including the dissemination of recruitment materials.
- A10. Receive and process all office correspondence, initiate appropriate responses or route to appropriate persons as necessary.
- A11. Process completed reports and correspondence signed by Special Agents and the Special Agent in Charge, photocopy and disseminate as required, ensuring attachments are made when

necessary.

- A12. Assist with the utilization of the database tabulating hours and investigative expenses for case costing purposes.
- A13. Attend meetings, workshops or seminars, including bureau meetings and in-services, for informational and training purposes and professional growth.
- A14. Organize and manage any bureau or case files, establishing filing guidelines as necessary. Use discretion regarding need for retention and efficiency of retrieval while adhering to the departmental records retention policies and procedures.

25% Provide and manage purchasing functions for the regional field office.

- B1. Identify best pricing for general office supplies and office equipment.
- B2. Prepare bid requests for blanket order services.
- B3. Solicit bids and monitor competitive pricing items excluded from blanket orders or state service contracts.
- B4. Reconcile state procurement card purchases for the field office.
- B5. Verify incoming shipments with packaging slips to purchase orders to ensure accuracy and reconcile erroneous shipments.
- B6. Manage the physical inventory for the field office including conducting the inventory for risk management.
- B7. Manage division facilities, including ensuring compliance with office leases.
- B8. Select regional vendors to service equipment in the field office.
- B9. Maintain accounts for undercover post office box and telephone lines and any off-site storage facilities.

20% Provide miscellaneous administrative support to the regional staff.

- C1. Function as field office forms manager, maintaining a supply of various forms and design or modify additional forms to facilitate

objectives.

- C2. Maintains calendar for conference rooms, itineraries and/or schedules for employees.
 - C3. Holds secondary responsibility for regional field office buy fund account, ensuring security and limiting access to funds and records, dispensing currency, maintaining record keeping systems accounting for expenses, filing all required forms and receipts, requesting additional funds to replenish account, and documenting all entries within the guidelines and requirements of the buy fund policy and accounting systems.
 - C4. Manage the filed office inventory for all personally assigned equipment, furniture and computers.
 - C5. Coordinate and approve repairs for field office equipment. Perform routine maintenance and simple repairs to office equipment, i.e., paper jams, toner addition, etc.
 - C6. Backup and restore network computer data; arrange and assist with the basic install of equipment or cable and wiring connections; aid with troubleshooting and coordinate with Bureau of Computing Services for computer accessing and user problems or complaints.
 - C7. Assist with special projects/duties assigned by the Administrator, Administrative Officer, Bureau Director or Special Agent in Charge.
 - C8. Develop, recommend, and implement office policies and procedures unique to the regional field office.
 - C9. Maintain DOA fleet records for the field office.
 - C10. Make travel arrangements for field office staff.
 - C11. Act as primary liaison with MOCIC and their gang and intelligence databases for the regional field office.
- 20% Provide training and instruction to assigned regional field office personnel, other program assistants, limited term and/or intern employees.
- D1. Facilitate acclimation to the area by providing informational brochures, maps or other related materials and identifying

- D2. Explain use, operation and maintenance of various office machinery and equipment, including postal scales and meters, copy machines, laser and color printers, and dictation equipment.
 - D3. Provide manuals and instruction relating to the use, operation and maintenance of various technical equipment, including radios, digital cameras, body transmitters, other audio and video recording units, duplication machines, VCR operations, and devices specifically used within the Narcotics Bureau.
 - D4. Answer policy and procedural questions relating to the Division or Bureau report forms or requirements, syntax, Division or personnel issues, or matters relating to regional office procedures.
 - D5. Provide information and instruction relating to the use of and operation of various computer programs, including advanced knowledge of Microsoft Word, Excel, PowerPoint, Photo Editor, Picture Easy, Access, and Explore programs, the dailies system, and/or applications specific to design floor plans, the enhancement or manipulation of photo files, digital or WAV files, graphs, timelines or charts, etc. Assist in computer access and use including basic keyboard skills, explanation of programs, manipulation of data files, introduction to electronic mail, calendars, clarification of assorted network drives, folders and subdirectories, and electronic data file processing and management procedures.
 - D6. Assign, monitor, direct and/or review general work activities of the limited term employee and/or intern, in coordination with the assigned supervisor.
- 10% Completion of program projects developed to support Division activity.
- E1. Determine appropriate design of program project to provide required program information. An example would be creating a timeline of a series of events for presentation in court.
 - E2. Initiate contacts with sources of information which will provide data/narrative used to justify and/or explain the program activity.
 - E3. Develop the system which will allow the assimilation of program/project data into the project design.

- E4. Gather, collate and analyze information.
- E5. Produce any necessary charts, graphs, spreadsheets, photo or video display, PowerPoint presentations, timelines, or documents to support the project and present for review, making any required alterations or changes.
- E6. Disseminate the program information to appropriate Division staff and outside recipients.

5% Function as security manager for the field office

- F1. Provide agents with security codes and keys to access buildings.
- F2. Maintain keys for main door lock system and change access code as required.
- F3. Act as liaison with security company for existing access rights, changes to access codes, assigning new privileges or deleting access rights.
- F4. Maintain inventory for office keys and office master key, desk and cabinet keys.
- F5. Review security reports from the monitoring company, notifying the Special Agent in Charge of any suspicious activities; act as a liaison with the security company regarding any security problems or concerns.
- F6. Properly identify and sign in all office visitors.
- F7. Secure and alarm the office each workday.

The PA 2 and PA 3 Class Descriptions are set out in the Program Assistant Position Standard, which states in pertinent part:

D. Classification Factors

Individual position allocations in this series will be based on the four following classification factors:

1. Accountability;

2. Know-How;

3. Problem-Solving; and

4. Working Conditions

which include:

- a. The diversity, complexity, and scope of the assigned program, project, staff responsibilities, or activities.
- b. The level of responsibility as it relates to: type and level of supervision received, status within the organization, and degree to which program responsibility and accountability are delegated and/or assigned.
- c. The degree to which program guidelines, procedures, regulations, precedents, and legal interpretations exist and the degree to which they must be applied and/or incorporated into the program and/or activities being carried out by the position;
- d. The potential impact of policy and/or program decisions on state and non-state agencies, organizations, and individuals;
- e. The nature and level of internal and external coordination and communication required to accomplish objectives;
- f. The difficulty, frequency, and sensitivity of decisions which are required to accomplish objectives and the level of independence for making such decisions.

E. Definition of Terms Used in this Standard

Terms that are used in conjunction with the above classification factors within this series are:

Paraprofessional	A type of work closely relating to and resembling professional level work, with a more limited scope of functions, decision-making and overall accountability. A paraprofessional position may have responsibility for segments of professional level functions, but is not responsible for the full range and scope of functions expected of a
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Moderate Difficulty The employee is confronted with a variety of breadth of duties susceptible to different methods of solution which in turn places a correspondingly higher demand on resourcefulness. Supervisors of employees engaged in routine assignments, journey-level personnel and paraprofessional employees usually perform work of moderate difficulty.

...

General Supervision The employee usually receives general instructions with respect to the details of most assignments but is generally free to develop own work sequences within established procedures, methods and policies. The employee may be physically removed from the supervisor and subject to only systematic supervisory checks.

II. CLASS DESCRIPTIONS

The following class descriptions for the various class levels within the Program Assistant series are designed to provide basic guidelines for the allocation of both present and future positions, as well as to serve as a basis for comparisons with positions in other class series.

...

PROGRAM ASSISTANT 1

This is work of moderate difficulty providing program support assistance to supervisory, professional or administrative staff. Positions allocated to this level serve as the principal support staff within a specified defined program or a significant segment of a program. Positions at this level are distinguished from the Clerical Assistant 2 level by their identified accountability for the implementation and consequences of program activities over which they have decision-making control. Therefore, although the actual tasks performed at this level may in many respects be similar to those performed at the Clerical Assistant 2 level, the greater variety, scope and complexity of the problem-solving, the greater independence of action, and the greater degree of personal or procedural control over the program activities differentiates the Program Assistant functions. The degree of programmatic accountability and involvement is measured on the basis on the size and scope of the area impacted by the decision and the consequence of error in making such decisions, which increases with each successive level in the Program Assistant series. Work is

performed under general supervision.

PROGRAM ASSISTANT 2

This is work of moderate difficulty providing program support assistance to supervisory, professional or administrative staff. Positions are allocated to this class on the basis of the degree of programmatic involvement, delegated authority to act on behalf of the program head, level and degree of independence exercised, and scope and impact of decisions involved. Positions allocated to this level are distinguished from the Program Assistant 1 level based on the following criteria: (1) the defined program area for which this level is accountable is greater in scope and complexity; (2) the impact of decisions made at this level is greater in terms of the scope of the policies and procedures that are affected; (3) the nature of the program area presents differing situations requiring a search for solutions from a variety of alternatives; and (4) the procedures and precedents which govern the program area are somewhat diversified rather than clearly established. Work is performed under general supervision.

PROGRAM ASSISTANT 3

This is paraprofessional work of moderate difficulty providing a wide variety of program support assistance to supervisory, professional or administrative staff. Positions are delegated authority to exercise judgment and decision-making along program lines that are governed by a variety of complex rules and regulations. Independence of action and impact across program lines is significant at this level. Positions at this level devote more time to administration and coordination of program activities than to the actual performance of clerical tasks. Work is performed under general supervision.

. . .

PROGRAM ASSISTANT 1 - WORK EXAMPLES

- Plans, assigns and guides the activities of a unit engaged in specialized clerical duties.
- Serves as the acknowledged expert who resolves the most difficult problems of a complex clerical nature.
- Performs the most intricate clerical operations, processing documents and performing other clerical operations where comprehensive knowledge of legislation or organization is required.
- Sets-up, maintains detailed budget ledgers posting debits and credits, issuing credits and refunds, and generally insures all records are accurate and up-to-date.

- Purchases and requisitions supplies, including capital purchases and services, and follows up to insure merchandise or services are received and priced accurately.
- Gathers and organizes information into summary reports, as assigned.
- Maintains department or program schedule.
- Develops and revises operating procedures affecting the immediate work unit.
- Composes and types correspondence, requiring knowledge of departmental operations and regulations, which may not be reviewed by a superior.
- Counsels and assists the public when applying for services provided by the program assigned, and may interview applicants to determine eligibility for program benefits and/or services.

PROGRAM ASSISTANT 2 – WORK EXAMPLES

- Provides administrative assistance to supervisory, professional and administrative staff, head of a department or program.
- Schedules department facilities usage.
- Maintains inventory and related records and/or reports and orders supplies.
- Conducts special projects: analyzes, assembles, or obtains information.
- Maintains liaison between various groups, both public and private.
- Directs public information activities and coordinates public or community relations activities.
- Prepares budget estimates, plans office operations, controls bookkeeping functions and handles personnel transactions.
- Plans, assigns and guides the activities of subordinate employees engaged in clerical program support work.

- Corresponds with various outside vendors or agencies to procure goods or information for program operation.

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- Develops and recommends policies, procedures, guidelines and institutions to improve administrative or operating effectiveness.
- Screens and/or reviews publications; drafts or rewrites communications; makes arrangements for meetings and maintains agendas and reports; arranges schedules to meet deadlines.
- Maintains extensive contact with other operating units within the department, between departments or with the general public in a coordinative or informative capacity on a variety of matters.
- Prepares information materials and publications for unit involved, and arranges for distribution of completed items.
- Attends meetings, work shops, seminars.

PROGRAM ASSISTANT 3 – WORK EXAMPLES

- Prepares reports, research project data, budget information, mailing lists, record keeping systems policies and procedures, training programs, schedules and generally oversees operations.
- Plans, assigns and guides the activities of a unit engaged in the clerical support of the program assigned.
- Develops and/or revises selected policies and procedures affecting the administration of the program.
- Answers questions regarding the program or division via telephone, correspondence or face-to-face contact.
- May serve as an Assistant in charge of secretarial and administrative tasks in an operation handling cash procedures, equipment orders, inventory, program preparation, pricing, etc.
- Composes correspondence, maintains files of program related data, sets up schedules and performs any related administrative support functions necessary to the operation of the program.
- May be in charge of public relations, preparing and sending out pamphlets, brochures, letters and various program publications.

No more than a month or two before the March 22, 2004 effective date, the Appellant

was temporarily assigned certain duties related to the ACISS Case Management System.

From a classification standpoint, the duties permanently assigned to Appellant as of March 22, 2004, are comparable to those of PA 2's Barbara Blue, Diane Gryczkowski and Kristine Midthun in the DCI's other regional offices. The majority of Appellant's responsibilities are at a lesser level of independent judgment and decision-making than those of Diane Mellotte, the PA 2 in DOJ's Victim Resource Center, Office of Crime Victim Services. The amount of time (40%) Mellotte spends advising, assisting and providing information to callers who are crime victims, and her responsibility for the operation of the state-wide Victim Appellate Notification Services (25%) make her's a stronger position than Appellant's, but is still within the PA 2 work examples. Appellant's position is stronger than those of PA 2 Femrite in DCI's Madison regional office and PA 2 Converse in DOJ's Division of Law Enforcement Services, Training and Standards Bureau.

The majority of the duties and responsibilities of all but one of the PA 3 positions of record are at a higher organizational level than those of Appellant and involve more independent judgment. The impact of their decision-making is greater and the decisions are broader in scope than Appellant's, and the majority of their duties are at the paraprofessional level, as defined by the class specifications for PA 3s, and are best described by the PA 3 work examples.

The majority of Appellant's duties and responsibilities are not at the paraprofessional level and Appellant's position is better described by the PA 2 class specifications and work examples, and is properly classified as a PA 2.

ORDER³

Respondent's decision to deny Ms. Knutson's request to reclassify her position from Program Assistant 2 to Program Assistant 3 is affirmed and the appeal is dismissed.

Given under our hands and seal at the City of Madison, Wisconsin this 22nd day of June, 2006.

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

³ Upon the issuance of this Order, the accompanying letter of transmittal will contain the names and addresses of the parties to this proceeding and notices to the parties concerning their rehearing and judicial review rights. The contents of that letter are hereby incorporated by reference as a part of this Order.

Department of Justice & Office of State Employment Relations (Knutson)

MEMORANDUM ACCOMPANYING
DECISION AND ORDER

The underlying question raised by this appeal is whether, based upon the duties that were assigned to Appellant, her position was better described at the PA 2 or PA 3 level, effective March 22, 2004.

In classification appeals, a classification specification must be read in its entirety as one document. Segmenting a specification and attempting to find specific words or phrases which can be attached to the duties and responsibilities assigned to a position is not dispositive of the appropriate classification of a position. The duties and responsibilities of the position and the classification specification must be reviewed in their entirety to determine the best fit. *FORIS V. DHSS & DER*, CASE NO. 90-0065-PC (PERS. COMM. 1/24/92). Classification specifications are comparable to administrative standards. Their application 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. The overlap of two or more job specifications in describing a given position is usual and expected. Once factual determinations have been made as to the specifics of an incumbent's job, they must be applied to the various specifications. The specification providing the "best fit" is used to determine the actual classification. The "best fit" is determined by the specification reflecting job duties and activities within which the employee routinely spends a majority of his or her time. *DER & DP V. PC (DOLL)*, DANE COUNTY CIRCUIT COURT, 79-CV-3860, 9/21/80. Where an appellant's position can plausibly be described by the definition statements of both of the classifications in issue, determination of the appropriate level rests primarily on the examples of work performed and a comparison to other positions in the series. *FAY V. DER*, CASE NO. 92-0438-PC (PERS. COMM., 7/7/94); *RHODES V. DOT & DER*, CASE NO. 92-0024-PC (PERS. COMM. 8/5/96).

In order for Appellant's position to be reclassified, more than 50% of her work must be at the higher level. *TISER V. DNR & DER*, CASE NO. 83-021-PC (PERS. COMM., 10/10/84). A position is not entitled to reclassification because some aspects of the work involved fall within the higher classification, particularly if those aspects comprise less than a majority of the total duties and responsibilities of the position. *FONTE V. UW & DP*, CASE NO. 82-131-PC (PERS. COMM., 4/15/85). If changes in time percentages result in the majority of the position's time being spent performing higher level duties and responsibilities, then the position satisfies the requirements for classification at the higher level, regardless of whether any change in the substance or function of these duties and responsibilities has occurred and regardless of the actual size of the change in the percentages of time consumed by certain functions. *AUSTIN ET AL. V. DER*, Case Nos. 90-0285, 0294-PC (PERS. COMM., 10/31/91).

As explained further below, the best fit for the duties and responsibilities assigned to Appellant's position is the PA 2 classification. A majority of Appellant's duties are within that classification and are not paraprofessional in nature.

Before looking at Appellant's position, it is noted that a good deal of Appellant's argument is directed at the reviewer, Miller, and her failure to interview Appellant's supervisor and to conduct a field audit of Appellant's position. As the Commission's hearing on an appeal of a reclassification denial is *de novo* and the facts considered are not limited to the findings made by Respondent in its review of the request, consideration of the procedures followed by Respondent in making its findings typically serves no useful purpose and typically has no probative value. *RASMAN V. DNR & DER*, CASE NO. 85-0002-PC (PERS. COMM., 8/1/85); *SOLIN V. DNR & OSER*, DEC. NO. 31424 (WERC, 11/05). The Commission's decision is based upon application of the facts presented by Appellant and Respondent at hearing to the classification standards, and the procedure followed by Respondent in reviewing the request for reclassification need not be evaluated in order to resolve the appeal. *KLEIN V. UW & DER*, CASE NO. 91-208-PC (PERS. COMM., 2/8/93). It is noted, however, that it is the Appellant who has the burden of proving by a preponderance of the evidence that Respondent's decision to deny her reclassification request was incorrect. *MILLER V. DHSS & DER*, CASE NO. 92-0840-PC (PERS. COMM., 1/25/94).

Duties Assigned

The 2003 position description accurately describes the Appellant's duties as of the effective date of her reclassification request, March 22, 2004, although the percentage of her time allocated to those duties cannot be entirely accurate, as those percentages total more than 100%. Appellant argues that while she performs all of the duties listed on the position description, the list of duties is not complete. One of the areas noted by Appellant in this regard, and upon which she bases a large part of her case, is the work she was performing in relation to the ACISS Case Management System. However, according to Ms. Knutson's May 13, 2004 e-mail to Miller, as of that date she had been working on the project "these past few months." At hearing, Appellant testified she had been working on the ACISS project at least two or three months prior to her interview with Miller on May 12, 2004.⁴ In order to be considered as a basis for a reclassification, the work must have been performed for at least six months prior to the date of the reclassification request and must not be temporary in nature. By her own testimony, Appellant had not been performing the ACISS related duties for six months prior to March 22, 2004, the effective date of her reclassification request. Reclassification decisions are to be based on the duties assigned to the position as of the effective date of the request. *GUTIERREZ V. DOT & DER*, 96-0096-PC (PERS. COMM.,

⁴ Appellant stated in her initial post-hearing brief that following the hearing she learned that the assignment to work on the ACISS occurred in January of 2005. Obviously, facts can only be found based upon evidence presented at hearing, and it would be inappropriate to rely on new information when Respondent has not had the opportunity to question Appellant regarding her assertion. See *SCHMIDT V. DOC & OSER*, DEC. NO. 31134 (WERC, 3/05).

4/11/97). Further, while Appellant's supervisor, Thelen, testified that Appellant had been asked to provide additional training on ACISS for the Division, it is not at all clear she will be permanently assigned to provide such training or how frequently it would occur. Work performed on a temporary basis does not qualify a position for reclassification unless the work has been performed for a number of years. GUTIERREZ, *supra*, citing MILLER V. DHSS & DER, CASE NO. 91-0129-PC (PERS. COMM., 5/1/92). For these reasons it is not appropriate to consider Appellant's duties on the ACISS project in determining the proper classification of her position.

A comparison of Appellant's 1986 PA 2 position description with her 2003 position description, the letters from former SAIC's of the office, and Appellant's testimony all establish that there has been a change in her duties over that span of time, especially regarding preparation of court documents, office management functions and training responsibilities. This has been due in large part to her willingness to accept additional responsibilities as was necessary, and to gaining experience and job-related knowledge over those years. In determining the impact of these additional duties, however, only those that fall within the higher classification provide a basis for reclassification to the higher level. However, the entire position must be considered when making a classification decision. All of the duties must be considered, not just the newly added duties and responsibilities. SHOREY V. DILHR & DER, CASE NO. 87-0070-PC (PERS. COMM., 2/1/88).

Overview of the Parties' Positions

Appellant asserts that a substantive shift has occurred in the primary emphasis of her position and its nature has developed from primarily clerical into administrative, analytical, office managerial and paraprofessional, involving a high level of duties and responsibilities. According to Appellant, she has gradually assumed additional duties that are normally performed by supervisors, agents, analysts and attorneys or other experts so that she is now exercising considerable discretion. Specifically, Appellant identifies components of A2 - composing reports, "preparing drafts of court orders, affidavits, subpoenas and warrants" and A3 - "aiding special agents in designing court exhibits". Appellant similarly identifies her analysis of telephone records, income tax returns, and utilities usage records as "paraprofessional" work, arguing the work would otherwise be done by intelligence analysts, and preparing time lines of events, that would otherwise be done by agents. As to these activities, Appellant asserts that they should have been listed under Goal A, allocated as 30% of her duties, rather than considered as part of the activities under Goal E - Completion of Special Projects Developed to Support Division Activity, allocated as 10% of her duties. Appellant also identifies Goal B - provide and manage purchasing functions for the office (allocated 25% of her time) and Goal D - providing training and instruction (allocated 20% of her time) as examples of the greater and higher level of responsibilities she has gradually been given over time. Appellant asserts she provides administrative oversight and independently provides office managerial duties, including purchasing functions, computer maintenance and assistance, building and equipment repair, inventory, security and management of office facilities. As regards her training and instruction responsibilities, Appellant identifies

providing training and instruction on programs and technical assistance on equipment use, including providing specialized training, answering questions, offering solutions, consulting on complex investigative projects and advising staff with ongoing problems. As to administrative support, Appellant identifies preparing reports, maintaining record keeping systems, handling cash procedures and inventory, composing correspondence, maintaining files and being the primary liaison within the office with local law enforcement, special agents, administrative personnel, attorneys, district attorneys, citizens seeking information, and informants, and fielding calls and providing information.

Respondent concedes that a few of Appellant's duties fall in the PA 3 category (preparing advanced reports, developing training programs and preparing affidavits) but asserts the following duties, representing the bulk of her time, are properly identified at the PA 2 level: (1) provides administrative support to a supervisor who heads a program (not a division) and to professional staff, (2) maintains the field office's inventory and reports and orders supplies, (3) analyzes and assembles information on special projects, such as training programs, (4) acts as a liaison with various groups, (5) plans office operations, (6) plans, assigns and guides the activities of an LTE program assistant, (7) develops and recommends policies, (8) drafts communications, (9) prepares information materials, and (10) attends events.

Appellant's Duties in the Context of the Class Specifications

The PA 2 classification description provides that the work properly described under that title is "of moderate difficulty providing program support assistance to supervisory, professional or administrative staff." The PA 3 classification description refers to "paraprofessional work" and providing "a wide variety of program support." The PA3 description also provides, "Positions at this level devote more time to administration and coordination of program activities than to the actual performance of clerical tasks."

According to Appellant's 2003 position description, she spends 30% of her time on the activities listed under Goal A, formatting and processing reports, letters, memoranda, etc. Of those fourteen activities, A2, A3, A4, A5, part of A9, and A14 fall within the description of paraprofessional work and/or are described by the work examples for both a PA 2 and a PA 3. The rest of the activities listed under that goal are at the PA1 or PA2 level and are not paraprofessional work. Other than stating she performed some of the six higher-level activities, such as drafting affidavits for purposes of obtaining search warrants "quite regularly", and that it varied from three times a week to once a month, there was no evidence offered at hearing as to how much time Appellant spends on the six PA3 level activities in Goal A. In the absence of evidence to the contrary, it is assumed that each activity listed within a goal is performed the same percentage of time.⁵ ACKLEY V. DNR & DER, 00-0135-PC (PERS. COMM. 8/1/01).

⁵ The Appellant has the burden of persuasion in this matter, which means that it was up to her to show that the her time was not equally distributed between each activity that is identified as a part of a particular goal.

Twenty-five percent of Appellant's time is allocated to the activities listed under Goal B, purchasing functions. Of those nine activities, B1 through B5 fall within the PA 1 work examples and B8 fits within the PA 2 work examples and B9 in the PA 3 work examples. Activities B6 and B7 could be described at either the PA 2 or PA 3 level, depending on the level of independent judgment and authority Appellant exercises. It is noted in this regard that the bid request example (A-37) Appellant offered is over Thelen's signature, and the requisition example (A-38) indicates it must be approved at several higher levels. Further, acting on behalf of a program head (here the SAIC of the regional office) is specifically listed under PA 2.

Goal C allocated 20 percent of Appellant's time to miscellaneous administrative support. Of the eleven activities listed, C3 is at the PA 3 level, and C7 could be identified as either PA 2 or PA 3 work, depending on the level, scope, and complexity of the project. The remaining activities fall below the PA 3 level.

Twenty percent of Appellant's time is allocated to providing training and instruction to the regional office's personnel under Goal D. Of the six activities listed, only D3 and D4 could be considered PA 3 paraprofessional work. Again, Appellant's ACISS training duties are not considered to be permanent, and it would be inappropriate to consider them in addition to duties already reflected in D5.

Ten percent of Appellant's time is allocated to the "completion of program projects" as reflected in the six activities listed in Goal E. Of the activities listed, only E1, E4 and E5 comprise paraprofessional work. Appellant asserts that her duties involving the analysis of telephone toll records, power usage records and income tax records, as well as her duties involving making timelines and link charts, should be considered part of her duties under Goal A. However, activity E4 specifically refers to "Gather, collate and analyze information", E1 and E5 refer to making timelines, and E1 specifically cites as an example, "creating a timeline of a series of events for presentation in court." Between them, activities E1 and E5 encompass making a chart to aid in an investigation. Thus, these activities are properly considered to fall under Goal E, rather than Goal A.

Five percent of Appellant's time is allocated to functioning as the security manager for the field office as reflected in Goal F. Activities F1 and F2 are only occasional duties on their face and only F3 and F5 require any independent judgment and are arguably of "moderate difficulty". Given the minimal amount of time spent on these activities, they have little significance for classification purposes. *MONK V. DP, CASE NO. 81-0118-PC (PERS. COMM., 6/4/86)*.

Based upon the percentage of Appellant's time allocated to these various goals, and the number of activities that are "paraprofessional work" of "moderate difficulty", the Appellant spends 12.8% (6/14 of 30%) of her time under Section A, 8.33% (3/9 of 25%) of her time under Section B, 3.64% (2/11 of 20%) of her time under Section C, 6.6% (2/6 of 20%) of her time under Section D, and 5% (3/6 of 10%) of her time under Section E performing

paraprofessional work/PA 3 level duties, for a total of 36.37%.⁶ That is less than a majority of her time spent performing PA 3 level duties. Appellant has failed to offer sufficient evidence to support a conclusion that she spends a majority of her time performing duties that fall within the PA 3 level class description, and, on that basis, reclassification to the higher level is not justified.

Comparator Positions

It is also appropriate to compare her position to other positions in the PA series in determining the appropriate level of classification of Appellant's position.

Respondent offered as PA 2 comparators the PA positions in DCI's four other regional offices (Barbara Blue, Connie Femrite, Diane Gryczkowski and Kristine Midthun), the PA 2 position of Katherine Converse in DOJ's Division of Law Enforcement Services, Training and Standards Bureau, and the position of Diane Mellotte, PA 2 in the Victim Resource Center of DOJ's Crime Victim Services. For PA 3 comparators, Respondent offered the PA positions of Colleen Seifert and Angeline Skaggs in DOJ.

Appellant asserts there are significant differences between her duties and those of the PA's in the DOJ's other regional offices in terms of handling the office's buy fund account, drafting reports for the agents, managing the office and purchasing and providing training. As PA 3 comparators, Appellant offered the positions of Linda Arnold in DOJ's Office of Public Interest, Gail Beale in DOJ's Legal Services Division, Ann Rulseh in DOJ's Office of Consumer Protection and Citizen Advocacy, Keara Smyth in DCI's Gaming Enforcement and Special Assignments Bureaus, Holly Heggstad in the DCI Madison Regional Office's Division of Narcotics Enforcement, Laura Hood in DOJ's Crime Lab – Wausau, and Jana Macemon, Training Coordinator in DCI.⁷

A comparison of Appellant's position description with the position descriptions of the PAs in DCI's other regional offices establishes that, on their face, Blue's and Midthun's are identical to Appellant's, and Gryczkowski's is the same except for: 1) additional duties under A6 (disseminating Clandestine Laboratory Enforcement Team program information) and A15 (participating in employment interviews and making hiring recommendations), and 2) the absence of duties related to managing the physical inventory of the office and training other PAs. Femrite's position description does not include drafting court documents and affidavits, and is weaker with regard to office management, purchasing and training functions.

⁶ The actual percentages would be less than those stated by a minimal amount due to the percentages used in the position description totaling 110%, rather than 100%.

⁷ Appellant also listed Lisa Stengel, an LTE PA 3 in DCI's Madison office, but provided no position description beyond a very brief summary with no time or percentage allocated to the various duties. Without that information, the position cannot be properly evaluated for comparative purposes. Therefore, Stengel's position has not been considered.

The only evidence to support Appellant's assertions that her duties are not comparable to those of these PAs in other regional offices is the testimony of Neil McGrath, who has been a Special Agent in DCI's Appleton, Wausau and Milwaukee regional offices. McGrath testified that Blue in Milwaukee and the LTE PA in Wausau do not help with computers, install electronic equipment, prepare his reports, draft affidavits or subpoenas, organize prosecutorial packages, or review income tax records, and that intelligence analysts usually prepare the timelines in those offices. Appellant testified that unlike her, the PA's in the other regional offices are not responsible for obtaining repairs to the equipment, installing new electronic equipment, training agents on the use of such equipment, and ordering of supplies and inventory, as they have supervisors or tech support people to perform those functions. However, Appellant provides no foundation for her testimony in this regard. While Femrite's position description and Miller's notes indicate that Femrite and Gryczkowski had fewer purchasing and ordering responsibilities, than Appellant, most of these duties are at the PA 2 level. Thelen testified that he knew of no PAs, other than Appellant, who had been asked to train other PAs. However, both Blue's and Midthun's position description list this activity in Goal D, the same as in Appellant's position description. Miller's notes regarding Blue also indicated she spent more time performing the duties under goals A and C (50% and 25-30%, respectively), and less time under goals B and E (15% and 5%) than stated in her position description. However, with the exception of Femrite, the differences in Appellant's duties from those of the other regional PA's, especially as they relate to PA 3 level duties, are not sufficiently significant to support a finding that the positions are not comparable.

A review of PA 2 Mellotte's position description establishes that she has a stronger position than Appellant, based on: 1) her work activities related to crime victims and the independent judgment required in that regard; and 2) the duties related to her responsibility for the state-wide Victim Appellate Notification Services program. Much of Mellotte's time in these two areas qualifies as paraprofessional work. However, a comparison of Appellant's duties with those listed in PA 2 Converse's position description establishes that Appellant's position is the stronger of the two, as a large portion of Converse's duties are clerical in nature and involves little or no paraprofessional work.

Ms. Seifert's PA 3 position description indicates she spends 50 percent of her time performing paraprofessional work as the "acknowledged expert who resolves difficult problems of a complex nature" for the state-wide help desk for the Bureau's TRAIN (Training Resources Available via the Internet) program, and 35 percent of her time conducting state-wide audits of criminal justice agencies' use of the criminal record information (TIME) database. PA 3 Skaggs' position description allocates 35 percent of her time to coordinating the annual Domestic Abuse Report and serving on the project development team "to improve its content and data collection methodology." The latter duties appear comparable to Appellant's regarding development and implementation of the ACISS system, except that Skaggs' duties are permanently assigned and ongoing. Another 35 percent of Skaggs' time is allocated to providing tech support to Office of Crime Victim Services (OCVS) programs and duties as the information technology coordinator for OCVS. These duties of both Seifert and Skaggs fall within the description of paraprofessional work and involve independent judgment and decision-making, the impact of which is wider in scope than that of Appellant's decision-making functions.

Similarly, a review of the PA 3 positions offered as comparators by Appellant shows that those positions spend a majority of their time performing paraprofessional work. Arnold's PA 3 position description allocated 65 percent of her time to providing program support assistance to Public Intervenor staff, which included developing, implementing and revising department policies and procedures for its Clinical Intern Program, by 1) directing the workflow of the clinical interns and setting up their schedules, 2) serving as the liaison for program constituents and the Public Intervenor Advisory Committee, and 3) developing, implementing, and maintaining staff program records systems. Thirty-five percent of her time is allocated to functioning as the coordinator and legal secretary for Public Intervenor staff. Much of it is paraprofessional work and is covered by the PA 3 work examples. Arnold also functions at a higher organizational level (Division) than Appellant.

The position description for PA 3 Beale allocates 40 percent of her time to providing general project assistance to the Administrative Officer of the Legal Services Division and 30 percent to independently preparing and maintaining projects for the Division. The majority of her duties fall within both the description of paraprofessional work and the PA 3 work examples, and are again at the Division level.

The position description for PA 3 Rulseh allocates 75 percent of her time to providing public information and consumer assistance for the Office of Consumer Protection and Citizen Advocacy and 10 percent to the coordination of consumer informational resource/referral materials. Nearly all of the activities listed under those two goals again fall within the description of paraprofessional work and involve independent judgment and decision making.⁸

The position description for PA 3 Smyth indicates that she spends 30 percent of her time receiving, reviewing and evaluating background investigation requests for licensing purposes, which includes determining the level of the background investigation to be conducted and conducting lower-level background investigations. The paraprofessional nature of the work, the level of independent judgment and decision-making and the impact of those decisions place Ms. Smyth's duties at the PA 3 level. Twenty-five percent of her time is allocated to providing administrative and program support to the Bureau Directors and Special Agents of the Gaming Enforcement and Special Assignments Bureaus. The majority of the 14 activities listed under this goal fall within the PA 3 work examples. She plans, coordinates and guides the two-week Death Investigation School offered biennially to experienced law enforcement officers throughout the State. The level of independent judgment and decision-making exercised in carrying out these duties in procuring the site, arranging for lodging, meals and equipment and purchasing supplies make these PA 3 level duties.

⁸ It is noted that the position descriptions for Arnold, Beale and Rulseh are from 1986, 1988 and 1989, respectively, and may be of limited value for that reason.

The position description for PA 3 Heggstad reflects that the incumbent spends 70 percent of her time coordinating, supervising and providing program support for the office of the Administrator of the Division of Narcotics Enforcement. The level of organizational responsibility of the activities listed under this goal, along with the fact that many of the activities fall within the PA 3 work examples, make this PA 3 level work. These activities, along with the 10 percent of her time allocated to completing program projects developed to support Division activity and the five percent of her time allocated to coordinating the processing of time, travel and activity reports for the Division's special agents, establishes that Heggstad spends a majority of her time performing PA 3 level work.

The PA 3 Hood position at DOJ's Crime Lab in Wausau is primarily (55 percent) responsible for managing the lab's budget. Again, it is the level of independent judgment and decision-making responsibility that make the activities under this goal PA 3 level work. Hood's duties relating to assisting with the procurement of supplies and equipment (15%), except perhaps for B6 (reviewing, confirming and approving payment of allowable expenses submitted by personnel), are on the same level as Appellant's procurement duties. Similarly, the duties that are related to coordinating repairs and purchases of computers and basic troubleshooting of computer problems are comparable to Appellant's duties in the same subject areas. Ten percent of Hood's time is allocated to "lead worker" duties, including assisting in the hiring, training and evaluation of support staff, which is again comparable to duties Appellant has at times performed. This is a relatively weak PA 3 position. Appellant's position is somewhat comparable, except for Hood's budget responsibilities.

The last position offered as a PA 3 comparator is that of Jana Macemon. According to her position description, the position "independently provides support to the Milwaukee HIDTA (High Intensity Drug Trafficking Areas) Training Initiative" requiring "knowledge of policies and procedures, and knowledge of counter-drug training opportunities unique to drug enforcement and the Milwaukee HIDTA." The position description allocates 65% of Macemon's time to coordinating training events for personnel assigned to the Milwaukee HIDTA as well as other law enforcement personnel throughout the State. Of the 20 activities listed under this goal, many appear to be more in the nature of coordinating information and providing clerical support. Ten percent of her time is allocated to duties as Time Agency Coordinator administering the Time Enforcer system, and 15 percent is allocated to taking care of travel arrangements. It is noted that under activities A20 and D3, Macemon orders training supplies through the HIDTA Budget Analyst and that personnel who are to travel have to meet with the Budget Analyst to ensure proper reimbursement. The level of independent judgment and decision-making authority make this at most a weak PA 3 position. Appellant's duties compare favorably to those of Macemon's position.

Out of the ten PA 3 positions offered as comparators, one (Stengel's) is disregarded, and Appellant's position compares favorably only to one (Macemon's). Out of the PA 2 positions offered as comparators, Mellotte's was stronger, Converse's and Femrite's were somewhat weaker, and Blue's, Gryczkowski's and Midthun's were comparable to Appellant's position. Thus, comparison of Appellant's position with these comparators supports the conclusion that her position is better described by the PA 2 class specifications than at the PA 3 level.

Appellant has the burden of proving that Respondent's decision to deny her request for reclassification to PA 3 was incorrect. Appellant has not sustained this burden and her appeal is therefore dismissed.⁹

Dated at Madison, Wisconsin, this 22nd day of June, 2006.

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

⁹ In their reply briefs, the parties also addressed the impact of the subsequent elimination of the PA series and Appellant asserted the reallocation of her position to Office Operations Associate was not appropriate given her duties. However, that reallocation decision was a separate transaction from the reclassification appeal before the Commission in this case and would have to have been timely appealed.

