

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

SUZANNE M. WEBER, Appellant,

v.

**Secretary, DEPARTMENT OF COMMERCE (STATE OF WISCONSIN) and
Director, OFFICE OF STATE EMPLOYMENT RELATIONS**, Respondents.

Case 602
No. 62884
PA(der)-63

(Formerly Case No. 98-0157-PC)

Decision No. 31576

Appearances:

Suzanne M. Weber, appearing on her own behalf.

Joseph Thomas, Chief Legal Counsel, State of Wisconsin, Department of Commerce, P.O. Box 7970, Madison, Wisconsin, 53707-7970, appearing on behalf of the Respondents.

DECISION AND ORDER

This matter is before the Wisconsin Employment Relations Commission on Appellant Suzanne Weber's appeal of the Respondents' decision which denied reclassification of her position in the Department of Commerce. The appeal was filed with the State of Wisconsin Personnel Commission (PC) on October 22, 1998. At a prehearing conference held November 22, 1999¹, the parties agreed to the following issue:

Whether the respondents' decision denying appellant's request for the reclassification of her position from Community Services Specialist 2 (CSS 2) to CSS 3 or Economic Development Consultant (EDC) was correct.²

¹ There were several prehearing conferences held in this matter.

² At the same prehearing conference the parties agreed to a hearing on March 10, 2000. The hearing was subsequently deferred, pending Appellant's submission of an amended request for reclassification from CSS 2 to CSS 3, Grants Specialist Advanced, or Economic Development Consultant, and Respondent's review and analysis of the amended request. It was determined that the Grants Specialist Advanced classification did not exist at the time of the request for reclassification. Accordingly, the issue to be decided is as indicated.

Prior to the matter having come on for hearing, Respondents filed a motion to dismiss that portion of the issue that pertained to the Community Services Specialist 3 (CSS 3) classification. Respondents' motion was based on its contention that an earlier decision in a case before the PC involving the same parties, *WEBER v. DOCOM & DER*, CASE NO. 95-0168-PC (PERS. COMM. 4/24/97), should be given preclusive effect as to Appellant's CSS 3 claim. The issue in the prior case was whether Respondents' decision to reclassify the Appellant's position from CSS 1 to CSS 2 rather than CSS 3 was correct. In that case, the PC concluded that the Appellant had not sustained her burden of proof and dismissed the appeal.

In their motion to dismiss, Respondents relied on certain facts that Appellant directly contested. The PC denied the motion by Order dated October 4, 2000.³

The merits of the appeal were heard before PC Commissioner Anthony J. Theodore on August 20 and 21, October 9, 10 and 11, 2001, and January 29, 30 and 31, 2002. The parties filed post-hearing briefs, the last of which was received by the PC on June 12, 2002.

Before a proposed decision was issued and while the matter was still pending, the Personnel Commission was abolished pursuant to 2003 Wis. Act 33, effective July 26, 2003, and the authority for processing this matter was transferred to the Wisconsin Employment Relations Commission (WERC). The same legislation reorganized and renamed the Department of Employment Relations (DER) which is now known as the Office of State Employment Relations (OSER).

Commissioner Susan J. M. Bauman was redesignated^A as the Hearing Examiner in this matter on December 28, 2005. She has listened to the 34 audio tapes of the hearing, and has reviewed the evidence and arguments presented by both parties. The hearing examiner issued a proposed decision on January 6, 2006. Written objections were filed and the final date for submitting a written response was March 12, 2006. The Commission adopts the proposed decision with the sole modifications noted in alphabetical footnotes.

³ As explained more fully below, Respondents subsequently reasserted their motion.

^A In her objections to the proposed decision, Appellant suggested that she was somehow disadvantaged by the fact that the redesignated examiner was unable to ask clarifying questions during the course of the hearing. The Commission would have preferred to avoid redesignation, but both parties have been subject to the same circumstances. Appellant was provided every opportunity to present evidence in support of her appeal. She made a very thorough record as evidenced by both the length of the hearing and the number of exhibits. In addition, Personnel Commissioner Theodore, who conducted the hearing, was available for consultation as necessary.

Appellant Suzanne M. Weber, hereinafter Appellant or Weber, was at all times material hereto an employee of the Respondent Department of Commerce⁴, hereinafter, Commerce or Respondent. She was first employed in November 1990 in a position classified as a CSS 1. On June 13, 1994, Weber requested a reclassification of her position. A review of her request was completed by Jill Thomas, Personnel Director, on July 14, 1995. Thomas determined that Weber was appropriately classified as a CSS 2. Weber filed a timely appeal with the PC which affirmed the Respondents' decision. WEBER V. DOCOM & DER, CASE NO. 95-0168-PC (PERS. COMM. 4/24/97).

On October 11, 1996, during the pendency of the appeal of the 1994 reclassification request, Weber again requested a reclassification of her position. Dale Bartz, a Human Resource Specialist in the Personnel Bureau of the Department of Commerce, was assigned to complete the analysis of Ms. Weber's new request. By memo dated September 22, 1998 to Hampton Rothwell, Weber's supervisor, with a copy to Weber, Bartz denied reclassification. Bartz was unable to find substantial evidence of logical and gradual change in the position since it was previously reviewed.

On October 22, 1998, Weber filed a timely appeal of that decision with the Personnel Commission. For the reasons set forth below, the decision of the Respondents is affirmed as to both the CSS 3 and the EDC classifications.

Prior to her employment by Respondent, Weber had received a BS in Business Education and Business Administration. She had been a teacher at the secondary and post-secondary levels where she taught courses in business and business start-ups, including the development of business plans. She owned and operated her own business for eleven years. She was employed at the State of Wisconsin Public Service Commission (PSC) for approximately six years in several different positions. When she left the PSC in late 1990, she was classified as a Public Utility Rate Analyst 4.

As noted above, Weber commenced her employment with Respondent in November 1990 as a Community Service Specialist 1 (CSS 1). She served as an assistant to Sara Burr, the Small Business Ombudsman, who was classified as an Economic Development Consultant (EDC). Burr trained Weber in her work, and served as her leadworker. Hampton Rothwell was Weber's supervisor. Mary Strickland filled the Women's Business Development Specialist position that was classified at the CSS 3 level at the time of Weber's hire.

⁴ When Weber first began her employment for Respondent, the Agency was known as the Department of Development. Sometime in 1996 it was re-organized and re-named as the Department of Commerce. All references to the Department of Commerce include those periods of time when the agency was known as the Department of Development.

From approximately October 1992 to June 1994, Dennis Leong replaced Mr. Rothwell as Weber's supervisor. There were numerous reorganizations in the agency resulting in changes of supervisors and reporting relationships. As a consequence, Roger Nacker was Weber's supervisor from June 1994 to May 1996 and Hampton Rothwell once again served as Weber's supervisor from May 1996 until Weber left the agency in January 2000.

In its 1997 decision referenced above, the PC found that Weber's position was correctly classified at the CSS 2 level as of 1994, based on a draft position description completed by her then-supervisor Dennis Leong on or around April 14, 1994. That position description listed the following goals:

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 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 classification specifications for the CSS 2 classification state, in pertinent part, as follows:

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 Service Consultants on a statewide basis. Requests are acted upon independently and work is reviewed through conferences and staff meetings, primarily for informational purposes.

Areas of Specialization:

Data Processing, Recreation, Solid Waste Disposal, Sewer and Water Grants, Community Planning and other areas of specialization requiring a statewide specialist.

Examples of Work Performed:

Perform duties similar to a Community Services Consultant⁵ Specialist 1.

Perform coordination and liaison between state agencies and local units of government and other local organizations in the area(s) 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.

⁵ The class specification submitted as Respondents' Exhibit 6 has the word Consultant crossed out and Specialist written in by hand.

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 specifications for the CSS 1 classification state, in pertinent part, as follows:⁶

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 involvement.

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.

⁶ This classification specification is included herein inasmuch as the specification for the CSS 2 classification includes reference to the CSS 1 classification.

Explain the role of the Bureau of Community Services and the Department of Local Affairs and Development to interested citizens, groups, and local governments.

The classification specifications for the Community Services Specialist 3 (CSS 3) classification state, in pertinent part, as follows:

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.

Areas of Specialization:

Housing, Training, Data Processing, Recreation, Solid Waste Disposal, Sewer and Water Grants, Community Planning and other comparable specialties requiring a full-time statewide specialist.

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 in 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 or 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.

In its April 1997 decision, the PC found that Weber's position was not at the CSS 3 level as of 1994 and, in fact, that her position was not a strong CSS 2 position at the time.

In a memo dated July 14, 1995, Jill Thomas, Personnel Director, completed a review of Weber's position and classified her position as a CSS 2. During the course of her review, Ms. Thomas developed a PD for Weber's position that reflected her duties in 1994. The PD reflected the following goals:

50% A. Provide technical and financial assistance to small businesses by providing information on funding programs and eligibility and business start-up (i.e. feasibility, marketing analysis, etc.). In addition, Ms. Weber assists in developing and refining business plans by reviewing for completeness and recommending changes, identifying expansion opportunities and providing informational packets.

25% B. Provide small business regulatory compliance and advocacy assistance. In this capacity, she provides technical assistance and research assistance on unemployment and worker's compensation, sales, tax, administrative rule interpretation, etc.

10% C. Provide small business outreach activities. She serves as department representative on business development committees and associations.

10% D. Maintain and publish resource information.

5% E. Assists with other special projects as assigned.

At the time of Ms. Weber's 1994 reclassification request she was part of Commerce's Small Business Assistance unit, along with Mary Strickland and Sara Burr. Sara Burr served as the Small Business Ombudsperson (position number 303968) and was classified as an Economic Development Consultant. The position summary for Burr's position in April 1993 read:

Perform highly responsible professional work involving a wide variety of activities designed to promote the economic growth of Wisconsin, particularly the growth and development of small start-up and expanding businesses. Provide consultation, advice and assistance to chief executives and top management of businesses, particularly small business owners and managers, as well as department supervisors, the Governor, legislators, and local economic and community development leaders. Encourage businesses particularly service, commercial, retail and other small businesses to expand or develop new facilities in the state and assist local officials and groups in helping firms expand or locate in their communities and in promoting their communities to interested firms, particularly small firms.

Ms. Burr left Commerce in May 1994. The May 16, 1994 version of the Ombudsman position description uses almost identical words in the position summary, although the percentage of time spent on various activities changed.

After Ms. Burr left the agency, the position of Small Business Ombudsman (position 303968) was vacant until mid-January 1995 when it was filled by Cheryl Gain. The position summary for Ms. Gain's EDC position, as of January 14, 1995, reads:

Perform highly responsible professional work involving a wide variety of activities designed to promote the economic growth of Wisconsin, particularly the growth and development of start-up and expanding small businesses. Provide consultation, advice, and assistance to small businesses owners, officers and management, as well as department management, the Governor, legislators, and local economic and community development officials. Encourage small businesses to expand or develop new facilities in the state and assist local officials and groups in helping firms expand or locate in their communities and to promote their communities to business.

This position is located in the Business Assistance Center of the Bureau of Business & Industry Services, together with the Women's Business Ventures program manager, Entrepreneurial Specialist, Small Business Assistance Specialist and other staff members which may be added in the future. The nature of the work performed by staff of the Business Assistance Center is highly interactive, requiring an exceptional degree of collaboration and joint planning and implementation of activities.

Mary Strickland was the Women's Business Development Specialist for the agency in position number 314481. Her initial duties, classified at the CSS 3 level, were described as follows:

- A. Providing consulting services including preparing business plans, reviewing feasibility studies, analyzing individual business problems, preparing financial projections, etc. for women-owned businesses. (55%)
- B. Providing loan packaging services including loan packages for clients and securing financing. (25%)
- C. Providing training and marketing for women-owned businesses and women's business organizations. (10%)
- D. Evaluating program services. (5%)
- E. Providing community liaison activities. (5%)

Ms. Strickland's position was reclassified in 1992 from CSS3 to EDC. Her duties and responsibilities at the higher (EDC) level were described as follows:

- A. Recruitment, expansion and retention of WBEs [Women Business Enterprises] by providing business consulting services for business plans and loan packages; preparing financial projections; marketing current financing programs; acting as a representative for WBEs when presenting loan proposals to financing sources; identifying, targeting and initiating calls on companies for expansion; and identifying and initiating calls on problem companies to advise and assist them. (30%)
- B. Development of training programs including strategic planning, fund raising, public relations, production of training materials, etc. (25%)
- C. Assistance to women's economic development organizations and trade associations to create and retain jobs. (15%)
- D. Assistance to women-owned businesses in purchasing existing businesses and franchises by analyzing firms for profitability and feasibility of a successful purchase; providing preliminary business valuation; analyzing management and financial strengths and weaknesses; and developing franchise and buy-out seminars. (20%)
- E. Involvement in special activities including representing the department, making formal and informal presentations, coordinating activities, making program recommendations, etc. (10%)

Ms. Strickland left the Department in August 1994. Kathy Heady was the next incumbent in position number 314481 and she took over responsibility for the women-owned business program. Her position was classified as an Administrative Officer 1 and her June 15, 1995 position summary reads:

This position administers the women-owned business economic development program. The position also performs professional consulting services with chief executives and top management of women-owned businesses to assist them in the creation, expansion and retention of firms in Wisconsin. The position assists these enterprises identifying and accessing capital and credit sources to obtain financing, developing strategic plans, identifying new business expansion opportunities and purchasing existing businesses. The position evaluates the effectiveness of the department's Women Business Enterprise (WBE) program, analyzes economic/business development trends, identifies problems and solutions, and recommends new initiatives and program services for the WBE program.

In addition this position performs entrepreneurial functions identified by state statute. These responsibilities include: 1) identifying and publicizing existing public and private sector entrepreneurial programs; 2) working with industry and trade associations to familiarize them with the needs of entrepreneurs; 3) coordinating public and private entrepreneurial programs; 4) reporting to the Governor and the state legislature on the effectiveness of state entrepreneurial assistance programs as well as on the results of DOD [Development] coordination networks. Examples of public and private entrepreneurial programs which this position will coordinate with include: the WHEDA WIN program, U-Extension Small Business Development Centers, the UW-Whitewater Technology Transfer Program, the SBA Small Business Innovation Research Program (SBIR), Entrepreneurial Training and Assistance Programs operated by the State Vocational Education System, Independent Business Association, and other private sector advisors or affiliations, Wisconsin For Research, Inc. (Madison), the Wisconsin Business Development Finance Corp., the Milwaukee Innovation Center and the Wisconsin Venture Network (Milwaukee).

A good deal of both Burr's and Strickland's responsibilities involved responding to inquiries received through direct telephone contacts, referrals from the Business hotline, legislators and the Governor's office, and walk-ins to the office. Both of these positions also included a significant amount of proactive work with constituent portions of the business community.

After Burr and Strickland left and the Small Business Ombudsman and the Women's Business Development Specialist positions were vacant, Weber was called upon to perform some duties and responsibilities that had previously been performed by these two individuals. The responsibilities were largely responding to inquiries and requests for information and assisting with business plans and linkages to financing opportunities. Although the positions were eventually filled by Gain and Heady with somewhat different duties than their predecessors, Weber continued to perform some of the duties that Burr and Strickland had performed. One example is reflected in changes in the Technical Assistance Available to Wisconsin Businesses and Communities guide issued by the Wisconsin Department of Development. The February 1993 issue included the following language under the heading of Business Development:

The **Small Business Ombudsman Office** gives information on government regulations and financing alternatives to small businesses, particularly new entrepreneurs. Through its advocacy function, the office promotes special consideration for small businesses in Wisconsin administrative rules.

Contact: Sara Burr, 608/266-5489

The **Women's Business Services Program** helps women entrepreneurs start or expand their businesses, and improve their business operations. It identifies accessible sources of financing for these firms, and also assists in business planning, financial projections, and cash-flow statement preparation.

Contact: Mary Strickland, 608/266-0593

The **Entrepreneurial Network Coordinator** develops resources, programs, and policies to strengthen Wisconsin's entrepreneurial network. Among activities the coordinator cosponsors are business development and training workshops, and conferences.

Contact: Cheryl Gain, 608/267-9384

The relevant portions of the guide remained the same in June 1994 except the general heading changed to Business and Industry Services and no contact person was named for the Small Business Ombudsman Office. The June 1994 issue also provided a description and contact person for the Manufacturing Assessment Center and the Recycling Specialist.

In April 1995, however, changes were made to the guide. The Business and Industry Services section read as follows:

The **Entrepreneurial Specialist** develops resources, programs, and policies to strengthen Wisconsin's entrepreneurial network. Among activities the coordinator cosponsors are business development and training workshops, and conferences.

Contact: Cheryl Gain, 608/267-9384

The **Small Business Assistance Office** provides management assistance to small businesses, particularly first-time entrepreneurs. The office furnishes information on government regulations and financing alternatives, and refers businesses to appropriate resources. The office is also a clearinghouse for the Regulatory Flexibility Program, which promotes special consideration for small businesses in Wisconsin administrative Rules.

Contact: Sue Weber, 608/266-3095

The **Small Business Liaison** provides information on government regulations and financing alternatives to small businesses, particularly entrepreneurs. Through its advocacy function, the office promotes special consideration for small businesses in Wisconsin administrative rules.

Contact: Cheryl Gain, 608/267-9384

The **Woman's Business Services Program** helps women entrepreneurs start or expand their businesses, and improve their business operations. It identifies accessible sources of financing for these firms, and also assists in business planning, financial projections, and cash-flow-statement preparation.

Contact: Kathleen Heady, 608/267-9227

In October 1996, Weber requested that the Department of Commerce Personnel Office review her position description for purposes of reclassification. The position description (PD) that she submitted in support of her reclass request was written in part from a draft position description developed by Roger Nacker and it also reflected comments from Hampton Rothwell, Weber's supervisor since earlier in 1996. The PD reads, in part, as follows:

Position Summary

Under the direction of the Director, Bureau of Permits and Business Assistance perform highly responsible professional work involving a variety of activities (including consultative, technical, research and training assistance) to promote economic development for Wisconsin by supporting and encouraging small business start-up, development, expansion and retention, provide small business easier access to government and to increase public and governmental awareness of small business needs and concerns. Provide responsible advice and specific technical assistance to small business owners and top management of businesses in matters related to business financing, feasibility, organization, start-up, planning, marketing, and regulations. Emphasis is placed upon assistance to small businesses in terms of identifying and accessing capital and credit sources to obtain financing, financial packaging, assistance with the development and modification of business plans, financial projections, identifying potential business expansion opportunities and the purchase of existing businesses and franchises. Encourage communication networks and data exchange among and between persons, communities and agencies (public and private) involved in small business development initiatives and issues. Work with development organizations, community groups, and state agencies in various promotional activities that encourage the formation and expansion of small businesses. Serve as a small business advocate in terms of providing information and assistance to help resolve state regulatory problems and issues. The group served by this position includes manufacturing, commercial, service, retail and other businesses with 50 or fewer employees. This position has statewide responsibility.

Goals and Worker Activities:

- 60% A. Provision of consulting, technical and financial assistance to business owners and top management of small businesses at the request of or referral from the Governor's and legislative offices, economic development intermediaries, COMMERCE superiors and economic development professionals, SBA, SBDC, SCORE, WHEDA, economic development professionals, other state agencies, bankers, attorney's and individuals.
- 15% B. Provision for small business assistance on complex regulatory issues and advocacy activities.
- 10% C. Provision for small business outreach activities, special assignments, and participation in small business seminars and conferences.
- 10% D. Provision for the maintenance and publication of resource information for small business needs.
- 5% E. Assistance on special projects as assigned.

The reclassification review was assigned to Dale Bartz, of the Bureau of Personnel at Commerce. Bartz asked Weber's supervisor, Hampton Rothwell, whether the position description correctly described Weber's duties and responsibilities. Rothwell did not concur in the position description as proposed by Weber and, in fact, expressed his belief that the position description developed by Jill Thomas in 1995 continued to accurately reflect the duties and responsibilities of the position. Rothwell had only recently become, once again, Weber's supervisor. In advising Bartz of the appropriateness of the 1995 position description, Rothwell conferred with Roger Nacker, who had preceded Rothwell as Weber's immediate supervisor.

By memo dated September 22, 1998, Bartz advised Rothwell and Weber that Weber was correctly classified at the CSS 2 level. Bartz wrote:

One of the most significant factors involved in my determination that the current class is appropriate is based on the observation that there does not appear to be any significant change in Ms. Weber's position since it was last formally reviewed in July 1995. The position was reclassified to a Community Services Specialist 2 by Commerce Personnel at that time. An appeal to the State Personnel Commission upheld that classification decision, after an exhaustive further review of the case merits. I found virtually no new information as a result of my subsequent review. The PD appears to be the identical PD used in reclassifying the position in July 1995. Indeed, the same issues which were raised as part of the present review are the same issues raised during the appeal and which were substantively responded to by the Personnel Commission. Nevertheless, I proceeded with my review, independent of the previous findings. My conclusion, however, did not differ from that of the previous reviewers.

Weber filed a timely appeal to the Personnel Commission, and specifically requested that her position be reclassified as either a CSS 3 or EDC.

The classification specifications for the Economic Development Consultant (EDC) classification state, in pertinent part, as follows:

Definition:

The work of employees allocated to this class involves highly responsible, [sic] planning, consulting and research activities designed to promote the state's economic growth. Each employee is a highly trained specialist in his particular field and is viewed as the state's consultant on matters affecting his speciality [sic]. They work with a great amount of freedom in that their proposals, from a technical point of view, are regarded as expert. Their work is, of course,

subject to review by others in the profession, and superiors within the department from overall policy and monetary points of view. Employees in this class are called upon by departmental superiors, governor, legislators, business and local leaders to provide consultation. Their planning projects are broad in that they affect particular industries on a statewide basis, or broad industrial groupings on a regional basis.

They are expected to determine, on their own initiatives, areas of research and to plan and conduct the research. They may also be given assigned projects which require a high level of investigation. Their publications frequently are in-depth studies of a problem although certain projects done under their direction may not require sophisticated analysis.

Areas of Specialization:

Plant Location, Transportation and Ports, Regional Economics; or any comparable specialization or combination thereof.

Examples of Work Performed:

Plant Location

Formulate and promote industrial and economic development programs and techniques for communities, areas, and the state.

Assist industry in plant location considerations.

Advise business in such matters as finance, production, sales, materials, etc.

Study, review, and recommend action on development plans, industrial loans, and grant applications involving federal funds for economic development.

Uphold the state's interest by handling matters involving retention or creation of job opportunities, i.e., confidential plant moves, expansions and layoffs.

Transportation and Ports

Advise and assist state ports and harbors with regard to local waterfront development.

Prepares booklets and port advertising which appear in shipping and other trade publications.

Appears as expert witness before regulatory bodies in matters concerning Wisconsin ports.

Supervises work on waterfront plans being prepared by department as part of its local planning assistance.

Develops and supervises federally-sponsored demonstration studies such as the application of urban renewal techniques to waterfronts.

Plans and supervises the department's work in the preparation of the state airport plan.

Appears as expert witness in matters concerning adequacy of air service.

Assists in other transportation matters as they arise, e.g., assisting communities in preparing their cases in railroad abandonment disputes.

Regional Economics

Acts as the department's economic consultant on matters relating to the state.

Prepares bulletins, newsletters and other pamphlets analyzing aspects of the state's economy such as manufacturing output, wages, etc.

Conducts research into particular aspects of the state's economy, utilizing original and secondary data, which illuminates Wisconsin's economic and industrial picture, statewide or regional.

Provides economic consultation on the development of the state plan, e.g., demographic analysis.

The receptionist in the unit where Weber worked was Janice McFadden. During the relevant time period, McFadden relied on a directory to refer telephone calls and walk-in inquiries regarding funding to Weber. Weber also responded to inquiries received from the Governor's office, legislative offices, the business hotline (1-800-HELP-BUS), and other economic development specialists throughout the State of Wisconsin. She provided outreach programs to Chambers of Commerce, business organizations, and other requesting groups. Weber's activities were of a reactive nature, responding to requests, inquiries, and the like.

The nature of the services that Weber provided to individuals varied considerably, depending on the circumstances. Sometimes she provided information to a contact by mailing brochures to them. In other instances she engaged in detailed discussions with callers, analyzed their particular business situation or proposal and provided specific information about available and applicable sources of loans or grants, as well as providing written information. On occasion, she reviewed business plans for a potential or existing business and provided specific advice in response to the circumstances.

Weber was the designated person in the Small Business Assistance office for dealing with financing questions. She responded to issues that arose throughout the state of Wisconsin. She provided a valuable service to the many small businesses and prospective small businesses in Wisconsin. However, Weber's duties and responsibilities did not rise to the level of "planning, consulting and research activities designed to promote the state's economic growth" as envisioned by the definition of an Economic Development Consultant. Weber's duties and responsibilities do not involve independently targeting and making contacts to provide information and assistance. Her work is almost entirely reactive, thus is not appropriately classified as a Community Services Specialist 3.

ORDER

Respondents' decision to deny Appellant's request to reclassify her position to Community Services Specialist 3 or Economic Development Consultant effective in October 1996 is affirmed and this matter is dismissed.

Given under our hands and seat at the City of Madison, Wisconsin, this 8th 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

Department of Commerce and Office of State Employment Relations (Weber)

MEMORANDUM ACCOMPANYING DECISION AND ORDER

As recounted above, this matter is before the Commission based upon Appellant Weber's 1996 request for reclassification of her position. This was the second time during the course of her employment by Respondent Department of Commerce that Weber had requested a reclassification of her position. In fact, the 1996 request was filed during the pendency of an appeal to the Personnel Commission (PC) of the Department's 1995 decision to reclassify her position to a Community Services Specialist 2 (CSS 2) rather than to CSS 3, effective in July 1994.

In September 1998, Dale Bartz, a Human Resource Specialist for the Department, advised Weber and her supervisor, Hampton Rothwell, that the request for reclassification was denied. Weber filed a timely appeal of this decision with the PC. In April 1997, the PC issued its decision on the 1994 reclassification request and found that Weber was correctly classified as a CSS 2, rather than a CSS 3. In the instant appeal, Weber again contends that the position was more correctly classified as a CSS 3 and she adds Economic Development Consultant (EDC) as an alternative. The Commission's focus this time is on Weber's responsibilities in the months immediately preceding October 1996.

Respondent's Motion to Dismiss Based on Issue and Claim Preclusion

Prior to hearing, the Respondents moved to dismiss that portion of the present appeal that deals with the CSS 3 classification. Respondents argued that the Commission's final order dismissing Ms. Weber's first appeal has preclusive effect on the contention that Ms. Weber's position is more appropriately classified at the CSS 3 level than as a CSS 2. The PC denied Respondents' motion in a ruling dated October 4, 2000. Throughout the lengthy hearing in the present matter as well as in their post-hearing briefs, Respondents have reasserted that the question of whether, as of October 1996, Weber's position was better described at the CSS 3 classification is not properly before the Commission. Respondents' arguments are unpersuasive.

We concur in the PC's October 2000 decision which concluded that Respondents' preclusion argument relied on contested facts:

Thus, neither of these doctrines [claim preclusion (also known as res judicata) and issue preclusion] can apply to bar appellant's effort to litigate the issue of the correctness of respondent's denial of appellant's position to CSS 3 unless her current appeal involves the same fact situation on which her first appeal was

based. Appellant's first case involved a 1994 reclassification request which was denied in 1995. The current appeal involves a 1996 reclassification request which was denied in 1998. Therefore, the operative time period for the first reclassification transaction was prior to the submission of the reclassification request in 1994. The operative time period for the second reclassification transaction was the time period prior to the submission of the reclassification request in 1996. It appears to be undisputed that the relevant class specifications have not changed, and the appellant is still in the same position. Accordingly, the resolution of the issue respondent raises turns on the question of whether the duties and responsibilities of appellant's position were materially different during the two time periods.

During the course of the extensive hearing and as reflected in some of the exhibits she placed into evidence, Ms. Weber established that her assigned responsibilities underwent tangible changes during the two-year period after she filed her initial reclassification request. The most obvious change is that by October 1996, two co-workers (Ms. Strickland and Ms Burr) had left their positions and Weber had assumed a portion of their duties even though the two positions had been filled by new employees. As is discussed more fully below, these changes are highly relevant to the question of whether Weber's permanently assigned duties had, by October 1996, become better described by the CSS 3 class than the CSS 2 class. Respondents are entitled to argue that the changes were insufficient to justify reclassification to the higher level. However, it is ultimately the Commission's responsibility to decide whether Weber has satisfied her burden of establishing that her duties had changed sufficiently to warrant the conclusion that they were better described at the CSS 3 level.⁷ AUSTIN ET AL. V. DER, CASE NOS. 90-0285, 0294-PC (PERS. COMM. 10/31/91) (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.); GHILARDI & LUDWIG V. DER, CASE NOS. 87-0026, 0027-PC (PERS. COMM. 4/14/88) (Significant change, for purposes of reclassification, is that amount of change which causes the majority of a position's duties to be at a different class level.)

⁷ Respondents' constant reiteration of their contention that Weber was barred from litigating the CSS 3 portion of this matter unnecessarily delayed and complicated the processing of the appeal. Respondents fully articulated their preclusion argument in their submissions made prior to the PC's October 4, 2000 ruling that rejected their motion to dismiss the CSS 3 claim. Rather than simply noting at the subsequent hearing that they had a standing objection to evidence relating to the CSS 3 classification, Respondents found it necessary to repeat the same unsuccessful arguments whenever the Appellant sought to introduce evidence related to that topic.

Standards to be applied in a reclassification case

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 when weighing factors against each other, it is essentially the application of a standard to a set of facts. DIVISION OF STATE PERSONNEL V. STATE PERS. COMM. (MARX), COURT OF APPEALS, DIST. IV, 84-1024, 11/21/85. 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.

It is the Appellant who has the burden of proof and must establish by a preponderance of the evidence those facts necessary to show that Respondents’ decision not to classify her position at the CSS 3 or EDC level was in error. HARDER V. DNR & DER, CASE NO. 95-0181-PC (PERS. COMM. 8/5/96). For the reasons set forth below, even though the Appellant was able to produce significant evidence regarding the nature of her position, she was unable to establish that either the CSS 3 or EDC specification was a better fit for her duties and responsibilities than the CSS 2 specification.

Duties performed

Unlike many of the classification cases that come before the Commission where the parties agree that the duties and responsibilities of the position have been accurately memorialized in a specific position description, the parties in this case have not reached such an agreement. Ms. Weber takes the position that her July 1995 PD is not an accurate description of her duties in October 1996 and, as part of her request for reclassification in 1996, Weber developed a position description that was based upon one her supervisor had been revising for a considerable period of time. Contrary to the clear and unequivocal statements of Hampton Rothwell that the July 1995 position description accurately described Weber’s duties and responsibilities in October 1996,⁸ Weber introduced evidence to the effect that she and her

⁸ A short time after Weber had submitted her request for reclassification to a higher level, Rothwell, with Thomas’ assistance, developed a new position description for Weber. On the face of this document and as reflected by a rather extensive meeting that Rothwell held with Weber on October 15, 1996 to clarify Weber’s duties under the new position description, it is very clear that the new PD calls for Weber to perform a more limited set of duties than previously. In particular, Rothwell made it very clear that Weber was not to engage in any analysis, but was primarily to provide standard answers to questions, mail packets of material to people, and refer callers to other resources in the event that more in-depth analysis was appropriate. The new PD was also classified at the CSS 2 level, certainly adding some weight to Weber’s contention that she had been performing duties at a level higher than CSS 2 prior to that time.

supervisors from October 1992 to May 1996, Leong and Nacker, did not feel that her July 1995 PD was entirely accurate during the times relevant to the 1996 reclassification request.⁹ Weber did not, however, sustain her burden to show that the position description she submitted with her reclassification request accurately described the work that she had been permanently assigned in the months leading up to October of that year, nor did she sustain her burden to demonstrate that the duties she performed were at the CSS 3 or EDC level.

Weber's version of her PD includes the following language in the position summary:

. . . perform highly responsible professional work involving a variety of activities (including consultative, technical, research and training assistance) to promote economic development for Wisconsin by supporting and encouraging small business start-up, development, expansion and retention, provide small business easier access to government and to increase public and governmental awareness of small business needs and concerns. Provide responsible advice and specific technical assistance to small business owners and top management of businesses in matters related to business financing, feasibility, organization, start-up, planning, marketing, and regulations. Emphasis is placed upon assistance to small businesses in terms of identifying and accessing capital and credit sources to obtain financing, financial packaging, assistance with the development and modification of business plans, financial projections, identifying potential business expansion opportunities and the purchase of existing businesses and franchises. Encourage communication networks and data exchange among and between persons, communities and agencies (public and private) involved in small business development initiatives and issues. Work with development organizations, community groups, and state agencies in various promotional activities that encourage the formation and expansion of small businesses. Serve as a small business advocate in terms of providing information and assistance to help resolve state regulatory problems and issues. . . .

Weber presented extensive testimony regarding the work she performed while providing "responsible advice and specific technical assistance to small business owners . . . in matters related to business financing, feasibility, organization, start-up, planning, marketing, and regulations." She failed however, to demonstrate that she expended significant time in order to support and encourage small business start-ups, development, expansion and retention, to provide small business easier access to government, or to increase public and governmental awareness of small business needs and concerns. While she testified she worked with other economic development professionals throughout the state, her testimony does not demonstrate that she was, to any extent, involved in promotional activities that encouraged the formation and expansion of small businesses.

⁹ In particular, the Performance Planning and Development Report signed by Weber's then supervisor, Roger Nacker, on June 21, 1996, indicates that Weber's position description was not current and specifically states that "P.D. discussions are underway."

Weber testified that she gave presentations to a high school group, to a Chamber of Commerce group, and to a number of other entities. She correctly characterized these presentations as “outreach” and as the provision of information. These presentations were provided at the request of the particular group and were not part of any significant outreach program that she initiated herself.

A comparison of the goals enumerated in the two key position descriptions is informative:

Weber’s view of her position¹⁰	Rothwell’s view of Weber’s position¹¹
A. 60% Provision of consulting, technical and financial assistance to business owners and top management of small businesses at the request of or referral from the Governor’s and legislative offices, economic development intermediaries, COMMERCE superiors and economic development professionals, SBA, SBDC, SCORE, WHEDA, economic development professionals, other state agencies, bankers, attorney’s and individuals	A. 50% Provide technical and financial assistance to small businesses by providing information on funding programs and eligibility and business start-up (i.e. feasibility, marketing analysis, etc.). In addition, Ms. Weber assists in developing and refining business plans by reviewing for completeness and recommending changes, identifying expansion opportunities and providing informational packets.
B. 15% Provision for small business assistance on complex regulatory issues and advocacy activities.	B. 25% Provide small business regulatory compliance and advocacy assistance. ...Provide technical assistance and research assistance on unemployment and worker’s compensation, sales, tax, administrative rule interpretation, etc.
C. 10% Provision for small business outreach activities, special assignments, and participation in small business seminars and conferences.	C. 10% Provide small business outreach activities. Serve as department representative on business development committees and associations.
D. 10% Provision for the maintenance and publication of resource information for small business needs.	D. 10% Maintain and publish resource information.
E. 5% Assistance on special projects as assigned.	E. 5% Assists with other special projects as assigned.

¹⁰ Set forth in the PD she submitted with her October 1996 reclassification request.

¹¹ Set forth in the PD developed by Thomas in July 1995.

Despite differences between the position summaries of the two position descriptions, this side-by-side comparison of the goals reveals that the most significant difference is that Ms. Weber believes she spends 60% of her time responding to inquiries and requests for technical and financial assistance for small businesses and 15% of her time providing assistance on complex regulatory and advocacy issues, whereas the position description relied on by the Respondents ascribes 50% of her time to providing technical and financial assistance in response to requests from various sources and 25% of her time on regulatory-related advocacy. We are unable to determine the precise percentages of time Weber spent on each aspect of her position¹², but conclude from the analysis of either position description that Weber was correctly classified as a CSS 2.

Economic Development Consultant (EDC) classification

The specifications for the EDC classification offer the following definition statement:

The work of employes allocated to this class involves highly responsible, planning, consulting and research activities designed to promote the state's economic growth. Each employe is a highly trained specialist in his particular field and is viewed as the state's consultant on matters affecting his specialty [sic]. They work with a great amount of freedom in that their proposals, from a technical point of view, are regarded as expert. Their work is, of course, subject to review by others in the profession, and superiors within the department from overall policy and monetary points of view. Employes in this class are called upon by departmental superiors, governor, legislators, business and local leaders to provide consultation. Their planning projects are broad in that they affect particular industries on a statewide basis, or broad industrial groupings on a regional basis.

They are expected to determine, on their own initiatives, areas of research and to plan and conduct the research. They may also be given assigned projects which require a high level of investigation. Their publications frequently are in-depth studies of a problem although certain projects done under their direction may not require sophisticated analysis.

Positions assigned to the EDC classification must be involved in "planning, consulting and research activities designed to promote the state's economic growth."^B Although the position description submitted by Weber in support of her request for reclassification contains these words in the position summary, the worker goals and activities are not of the type envisioned by this class specification as enumerated in the Examples of Work Performed in the EDC class specification, pages 15-17, above.

¹² Despite 8 days of hearing, neither party offered any testimony or evidence that provides guidance to the Commission for determining the accuracy of the percentages spent on any of the goals and activities.

^B In her objections to the proposed decision, Appellant contended that because "consulting" is part of the class title, the EDC class describes positions that spend the majority of time as a consultant. Appellant's focus is misdirected on the title rather than the body of the specification. Nothing in the class specification imposes the requirement argued by Appellant. To the contrary, the definition statement provides that the work involves "planning, consulting and research activities."

Weber submitted the position descriptions for the positions held by both Sara Burr and Mary Strickland when they were classified as EDCs in support of her claim that she should be reclassified to the EDC level. Burr's position summary, on page 8, above, speaks of encouraging business to expand or develop new facilities in the state, as well as assisting local officials and groups in helping firms expand or locate in their communities and promoting these communities to interested firms.^c By contrast, Weber works with businesses that are located in a particular place, or are thinking about one location for opening or expanding. She has not demonstrated that she works with communities directly to foster new or expanded economic development in those communities. Mary Strickland's duties, as delineated on pages 9 and 10, above, specifically call for recruitment, expansion and retention of WBEs (Women Business Enterprises) by providing business consulting services for business plans and loan packages, preparing financial projections, marketing financing programs, and serving as a representative for WBEs when presenting loan proposals to financial sources. Strickland's position also called for her to initiate calls on companies and to develop materials specific to the WBE program. By contrast, Weber's position does not require that she initiate contact with companies or communities. While she reviews business plans, she does not prepare financial projections. While Weber suggested sources of financing to prospective or existing business owners, she did not represent them in contacts with financial sources, including sources of funding within the Department.

Based upon the reference in the EDC specifications to planning and research, the EDC work examples that are dramatically different from Ms. Weber's responsibilities, and the CSS comparison positions discussed below, the CSS series more accurately describes Weber's duties even though, as noted below, that series focuses on community relations rather than interactions with specific businesses.

^c More specifically, 25% of Ms. Burr's time as an EDC was spent providing "assistance to communities and local development organizations in attracting, creating and retaining job opportunities," 20% was spent on consulting (and otherwise assisting) "*other economic development consultants*," and 30% was on special activities that focused on various forms of group training or education. This description belies Appellant's contention that Ms. Burr was spending the majority of her time on one-to-one consulting with individual small businesses. Even though Appellant ended up performing a segment of the work that had been assigned to Ms. Burr, it was clearly not the majority of Burr's responsibilities. Similarly, the justification for the reclassification of Ms. Strickland's position in 1992 from CSS 3 to EDC illuminates the distinctions between the two classifications as well as the distinctions between the work Ms. Strickland was performing as an EDC in comparison to the work that the Appellant was permanently assigned in October 1996. The document indicates that while a CSS 3, Ms. Strickland spent the majority of her time (55%) providing consulting services (only a fraction of which was comparable to the consulting provided by the Appellant) but that the time she spent on consulting work had dramatically decreased when her position was reclassified to EDC. By 1992, Ms. Strickland was spending only a fraction of the 30% of her time allocated to Goal A and the 20% allocated to Goal D on providing business consulting services. The vast majority of her time was spent on training and assistance to groups, targeting and initiating calls on companies contemplating expansion or relocation, developing seminars and on special activities. Again, even though Appellant ended up performing a segment of the work that had been assigned to Ms. Strickland, it was clearly not the majority of Ms. Strickland's responsibilities and was clearly not the work that justified classification of Ms. Strickland's position at the EDC level. These fundamental distinctions mean that both the Strickland and Burr EDC positions act to severely undercut any contention that Ms. Weber's permanently assigned duties in October 1996 merited reclassification of her position to the EDC level.

Community Services Specialist 3 (CSS 3) classification

The Personnel Commission offered the following description of the CSS series in the decision on Ms. Weber's initial (i.e. 1994) appeal:

[The CSS] 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 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 specification, 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 a 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 requests; 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.

WEBER v. DOCOM & DER, CASE NO. 95-0168-PC (PERS. COMM. 4/24/97), pages 6-7. The Community Services Specialist specifications were not modified during the period between Weber's 1994 reclassification request and her 1996 request. We adopt the PC's analysis of the CSS series and apply these distinctions to Weber's duties in 1996.

Just as in 1994, the record in the present matter indicates that Weber is a reactive resource, which confirms that her 1996 duties would not properly be classified at the CSS 3 level. Weber responds to general questions regarding small businesses, but she also serves as the Small Business Assistance Center's contact regarding business financing. A review of her testimony and the myriad business contact sheets that she submitted as exhibits makes it abundantly clear that she provides in-depth analyses of complex small business issues, which

includes reviewing business plans and ascertaining and recommending appropriate sources of funding for emerging new businesses.¹³ Weber also has some program development, policy, and evaluation responsibilities in the areas of training and publication as evidenced in her testimony regarding editing of publications, serving on survey committees and other activities. While the evidence does not support the conclusion that she seeks speaking engagements in the field, it is clear that she has numerous connections with economic development professionals at the local, state and federal level. We conclude, based solely on an analysis of the language of the relevant specifications, that Weber is properly classified as a CSS 2. In so doing, based on the record before us, we do not find that in 1996 Ms. Weber's position was "not a strong CSS 2 position from a classification standpoint" as did the Personnel Commission based on Weber's 1994 position.¹⁴

Comparison Positions

A comparison of Weber's position with others is an important component of the Commission's analysis of this matter and it supports a conclusion that the position is more appropriately classified at the CSS 2 level than the CSS 3 level or the EDC level:

James Holahan filled a position classified as CSS 1 at the time of Weber's reclassification request in 1996. His position was reclassified to a CSS 2, effective March 2, 1997. Mr. Holahan was employed by the Department of Commerce, Division of Marketing, Advocacy and Technical Development, Bureau of Small Business and Permit Assistance. The position summary from his CSS 2 PD indicates that the position incumbent

. . . performs highly responsible professional work involving a variety of activities (including consultive, technical, research and training) to promote economic development in Wisconsin by supporting and encouraging prospective and/or established small businesses. Serving as a one stop center for permits, occupational licenses and general business information, this position manages the Department of Commerce's toll free information service (1-800-HELP BUSIness), providing easier access to government for small businesses and

¹³ Respondents contend that Weber only answered routine questions from callers and provided them with printed information. Weber established, without any doubt, that she also analyzed information provided by current and prospective business owners. She utilized knowledge that she had gained through many years of experience in the Department and elsewhere to identify potential funding sources for businesses as well as ensure that business owners did not pursue sources for which they were ineligible. While Weber frequently had only one contact with a business owner, the evidence also supports her contention that she often had on-going relationships with individual businesses where she provided appropriate assistance to the business as it progressed from the "thinking about starting a business" stage to the "opening of the doors" stage and, sometimes, even to the "thinking about expansion" stage.

¹⁴ This finding re-affirms our decision, and that of the Personnel Commission, that Ms. Weber was properly permitted to proceed to litigate the question of whether or not she should have been classified as a CSS 3 rather than as a CSS 2. On this record there is significant evidence of in-depth analysis of business plans, business proposals, and funding requirements to determine that the bulk of the inquiries to which Weber responded required in-depth analysis of the situation and did not merely require the provision of off-the-shelf information as the Respondents contended at hearing.

increasing public and governmental awareness of small businesses' needs and concerns. Comprehensive information, general advice and technical assistance is supplied on all state agency permits and occupational licenses, as well as start-up planning, organization, marketing, financing resources and related topics.

The position also fosters creation of communications networks and data exchange among and between persons, communities and agencies (public and private) interested in small business initiatives and issues. Works with trade associations, development organizations, community groups and local, state and federal agencies in stimulating various promotional and educational activities that encourage the formation and expansion of small businesses. This position also collaborates with the Department of Workforce Development (DWD) staff as a statewide specialist in providing special attention and assistance to workers who have been dislocated as a result of plant lay-offs and closures as a member of DWD's "Rapid Response Team."

This position is quite similar to Weber's, although the format of inquiries (managing the 1-800-HELP BUS line) is different. Whereas the responses Holahan generally provides are one-time answers or referrals to more appropriate staff for in-depth analysis, Weber receives referrals from the HELP BUS line and responds to those more in-depth questions. Although Weber responds to more in-depth inquiries, this is insufficient to support a conclusion that her position is at a higher level than is Holahan's because her position continues to be reactive and does not involve highly responsible planning, consulting and research activities. Additionally, Weber often has repeated contact with callers.

Michael Malcheski is classified as a CSS 2 in the Department of Commerce. His position is described as providing

. . . technical assistance services to local units of government, and community based organizations and associations on community development techniques, strategies, financing and on the identification of resources to develop and implement local projects. In addition, business development assistance will be provided to entrepreneurs and small businesses located in communities participating in other Division programs, including the Main Street and Development Zone Programs. This assistance will include identifying market potential and feasibility, business plan development, financial packaging, business structure and inventory control. The position will serve as the Department's primary contact on business incubator development and Tax Increment Financing.

This position was used as a comparison position by the PC when it reviewed Weber's 1994 reclassification request. At the time, the PC found that this position satisfies the requirements for classification at the CSS 2 level in that 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." The PC found that the position was a stronger position than Weber's at the time, 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.

Michelle Harkins is a CSS 3 who works under the direction of the Department Fiscal Officer in the Department of Commerce. The position summary states:

This position is a statewide economic development specialist based in Madison with some travel. The position represents the Department in the design, negotiation, and implementation of local economic development programs. The specialist serves as a bureau expert in reviewing financial statements and pro formas for the Wisconsin Development Economic Development (WDF-ED) portion of the HUD funded Community Development Block Grant (CDBG) Program. Conducting reviews and analyses of business financial statements is an integral part of the position responsibilities. The position is responsible for being a resource person on more general credit analysis issues including the Department's Public Facilities Economic Development Program and participating in the Department training programs.

This position was also considered by the PC as part of its review of Weber's 1994 reclassification request.¹⁵ We concur in the PC's analysis of this position as satisfying the CSS 3 requirements of serving both as a proactive and reactive resource, by providing in-depth analysis of complex financing issues, and by having significant program planning, policy and evaluation roles. The difference between this position and that of Weber's is significant and, again, supports the finding that Weber is properly classified as a CSS 2.^D

¹⁵ The incumbent's name was Michelle Unga at the time.

^D Mary Strickland's CSS 3 position description also reflects duties that are at a higher classification than those responsibilities permanently assigned to Ms. Weber during the period relevant to the October 1996 effective date. Ms. Strickland performed a wider range of consulting that was of greater depth than the responsibilities assigned to Appellant. Strickland was also responsible for extensive loan work, training, marketing and community liaison work in contrast to Appellant. These duties coincide with serving as the bureau expert in the specialty field, training, and applying for necessary funding, all of which are elements in the CSS 3 definition statement.

Ms. Weber sought reclassification as either as CSS 3 or EDC. As noted above, the relevant specifications and the comparison positions indicate that her position was better described as a CSS 2. Accordingly, we conclude that Respondents did not err in denying Weber's October 1996 request for reclassification and affirm that her position is better described at the CSS 2 level rather than either the CSS 3 or EDC classifications.

Dated at Madison, Wisconsin, this 8th day of June, 2006.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Judith Neumann /s/

Judith Neumann, Chair

Paul Gordon /s/

Paul Gordon, Commissioner

Susan J. M. Bauman

Susan J. M. Bauman, Commissioner