

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

MARY CZYNZAK-LYNE, Appellant,

v.

**STATE OF WISCONSIN, DEPARTMENT OF ADMINISTRATION,
OFFICE OF STATE EMPLOYMENT RELATIONS**, Respondent.

Case 734
No. 66164
PA(der)-166

Decision No. 32633

Appearances:

Kurt C. Kobelt, Lawton & Cates, P.O. Box 2965, Madison, Wisconsin, 53701-2965, appearing on behalf of Appellant Mary Czynzak-Lyne.

David J. Vergeront, Legal Counsel, Office of State Employment Relations, Post Office Box 7855, Madison, Wisconsin 53707-7855, appearing on behalf of Respondent State of Wisconsin, Department of Administration, Office of State Employment Relations.

ORDER GRANTING MOTION FOR SUMMARY JUDGMENT

This case concerns an appeal of a decision, by the Office of State Employment Relations, reallocating the Appellant's position. On February 25, 2008, Respondent filed a motion for summary judgment. Both parties subsequently filed written materials pertaining to the motion. The final submission was received on April 30, 2008.

FINDINGS OF FACT

1. As a result of an Administrative Support Personnel Management Survey conducted by Respondent, Appellant's position was reallocated to the University filed an appeal of the reallocation decision with the Wisconsin Employment Relations Services Program Assistant ("USPA") classification, effective July 24, 2005. Appellant Commission, contending that her position should have been reallocated to the Academic Department Specialist ("ADS") classification.

Dec. No. 32633

2. The Appellant's position is in the University of Wisconsin-Madison, College of Letters & Science, Honors Program. The working title for the Appellant's position is Program Assistant. The position description for the Appellant's position, which was signed by the Appellant on October 19, 2005, provides the following, in pertinent part:

POSITION SUMMARY

This is a sole full-time classified staff position in the L&S Honors Program. This position operates independently as the Office Administrator, performing work of a paraprofessional nature responsible for finance management, payroll and benefits, and the undergraduate program. Responsibilities of the position include administrative oversight and implementation of all classified and non-classified human resources and appointment process, including coordination of payroll and staff benefits functions. The emphasis of this position is on development, coordination and administration within these areas. This position is under the general direction of the Program Director and Associate Director for Administration, but with no direct supervision. This position requires a comprehensive knowledge of, and ability to interpret and analyze, college and university policies, federal and state guidelines, rules and regulations relating to payroll and benefits, accounting and purchasing, instruction, student records, timetable, fiscal management, time management and record maintenance. The position also requires excellent customer service skills, project management and organization skills, as well as facilitation and negotiating skills and the ability to interact positively and independently with university administration, faculty, staff, students, parents, and the community. Additionally, the position requires participation in development, revision, and implementation of policies and procedures; and oversight of student workers. Mandatory requirements include strong oral and written communication skills, data interpretation and analysis, exacting attention to details and prioritization, advanced computer skills as well as ability to handle a wide variety of tasks simultaneously and superior political judgment when dealing continuously with the larger public constituted by parents and applicants to the Honors Program.

3. The specifications for the ADS classification provide as follows, in pertinent part:

I. INTRODUCTION

A. Purpose of This Classification Specification

This classification is the basic authority under ER 2.04, Wis. Adm. Code, for making classification decisions relative to present and future paraprofessional administrative support positions that

function as the primary or sole Academic Department Representative for a university academic department, academic research center, or an area studies program or a language studies program located within a University of Wisconsin System campus. Positions report directly to an Academic Department Chairperson, Research Center Director or Academic Program Director of a school, an area studies program or a language studies program and are responsible for overseeing the daily administrative operations of the department or center, including the grants activities and performing human resources and purchasing duties. This classification specification is not intended to identify every duty, which may be assigned to positions, but is intended to serve as a framework for classification decision-making in this occupational area.

...

B. Inclusions

This classification encompasses paraprofessional positions that exercise discretion and independent judgment in matters of significance to the operations of and are delegated responsibility for the administrative matters internal or external to the academic department, research center, or language/studies program under general supervision. These positions directly report to and have the authority to act on behalf of the Department Chair person, Research Center Director, or Academic Program Director of a school or an area studies program such as Women Studies or a language studies program such as Chicano/a Studies. These positions represent the academic department or research center regarding policy and departmental administrative issues. Positions in this classification oversee several key administrative function in support of the mission of the department or center, including: grants, human resources, operating budget; payroll for a variety of employment types including academic, classified and faculty staff; purchasing; UW Foundation, gifts and trust accounts; and undergraduate and graduate programs. These positions function as the primary or sole paraprofessional position in an academic department or research center where there isn't a classified supervisor.

C. Exclusions

Excluded from this classification are the following types of positions:

...

8. Positions that do not report to a Department Chairperson, Research Center Director, or Academic Program Director of a school, area or language studies program and are more appropriately classified as Office Operations Associate, Office Associate, University Services Associate 1 or 2.

...

II. DEFINITIONS

ACADEMIC DEPARTMENT SPECIALIST

Positions allocated to this classification perform complex paraprofessional work under general supervision of academic staff for a majority of time. Positions at this level are located in an academic department, research center, area studies program or language studies program[.] Positions report to and have delegated authority from the Department Chairperson, Research Center Director or Academic Program Director of a school, an area studies program or a language studies program for management of the day-to-day operations. Positions may lead the work of classified staff; students and LTE's. Positions perform complex duties including administration, fiscal, human resources, payroll and purchasing and, in addition, administer the grants and/or undergraduate/graduate programs. The responsibilities of the position will include the majority of the duties in each of the following functional areas.

...

4. The specifications for the USPA classification provide as follows, in pertinent part:

I. INTRODUCTION

...

B. Inclusions

This series encompasses paraprofessional positions that, for the majority of time (more than 50%), support student programs, social programs that compliment classroom learning, instructional programs, or research programs that are unique to higher education and report to professional or administrative staff. These positions are located in an administrative unit or academic

department within a University of Wisconsin System campus or system office and perform complex program and/or administrative support for an office or department which is primarily responsible for a student or higher education specific program area. The program areas supported include, but are not limited to: student registration, tuition, fees, admissions, residence life, health services, counseling and other program areas unique to higher education where complex policies and regulations are applicable. These positions may require extensive knowledge of student information and reporting systems; Registrar's Office registration policies; Bursar's Office tuition and fees policies; Graduate School's admission policies; Academic department admission policies; state and federal foreign student immigration rules and regulations; federal and state laws regarding the maintenance and distribution of student records and student record certification procedures. Positions located in a central or system administrative office or department will have interaction in an office or department which is primarily responsible for programs unique to higher education and may globally provide support without having direct student program interaction.

...

II. DEFINITIONS

UNIVERSITY SERVICES PROGRAM ASSOCIATE

These are professional positions that spend the majority of time (more than 50%) providing support to an office or department that is primarily responsible for a student program or a program area unique to higher education. These positions perform a combination of complex program-related and/or administrative program functions that support student programs, social programs that compliment classroom learning, instructional programs or research programs. Positions at this level provide support to administrators, faculty, academic and/or research staff. Positions require considerable knowledge of the program area to enable the employee to work effectively and independently in a wide range of work situations. Positions exercise a high level of complexity as evidenced by the degree of involvement, interpretation of regulations and impact of decision required. Positions have a significant role and responsibility to make complex independent judgments and decision within the scope of their responsibility as a result of delegated authority. The worker activities are governed by a variety of complex rules and regulations, which often require analysis and interpretation. Performance of these worker activities requires extensive contact with operating units

within the department and/or between campus departments, the general public, and may include student contact. Positions at this level may also perform lead-work duties, including training, assigning work, and reviewing the work of others in the assigned program area. Work is performed under general supervision.

. . .

5. The Appellant's position does not report directly to an Academic Department Chairperson, Research Center Director, or Academic Program Director of a school, an area studies program, or a language studies program.

6. The Appellant's position is not responsible for overseeing the daily administrative operations of the Honors Program.

CONCLUSIONS OF LAW

1. This matter is properly before the Commission pursuant to Sec. 230.44(1)(b), Stats.
2. Respondent has the burden to show that there are no genuine issues of material fact and that it is entitled, as a matter of law, to summary judgment in its favor.
3. Respondent has satisfied its burden.

ORDER¹

Respondent's motion for summary judgment is granted and this appeal is dismissed.

Given under our hands and seal at the City of Madison, Wisconsin, this 26th day of December, 2008.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Judith Neumann /s/

Judith Neumann, Chair

Susan J. M. Bauman /s/

Susan J. M. Bauman, Commissioner

Commissioner Paul Gordon did not participate.

¹ Upon 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 the Order.

MEMORANDUM ACCOMPANYING ORDER
GRANTING MOTION FOR SUMMARY JUDGMENT

The Commission may summarily decide a case when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. *BALELE V. WIS. PERS. COMM.* 223 Wis.2D 739, 745-748, 589 N.W.2D 418 (CT. APP. 1998). Generally speaking, the following guidelines apply. The moving party has the burden to establish the absence of any material disputed facts based on the following principles: (a) any disputed facts that would not affect the final determination are immaterial and insufficient to defeat the motion; (b) inferences to be drawn from the underlying facts contained in the moving party's material should be viewed in the light most favorable to the party opposing the motion; and (c) doubts as to the existence of a genuine issue of material fact should be resolved against the party moving for summary judgment. *See, GRAMS V. BOSS*, 97 Wis.2D 332, 338-339, 294 N.W.2D 473 (1980), *abrogated on other grounds*, *BALELE V. DOT*, CASE NO. 00-0044-PC-ER, (Pers. Com. 10/23/01). The non-moving party may not rest upon mere allegations, mere denials or speculation to dispute a fact properly supported by the moving party's submissions. *BALELE, ID., citing MOULAS V. PBC PROD.*, 213 Wis.2D 406, 410-411, 570 N.W.2D 739 (CT. APP. 1997). If the non-moving party has the ultimate burden of proof on the claim in question, that ultimate burden remains with that party in the context of the summary judgment motion. *BALELE, ID., citing, TRANSPORTATION INS. CO. V. HUNTZIGER CONST. CO.*, 179 Wis.2D 281, 290-292, 507 N.W.2D 136 (CT. APP. 1993).

It is appropriate to apply the above guidelines in a flexible manner, after considering at least the following factors that are relevant to resolution of a matter filed under Sec. 230.44, Stats.:

1. *Whether the factual issues raised by the motion are inherently more or less susceptible to evaluation on a dispositive motion.* Subjective intent is typically difficult to resolve without a hearing whereas legal issues based on undisputed or historical facts typically could be resolved without the need for a hearing.
2. *Whether a particular Appellant could be expected to have difficulty responding to a dispositive motion.* An unrepresented Appellant unfamiliar with the process in this forum should not be expected to know the law and procedures as well as an Appellant either represented by counsel or appearing *pro se* but with extensive experience litigating in this forum.
3. *Whether the Appellant could be expected to encounter difficulty obtaining the evidence needed to oppose the motion.* An unrepresented Appellant who either has had no opportunity for discovery or who could not be expected to use the discovery process, is unable to respond effectively to any assertion by Respondent for which the facts and related documents are solely in Respondent's possession.

4. *Whether the Appellant has engaged in an extensive pattern of repetitive and/or predominantly frivolous litigation.* If this situation exists it suggests that use of a summary procedure to evaluate his/her claims is warranted before requiring the expenditure of resources required for hearing.

BALELE, ID., AT 18-20. This method of analysis was adopted by the Commission in DOC & DER (SCOTT), DEC. No. 30767 (WERC, 1/04).

We now turn to applying the above factors to this case. The present motion does not focus on subjective intent and instead relies on undisputed facts. Further, although the Appellant filed the present appeal on a *pro se* basis, the Appellant's attorney subsequently made a notice of appearance and filed the materials responding to the motion for summary judgment. Moreover, it is apparent that the Appellant knows what responsibilities have been assigned to her and, to the extent determination of the motion relies on the nature of the Appellant's responsibilities, the Appellant would be able to identify any areas of responsibility that are in dispute. Finally, there has been no showing that Appellant has engaged in an extensive pattern of repetitive and/or predominantly frivolous litigation. Given these circumstances, we conclude that the Appellant, to survive the motion for summary judgment, should be held to the requirement that she show that there are genuine issues of disputed facts.

The ADS specifications provide that positions in the classification "report directly to an Academic Department Chairperson, Research Center Director or Academic Program Director of a school, an area studies program, or a language studies program". The Respondent contends that the Appellant's position cannot meet these reporting requirements. The arguments of the parties relative to this point focus on the question of whether the Honors Program can be considered a department.

The University of Wisconsin-Madison's internet listing of departments and programs does not mention the Honors Program. Also, on the College of Letters & Science organizational chart, the Honors Program is not identified under any of the "departments" or "programs" headings. Indeed, as the Respondent points out, the Honors Program is on an altogether separate line from the listed departments and programs, affiliated organizationally, instead, with Academic Planning, the Chazen Museum of Art, College Relations, and facilities management.

The Appellant points out that the internet directory page that features the Appellant's contact information identifies the Honors Program in the "department" category. That directory page, however, also identifies the Honors Program in the "unit" category. Such redundancy suggests that the directory cannot be relied on for a precise reflection of the University's organizational structure. Describing the organizational structure is, on the other hand, the actual purpose of the organizational chart, and the indication therein that the Honors Program is not a department trumps any suggestion, in the directory, to the contrary.

The Appellant attempts to cast doubt on the reliability of the listing of departments and programs by asserting that it does not account for a July, 2004 administrative reorganization that separated the Honors Program from the Academic Affairs Department and made it a freestanding entity within the College of Letters and Science. A copyright date of 2006, however, suggests that the listing does account for the reorganization. Further, the non-inclusion of the Honors Program in the listing of departments and programs is mirrored by the organizational chart, which is dated August, 2006. Even the November 2005 Report of the Faculty Honors Committee submitted by the Appellant, wherein the reorganization is described, never refers to the Honors Program as a department. The same is true for a reclassification form submitted by the Appellant in June, 2005.

The Appellant's effort to characterize the Honors Program as a department because of its "comparable" academic nature also is not persuasive. As the Respondent accurately points out, the reporting requirements repeatedly set forth in the ADS specifications are unequivocal. Further, they are reinforced by the specification exclusions, which carve out of the ADS classification any positions that do not meet those requirements. The Appellant contends that the reporting requirements are merely intended to ensure that positions in the ADS classification are confined to academic responsibilities, but she fails to point to any language in the specification that supports this reading. Nor does the Appellant present any comparable positions that would support her expansive interpretation of the specifications. To read flexibility into the reporting requirements where none is indicated would be to rewrite the ADS specification, an act that is unquestionably beyond the Commission's authority. *KAMINSKI ET AL. V. DER*, CASE NO. 84-0124-PC, (PERS. COM. 12/6/84).

Finally, the reporting requirements are not met even accepting at face value the Appellant's assertion that she reports not only to Jeffrey Shokler, the Associate Director of the Honors Program, but also to Christopher Kleinhenz, the Director of the Honors Program. Although it is clear that both Mr. Shokler and Mr. Kleinhenz have academic responsibilities, neither of them is an academic department chairperson, a research center director, or an academic program director of a school, area studies program, or a language studies program.

The Respondent also asserts that the Appellant's position cannot be placed in the ADS classification because it is not "responsible for overseeing the daily administrative operations" of the Honors Program. As the Respondent points out, the position description for Jeffrey Shokler indicates that it is one of his responsibilities – indeed, the first one identified in the listing of responsibilities for his position – to "manage the day-to-day operations of the Honors Program". The Appellant's assertions regarding her position responsibilities do not dispute the contention that she does not oversee such operations. In her declaration, the Appellant only asserts that she is "actively involved in assisting [Mr. Shokler] in overseeing data collection and maintenance activities of the program, providing personalized and professional responses to students, faculty, staff and interested parents who contact the program office, organizing and coordinating major activities such as the Sophomore Apprenticeship Retreat and the Fall First-Year Student Retreat, and reconciling monthly account statements" (emphasis added). Further,

in the exhibit that purports to highlight the portions of the ADS specifications that reflect the Appellant's job duties, the Appellant highlights the words, "day-to-day operations", but does not highlight the immediately preceding phrase, which is "management of". Such an omission reinforces the conclusion that the Appellant participates in day-to-day operations but cannot claim that she is responsible for overseeing them.

It also bears pointing out that the Appellant never asserts that her position does not fit in its current USPA classification. Although this observation is not determinative under the required "best fit" analysis, *DER & DP v. PC (DOLL)*, DANE COUNTY CIRCUIT COURT, 79-CV-3860, 9/21/80, it does allow for the basic conclusion that her position fits within the classification to which it has been reallocated.

This decision is not precluded by any procedural defects alleged by the Appellant to undercut the Respondent's motion. The Appellant claims that the Respondent's initial submission cites exhibits without setting forth accompanying factual averments, leaving the Appellant and the Commission to speculate as to the nature of the allegedly undisputed material facts. Our conclusion that the Respondent's assertions are sufficiently clear is supported by the Appellant's ability, in its submission, to substantively address the assertions that lie at the heart of the Respondent's motion. Further, the Appellant asserts that the Respondent submits no direct evidence regarding Appellant's actual job duties, but only a bare position description that constitutes hearsay evidence of Appellant's job duties. Because the Respondent withdrew its contention that the Appellant does not perform duties in all of the functional areas delineated in the ADS specifications, this alleged shortcoming is not relevant to the outcome of this decision.

For the reasons set forth above, the Respondent's motion must be granted.

Dated at Madison, Wisconsin, this 26th day of December, 2008.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Judith Neumann /s/

Judith Neumann, Chair

Susan J. M. Bauman /s/

Susan J. M. Bauman, Commissioner

Commissioner Paul Gordon did not participate.

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