

STATE OF WISCONSIN

PERSONNEL COMMISSION

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 *
 ELMER O. CADY,
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 Appellant,
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 v.
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 DIVISION OF PERSONNEL,
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 Respondent.
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 Case No. 78-2-PC
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ORDER

NATURE OF THE CASE

This is an appeal from the denial of appellant's request for the reclassification of the position of Gerald Vigdal from Social Services Supervisor 3 (PR 1-16) to a higher position. On November 22, 1978, the Personnel Commission issued an Interim Decision (copy attached) denying respondent's motion to dismiss on the grounds that the appellant lacked standing to raise the issue in this appeal. On August 31, 1979, the Commission issued an Order of Substitution, wherein Elmer O. Cady was substituted for Allyn R. Sielaff, the original appellant. (Copy attached).

The Commission issued an Order on June 7, 1979 adopting the Proposed Findings, Conclusions, and Opinion as set forth in the Proposed Decision of the hearing examiner, (copies attached) and establishing a briefing schedule on the following questions:

1. Whether the transaction should be denominated a reallocation or a reclassification.
2. What should be the effective date of the reallocation or classification.

OPINION

The Commission has considered the arguments set forth in the briefs of the parties as well as the respondent's objection to the substitution of Elmer O. Cady, successor to the appellant's position, as a party.

The issue of reallocation versus reclassification was raised by the respondent for the first time in the course of oral argument before the Commission on respondent's objections to the Proposed Decision on May 9, 1979. Consequently there are no Findings of Fact which address this issue directly. However, the following chronology is supported by both the Proposed Findings adopted by the Commission and the evidence adduced at the hearing on the merits on December 1, 1978.

1. This appeal arose out of a reclassification request dating back to 1976, at which time Gerald Vigdal was and had been since July, 1973, a Social Services Specialist 3 (PR 1-16) in his present position.

2. Effective April 24, 1977, Mr. Vigdal was reclassified to Social Services Supervisor 3, also (PR 1-16) by the Department of Health and Social Services. (Findings 2 and 5, Proposed Decision, neither of which were disputed by respondent's counsel in her objections during oral argument.)

3. On June 20, 1977, the appellant requested a review of that reclassification. An audit of Mr. Vigdal's position was conducted by DHSS, and it was determined that the original reclassification to SS Supervisor 3 was correct, as detailed in a memorandum to the appellant dated September 22, 1977. Appellant was advised of the right to request

referral of this action to the Director of the then State Bureau of Personnel. (Respondent's Exhibit 6).

4. On September 27, 1977, appellant requested such referral. On January 23, 1978, the Bureau of Personnel denied the appellant's request for reclassification of Mr. Vigdal's position to a higher level in a letter referenced "SUBJECT: Reclassification Re-review." The appellant appealed that action pursuant to §230.44(1)(a). (Commission's Exhibit 1).

Respondent takes the position that if any personnel transaction is appropriate, it should be a reallocation, since there was no demonstrated change in the duties and responsibilities of Mr. Vigdal's position such that a reclassification is warranted. However respondent's position ignores the fact that this appeal relates back to a 1976 reclassification request and the resultant reclassification of his position. That action was not denominated a reallocation; although no evidence was introduced regarding the basis for that transaction, the presumption of official regularity supports the inference that the transaction was properly characterized as a reclassification.

An appeal was taken from that action because it was the appellant's belief that the position should be classified at a higher level. The issue in this case is not whether the transaction is a reclassification or a reallocation, but rather, at what level and to what classification Mr. Vigdal should have been reclassified originally. The action which triggered this appeal was the January 23, 1978, letter from the Deputy Director of the respondent's predecessor agency, denying a higher

classification of Mr. Vigdal's position on the basis of its Reclassification (emphasis provided) Re-review.

Under all the circumstances the transaction in question is properly denominated a reclassification and the Commission so orders.

The effective date is determined to be April 24, 1977, the date of the original reclassification.

Respondent objects to the substitution of Elmer O. Cady, successor to appellant's position, as a party in this matter on the following grounds:

1. That he lacks standing to appeal under §§227.01(6) and 227.064 Stats.,
2. that his appeal is not timely filed under §230.44(3), and
3. that there is no action of the administrator from which an appeal can be taken under §230.44(1)(a) and (b).

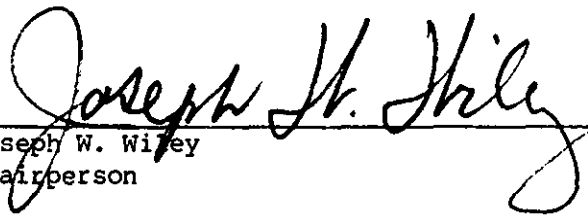
The Commission dismissed the respondent's objection as to appellant's standing in its Interim Decision dated November 22, 1978, copy attached. Points 2 and 3 above are irrelevant in the light of §803.10(4)(a), Stats., which provides that, when a public officer is a party to an action in an official capacity and during its pendency ceases to hold office, the successor is automatically substituted as a party.

Pursuant to that statute, the Commission determines that Elmer O. Cady is properly substituted for Allyn R. Sielaff as appellant in this action. (Order of Substitution Attached).

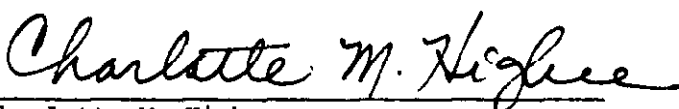
ORDER

IT IS HEREBY ORDERED that the actions and decisions of the respondent denying the appellant's reclassification request are modified and this matter is remanded to the administrator for action in accordance with this decision, pursuant to §230.44(4)(c), Stats.

Dated: Sept 5, 1979. STATE PERSONNEL COMMISSION



Joseph W. Wiley
Chairperson



Charlotte M. Higbee
Commissioner

CMH:jmg

9/5/79

STATE OF WISCONSIN

PERSONNEL COMMISSION

* * * * *
 ALLYN R. SIELAFF,
 Appellant,
 v.
 DIVISION OF PERSONNEL,
 Respondent.
 Case No. 78-2-PC
 * * * * *

INTERIM
DECISION

FINDINGS OF FACT

1. This is an appeal of the denial of a reclassification request.
2. The reclassification request related to a position in the Drug and Alcohol Abuse Section, Bureau of Clinical Services, Division of Corrections occupied by Mr. Gerald Vigdahl.
3. The appeal of that denial was taken by Mr. Sielaff, Administrator of the Division of Corrections.
4. The respondent has objected to subject matter jurisdiction on the grounds that Mr. Sielaff lacks standing to raise the issue in this appeal.
5. This reclassification request was denied on January 23, 1978.
6. The appeal was filed February 16, 1978.

CONCLUSIONS OF LAW

1. Pursuant to §129(5), chapter 196, Laws of 1977, this case must be decided by the Commission under prior law, specifically §16.05(1)(f), Stats. (1975).
2. Appellant Sielaff is an interested party under §16.05(1)(f), Stats.

(1975).

3. Appellant Sielaff has standing to pursue this appeal.

OPINION

This appeal was filed on the effective date of Chapter 196 and was not transferred to the Commission and is not decided under prior law. §129(5), Chapter 196, Laws of 1977. Section 16.05(1)(e), Stats. (1975) provided for appeals of actions and decisions of the director by "interested parties." Section 227.01(6), Stats., provides for standing for any person whose "substantial interests may be adversely affected" by adverse agency action. The supreme court in Wisconsin's Environmental Decade Inc. v. PSC, 69 Wis. 2d 1, 13 230 N.W. 2d 243 (1975), has held that the law of standing should be liberally and not narrowly or restrictively construed.

Section 230.44(1)(a) Stats. (1977), which now provides for appealable actions, does not set forth who can appeal actions of the administrator. Chapter 227 provides rules of standing, and we must look to the aforesaid subsection.

Mr. Sielaff clearly pursues this appeal in his official capacity as head of the Division of Corrections. In the Commission's opinion his "substantial interests" are affected by the classifications of positions in his agency. These classifications have a bearing on the morale and efficiency of the incumbents and the ability to recruit high quality replacements in the case of vacancies, to mention just a few factors.

ORDER

The respondent's motion to dismiss is denied.

Dated: Nov 22, 1978.

Edward D. Durkin
Edward D. Durkin
Commissioner

Dated: Nov. 22, 1978.

Charlotte M. Higbee
Charlotte M. Higbee
Commissioner

Dated: Nov 22, 1978.

Joseph W. Wiley
Joseph W. Wiley
Chairperson

STATE OF WISCONSIN

PERSONNEL COMMISSION

* * * * *

ALYN R. SIELAFF, *

Appellant, *

v. *

DIVISION OF PERSONNEL, *

Respondent. *

Case No. 78-2-PC *

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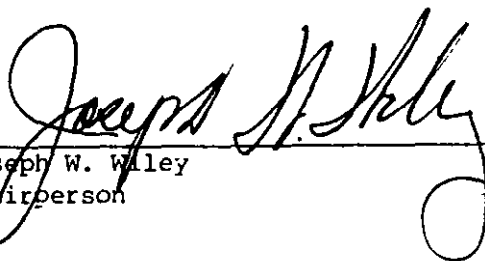
ORDER
OF
SUBSTITUTION

By virtue of the replacement of the named appellant, Allyn R. Sielaff as Administrator of the Division of Corrections in the Department of Health and Social Services by Elmer O. Cady,

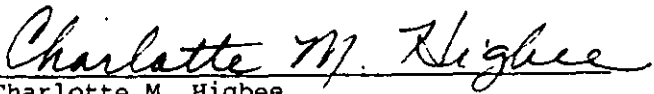
IT IS HEREBY ORDERED that said Elmer O. Cady is substituted as appellant in the captioned matter.

Dated: August 31, 1979.

STATE PERSONNEL COMMISSION



 Joseph W. Waley
 Chairperson



 Charlotte M. Higbee
 Commissioner

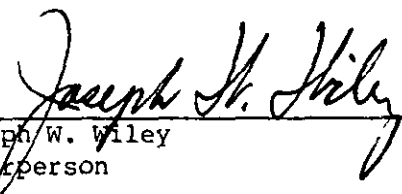
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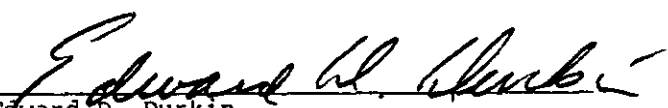
Sielaff v. DP
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Page 2

Dated: June 7, 1979.

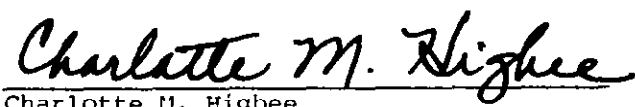
STATE PERSONNEL COMMISSION



Joseph W. Wiley
Chairperson



Edward D. Durkin
Commissioner



Charlotte M. Higbee
Commissioner

AJT:jmg

STATE OF WISCONSIN

PERSONNEL COMMISSION

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ALLYN R. SIELAFF,
 Appellant,

v.

DIVISION OF PERSONNEL,
 Respondent.

Case No. 78-2-PC

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PROPOSED
 DECISION

NATURE OF THE CASE

This is an appeal from the decision of the deputy director of the Bureau of Personnel, denying appellant's request for the reclassification of the position of Gerald Vigdal from Social Services Supervisor 3 (PR 1-16) to a higher level. On November 22, 1978, the personnel commission issued an Interim Decision denying respondent's motion to dismiss on the grounds that the appellant lacked standing to raise the issue in this appeal and concluding that the appellant is an interested party under §227.01(6), Stats., which governs this appeal.

ISSUE

The only issue of fact is whether Gerald Vigdal's position should be classified at a higher level than Social Services Supervisor 3 (SS Sup. 3), namely SS Sup. 4, Psychologist Supervisor 1 or 2 (Psych. Sup. 1-2), or Human Services Administrator 1 or 2 (HSA 1-2).

FACTS

1. Appellant is administrator of the Division of Corrections in the Department of Health and Social Services, which includes the Bureau

of Program Resources.

2. Since July, 1973, Gerald Vigdal has been employed as supervisor of the Drug and Alcohol Abuse section in the Bureau of Human Resources. His immediate supervisor is Dr. Eugene H. Strangman, PhD, Psychologist Supervisor 3, Clinical Services (PR 1-19), one of three assistant directors of that bureau.

3. There are six sections under Dr. Strangman's direct supervision, all having direct line responsibility through him to the bureau director and the appellant, deriving their duties and responsibilities therefrom. The other five section supervisors, all at PR 1-18, are:

Adult Institution	Psychologist Supervisor 2
Juvenile Institution	Psychologist Supervisor 2
Community Services	Psychologist Supervisor 2
Clinical Training and Special Projects	Psychologist 6
Clinical Research	Psychologist 6

4. Mr. Vigdal is the only supervisor with statewide responsibility.

5. Effective April 24, 1977, as the result of an earlier reclassification request, Mr. Vigdal was reclassified from SS Specialist 3 (PR 1-16) to SS Sup. 3 (PR 1-16) by the Department of Health and Social Services, which denied his request for reclassification to a higher level. This decision was appealed to the former Personnel Board, and the appeal was subsequently withdrawn by appellant at the request of the Bureau of Personnel on the ground that reclassification to a higher level involved non-delegated authority and that, since the Bureau of Personnel had not reviewed the matter, the Personnel Board lacked jurisdiction.

6. Mr. Vigdal's position was reviewed by the Bureau of Central Personnel in September, 1977 and the request for reclassification denied.

At the request of the appellant, the position was re-reviewed, and on January 23, 1978 the Deputy Director of Personnel determined that the duties and responsibilities assigned to Mr. Vigdal were properly classified at the SS Supervisor 3 level and that the DHSS denial of the reclassification request was appropriate.

7. Mr. Vigdal's position was compared with all possible jobs to which he could be reclassified, namely SS Supervisor 4, Psychologist Supervisor 1 and 2, and HSA 1 and 2, as well as other SS Supervisor 3 positions (Respondent's Exhibit 9-18).

8. Respondent denominated comparison of Vigdal's position with the Psychologist 5 (Respondent's Exhibit 14) and Psychologist Supervisor 2, 3, and 4 (Respondent's Exhibit 9-13) "especially relevant" because those positions were in the same work unit.

9. The positions of Vigdal (Respondent's Exhibit 8) and the Psychologist Supervisor 2's (Respondent's Exhibit 10, 12, 13) are substantially similar in the nature of tasks performed, as evidenced by the Job Summaries, listing of duties and responsibilities, and the Supervisory Analysis forms: both positions are supervised by a Psychologist Supervisor 3; both are responsible for directly supervising the activities of other classified employees, including professionals; and, in the case of Mr. Vigdal only, a lower level supervisor; both independently interview applicants and effectively recommend hiring but neither selects new employees; both effectively recommend formal discipline, up to and including discharge up to a level in the chain of command where such action can be authorized; both prepare formal performance evaluations, sign as first line supervisors, and discuss evaluations with employees; both are

identified as a formal step in the employe grievance procedure and have the authority to settle work-related complaints prior to the filing of a formal grievance.

10. The Psychologist Supervisor 2, 3, and 4 positions supervise psychologists.

11. The Psychologist 5 and Psychologist Supervisor 3 and 4 positions are not substantially similar to Vigdal's position in the nature of tasks performed.

12. Mr. Vigdal has a master's degree in social work.

13. Psychologists are "priced" at a higher level because of their clinical responsibilities. At the time of this review the Psychologist 5 and Psychologist Supervisors were required to have either a PhD or a master's degree with considerable experience as a clinical psychologist. All are, in fact, PhD's.

14. There is no position directly comparable to Mr. Vigdal's, in DHSS, either in the Division of Corrections or in the Division of Community Services, which includes the Bureau of Alcohol and Other Drug Abuse (OADA).

15. The Bureau of Personnel denial letter states that the significant factor in differentiating Mr. Vigdal's position from the SS Supervisor 4 in the Division of Corrections, Bureau of Institutions, would be the nature, scope, and complexity of the programs being administered. (Commission's Exhibit 1B).

16. The evidence does not support that distinction in that:

a) Mr. Vigdal's position has total responsibility for the alcohol and drug abuse program in all state correctional institutions as

relates to the Division of Corrections, not only for inmates but also for probationers and parolees serviced by the regional and district offices throughout the state, involving both the Bureau of Institutions and the Bureau of Community Corrections (formerly the Bureau of Probations and Parole). Of the 3500 - 4000 persons incarcerated and 18,000 probationers and parolees, from 60 - 70% have a history of substance abuse, and about 50% of that group are taking advantage of the programs of Vigdal's section. Mr. Vigdal has direct line supervisory responsibility for 16 - 17 persons, including a SS Supervisor 2, SS Psychologist Supervisor 1's, and Psychological Services Associates. He serves as liaison to the Bureau of Alcohol and Other Drug Abuse in the Division of Community Services, DHSS. Vigdal's section utilizes services from that division in locating community agencies which can serve its clients.

b) The SS Supervisor 4, to whom Vigdal's position was compared, is Chief of the classifications section in the Bureau of Institutions, having institution-wide responsibility for the classification of inmates at the adult institutions administered by the Division of Corrections. This includes assessment and evaluation of inmates and recommendations for transfers to the institution best meeting the individual's needs. He directs the activities of the Assessment and Evaluation Centers at the state reformatory and state prison, staffed by 2 SS Specialist's, 7 Social Workers, 2 Officer 5's and 2 Client Service Assistants. He also has administrative responsibility for a contract parole program at the adult institutions staffed by a SS Supervisor 2 and 8 SS Specialist 1's. About 10% of his time involves contact with U.W. research programs

and other communitiy resources.

17. The job summary and listing of duties and responsibilities in Mr. Vigdal's position description and attached supervisory analysis (Respondent's Exhibit 8) conform to all the inclusions set forth in the Human Services Administrator (HSA) position standard except the organizational level.

18. HSA 1-2 positions to which Mr. Vigdal's position was compared conform to the requisite organizational level, namely deputy director and director of the Bureau of Alcohol and Other Drug Abuse in the Division of Community Services (Respondent's Exhibit 20 and 21) and an Assistant Director of the Bureau of Program Services in the Division of Corrections.

19. The only Division of Corrections position listed as representative in the HSA standards are Regional Chiefs-Bureau of Community Corrections (probation and parole) programs and activities in one of six regional areas (emphasis provided).

20. Mr. Vigdal's position is comparable to those of the HSA 1's, based on respondent's classification criteria for high level professional positions where there is administrative program and supervisory responsibility: both content and complexity of responsibility; independence of decision making; nature of environment in which those decisions are made; relative scope of authority not only in terms of who is supervised but also what program areas are supervised; how far that program authority stretches in terms of relating to other agencies, other work units and other functional operations within the state or within the division or department.

21. Although the SS Supervisor 3 standard lists Assistant Bureau

Directors as representative positions in the Division of Corrections,
the actual classifications of assistant directors in the Bureau of
Program Resources are at a higher level, namely:

Clinical Services	Psychologist Supervisor 3	PR 1-19
Program Services	H.S.A. 1	PR 1-17
Career Services	Administrative Officer 3	PR 1-18

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over this appeal pursuant to section 230.44(1)(a) Stats.
2. The burden of proof is on the appellant to show to a reasonable certainty by the greater weight of the credible evidence that the respondent was incorrect in classifying Mr. Vigdal's position at the Social Services Supervisor 3 level.

<u>Reinke v. Personnel Board</u>	53 Wis. 2d 123 (1971)
<u>Lyons v. Wettengel</u>	73-36, 11/20/78
<u>Bischel v. Bureau of Personnel</u>	78-24, 6/16/78

3. The appellant has carried the burden of proof and has shown the classification action of the respondent to be incorrect.
4. The action of the respondent must be rejected.

OPINION

In this appeal the appellant asserts that the position in question had the same assignments, duties and responsibilities as those delegated to the other Section Chiefs in the Bureau of Program Resources and should receive "equal pay for equal responsibility." For the appellant to prevail in this matter he must show by the greater weight of the credible evidence that Mr. Vigdal's position involves duties and responsibilities that

would be associated with a higher level than the SS Supervisor 3 classification. The appellant has succeeded in carrying this burden of proof in showing sufficiently that the position reflects a scope and complexity of duties and responsibilities comparable to either a Social Services Supervisor 4 or a Human Resources Administrator 1.

Because the Psychologists and Psychologist Supervisors have professional training and experience and perform clinical services which command a higher price in the market place, it is reasonable that they be classified at a higher level than Mr. Vigdal's position. However the evidence does not justify a two-level differential in this situation where the levels of administrative responsibility are substantially equivalent.

Respondent emphasized that this case should be decided on actual classification factors, whether or not management had designed Mr. Vigdal's position so that organizationally it would be comparable to the Psychologist Supervisor 2 positions. By these very standards the facts set forth in findings 3, 4, 9, 16-21 support a higher classification for Mr. Vigdal's position.

At the outset of the hearing in this matter, respondent reiterated her motion to dismiss on the grounds that appellant lacks standing to raise the issue in this appeal; respondent further objected to the fact that the appellant was not present at the hearing and was represented by the Director of the Bureau of Program Services rather than by himself or an attorney, based on her understanding that the case was to be decided under prior law. The motion is denied and the objection overruled.

Although the Interim Decision (copy attached) erroneously states as

conclusions of law: (1) "Pursuant to §129(5), Chapter 196, Laws of 1977, this case must be decided by the Commission under prior law, specifically §16.05(1)(f), Stats. (1975), (2) Appellant Sielaff is an interested party under §16.05(1)(f), Stats. (1975)," the opinion makes it clear that this appeal is not decided under prior law and that the Commission's determination concerning the appellant's standing was made pursuant to Sec. 227.01(6), Stats., not Sec. 16.05(1)(f), Stats. of 1975 (incorrectly noted as 16.05(1)(e) in that opinion.

Section 129(5), Chapter 196, Laws of 1977, provides:

"(5) Any case filed, heard or pending decision by the personnel board created under section 15.105(3), 1975 stats., and transferred under this act to the personnel commission, as created by this act, shall be decided by the personnel commission under prior law.

However, this appeal was filed with the Personnel Commisison on the effective date of Chapter 196, the second of such appeals under the new statute, hence sec. 129(5) is not applicable.

ORDER

IT IS HEREBY ORDERED that the actions and decisions of respondent denying appellant's request for Mr. Vigdal's reclassification are rejected and the matter is remanded to the Administrator for action in accordance with this decision, pursuant to Sec. 230.44(4)(c).

Parties will submit briefs as to the effective date of the reclassification, based on the following schedule:

Appellant -	30 days from date of Commission order
Respondent -	14 days thereafter
Appellant's reply -	7 days thereafter

Dated: _____, 1979.

STATE PERSONNEL COMMISSION

Joseph W. Wiley
Chairperson

Edward D. Durkin
Commissioner

Charlotte M. Higbee
Commissioner

CMH:jmg

2/28/79