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STATE OF WISCONSIN

PERSONNEL COMMISSION

DOROTHY JENSEN,

Appellant,

v.

UNIVERSITY OF WISCONSIN,

Respondent.

Case No. 78-84-PC



ORDER

On its own motion the Commission amends the Order dated June 28, 1979, as follows. The second paragraph of said Order is amended by deletion of all language after the word "decision," so that the paragraph now reads:

"The Commission adopts the Findings of Fact set forth in the Proposed Decision."

This amendment is made because the addition of Finding #12 in the June 28, 1979, Order was made solely through oversight and there is no basis in the record for this finding.

Dated: July 5, 1979.

STATE PERSONNEL COMMISSION

Joseph W. Wiley
Chairperson

Charlotte M. Higbee
Commissioner

AJT:jmg

7/5/79

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 DOROTHY JENSEN,
 Appellant,
 v.
 UNIVERSITY OF WISCONSIN,
 Respondent.
 Case No. 78-84-PC
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ORDER

This case was before the Commission for oral argument on June 11, 1979, following the issuance of a Proposed Decision and the preparation of a written transcript at the request of the respondent.

The Commission adopts the Findings of Fact set forth in the Proposed Decision of the hearing examiner with the addition of the following finding to conform to the record and in light of the parties' agreement on this point at the argument:

"12. The appellant was employed on a half-time basis."

The first Conclusion of Law is amended to read as follows:

"1. This case is properly before the Personnel Commission under §230.44(1)(b)."

This change is made to conform to the proof. This case was noticed for hearing pursuant to §230.44(1)(a). At the hearing it was established that the reclassification denial was made by the University on a delegated basis. See respondent's exhibit 5. It is noted that this appeal was opened by the Commission with both the University and the Division of Personnel as respondents and a copy of the appeal letter was served on both agencies. However, only the University appeared at the prehearing

conference and the Division of Personnel did not appear further in this case.

The second Conclusion of Law is amended to read as follows:

"2. The burden of proof is upon the appellant to prove that respondent agency's decision not to reclassify her was incorrect."

In the opinion of the Commission this change is in keeping with substantial and long-established precedent. See, e.g., Rydzek v. Wettengel, Wis. Pers. Bd. No. 73-26 (7/2/74). Jallings v. Smith, Wis. Pers. Bd. No. 75-44 (8/23/76).

The Commission adopts and incorporates by reference the third Conclusion of Law.

The Commission adopts and incorporates by reference the Opinion contained in the Proposed Decision of the hearing examiner with the following addition:

"The appellant should be reclassified effective the date of the denial of reclassification, May 25, 1978."

This is removed from the Proposed Order and placed in the Opinion and Order to comply with §230.44(4)(c), Stats. (1977).

The Commission amends the Order contained in the Proposed Decision of the hearing examiner in order to comply with §230.44(4)(c), Stats. (1977), as follows:

"The actions of the respondent to deny the appellant's reclassification to Typist III is modified, and this matter is remanded for action in accordance with this decision."

Dated: June 28, 1979.

Joseph W. Wiley
Joseph W. Wiley
Chairperson

Charlotte M. Higbee
Charlotte M. Higbee
Commissioner

6/28/79

STATE OF WISCONSIN

PERSONNEL COMMISSION

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DOROTHY JENSEN,

Appellant,

v.

UNIVERSITY OF WISCONSIN,

Respondent.

Case No. 78-84-PC

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PROPOSED
OPINION
AND
ORDER

NATURE OF THE CASE

This is an appeal of a denial of reclassification from Typist II to Typist III.

FINDINGS OF FACT

1. Appellant started work for the University of Wisconsin Extension as the Membership Secretary for Friends of Channel 21, WHA-TV and has at all relevant times been classified as a Typist II.
2. Appellant plans and coordinates the activities related to the membership process for Friends of Channel 21, Inc.
3. Appellant's job description covers 7 pages of varied duties ranging from training and supervising volunteers to screening mail. Other duties include, but are not limited to: preparing bank deposits, preparing bank charge card records, preparing membership records for data processing, processing new memberships, processing renewal memberships, coordinating renewal direct mail, preparing records for installation payments by members, coordination of membership transfers, processing gift membership requests, recommending new procedures to the Executive Coordinator for increasing the efficiency of volunteers, and compose and type letters as directed by

Executive Coordinator.

4. Appellant has a thorough knowledge of the office practices at Channel 21 and exerts skill in her application of those practices.

5. Appellant has considerable knowledge and understands the policy and relationship of how the membership function fits into the general policy of Friends of Channel 21.

6. Appellant has a high degree of skill and ability to direct and supervise the volunteers by laying out and obtaining the desired results for Friends of Channel 21 through the membership drives.

7. Appellant recommended and revised the operating procedure affecting her particular work area.

8. Appellant spends less than 10% of her time typing with most of her time being devoted to the great variety of work found in her position description.

9. During the course of the last year, between 40 and 60 different persons volunteered to assist Friends of Channel 21 in their membership drive. These volunteers represented a wide spectrum of abilities and skills. These volunteers all worked under the direction of appellant. She makes decisions concerning their selection and exercises that discretion by which ones she requests to aid her. She plans and reviews the volunteer's work and answers any questions they may have. Volunteers are a vital aid to accomplishing the mission of Friends of Channel 21.

10. Appellant does not work under direct supervision.

11. The job auditor who recommended appellant not be reclassified has never supervised or directed volunteers, and he did not interview

any of the volunteers. He did not interview the Executive Coordinator who is one of the persons who appellant reports to.

CONCLUSIONS OF LAW

1. This case is properly before the Personnel Commission under §230.44(1)(d).
2. The burden of proof is upon the appellant to prove that respondent agency's decision to not reclassify her was an abuse of discretion.
3. Appellant in this case has met that burden of proof that the agency decision was an abuse of discretion.

OPINION

There were some conflicting statements as to the nature of appellant's work. Respondent witnesses testified that the work was routine and repetitive and the duties were ordinary typing and clerical functions. Respondent also denies that appellant's work with the volunteers is of a supervisory nature.

Creditable facts and witnesses just do not support respondent's contentions. Appellant's job as Membership Secretary is not an ordinary Typist II position. Membership Secretary is a job that has such a variety of work that the job description covered 7 pages of different duties. Appellant's supervisor does not directly supervise her nor did she train her.

Appellant's supervisor did not support the reclassification and stated so in the same letter to Extension Personnel which relayed appellant's request for an audit. Appellant's supervisor never held the position of Membership Secretary or did the work.

The respondent downplays appellant's work relationship to the

volunteers of Channel 21. However, the facts are undisputed that without the large volunteer force, the processing of memberships could not be accomplished without hiring a number of paid employes.

Adding to the complexity of directing the activities of the volunteers is their vast range of intellect and education. For example, appellant's supervisor when asked the intelligence level of the volunteers replied that many of them were from the Madison Area Retardation Council. No other examples were given by the Respondent. On the other range of the scale though were two volunteers who testified on behalf of the appellant. Both were highly educated and clearly motivated by working with the appellant. When asked if her working relationship with the appellant had anything to do with her returning and continuing to return as a volunteer, one answered as followed:

"Yes, I felt that she was very good at her job in the way she handled volunteers and administered the work and because I was very satisfied with the way everything was run and I felt that the volunteers could really contribute to WHA - I did continue to return. I think this is very important, the relationship she set up with volunteers and she handles the situation very well. I'm quite sure all of us feel the same way and were willing to go back because of this."

Both volunteer's witnesses worked an average of 20 hours per week over a period of time. Another key statement by the witnesses was: "The way I see it, when I was doing that work, there was no way I could have done that without Dorothy looking it over to see if I had done it correctly." Despite it being a small office and despite respondents claiming the work was routine, volunteer witnesses stated they had gone to others in the office with questions but they could not answer them and directed them to ask appellant their questions.

Respondent contends that since appellant did not have the power to

hire and fire the volunteers, she was not a supervisor. Respondent is ignoring the real world where supervisors spend little or no time hiring, firing or disciplining the people working under them. Most of any supervisor's time is coordinating and directing subordinates in a positive progressive way to accomplish their mission. Respondent even stipulated that appellant did oversee the work and made sure the work was done properly.

The Typist III classification does not call for much supervisory responsibility and in the instant case appellant far exceeds it both in quantity and quality.

Appellant does understand the policies of her department and has made many suggestions on how to improve the procedures. Some of those suggestions have been accepted and they have improved the operation.

Very little of appellant's time is spent typing and much of that is composing her own letters to people whose participation and aid is very important to the success of Channel 21.

The record in this case before the Commission indicates that appellant's job description and actual duties performed are in the category of Typist III and Clerk III, not Typist II.

ORDER

The actions of the respondent to deny appellant's reclassification to Typist III is modified. Appellant is reclassified effective the date of that denial, May 25, 1978.

Dated: _____, 1979.

STATE PERSONNEL COMMISSION

Joseph W. Wiley
Chairperson

Edward D. Durkin
Commissioner

Charlotte M. Higbee
Commissioner

ADDENDUM TO JENSEN
Case No. 78-84-PC

The Union representative in this case had made appointments to interview co-workers of appellant in order to determine job responsibilities of the appellant. The appointments were to take place during work hours at each of the workers place of employment. All were members of the same bargaining unit as appellant.

The appointments were canceled by supervisors of the employes on advise of the University's attorneys. The reasons given for the cancelation were:

- (1) Employes did not have authority to talk to anyone about the case during working hours.
- (2) The case involved legalities and they would be taken care of for the employes.
- (3) The employes to be interviewed were entitled to legal representation by the University if they were to be interviewed by their Union.

The University took the position that the information needed by the Union should have been obtained by discovery or some other method such as depositions and interrogatories. The University contends the action to cancel the appointments and to deny them in the future did not and does not obstruct appellant's case.

The Union alleged it did obstruct their case. There was a period of one week between the time of cancelations and the hearing. The Union did not ask to meet the employes off the job.

The questions raised by this factual setting are somewhat similar to those raised in Basinas v. DHSS, Wis. Pers. Bd. 77-212 (6/16/78), and in particular the interim or prehearing decision of 5/8/78 which was adopted by the board.

In that case the respondent prohibited its employes from participating

in oral interviews with appellant's attorney's law firm, but took the position that the appellant was limited to formal discovery methods. The board rejected that argument, holding that the "Board's Adoption of the Discovery provisions of Chapter 804 were not designed to and do not prevent parties from utilizing informal investigative techniques such as the interviewing of prospective witnesses."

The Commission agrees with this approach. The Commission does not agree with respondent's argument that it is improper for state employees to participate in interviews during working hours. The Commission appeal procedures are mandated by the legislature and the participation by employees in that process relates to their employment and should be allowed, within reason, during their working hours. Compare, SHEDA v. Carballo, Wis. Pers. Bd. 76-91 & 114 (6/13/77); 36 OAG 90, 91-21 (1947).

If the Commission sanctioned the approach argued by the respondent in this case, limiting the interviewing of state employees to formal discovery devices and to non-work hours, the ability of appellants to prepare their cases would be crippled, and Commission appeals, which are supposed to be relatively informal administrative proceedings but which are far too technical in nature as it is, could well become hopelessly complicated, time-consuming and expensive.

The respondent cites Marlett v. State Personnel Board, Dane County Circuit Court [134-443,135-001] (5/24/72) (per J. Maloney)]. In that review of a Personnel Board proceeding the appellant alleged that he was deprived of his constitutional right to due process of law by an agency directive that the employee-witnesses not talk to appellant's representatives during working hours. The court rejected that argument.

The Commission does not feel this case is controlling, for a number of reasons.

First, the question before the court was whether the restriction violated the due process clause of the Fourteenth Amendment to the U.S. Constitution. The question before the Commission in this appeal has to do with a question of prehearing practice in our administrative proceeding. The fact that the court held there was no constitutional violation certainly does not compel the conclusion that this Commission must approve the same kind of action in ruling on a question of prehearing practice. An agency practice does not have to reach the dimension of a constitutional violation before it can be acted on by the Commission.

The addendum to this case did not have any effect on the decision because the case for the appellant was overwhelmingly in her favor. However, both parties raised the issue spoken to in the addendum and presented arguments on it. They were also promised an answer to their positions as part of this case.