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MILDRED BARTKO,  
 Appellant,  
 v.  
 Secretary, DEPARTMENT OF  
 HEALTH AND SOCIAL SERVICES,  
 and  
 Administrator, DIVISION  
 OF PERSONNEL,  
 Respondents.

Case No. 81-341-PC

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DECISION  
 AND  
 ORDER

NATURE OF THE CASE

This is an appeal pursuant to §230.44(1)(b) of the denial of a request for reclassification of appellant's position from Public Health Nurse 2 to Public Health Nurse 3.

FINDINGS OF FACT

1. At all relevant times the appellant has been employed in the classified civil service in the Occupational health section, Division of Health, Department of Health and Social Services (DHSS), in a position classified as Public Health Nurse 2 (PHN 2).

2. The appellant began her employment as aforesaid on June 20, 1977, under the direct supervision of Jane Parker, the Chief Occupational Health Nurse Consultant, a position classified as PHN 3.

3. In 1978, Ms. Parker was promoted to deputy section chief. She continued to supervise the appellant. Her prior position was frozen and ultimately abolished.

4. Following Ms. Parker's promotion, the appellant gradually assumed all of her duties, except budget and supervision of other nurses, initially on a temporary and subsequently on a permanent basis, due at least in part to the freezing and ultimate elimination of Ms. Parker's former position.

5. The appellant originally was assigned to work on a district wide basis. However, due to budget cut-backs and position eliminations, she became the only occupational health nurse in her unit and worked on a statewide basis. Although subsequently another occupational health nurse was hired, the appellant continued to operate on a statewide, as opposed to a district-wide, basis.

6. There are 6 other positions in DHSS classified as PHN 3 which specialize in maternal and child health nursing (MCHN).

7. These MCHN positions are comparable to the appellant's PHN position in terms of level of skill, complexity, authority, and responsibility.

8. The 6 MCHN positions do not have areas of specialization within MCHN. Each position performs generally the same kinds of functions throughout the state.

9. The basic duties and responsibilities of appellant's position may be summarized as follows: the provision of direct nursing consultation to business and industry regarding programs in occupational health for the promotion of health for working persons in Wisconsin; the extension of occupational health services to small businesses through public health agency personnel; the promotion of educational programs and activities and the preparation of materials for occupational health personnel in Wisconsin; the preparation of administrative reports, planning of schedules, and performance of other administrative activities to promote the objectives of the program; and the development of the incumbent's expertise in the area of occupational health program consultation.

10. The appellant works under general supervision, and has total independence in determining her own workload and priorities.

11. The appellant is a registered nurse (RN) with a master's degree in public health. She is a Certified Occupational Health Nurse (a comparable

certification does not exist for MCHN). The appellant is well-trained, well-qualified, and has a very high level of expertise in her work.

12. The class specifications for PHN 2 and PHN 3, joint Exhibits 5 and 6 respectively, contain the following definitions:

a. PHN 2:

This is responsible consultative work in public health nursing performed in a state public health district or in the central office. Employees in this class serve as (1) the district consultant having responsibility for all consultative services provided to public and private agencies in the district, or (2) a statewide program consultant providing guidance and technical assistance in the area of expertise to other public health nurses, program directors, and public and private agencies. The work performed in this class is similar to that performed at the Public Health Nurse 1 level, except that it involves planning, implementing and directing an on-going program of consultative services in the assigned area with considerable latitude for initiative and independent judgment. Professional guidance, training and direction are provided to lower level consultants. Employees in this class receive limited supervision in the form of periodic conferences and review of reports submitted.

b. PHN 3:

This is very responsible consultative work in public health nursing. Employees in this class function as a statewide consultant in areas such as maternal and child health, chronic diseases, home health cardiovascular disease, or home health, with responsibility for providing technical consultation to program directors on policy issues and the development, operation, and evaluation of programs in the specialty area. The statewide program at this level is distinguished from that identified at the Public Health Nurse 2 level by the greater scope and complexity of the program specialty area and the recognized expertise level of the consultant as demonstrated by the degree of independence and authority with which he acts in carrying out his responsibilities. Work is performed under the general direction of the designated program director and the technical guidance of the Chief or Assistant Chief of the Public Health Nursing Section.

13. The appellant's position is better described by the class specifications for PHN 3 than by the class specifications for PHN 2.

14. DHSS, acting on a delegated basis pursuant to §230.05(2)(a), stats., denied a request to reclassify appellant's position to PHN 3 on July 9, 1981, see Joint Exhibit 2.

CONCLUSIONS OF LAW

1. This case is properly before the Commission pursuant to §230.44(1)(b), stats.

2. The appellant has the burden of proving by a preponderance of the evidence, to a reasonable certainty, that the respondents erred in denying the request to reclassify appellant's position.

3. The appellant has satisfied that burden.

4. The respondents erred in denying the request to reclassify appellant's position, and the appellant is entitled to have her position reclassified to PHN 3.

OPINION

In its written Decision denying the reclassification request (Joint Exhibit 1), DHSS stated that the decision was based:

"... on the facts that although Ms. Bartko has statewide responsibility in the area of orientation and providing for continuing educational programs, the position provides consultative service on a district and/or regional basis the majority of the time." p. 4. (emphasis added)

At the hearing, the appellant presented persuasive testimony that the district concept of providing services had not been used for a considerable period of time.

The respondents presented opinion testimony at the hearing that the term "statewide" meant the sole responsibility for a particular program across the state. This assertion is at odds with the fact that on this record the 6 MCHN positions, classified at the PHN 3 level, do not each have sole statewide

programmatic responsibility. On this record, no distinctions of any kind that are material to the classification issue can be drawn between the appellant's position and the MCHN positions. There has been no suggestion that the MCHN positions are incorrectly classified. In fact, the respondent referred to one of them in the decision denying the reclassification request. See Joint Exhibit 2.


The Commission also notes that this is not the only definition of the term "statewide" that has been advanced by the division of personnel. See Slack v. DP, Wis. Pers. Comm., No. 79-314-PC (3/18/81), where there was no reference to sole responsibility but rather to "... responsibilities which cut across state agency lines and in some instances include both public and private sectors." (This definition fits the appellant's position which inter-relates with other agencies and works with both the public and private sectors.)

Under all of these circumstances, including the facts that the term "statewide" is not defined in the official class specifications, and that the appellant's position cannot meaningfully be distinguished from the MCHN positions which concededly are properly classified at the PHN 3 level, it must be concluded that the appellant's position is better described by the PHN 3 class specifications and that the respondents erred in denying the request for reclassification to that level.


ORDER

The action of the respondents is rejected and this matter is remanded for action in accordance with this decision.

Dated: April 2, 1982 STATE PERSONNEL COMMISSION

  
DONALD R. MURPHY, Chairperson

AJT:jmf

  
JAMES W. PHILLIPS, Commissioner

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