

STATE OF WISCONSIN

PERSONNEL COMMISSION

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ROGER WHITING,

Appellant,

v.

Secretary, DEPARTMENT OF HEALTH AND SOCIAL SERVICES, and Secretary, DEPARTMENT OF EMPLOYMENT RELATIONS,

Respondents.

Case No. 90-0066-PC

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DECISION AND ORDER

NATURE OF THE CASE

This is an appeal pursuant to §230.44(1)(b), Stats. of the reallocation of appellant's position to Nursing Specialist 2 instead of Nursing Instructor 2 as a result of a personnel management survey conducted by the Department of Employment Relations. In an interim order dated July 17, 1990, the Commission added the Department of Health and Social Services as an interested party.

FINDINGS OF FACT

1. At all times relevant to this matter, appellant has been employed as a registered nurse at Northern Wisconsin Center for the Developmentally Disabled (Northern Center).

2. Appellant was originally hired as a Nursing Supervisor 1 (NS 1) In 1982, after approximately seven months in the NS 1 position, appellant later-ally transferred into a Registered Nurse 4 (RN 4) position which had primary responsibility for assisting in the development and implementation of a qual-ity assurance program. Subsequent to that, responsibility for infection control services and providing back-up for the occupational health nurse were added to appellant's position.

3. Appellant has a B.S. degree in Nursing, a M.S. degree in Preventative Medicine, a M.S. degree in Hospital Administration, and is certified as a Registered Nurse Anesthetist. This formal education, as well as conferences and workshops appellant has attended, provide him with a wide range of

knowledge and experience which assist him in performing functions for Northern Center.

4. In 1989, the Department of Employment Relations (DER) completed the Care and Custody survey which included a study of all nursing positions in state service. This survey resulted in the creation of a number of classifications including the Nursing Specialist and Nursing Instructor classification series. Effective December 31, 1989, appellant's position was reallocated to Nursing Specialist 2 (NS 2) as part of the implementation of the survey. Appellant filed a timely appeal of this reallocation.

5. The appellant's duties and responsibilities at the time the survey was implemented are accurately reflected in his position description dated October 3, 1989, as follows:

Position Summary

Under the direction of the Nursing Supervisor 2, is responsible for assisting in the development and implementation of a quality assurance program in nursing at Northern Center.

Time %      Goals and Worker Activities

- |     |   |
|-----|---|
| 25% | A. Development of criteria sets in nursing and performance of audits in the implementation of criteria sets.<br><br>A1. Using the accepted practices and current nursing theory, develop audit criteria to be used in measuring the quality of nursing care delivered to clients.<br>A2. Systematically review client records for quality of care and prepare report of findings and make recommendations for improvement of nursing care.<br>A3. Identify areas where staff development is necessary and provide said inservice or refer needs to staff development to implement training.<br>A4. Serve as chairperson of the Nursing Audit Committee.<br>A5. Maintain all records of Nursing Quality Assurance programs such as Audit Committee minutes, audit reports, audit recommendations and followup. |
| 20% | B. Provision of Infection Control surveillance/education services.  |

- B1. Conduct unit quarterly surveillance, monitoring for environmental cleanliness, cleaning procedures and cross-contamination problems and submit results and recommendations to the Infection Control Committee, unit directors and Institution Director.
  - B2. Provide on-unit employe instruction in care and handling of clients with infectious/communicable diseases.
  - B3. Provide monthly and yearly reports on number of infections, location, problems (actual and potential), and antibiotic usage to Infection Control Committee.
  - B4. Investigate and analyze all nosocomial infections.
  - B5. Investigate reported infections and/or communicable diseases and notify the appropriate public health agency.
  - B6. Maintain annual pinworm report.
  - B7. Participate as a member of the Medical Management Committee.
- 15% C. Staff development, committee work and provision of community services.
- C1. Provide 1:1 and group classes for nursing staff as part of the annual nursing inservice calendar and the RN-LPN orientation program.
  - C2. Participate in the Annual Program of Staff Development.
  - C3. Serve as a member of committees as assigned.
  - C4. Speak to community groups and facilities as assigned.
  - C5. Continuously develop specialized knowledge, skills and abilities through study, research and clinical experience.
  - C6. Maintain knowledge of current issues in professional nursing and health care.
- 10% D. Application of knowledge of current nursing theory and practice to assess and resolve nursing care problems among clients with special health care needs.
- D1. Provide consultation at the request of nursing, medical or other staff, to assist unit staff in solving complex care problems, developing staff abilities to assess the needs of client and formulate and assist in

- implementing and evaluating a nursing care plan.
  - D2. Provide direct nursing care to selected clients to demonstrate specific aspects of the nursing process to nurses, LPNs and other staff.
  - D3. Develop the abilities of direct care staff in Hillcrest to meet the special nursing needs of individuals and other groups of clients with serious health care problems.
- 10% E. Participation in the continuous updating of nursing policies and procedures.
- E1. Gather information which would substantiate the need for new or changed policies, routines, procedures or equipment.
  - E2. Develop new or revised policies and procedures.
  - E3. Function as a member of the Nursing Procedure Committee.
- 10% F. Provision of relief Occupational Health Services
- F1. Provide first aid to employes for work and non-work related injuries and/or illnesses.
  - F2. Complete occupational health reports as required following provision of first aid.
- 5% G. Cooperation with all professional and supportive services affecting the delivery of clients' health care.
- G1. Contribute health care knowledge to the interdisciplinary team upon request.
  - G2. Contribute health care information to the development of an environment which supports the prevention of illness or accidental injury and which provides the optimal setting in which the client can remain and maintain a state of optimal health.
  - G3. Contribute to the Center's programs to manage and reduce the incidence of communicable disease among clients and staff.
- 5% H. Provision of back-up services for Nursing Supervisor 2.
- H1. Attend meetings as assigned.
  - H2. Conduct interview of RN and LPN applicants.

6. The classification specifications for Nursing Specialist 2 provide the following:

Class Description

Definition:

This is advanced or lead level professional and administrative nursing work. Employees at this level coordinate a nursing program or service which does not have direct patient care as its primary focus. The areas involved may include such programs as infection control, continuity of care, utilization review, nursing information systems, quality assurance, community outreach or a combination of such programs. Employees at this level will be responsible for planning, development and implementation of program services, establishing program policies and procedures and coordinating administrative activities necessary to implement the program or service. Employees may also be responsible for the assignment and review of work of other nursing staff assigned to the program. The work is performed under the general supervision of a clinical or administrative supervisor.

Examples of Work Performed:

Perform all functions of the Nursing Specialist 1 and in addition:

Recommend program revisions to meet established or changing goals or services.

Provide direction and training to program staff.

Develop and implement preventive health programs.

Assign work to nursing staff and monitor the completion of work.

Provide nursing expertise to and serve on institution and community committees established to improve outreach, continuity of care, patient referrals, quality assurance, utilization review or infection control activities.

Develop, distribute and interpret guidelines for nursing and other staff.

Provide consultation to other disciplines regarding the program or service provided.

Develop and revise recordkeeping and data-gathering systems as necessary to support the service or program.

Identify areas for study, lead the problem-solving and implement the findings as appropriate.

Develop and conduct training sessions designed to minimize or control the spread of disease.

Develop and implement systems and procedures to assess and evaluate patient care and services.

Review utilization review or quality assurance plan annually to assure compliance with applicable rules, regulations and standards.

Review literature to keep current with norms for rating quality of patient care.

Coordinate quality assurance activities to assure high quality patient care, prevent duplication of effort and meet regulatory accreditation requirements.

7. The classification specifications for Nursing Instructor 1 and Nursing Instructor 2 provide the following:

#### **NURSING INSTRUCTOR 1**

##### Class Description

##### Definition:

This is professional nursing work in developing and conducting educational programs for nursing personnel. Employees at this level are responsible for planning, implementing, evaluating and revising course content and materials for the training program assigned. Classroom instruction and clinical experience programs are provided for staff of the institution and nursing students. Training program content includes general orientation courses, a full range of clinical subjects relating to patient care and treatment and supervisory and professional staff continuing education programs. The employee is also responsible for assisting in the assessment of training needs, the development of training objectives and curriculum and monitoring the evaluation and feedback system. The work is performed under the general supervision of higher level clinical or administrative staff.

##### Examples of Work Performed:

Plan and conduct preservice, orientation, inservice and continuing education courses.

Prepare course outline, lesson plans and audiovisual or other materials.

Select and organize facilities, equipment and materials as necessary.

Assist in selecting appropriate clinical experience for students.

Develop and maintain adequate records and reports for communication and evaluation purposes.  
Participate in planning, evaluating and revising total curriculum.  
Assist in developing and preparing general teaching and reference materials.

## **NURSING INSTRUCTOR 2**

### Class Description

#### Definition:

This is advanced professional nursing work in planning, implementing and evaluating a nursing education, inservice or staff development program. Employees at this level are responsible for assessment of training program needs, identification of training program objectives, development of training program design and curriculum, and the evaluation and feedback system for the program assigned. They are also responsible for consultation to management and staff for the area of education or training assigned. The work at this level differs from that at the lower level by the responsibility for the development of overall training policies, procedures and programs. The work may involve providing guidance and review for lower level instructors or staff assistants. Work is performed under the administrative direction of the director of nursing or nursing education.

#### Examples of Work Performed:

Perform all functions of the Nursing Instructor 1 and in addition:  
Establish and revise education program philosophy, policy, objectives and procedures.  
Act as the program coordinator for a major inservice program area.  
Consult with lower level instructors in reviewing course content, teaching methods and student participation and progress.  
Plan and conduct work conferences and clinics for institution staff, professional and special interest community groups, and the general public.  
Prepare, revise and maintain institution nursing practices and procedures manual.  
Observe, evaluate and effectively recommend changes in nursing practices and procedures throughout the institution.

Participate in nursing administrative staff meetings in developing broad program goals, objectives and priorities.

8. At hearing appellant introduced the following positions for comparison purposes:

- a. Barbara Bergum, Registered Nurse 3, Mendota Mental Health Institute (MMHI), dated 4/28/89.

Under general supervision of the Director of Quality Assurance (Administrative Assistant 4-Supervisory) this position functions as 1) Utilization Review (UR), and, 2) Infection Control Practitioner (ICP). UR responsibilities include review of patient treatment records in accordance with MMHI's UR Plan and Medical Staff's approved criteria. The UR Coordinator develops and implements systems and procedures to assess and evaluate patient care and services and participates as a committee members in implementing and measuring the compliance of [sic] patient care standards. IC responsibilities include assurance that all aspects of IC are effectively implemented. This is accomplished under the general supervision of the Director of Quality Assurance, with consultation from the Medical Director or Chair of ICC as determined necessary by ICP. Compile infection control data, prepare reports, assist in Title 18 and 19 survey's, provide IC inservice training to all disciplines, incorporate IC principles into policies and procedures.

Appellant's un rebutted testimony was that this is probably not the job description used for the survey, since the incumbent told him she had been reallocated to a Nursing Specialist 2.

- b. Doris Voorhees, Nursing Specialist 2, Winnebago Mental Health Institute.

This position has a working title of Utilization Review Coordinator. The major activities of the position are: performing admission reviews and extension of stay reviews on all admissions with reviews being conducted in accordance with Title 18 (Medicare) and Title 19 (Medicaid) criteria and standards (45%); maintaining liaison with Medical Records Administrator, Department of Nursing, and with hospital management to assure continuity of patient care and effective communication activities. (45%); and assisting the Utilization Review Committee (10%).



9. The respondent introduced the following positions at hearing for comparison purposes:

- a. Christine Mechelke, Nursing Specialist 2, Northern Wisconsin Center for the Developmentally Disabled.

This position reports to the institution personnel manager and is responsible for the operation of the Northern Center employe health services. Included in the functions performed by this position are: assistance in the management and implementation of the Worker's Compensation Program (47%); functional capacities/physical job analysis, coordination of pre-employment physical and conduct of periodic health reviews (15%); employe health management including evaluation of employe illnesses and providing first aid services (18%); development, implementation and coordination of the immunization program for clients and staff (13%); and miscellaneous duties such as maintaining employe health records, conducting inservice classes, and serving on institution committees (7%).

- b. Nancy Anderson, Nursing Instructor 2, Winnebago Mental Health Institute.

This position reports to the Director of Nursing and instructs all levels of nursing staff. The activities assigned to the position include: provision of ongoing educational programs for senior staff, including needs assessment, development and evaluation of educational programs, and serving as resource to nursing staff in treatment planning and staff development (60%); orientation of all new Nursing Services personnel (25%); and maintenance of a library of current professional literature and nursing information, participation in research projects and institution committees, and participation in professional development activities (15%).

10. There are currently two positions at Northern Center classified as Nursing Instructor 2's performing staff development and/or inservice training programs.

11. Prior to the survey, appellant's position (RN 4) was assigned to a pay range comparable to the Nursing Supervisor 1 and Nursing Instructor 2, and two pay ranges above the Registered Nurse 3 (RN 3) classification. With the implementation of the survey, appellant's position was one pay range lower than the Nursing Instructor 2 and Nursing Supervisor 2 and only one pay range higher than RN 3.

12. The survey of nursing position was conducted using a whole job comparison methodology. The assignment of classifications to pay ranges was accomplished through the collective bargaining process.

13. The duties and responsibilities of appellant's position are better identified by the classification specification for Nursing Specialist 2.

#### CONCLUSIONS OF LAW

1. This matter is appropriately before the Commission pursuant to §230.44(1)(b), Stats.

2. Appellant has the burden of proof to show that respondent's decision reallocating his position to Nursing Specialist 2 instead of Nursing Instructor 2 was incorrect.

3. Appellant has failed to sustain this burden.

4. Appellant's position is appropriately classified as a Nursing Specialist 2.

#### DISCUSSION

The parties agreed that the following issue would govern the hearing in this case:

Whether the decision by respondents to reallocate appellant's position from Registered Nurse 4 (RN 4) (PR 11-07) to Nursing Specialist 2 (NS 2) was correct.

Subissue: Whether appellant's position is more appropriately classified as an NS 2 or a Nursing Instructor 2.

In reviewing the correctness of a classification decision, the Commission is bound by the clear language of the specifications. (Zhe et al. v. DHSS & DP, 80-285-PC, 11/19/81; affirmed by Dane County Circuit Court, Zhe et al. v. PC, 81-CV-6492, 11/2/82.) In this particular case, the appellant argues that no classification fits his job properly. It is not an unusual circumstance in state service to find that more than one classification specification may identify a function or functions assigned to a specific position. In these type of cases, the Commission has held that the position is best identified by the classification which identifies the majority (at least 51%) of the duties and responsibilities assigned to the position.

The basic distinction between the Nursing Specialist 2 (NS 2) and Nursing Instructor 2 (NI 2) is that a NS 2 "coordinates a nursing program or service which does not have direct patient care as its primary focus," while an NI 2 has responsibility for "planning, implementing and evaluating a nursing education, inservice or staff development program.

Appellant argues that his Nursing Instructor duties are interwoven with his other duties and are not apparent from a superficial reading of his position description. As an illustration of his activities in this area, appellant identified staff development activities, such as CPR certification and recertification training, orientation to Quality Assurance, and a two hour introduction course on mental retardation; and inservice training, such as infection control, personal care and hygiene, behavior management techniques, an eight-hour course for RN's on the nursing process, and a two-hour course for Licensed Practical Nurses (LPN's) on their roles. Appellant also indicated that he fills in for other instructors on an as needed basis.

These duties certainly can be found in the Nursing Instructor classifications. The question to be answered is what percentage of time these activities take and at what level are they found. Appellant could not give specific time percentages for these types of activities outside of what is contained in his position description (PD). In reviewing appellant's PD (Finding #5), Goals A, B, and C appear to contain instructional related components. If appellant were to be given one-half of the 25% time assigned to Goal A — Development of criteria sets in Nursing and performance of audits in the implementation of criteria sets — (See specifically Worker Activity A.3), and one half of the 20% time for Goal B — Provisions of Infection Control surveillance/education services — (See specifically Worker Activity B.2), and all of the 15% time assigned to Goal C — Staff development, committee work and provision of community services, the total would come to 37.5%. Consequently, these instructional functions do not appear to constitute a majority of appellant's time.

Appellant argued further that all the training/instructing was not didactic, but rather occurred on an informal basis. Staff on the units will ask him to help them with a particular problem relating to patient care, which could involve anything from equipment operation and care techniques to patient care diagnoses. Even if the Commission were to assume that this type of activity would bring appellant's time percentage for instructional activities to

over 50%, the position would not be appropriately classified at the NI 2 level because appellant does not have overall responsibility for a training program.

Appellant's instructional work appears to be best identified at the NI 1 level by the following language of the specifications:

Definition:

This is professional nursing work in developing and conducting educational programs for nursing personnel. Employees at this level are responsible for planning, implementing, evaluating and revising course content and materials for the training program assigned. . . .The employe is also responsible for assisting in the assessment of training needs, the development of training objectives and curriculum and monitoring the evaluation and feedback system. . . .

Examples of Work Performed

Plan and conduct preservice, orientation, inservice and continuing education courses.  
Prepare course outline, lesson plans and audiovisual or other materials.

\* \* \*

Participate in planning, evaluating and revising total curriculum.

By contrast, the NI 2 specification identifies positions that have institution wide responsibility for an assigned program.

Definition:

This is advanced professional nursing work in planning, implementing and evaluating a nursing education, inservice or staff development program. Employees at this level are responsible for assessment of training program needs, identification of training program objectives, development of training program design and curriculum, and the evaluation and feedback system for the program assigned . . . The work at this level differs from that at the lower level by the responsibility for the development of overall training policies, procedures and programs.

Examples of Work Performed

\* \* \*

Establishes and revise education program philosophy, policy, objectives and procedures.  
Act as the program coordinator for a major inservice program area.

\* \* \*

The record shows that appellant performs functions that may be found at the NI 1 and NI 2 level. However, these functions do not appear to constitute a majority of appellant's assigned duties and responsibilities. While appellant, because of his background, is able to put on a wide variety of courses, he is not assigned responsibility for an institution-wide training program or function. Certainly the instructional activities he engages in have an institution-wide impact, but that is distinguishable from the institution-wide program development, implementation, and evaluation identified at the NI 2 level.

Additionally, the NI 1 and 2 specifications place particular emphasis on didactic training and clinical experiences. This is not to say that the informal teaching and assistance provided by appellant is not important; but rather that the specifications for NI 1 and NI 2 identify positions that spend the majority of their time in more formalized training programs. This is substantiated by the comparison position for Mary Anderson introduced at hearing (Finding #9b). Ms. Anderson is an NI 2 and has overall responsibility for staff development and orientation of nursing services personnel at the institution.

Lastly, Northern Center currently has two Nursing Instructor 2's on staff. While the record does not show what their specific program or area of responsibility they have, it can be surmised that they have overall responsibility for an institution wide training program. While appellant may assist them by teaching a course or reviewing material, he is not assigned overall program responsibility.

If the majority of appellant's duties are not appropriately identified in the NI classification, are they then better identified by the NS 2's specification? The Commission answers in the affirmative for the following reasons. A reading of the appellant's position description shows that the overall job summary contained on the position description for his position (Finding #5)

identifies responsibility for the "development and implementation of a quality assurance program in nursing at Northern Center." In looking at specific worker activities, the majority of functions identified in Goal A, B, D, E and G relate to Quality Assurance and/or Infection Control. Even using only one half of the 25% time allotted to Goal A and the 20% allotted to Goal B, these 5 goals when combined comprise 47.5% of the job. This combined with the 10% for Goal F — Provisions of Relief Occupational Health Services (which was shown at hearing to be a function at the NS 2 level — Finding 9b) accounts for the major emphasis and time percent for appellant's position.

The specifications for NS 2 also identify these functions as follows:

Definition:

. . . Employees at this level coordinate a nursing program or service which does not have direct patient care as its primary focus. The areas involved may include such programs as infection control, continuity of care, utilization review, nursing information systems, quality assurance, community outreach or a combination of such programs. Employees at this level will be responsible for planning, development and implementation of program services, establishing program policies and procedures and coordinating administrative activities necessary to implement the program or service. . . . (Emphasis added)

Examples of Work Performed

\* \* \*

Provide direction and training to program staff  
Develop and implement preventive health programs.

\* \* \*

Provide nursing expertise to and serve on institution and community committees established to improve outreach, continuity of care, patient referrals, quality assurance, utilization review or infection control activities.

Develop, distribute and interpret guidelines for nursing and other staff.

Provide consultation to other disciplines regarding the program or service provided.

\* \* \*

Review literature to keep current with norms for rating quality of patient care.

Coordinate quality assurance activities to assure high quality patient care, prevent duplication of effort and meet regulatory and accreditation requirements.

The definition portion of the specification specifically identifies the quality assurance and infection control program for which appellant is responsible, and the Examples of Work Performed identify the training, consultation, and policy development functions appellant performs.

Positions classified as NS 2's have institution wide responsibility for an identifiable program or combination of programs, such as quality assurance and infection control. For comparison purposes, the NS 2 position of Doris Voorhees — Utilization Review Coordinator, and Christine Mechelke — Employee Health Services introduced at hearing (Findings 8 and 9b respectively) bear out that nurses with institution and program responsibility, like the appellant, are identified at the NS 2 level.

Appellant introduced the position of Barbara Bergum (Finding # 8a) apparently to show that employees who had less responsibility than he did were put at the NS 2 level. Respondent's classification expert testified that if this employee had institution wide responsibility for these programs the position could be classified as an NS 2. Since the record does not indicate if this was the PD used for the survey (and appellant indicated in his testimony that it probably wasn't the one used), this has very little probative value and does not help to substantiate appellant's contention that he should be an NI 2.

Lastly, appellant argued that he had been demoted and his ability to transfer severely impaired when his new classification (NS 2) was not in a comparable pay range to NI 2 or Nursing Supervisor 1 like it was prior to the survey when he was classified as an RN 4. The relationship of classifications prior to a survey as compared to after the survey is outside the scope of the issue set for hearing in this case. In general, any changed relationship between classes is a result of the pay range assignment for the specific classes involved. Since the assignment of classifications to pay ranges is now a subject of collective bargaining, the Commission would have no jurisdiction over this matter, pursuant to §111.93(3), Stats., because the underlying action

which caused the relationship to change was a result of the collective bargaining process.

The Commission notes that the background of the appellant allows him to step in and perform a wide range of functions which is certainly beneficial to the institution. However, the issue before the Commission is not the performance or abilities of the employee. Rather, the issue to be resolved is what classification best describes the appellant's assigned duties and responsibilities. It is the Commission's conclusion that based on the classification specifications and the comparison position submitted the duties and responsibilities assigned to appellant's position are best described by the Nursing Specialist 2 classification.


ORDER

The action of the respondent to reallocate appellant's position to Nursing Specialist 2 was not incorrect and this appeal is dismissed.

Dated: January 24, 1992 STATE PERSONNEL COMMISSION

  
LAURIE R. McCALLUM, Chairperson

GFH/gdt/1

  
DONALD R. MURPHY, Commissioner

  
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