

STATE OF WISCONSIN

PERSONNEL COMMISSION

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SUSAN SPILDE, *

Appellant, *

v. *

Secretary, DEPARTMENT OF *
ADMINISTRATION, and *
Secretary, DEPARTMENT OF *
EMPLOYMENT RELATIONS, *

Respondents. *

Case No. 92-0155-PC *

* * * * *

DECISION
AND
ORDER

NATURE OF THE CASE

This is an appeal pursuant to §230.44(1)(b), Stats., of the denial of a reclassification from Program Assistant 2 (PA2) to Program Assistant 3 (PA3)-Confidential rather than Program Assistant 4 (PA4)-Confidential (the latter reclassifications will be referred to simply as PA3 and PA4).

FINDINGS OF FACT

1. Appellant is employed in the classified civil service in a position at the Board of Aging and Long Term Care (BALTC). This position was reclassified from PA2 to PA3, effective September 8, 1991.

2. The duties and responsibilities of appellant's position are essentially accurately described in her position description (PD) (Respondents' Exhibit 8). This PD contains the following "position summary":

This position is responsible for providing administrative, secretarial and program support for the Board and the Executive Director of the Board on Aging and Long Term Care. Preparation for board meetings as well as serving as recording secretary and follow up to board meetings is a part of the position responsibilities. As Office Manager, the position requires tactful monitoring of work flow and detailed knowledge of the function and purpose of the board as well as other agencies throughout the state, both public and private.

This position also serves as lead worker in developing, organizing and directing the support activities in the board central office. The position has a great deal of contact with legislative offices, other state and national organizations and the public.

Appellant's PD shows an allocation of 30% for office manager activities, which includes such things as assisting the staff and executive director in the performance of their duties, arranging the logistics of Board and staff meetings, preparing minutes, laying out and producing the text of the Board's annual report, responding to inquiries from the public, other agencies, and the legislature, and typing. There is a 30% allocation for management of the "needs of services, supplies and permanent property for the board, and the board staff." This includes mail distribution, serving as agency timekeeper and performing similar personnel-related functions concerning leave and payroll in liaison with the Department of Administration (DOA) payroll office, functioning as liaison with respect to other agency services, developing and preparing special projects such as office procedures for final approval by the Executive Director, responding to program inquiries, maintaining state fleet records, negotiating the purchase of office equipment, which includes research to determine the appropriate vendor, state purchase agreement or bidding process, and preparing and submitting for approval by the executive director a request for purchase order and/or purchase order, serving as printing liaison with WISCOMP, state printing and private vendors, and purging office files in accordance with the approved RFP. There is a 30% allocation for serving as lead worker for clerical support services. This includes developing office procedures and forms for approval by the executive director, monitoring use of the multi-line telephone system, assisting in hiring, disciplining, and evaluating staff, attaining "knowledge of computer operations regarding recording statistics, generating statistical reports, update and storage, use of math function, and recall of documents from archive to system for editing, updating and printing," and assessing "computer systems for needed repair, replacement and new equipment as needed and advise the executive director." This allocation also contains the following requirement:

This position also must acquire basic knowledge of the long term care system both public and private, the Ombudsman program, Medigap

Insurance and other programs available to the elderly and disabled. Also, in order to better serve those people in need of direction, this person must have knowledge of the function of other state, county, and municipal agencies i.e. Commissioner of Insurance, Benefit Specialists, City and County Aging Agencies, COP program.

Finally, the PD has a 5% allocation for serving "as assistant to the Executive Director regarding voucher and payment of outstanding bills," and 5% for serving as the BALTC affirmative action representative.

3. Changes in the duties and responsibilities of this position that have occurred since appellant was appointed in April of 1989 include the deletion of a considerable amount of word processing and certain other more or less clerical-type duties, and the addition of the following:

1. At the direction of the Executive Director, the employe prepares or assists in preparation and interpretation of various reports and correspondence. As a result of the knowledge gained, the employe is able to assist the public and other agencies in finding help available to aid the aging and disabled as well as other general questions asked of the BOALTC staff. 10%
2. In addition to previous Printing, Procurement and Purchasing Manager responsibilities, the Program Assistant also participates in the Small Agencies Users Group (SAUG), Telecommunications, computer networking, Management Information Technology (MIT) information and meetings. This position is also the Affirmative Action Designee for the agency. 15%
3. As a result of this knowledge, the employe has researched, written and produced charts and information directories to aid BOALTC employees in dealing with the public. 12%
4. At the direction of the Executive Director, this position plays an instrumental part in the research and production of special projects such as the PartnerCare Survey conducted for the Wisconsin Legislature. This employe also assists the Executive Director, with planning, assigning and guiding current activities and programs. 11%
5. This position is now the first line source of information in the classification of rules and regulations regarding State of Wisconsin rules and regulations, i.e. DOA Employee Handbook, leave reports, schedules, procurement, and insurance. 1%

Appellant's Exhibit 32.

4. Appellant's first line supervisor is the executive director. Appellant works under general supervision.

5. The BALTC has 14 FTE positions in five offices around the state. It is governed by a gubernatorially appointed board. Its primary role is to advise the governor and legislature on long term care policy. To achieve this it operates the long term care ombudsman program, which receives and investigates and attempts to resolve complaints coming from consumers of long term care, and the medigap hotline, an insurance counseling program for Medicare eligible individuals, which counsels them on the purchase of insurance products. In 1991, the BALTC handled 2100 complaints, and approximately 4000 calls with respect to the ombudsman program and another 4000 calls with respect to medigap program.

6. The position standard for the Program Assistant-Confidential series, Respondent's Exhibit 1, contains the following class descriptions and examples of work performed for Program Assistant 3-Confidential (PR1-08) and Program Assistant 4-Confidential (PR1-09):

PROGRAM ASSISTANT 3 - CONFIDENTIAL

(PR1-08)

This is paraprofessional work of moderate difficulty providing a wide variety of program support assistance to supervisory, professional or administrative staff. Positions are delegated authority to exercise judgment and decision making along program lines that are governed by a variety of complex rules and regulations. Independence of action and impact across program lines is significant at this level. Positions at this level devote more time to administration and coordination of program activities than to the actual performance of clerical tasks. Work is performed under general supervision.

PROGRAM ASSISTANT 4 - CONFIDENTIAL

(PR1-09)

This is paraprofessional staff support work of considerable difficulty as an assistant to the head of a major program function or organization activity. Positions allocated to this class are coordinative and administrative in nature. Positions typically exercise a significant degree of independence and latitude for decision making and may also function as leadworkers. Positions at this level are differentiated from lower-level Program Assistants on the basis of the size and scope of the program involved, the independence of action, degree of involvement

and impact of decisions and judgment required by the position. Work is performed under direction.

* * *

PROGRAM ASSISTANT 3-CONFIDENTIAL - WORK EXAMPLES

Prepares reports, research project data, budget information, mailing lists, record keeping systems policies and procedures, training programs, schedules and generally oversees operations.

Plans, assigns, and guides the activities of a unit engaged in the clerical support of the program assigned.

Develops and/or revises selected policies and procedures affecting the administration of the program.

Answers questions regarding the program or division via telephone, correspondence, or face-to-face contact.

May serve as an assistant in charge of secretarial and administrative tasks in an operation handling cash procedures, equipment orders, inventory, program preparation, pricing, etc.

Composes correspondence, maintains files of program-related data, sets up schedules and performs any related administrative support function necessary to the operation of the program.

May be in charge of public relations, preparing, and sending out pamphlets, brochures, letters, and various program publications.

PROGRAM ASSISTANT 4-CONFIDENTIAL - WORK EXAMPLES

Plans, assigns, and guides the activities of a unit engaged in current projects or programs. Researches and produces, as recommended by federal regulations and through the direction of an immediate supervisor, necessary data and information to prepare grant applications based on federal, state, and local funding regulations.

Interprets rules, regulations, policies, and procedures for faculty, other employers, and the public.

Prepares various informational, factual, and statistical reports.

Assists in the development and revision of policies, laws, rules, and procedures affecting the entire program or operation.

Coordinates units within the department, between departments, or with the general public in an informative capacity for a variety of complex matters.

Conducts special projects; analyzes, assembles, or obtains information.

Prepares equipment and material specifications, receives bids, and authorizes the purchase of an operating department's equipment, material, and supplies.

Analyzes, interprets, and prepares various reports.

Administers and scores admission and placement tests; administers nationally scheduled examinations; confers with applicants regarding test interpretations.

7. Other positions used for purposes of classification comparison may be summarized as follows:

a. Ethics Board-PA 4. This position is responsible for 35% office management, which includes scheduling, meeting minutes, records management, etc.; 15% computer network management; 20% budget and accounting, which includes auditing and paying bills on a monthly basis and reporting the agency position to executive director, responsibility for providing correct answers to DOA budget analysts and legislative auditors performing cost analyses and budget projections to assure that the board remains within budget, and accounting for all revenue and producing necessary reports; 10% publications and text editing; 10% office equipment and service responsibility; 5% acting for the executive director and other professional staff in their absence, which includes reviewing statements of economic interests for completeness and checking statements for compliance with §19.44(1)(a)-(c), (g) and (h), Stats. This position responds directly to requests from both the Governor's office and the chairman of the Senate Committee on Statements of Economic Interest. This position reports to the executive director in an agency with six employees. This position has a higher level of duties and responsibilities than appellant's position, primarily with respect to its greater degree of budgetary responsibility, its more significant inter-agency contacts, and its more substantive degree of responsibility when it acts in place of the higher level professional staff.

b. PA 4-Department of Health and Social Services (DHSS), Division of Community Services (DCS). The PD for this position (Appellant's Exhibit 17) includes the following position summary:

Under general supervision, this position is responsible for providing program support and secretarial functions for the Division Administrator and the Assistant to the Administrator. This position is responsible for handling and preparing confidential and sensitive correspondence which has impact on the employe/employer relationships including proposed contract language changes, bargaining strategies, grievance responses, and discipline letters. This person has extensive contact with public officials (Governor's Office, legislators, agency executives, bureau chiefs and division administrators) and deals constantly with confidential and sensitive information. The position requires tactful monitoring of work flow and

detailed knowledge of roles and responsibilities with the Division, throughout the Department and other public and private agencies.

This position is generally comparable to appellant's position with respect to the kinds of functions performed, although while it reports to a deputy administrator as opposed to the chief executive officer of the agency, DCS is a far larger entity than BALTC. This position is at a higher level than appellant's position from the standpoint of the size and scope of the programs involved, and the impact of decisions.

c. PA 4-Public Service Commission (PSC). This position provides administrative and secretarial support to the Chairperson and Executive Assistant, serves as leadworker in organizing and directing support activities in the commission office, does preparation and follow-up to commission meetings, and serves as back-up to the commission secretary. This position is responsible for writing speeches for the PSC chairperson. This position is also generally comparable to appellant's position with respect to the kinds of functions performed, but, because of the larger and more extensive programs administered by the PSC, is at a higher level from the standpoint of the size and scope of the program involved, and the impact of decisions.

d. PA 4-State Building Commission. This position functions as the recording secretary to the commission and assists the division administrator in the operation of division management functions. This position is also generally comparable to appellant's position with respect to the kinds of functions performed, but, because of the membership of the governor and legislators on the commission, and the financial impact of the commission's decisions, this position is at a higher level from the standpoint of the size and scope of the program involved and the impact of decisions.

e. PA 4-Ethics Board. This position has a 35% allocation for "coordination of office procedures and schedules," 15% computer network manager," 20% "Budgeting and Accounting," 10% "Publication and text," 10% "Office equipment , furnishing and services, " and 10% training. The duties and responsibilities of this position include reconciling the agency budget on

a monthly basis and reporting the budget position to the executive director, ensuring that all requests from DOA and legislative budget analysts are answered and correct, performing cost analyses and budget projections assuring the board remains within budget and able to function accordingly to agency long-range plans, and accounting for all revenue and produce any necessary reports. The ethics board has seven positions, including this one. This position reports to the executive director. The functions of this position are somewhat similar to appellant's position, although this position is at a higher level with respect to its more advanced and more responsible budget work.

f. PA 3-PSC. This is a paralegal position that has the following "position summary":

Provide paraprofessional support and assistance to Administrator/Chief Hearing Examiner and Division Hearing Examiners; provide administrative assistance to Examining Division Administrator prepare and compile complete Commission record for Commissioners and summarize record and establish, coordinate, maintain and update full-party, parties-of-interest and Service List in compliance with PSC 2.32, Wis. Adm. Code.

Examples of specific tasks performed by this position include the following:

Abridge portions of transcripts (prefiled as well as transcribed) to determine party status, briefing deadlines, prefiling dates, data request information and schedules, issues, documents to be considered part of the record and outstanding material pertinent to specific case; index prefiled transcripts as to exhibits and descriptions, witnesses, and page numbers. Correspond with, and respond to, inquiries by the public, media, staff, intervening counsel, applicant's counsel and legal offices, and staff regarding various activities, policies, procedures, legal requirements, prehearing and hearing dates, places and schedules.

* * *

Inform parties to the proceeding and commission staff orally or in writing of proper procedures and legal requirements pertaining to filing of prefiled testimony, exhibits, briefs and comments; monitor filings to ensure compliance.

Develop and update as necessary legal documents, forms and guidelines necessary to division operations; i.e., hearing reports, assessment notices, letter notices, full-party records, case status, and Commission record status.

Appellant's Exhibit 18. This position reports to an Attorney 13-Management. This position is difficult to compare in a meaningful way to appellant's position because of its significantly different orientation (paralegal in a relatively large agency versus an office manager in a smaller agency).

g. PA 3-Tax Appeals Commission. This is a paralegal position. The position summary state that it "carries the title of 'clerk of the Wisconsin Tax Appeals Commission' and, as such, would encompass the many duties similar to a clerk of Circuit Courts." As such, this position is responsible for reviewing petitions, opening files, and, in general, for the administrative processing of appeals from beginning to completion. This position is also responsible for preparing returns of record for judicial review proceedings. It has a 20% allocation for general administrative activities, such as functioning as the commission timekeeper, taking care of the mail, etc. This position reports to an Administrative Assistant 4 (AA 4). This position is also difficult to compare to appellant's position because of the different orientation of the job.

h. PA 3-Waste Facility Siting Board. The PD for this position has the following position summary:

Under the general direction of the Executive Director, this position functions very independently in a small 2-person office providing a wide range of support services. The position provides program and administrative support to the executive director in the day to day administration of the agency and in the development of program policies and procedures; provides support in the administration of the negotiation/arbitration process to affected parties, attorneys, legislators, and the general public in accord with s. 144.445, Wis. Stats., and the administrative rules of the WFSB; provides staff support to the WFSB; and manages the WFSB office.

Appellant's Exhibit 19. This position has the following specific budget duties:

Monitor WFSB budget; reconcile internal accounts with DOA reports, bringing any accounting errors to attention of the executive director.

Calculate figures based on existing data and projected increases for budget preparation; review and recommend possible reductions or increases in expenditures where appropriate.

Prepare financial reports for executive director and WFSB semi-annually and as requested.

This position's responsibility for the negotiation/arbitration process under §111.445, Stats., includes the following:

- B1. Initiate and maintain files on all cases filed with the WFSB.
- B2. Monitor all cases and adhere to schedule of actions required by the WFSB to comply with statutory timetables and notice requirements.
- B3. Review requests for local approvals, siting resolutions, and economic interest statements for completeness; notify parties of any deficiencies.
- B4. Compose correspondence to accomplish B2 and B3, exercising knowledge of sec. 144.445, Wis. Stats., and WFSB procedures.
- B5. Maintain working knowledge of s. 144.445, Wis. Stats., in order to explain and interpret WFSB policies and procedures to affected parties, attorneys, elected officials, state agencies, general public, and the media.

While this position is in a smaller agency than BALTC, the position is not at a lower level from a classification standpoint, due to its involvement in the agency budget process and the §144.445 process.

8. The duties and responsibilities of appellant's position are better classified as PA 3 rather than as PA 4.

9. By a memo dated February 25, 1992 (Respondent's Exhibit 3), DOA personnel approved the reclassification of appellant's position from PA 2 to PA 3, but not to the requested level of PA 4.

CONCLUSIONS OF LAW

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

2. Appellant has the burden of proving by a preponderance of the evidence that respondents' decision to reclassify her position from PA 2 to PA 3 rather than PA 4 was in error.

3. Appellant has failed to sustain her burden of proof, and it is concluded that respondents' decision was not incorrect.

OPINION

The program assistant series is a general series that encompasses a wide range of types of positions. Because of this and the correspondingly relative general language in the class definitions, frequently a great deal of the weight in classification decisions is carried by position comparisons, as was the case here.

One of the more significant comparison positions is the PA 4 at the Ethics Board. While there are a number of points of similarity, that position has a significant budgetary component that is not found in appellant's position. Also, in the absence of the executive director and other professional staff, the Ethics Board acts for them in reviewing statements of economic interests for statutory compliance. Mr. Potaracke testified that appellant's role in his absence is not substantive policy oriented, but rather involves scheduling and coordinative activities. In comparing these positions in the context of the language in the PA 4 definition that: "Positions at this level are differentiated from lower-level Program Assistants on the basis of the size and scope of the program involved, the independence of action, degree of involvement and impact of decisions and judgement required by the position," the Ethics Board comparison definitely supports respondents' decision.

The comparison to the PA 4 position at the Division of Community Services at DHSS is less compelling from respondents' standpoint. That position has functions which are somewhat comparable to appellant's position. However, it provides program support for the DCS administrator and the assistant to the administrator of a large division, and does not have the variety of functions associated with the role of an office manager for a small agency. On the other hand, DCS is a much larger operation than BALTC, and respondents relied on this for much of their conclusion that the position was stronger in terms of "size and scope of the programs involved." This approach to comparison appears to have a reasonable basis, although if this were the only PA 4 position to be compared to appellant's, this would be a very close case.

The PA 4 positions at the PSC and the State Building Commission also are primarily distinguishable from appellant's position on the basis of the size and scope of the programs involved, and the impact of decisions. Appellant argues that the BALTC deals with more individuals and a larger variety of programs and legislation. However, while this is not meant to downplay the significance the BALTC, the Building Commission's membership includes the Governor and legislators and its decisions impact at many different levels with respect to the state budget, deployment of capital, employment, etc. Appellant has not demonstrated that respondents' conclusion with respect to this position comparison was incorrect.

The two PA 3 paralegal-oriented positions at the PSC and the Tax Appeals Commission are difficult to compare because of the kinds of work performed. While these positions are performing a more limited variety of work, they do have a degree of technical legal responsibility and appear to function with a fair degree of independent responsibility with respect to their program areas. Appellant analogizes the activity in the PSC PA 3 position description of "prepare and compile complete Commission record for Commissioners..." to the record keeping activities of a WPO 2 at BALTC. However, there is no evidence to support appellant's assertion that these activities are comparable.

The PA 3 position at the Waste Facility Siting Board is comparable to appellant's position on the basis of its PD, because although it is in a smaller agency, it has significant components with respect to the agency budget and the \$111.445 negotiation/arbitration processes. While appellant contends that the incumbent of this position has told her she does not have any budget responsibilities, this does not lead to the conclusion that these responsibilities should be ignored in the position comparison being conducted at this stage of this proceeding. The PD constitutes what amounts to a state business record, reflecting management's assignment of duties and responsibilities to this position. The only evidence in this record to the contrary is the hearsay statement of the incumbent provided in appellant's testimony. This hearsay evidence alone is insufficient to outweigh the PD on this point. Furthermore, the only inference that can be drawn from the record before the Commission is that this position was classified at the PA 3 level based on its duties and responsibilities as set forth on the PD, including those involving budgetary matters. This is not a case where the record reflects that DOA personnel continued the position at the PA 3 level notwithstanding awareness that the PD was inaccurate.

Appellant has pointed out (see Appellant's Exhibit 3) that certain areas of her responsibility are performed in other agencies by a higher level position. These comparisons have little weight because of the myriad differences in the agencies, organizational structures, and positions involved. To cite one example, the AA 3 position at the Personnel Commission is another office manager type position in a small agency which is responsible for many of the same functions as appellant's position -- personnel and payroll coordination, etc. However, this position has very responsible budget functions which are absent from appellant's position, and which undoubtedly contribute significantly to its classification level.¹

In conclusion, while this position has experienced an increase in the level at which it functions, appellant has not sustained her burden of proof of

¹ In a related vein, the commission has considered appellant's comparisons to other positions outside the PA series and not found them significant, primarily for similar reasons.

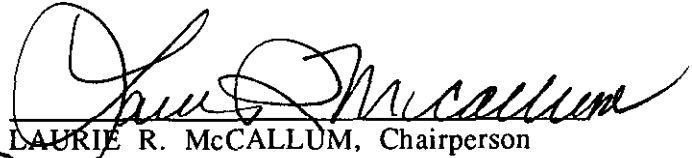
establishing by a preponderance of the evidence that DOA's decision to reclassify it from PA 2 to PA 3, rather than PA 4, was incorrect.

ORDER

Respondent's action reclassifying this position to PA 3 rather than PA 4 is affirmed and this appeal is dismissed.

Dated: July 22, 1993

STATE PERSONNEL COMMISSION


LAURIE R. McCALLUM, Chairperson

AJT:dkd


DONALD R. MURPHY, Commissioner


JUDY M. ROGERS, Commissioner

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NOTICE
OF RIGHT OF PARTIES TO PETITION FOR REHEARING AND JUDICIAL REVIEW
OF AN ADVERSE DECISION BY THE PERSONNEL COMMISSION

Petition for Rehearing. Any person aggrieved by a final order may, within 20 days after service of the order, file a written petition with the Commission for rehearing. Unless the Commission's order was served personally, service occurred on the date of mailing as set forth in the attached affidavit of mailing. The petition for rehearing must specify the grounds for the relief sought and supporting authorities. Copies shall be served on all parties of record. See §227.49, Wis. Stats., for procedural details regarding petitions for rehearing.

Petition for Judicial Review. Any person aggrieved by a decision is entitled to judicial review thereof. The petition for judicial review must be filed in the appropriate circuit court as provided in §227.53(1)(a)3, Wis. Stats., and a copy of the petition must be served on the Commission pursuant to §227.53(1)(a)1, Wis. Stats. The petition must identify the Wisconsin Personnel Commission as respondent. The petition for judicial review must be served and filed within 30 days after the service of the commission's decision except that if a rehearing is requested, any party desiring judicial review must serve and file a petition for review within 30 days after the service of the Commission's order finally disposing of the application for rehearing, or within 30 days after the final disposition by operation of law of any such application for rehearing. Unless the Commission's decision was served personally, service of the decision occurred on the date of mailing as set forth in the attached affidavit of mailing. Not later than 30 days after the petition has been filed in circuit court, the petitioner must also serve a copy of the petition on all parties who appeared in the proceeding before the Commission (who are identified immediately above as "parties") or upon the party's attorney of record. See §227.53, Wis. Stats., for procedural details regarding petitions for judicial review.

It is the responsibility of the petitioning party to arrange for the preparation of the necessary legal documents because neither the commission nor its staff may assist in such preparation.