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MARGARET A. FAY,
 Appellant,

v.

Secretary, DEPARTMENT OF
 EMPLOYMENT RELATIONS,
 Respondent.

Case No. 92-0438-PC

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DECISION
 AND
 ORDER

This case involves an appeal pursuant to §230.44(1)(b), Stats., of the reallocation of appellant's position from Agricultural Marketing Specialist 1 to Administrative Assistant 4 (AA 4) rather than AA 5. This reallocation was recommended by Georgia Pedracine of DATCP (Department of Agriculture, Trade and Consumer Protection) personnel, and concurred in by Jean Bidner of DER.

Appellant's position is in the Marketing Division of the DATCP. Her immediate supervisor is Erwin Sholts, the Director of the Agricultural Development and Diversification program. The duties and responsibilities of appellant's position are essentially accurately described in her position description (PD) she signed on October 25, 1990 (Respondent's Exhibit 3). Appellant submitted a revised PD (Appellant's Exhibit 1) as part of the hearing record. This document does not contravene her earlier, "official" PD, but provides amplification and emphasis with respect to certain aspects of the position as perceived by appellant. The revised PD contains the following "position summary" (the bold type constitutes appellant's additions to her "official" PD):

This is a very responsible professional position located in the Marketing Division - Agricultural Development and Diversification program (section), reporting to Director and working closely with the Department legal counsel on a variety of statutory and regulatory services for the Secretary.

The primary emphasis of the position is on the administration and oversight of state commodity marketing orders and agreements **including day-to-day program operations, compliance, service, planning and support staff leadership and limited**

term employment recruitment and staff assignments, and program budgeting and billing for a cost recovery program.

Services to state commodity boards include: planning and organizational assistance (**consultation**), conducting referendum and elections, preparation and **compliance analysis** of reports on board projects and budgets, conducting board income and expenditure audits, monitoring of board activities to assure that they are operating within the State Administrative Code; coordination of media services to the boards including press and radio news releases, draft legislative proposals regarding administrative rule changes as required, and provide other board services authorized.

Secondary emphasis is provision of organizational assistance to organizations, cooperatives, farmers, and other independent small and medium-sized businesses and to collaborate on agricultural assistance projects when assigned. Work is performed under general supervision. Work is reviewed through reports and administrative conferences.

The revised PD contains the following goals and associated time percentages:

35% **GOAL A** - **Directs Provision of day-to-day program operations, compliance, service, planning and support staff leadership for the assistance to industry groups in the development, implementation and administration of state marketing orders and agreements. Work is to be performed on a cost recovery basis.**

* * *

55% **GOAL B** - Provision of monitoring and oversight duties associated with marketing board programs, policies and procedures, operations, and other compliance in accordance with Chapter 96; Stats., Chapter Ag 140, Wis. Adm. Code; and other market order provisions.

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10% **GOAL C** - Provide business planning and organizational assistance to farmers, their commodity groups, marketing boards, cooperatives, and business associations.

Appellant's position is the primary point of contact for the marketing boards. She is frequently called on to answer questions and provide explanations about marketing orders, board elections, and other aspects of state and departmental law and policy. She is the person in the agency who works most closely with the board members. She also works closely with

DATCP management information employees with respect to developing data bases and updating lists of producers that are used in the marketing order program for referenda and board elections. Appellant provides information to the boards regarding producers who are delinquent in their assessments, and handles the collection process through small claims court. This involves the preparation of primarily "boiler plate" documents. Appellant also directs the activities of two or more LTE's and plays a significant role in their hiring and other aspects of their personnel management. Other aspects of her work, primarily the extent of her authority, will be discussed below in the context of the classification criteria.

The issue in this case involves the determination of whether respondent erred when it reallocated appellant's position to AA 4 rather than AA 5. The relevant classification definitions and examples of work performed are as follows:

Administrative Assistant 4

Characteristic Work of the Class

Definition:

This is line supervisory and/or staff assistance work in a state agency or segment of a large state agency. Employees in this class have supervisory responsibilities over a large, moderately complex records processing and maintenance unit involving a variety of functions and having large clerical staffs with a number of subordinate levels of supervision, and/or supervise and perform staff services in records, accounting, personnel, budgeting or purchasing. Employees are responsible for interpretations of laws, rules and departmental policies in carrying out their assigned functions. Work is performed with a minimum of supervision which is received through staff conferences or general written or oral instructions. Employees are expected to carry out assigned functions with a considerable amount of initiative and independence with the results of their work reviewed through oral or written reports and personal conferences.

Examples of Work Performed:

Assumes full responsibility for supervising a large records maintenance and processing section involving a variety of functions and a number of subordinate organizational units with a large number of employees.

Supervises and prepares special administrative surveys and studies for reports to aid in program development and improve-

ment or other studies to increase the efficiency of work flow and/or production.

Develops and installs operating procedures, deadlines and priorities and makes recommendations concerning policies, rules, and proposed legislation.

Reviews and analyzes reports of assistants or field staff to determine effectiveness of operations and needed areas of improvement.

Interprets laws, rules and departmental policies to employes, other governmental agencies, and the general public or their legal representatives.

Supervises departmental records and accounts, approves disbursements, maintains cash receipts or budget records.

Acts as a liaison officer between department and other agencies in regard to a variety of administrative services.

Interviews, appoints and assigns personnel and establishes clearly defined work assignments and responsibilities.

Keeps records and makes reports and performs related work as required.

* * *

Administrative Assistant 5

Class Description

Definition:

This is responsible line administrative and/or professional staff assistance work in a large state agency. Employees in this class direct an important function of the department and/or provide staff services in management areas such as accounting, purchasing, personnel or budget preparation. Employees may be responsible for supervising a staff of technical, semi-professional or professional employees in directing the assigned program. Employees have a great deal of latitude in areas of decision making and initiating action within a broad framework of laws and rules. Work is evaluated by administrative superiors through conferences, personal observations and reports.

Areas of Specialization:

Staff services, general administration, specialized program administration, or any comparable specialization or combination thereof.

Examples of Work Performed:

Plans, organizes, and supervises the work of technical, semi-professional, or professional personnel; reviews and analyzes operating procedures; evaluates program and installs improvements.

Directs the administrative services of a moderate sized department or specialized services of a major department such as budgeting, accounting, personnel and purchasing.

Performs a wide variety of top level staff assignments in many broad areas for the head of a major department, often acting with full authority of a director or commission.

Directs a function or program of a department which may involve the supervision of technical or professional personnel and the responsibility for law enforcement or for program review of other agencies functions in a specialized area.

Conducts responsible statistical, financial, program and other research; recommends program improvements or changes in program direction or emphasis.

Represents the department in important public relations work involving program promotion, coordination and cooperation of other private and governmental agencies, and public appearances.

Performs related work as required.

The duties and responsibilities of appellant's position are not particularly well-described by the AA 4 class definition. However, it is a somewhat better description than the AA 5 definition. Also, her work is better represented by the AA 4 examples of work performed than by the AA 5 examples. Finally, her position more closely resembles from a classification standpoint the other AA 4 PD's rather than the AA 5 PD's that are in this record. For these reasons, the Commission concludes that respondent did not err in reallocating this position to AA 4 rather than AA 5.

With respect to the AA 4 definition, appellant's position does not "have supervisory responsibilities over a large, moderately complex records processing and maintenance unit" as set forth in the initial allocation for this classification. With respect to the second allocation -- "perform staff services in records, accounting, personnel, budgeting or purchasing" -- it is probable that it is primarily intended more for a support staff specialist type of position than a job like appellant's. However, she does have some responsibilities in records, accounting, personnel and budgeting, so placement in this allocation would not be completely inappropriate. The remainder of the AA 4 definition applies to appellant's position, in that she is responsible for interpreting laws, rules and policies, and works relatively independently with a minimal amount of supervision.

Turning to the AA 5 definition, the first sentence is: "This is staff assistance work in a large state agency." Appellant would meet this definition but for the fact that it is conceded that DATCP is not a "large" state agency.

However, respondent has not advanced this contention. One of the AA 5 positions respondent cited by way of comparison (Respondent's Exhibit 6, PD for position occupied by Jeanne M. Meier) is also in DATCP, so it can be inferred that this aspect of the class definition has been reinterpreted in light of changes in state agency structure since 1979, when this class specification was promulgated.

The second sentence in the definition is "Employees in this class direct an important function of the department and/or provide staff services in management areas such as accounting, purchasing, personnel or budget preparation." The record in this case does not establish that appellant meets the first allocation of "direct[ing] an important function of the department." While she works in a relatively independent manner, her role is primarily facilitative, coordinative and administrative in nature, and her supervisor (Mr. Sholts) and the assistant division administrator (Mr. Lester) have the responsibility for making the major program decisions. The witnesses' testimony on this point was not necessarily conflicting, but had significantly different emphases.

For example, Mr. Lester testified with respect to appellant's role in the marketing order hearing process that she handled administrative matters such as registering the appearance of participants, taking notes, etc., while he wrote up the findings resulting from the hearing and reported back to the Board of Agriculture, Trade and Consumer Protection, etc. He further testified that he has appellant review his rule drafts because she is the person in the agency who has the most direct, continuing contact with the boards, and her input helps insure that he has not missed anything or made mistakes, such as misspellings, in his drafts.

Mr. Sholts testified that appellant acts as a conduit for communication and the transfer of information between the boards and the department, and serves the board's needs. He further testified that while appellant functions very independently with respect to the degree of supervision received, she does not have a policy development role and she basically is involved in explaining rules and policies rather than providing significant substantive interpretations of them.

Appellant, on the other hand, testified with respect to the hearing process that LTE's handled the clerical aspects of the process, and that she had significant substantive input into the issues involved in the hearing drafts.

She emphasized that there is a team approach used on many issues, with input from Mr. Lester, Mr. Sholts and herself, and that generally speaking she is more intensively involved in substantive, programmatic decisions than represented by management.

Even assuming that appellant's role in policy-making and program development activities is closer to her version with respect to the degree of substantive input she has, the fact would remain that she would not be considered to "direct an important function of the department," as set forth in the AA 5 definition, because even as she describes her level of authority, the ultimate authority for the decisions is being exercised by her supervisors, with appellant providing input. Her role in this regard and level of responsibility may be contrasted with the AA 5 position in DATCP occupied by Ms. Meier. The PD for this position (Respondent's Exhibit 6) provides that "[t]his is the primary position in the agency responsible for activities associated with the farmer's assistance program."

The second allocation at the AA 5 level -- "provide staff services in management areas such as accounting, purchasing, personnel or budget preparation" -- is similar to the second AA 4 allocation and conceivably could apply to appellant's position. The definition goes on to provide: "Employee may be responsible for supervising a staff of technical, semi-professional or professional employees in directing the assigned program." (emphasis added) If appellant's position fit within this descriptive language, it would strengthen her case. While it does not, since this is not a mandatory criterion for an AA 5 classification, this is not dispositive. The remainder of the definition, which concerns latitude and level of independence, does not operate to exclude complainant.

Since appellant's position could plausibly be described by either the AA 4 or AA 5 definition, determination of the appropriate level rests primarily on the examples of work performed and a comparison to other positions in this series.

With respect to the AA 5 examples, she does not "plan, organize and supervise the work of technical, semi-professional, or professional personnel," although she does "review and analyze operating procedures; evaluate program and install improvements," within her sphere of operation. She does not "[d]irect the administrative services of a moderate sized department or specialized services of a major department." She does not

"[p]erform a wide variety of top level staff assignments in many broad areas for the head of a major department, often acting with full authority of a director or commission." She does not "[d]irect a function or program of a department which may involve the supervision of technical or professional personnel and the responsibility for law enforcement or for program review of other agencies' functions in a specialized area." Appellant does satisfy the remaining two examples, again within her sphere of activity:

Conducts responsible statistical, financial, program and other research; recommends program improvements or changes in program direction or emphasis.

Represents the department in important public relations work involving program promotion, coordination and cooperation of other private and governmental agencies, and public appearances.

With respect to the AA 4 work examples, the first (relating to supervision of a records processing section) is inapplicable. However, appellant's position probably fits to some extent within the remaining work examples, except for those relating mainly to financial positions or involving supervision of permanent employees:

Supervises and prepares special administrative surveys and studies for reports to aid in program development and improvement or other studies to increase the efficiency of work flow and/or production.

Develops and installs operating procedures, deadlines and priorities and makes recommendations concerning policies, rules, and proposed legislation.

Reviews and analyzes reports of assistants or field staff to determine effectiveness of operations and needed areas of improvement.

Interprets laws, rules and departmental policies to employees, other governmental agencies, and the general public or their legal representatives.

* * *

Acts as a liaison officer between department and other agencies in regard to a variety of administrative services.

* * *

Keeps records and makes reports and performs related work as required.

The PD's in this record strongly support respondent's decision. As has already been mentioned, the other DATCP AA 5 (Respondent's Exhibit 6) is

directly responsible for the farmer's assistance program. It is responsible for the direction of several permanent positions (a Research Assistant 5, Program Assistant 2, and Administrative Assistant 4). This position develops its own program's operating budget, which includes both state and federal funds. Its legally-oriented aspects are at a substantially higher level of complexity and degree of responsibility than appellant's, as illustrated in part by its stated training and experience requirement: "As a minimum, a law degree with emphasis on commercial contract law, foreclosure, bankruptcy, and conflict resolution. Another research or teaching-oriented degree is desirable, as well as background in agriculture."

The other AA 5 PD in this record is located in the Department of Industry, Labor and Human Relations (DILHR) and is occupied by Lynne Fry (Respondent's Exhibit 7). This position has program responsibility for the statewide labor-management cooperation program. It is responsible for developing an annual grants budget, and for overall administration of a grants program. While this position has more similarities to appellant's position than does the DATCP AA 5, it has greater authority and responsibility than appellant's position.

The AA 4 positions also tend to support respondent's decision. The AA 4 position occupied by Kathryn Schmitt in DATCP (Respondent's Exhibit 4) serves as the Farmer Training Coordinator. Like appellant's position, it functions very independently and has a heavy emphasis on coordination with entities within and without the agency. The AA 4 position in the Department of Justice occupied by Teresa Meuer (Respondent's Exhibit 5) serves as the staff person to the Crime Victim's Council. It is responsible for developing, researching and coordinating victim-related legislation. Again, like appellant's position, this position has a strong emphasis on coordination with various agencies and other entities outside state government.

In conclusion, while the record establishes that appellant has a responsible job and plays an important role in the Marketing Division, it does not establish that respondent erred in reallocating her position to AA 4, which on this record provides a better fit for her position than AA 5.

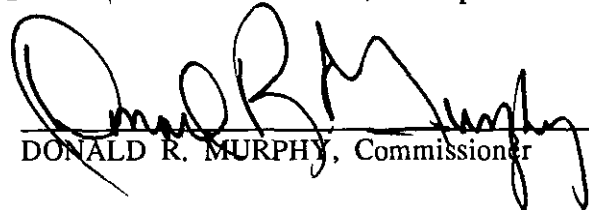
ORDER

The respondent's action reallocating appellant's position to AA 4 rather than AA 5 is affirmed and this appeal is dismissed.

Dated: July 7, 1994 STATE PERSONNEL COMMISSION


LAURIE R. McCALLUM, Chairperson

AJT:rcr


DONALD R. MURPHY, Commissioner


JUDY M. ROGERS, Commissioner

Parties:

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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.

Pursuant to 1993 Wis. Act 16, effective August 12, 1993, there are certain additional procedures which apply if the Commission's decision is rendered in an appeal of a classification-related decision made by the Secretary of the Department of Employment Relations (DER) or delegated by DER to another agency. The additional procedures for such decisions are as follows:

1. If the Commission's decision was issued after a contested case hearing, the Commission has 90 days after receipt of notice that a petition for judicial review has been filed in which to issue written findings of fact and conclusions of law. (§3020, 1993 Wis. Act 16, creating §227.47(2), Wis. Stats.)

2. The record of the hearing or arbitration before the Commission is transcribed at the expense of the party petitioning for judicial review. (§3012, 1993 Wis. Act 16, amending §227.44(8), Wis. Stats.)