

STATE OF WISCONSIN

PERSONNEL COMMISSION

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DIANE K. ALME,

Appellant,

v.

Secretary, DEPARTMENT OF
NATURAL RESOURCES, and
Secretary, DEPARTMENT OF
EMPLOYMENT RELATIONS,

Respondents.

Case No. 93-0129-PC

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DECISION
AND
ORDER

This is an appeal, pursuant to §230.44(1)(b), Wis. Stats., from a decision by the respondents denying the appellant's request to reclassify her position from a Community Services Specialist 2 to a Community Services Specialist 3. The hearing was conducted on April 5, 1994.

In June, 1991, appellant requested a reclassification of her position. This request was conveyed to respondent Department of Natural Resource's (hereinafter, DNR) Personnel Director in October 1991. Susanne Steinmetz (DNR's Classification Specialist) reviewed and analyzed appellant's reclassification request. She concluded that appellant's job was more appropriately classified in the accountant series as an Accountant 4 rather than in the CSS series. At that time, Accountant 4 was a counterpart pay range to appellant's CSS 2 classification (Range 14). After consulting with appellant's supervisor, Steinmetz decided not to issue this decision because, at the time, a statewide survey of fiscal positions was being conducted by the Department of Employment Relations. Steinmetz believed that after the fiscal survey was implemented, appellant could be reallocated to a new fiscal classification and a higher pay range. It was her opinion that in the meantime, appellant's position was more appropriately classified at the CSS 2 rather than CSS 3 level. Steinmetz did not issue a written decision denying appellant's reclassification request. After the implementation of the statewide survey of fiscal positions, appellant's position was reallocated and she was reggraded to Accountant-Advanced (Range 16) effective in April, 1992. Appellant appealed the constructive denial of her reclassification request to the Personnel Commission in July 1993.

At hearing, respondents disputed the Personnel Commission's jurisdiction of the case because, as of the commencement of the hearing, respondents had not issued a written denial of appellant's reclassification request. Respondents' counsel cured this deficiency at hearing by stating that had the final written decision been issued, appellant's reclassification request would have been denied based upon the applicable classification specifications.

Appellant believes that in 1991, her position was more appropriately classified at the Community Services Specialist (CSS) 3 rather than CSS 2 level. In order for a position to be reclassified to a higher level, the majority of the position's responsibilities must be identified at the higher level classification specification.

At all times relevant to this proceeding, the appellant was employed as a Community Services Specialist (hereinafter, CSS) 2 in respondent DNR's Bureau of Environmental Loans. On October 15, 1991, appellant signed a PD which accurately reflected her position duties and responsibilities at the time and for the prior six months. This PD stated, in part:

Position Summary

Performance of sewer use rate studies in the analysis of routine, complex and highly complex sewer municipal rate proceedings required by municipalities in order to obtain loans and grants. Respond to inquiries and complaints. Review sewer use ordinances, intermunicipal agreements and industrial contracts. Advise and provide technical assistance to municipalities applying for loans. Review loan applications and plans and specifications and prepare loan documents. General supervision is given for assignments on routine cases in which employee has full involvement. Work is performed independently on routine and complex matters with highly complex, controversial, or precedent setting issues being performed under the general supervision of the Section Chief or Bureau Director.

The goals and percentages are "Analysis of formal rate applications" (75%), "Respond to inquiries and complaints involving rate matters" (3%), and "Advise and provide technical assistance to applicants, consulting engineers and private citizens on the Clean Water Fund program. Review applications and related materials" (18%).

The CSS 2 position standard provides, in part:

Definition:

This is responsible general advisory and technical assistance work in all matters relating to the operations of local units of government within the state. Employees in this classification are responsible for providing a broad range of technical assistance and information to requesting local units in an assigned geographic area of the state

and acting as a statewide consultant in one or more of the specialty areas related to community development and local government operations. The work includes providing technical assistance and information to local units in the same manner as a Community Services Consultant 1 and for providing specialized information and technical assistance to local governmental units and organizations, state agencies, and other Community Services Consultants on a statewide basis. Requests are acted upon independently and work is reviewed through conferences and staff meetings, primarily for informational purposes.

* * *

Examples of Work Performed:

Perform duties similar to a Community Services Consultant 1.

Provide coordination and liaison between state agencies and local units of government and other local organizations in the areas(s) of specialization.

Attend agency staff meetings, conferences, and workshops pertaining to the specialty areas(s) and plan and coordinate informational meetings designed for local governmental, state agency, and bureau personnel.

Provide specialty program information to individuals, groups, and agencies upon request.

Abstract and summarize current informational materials in the areas(s) of specialization, compile reports, and conduct research or surveys to obtain new data.

Represent the bureau in the various capacities which may be required for a particular specialty, such as attending hearings, reviewing legislation and serving on committees.

The CSS 3 position standard provides, in part:

Definition:

This is responsible statewide consultative and technical assistance work in a major area of specialization related to community development. Positions in this class are based in the central office but travel will be required in connection with the activities necessary to serve the community services field consultants, local governmental units, and individuals and organizations throughout the state as the bureau expert in the specialty field. The work includes providing and coordinating information on federal and state programs related to the specialty; assisting local governmental units and organizations in developing appropriate programs and applying for necessary funding; and developing and maintaining working relationships with state and federal agencies. Depending on the specialty field, individuals may plan, coordinate and implement programs, such as in the area of training or provide technical assistance, such as in the area of housing. Work is performed independently with review for information purposes only.

* * *

Examples of Work Performed:

Advise and assist all types of local governmental units, local and regional organizations, bureau field consultants, and other staff members on available programs and funding sources, technical

information and its application, and current problems in matters relating to in the area of specialization.

Provide specialized technical assistance to local units in the areas of advance planning, program development, and proposal preparation.

Establish and maintain close working relationships with state and federal agencies involved with administering and developing programs in the specialty field.

Review existing legislation related to the area of concentration and recommend revisions or additions, as well as recommending new legislation or the approval of current legislative proposals.

Develop programs to facilitate the implementation of legislative directives in the area of expertise.

Act as a clearinghouse for information in the specialized area, including the development of data sources and the coordination of available information.

Recommend and organize research and survey projects in the specialty field in areas where adequate information is not available from other sources.

Plan, coordinate and implement pre-service and in-service community development training programs for local governmental personnel and elected officials.

Survey training needs, arrange for funding, develop programs, provide for efficient use of all training resources, evaluate training programs, and make recommendations to improve specific training programs and to further the state's overall community services training program.

Based on the classification specifications, the CSS 3 has more all-encompassing responsibilities than the CSS 2. The CSS 3 is the bureau expert in a major area of specialization related to community development. In that capacity, the position must travel the state, provide and coordinate information on federal and state programs and assist local governmental units and organizations in developing programs and applying for funds. Work is performed independently with review for informational purposes only. The "Examples of Work Performed" by the CSS 3 further distinguishes between the CSS 2 and CSS 3 by reflecting the all-encompassing activities in which the CSS 3 participates. The CSS 3 has entire responsibility for the specialty including, among other things, program development, legislative analysis, community/agency relations, research and training. The CSS 3 keeps abreast of information related to the specialty and is able to assist entities with all aspects of the specialization from developing programs to funding them.

Appellant's responsibilities are narrow and not as all-encompassing as a CSS 3. For example, appellant's most time consuming responsibility reflected in her position description (hereinafter, PD) is evaluating and analyzing user charge systems and sewer use ordinances (which leads to the approval or

disapproval of loans to these entities). While her duties are extremely technical, the majority of her duties are user charge reviews. In conducting these reviews she follows previously established standards and policies (required by statute and administrative rule) which she did not develop. Although the various guidelines (both statutory and administrative) are complicated and large amounts of money are involved, neither the complexity of the analysis nor the considerable sums of money involved are factors germane to the classification specifications. Statutory and administrative code requirements must be met by municipal rate cases to receive loans. Appellant has a set of rules she applies to any given situation. User charge systems are just that: "a system" in place. Appellant is not creating, developing, or modifying it. There is a process for conducting rate analyses which is complicated but specific.

Appellant does not have the overall authority for user charge reviews. While she deals independently with day-to-day and complex issues, controversial or precedent-setting issues require her to consult with and receive the approval of her Section Chief or Bureau Director. Thus, the latter type of cases do not carry appellant as the final decision maker and/or responsible party. Rate review letters do not go out under her signature. These factors tend to show that appellant does not have overall and/or ultimate responsibility for the areas in which she works and that her work is not reviewed for informational purposes only.

Appellant's responsibilities, reflected in her PD, do not identify her position as one that travels, works closely with state or federal agencies involved with developing programs in her specialty, reviews existing legislation or creates new legislation, develops programs, trains, and organizes research projects. Although appellant testified that she does some travelling, training, coordinating with other agencies and, on one occasion, did some consulting on the administrative rules, these are not duties reflected in her PD and appear to be a minor aspect of her responsibilities.

Appellant's predecessor in performing the majority of user charge reviews also was classified as a CSS 2 although that individual performed these responsibilities under a grant program rather than a loan program. However, the shift from grant to loan does not present additional responsibilities that make the position a CSS 3 rather than a CSS 2. The loan program adds an extra consideration to appellant's rate analyses in that she must review a municipality's operating and capital budgets. This added step in the review does not fall into any of the criteria of the classification specifications.

Appellant is not the only position in DNR performing user charge reviews. Another position classified as a CSS 2 performs simple user charge reviews. This individual's position appears to back up appellant rather than perform these as a central aspect of her position responsibilities. Nonetheless, that position does perform some of the same responsibilities as appellant and therefore appellant is not the sole user charge system specialist in the department.

Respondents identified the CSS 2 PD of Cynthia M. Hoffland dated November 25, 1991 as comparable to appellant's. Hoffland's "Position Summary" states:

Under the general supervision of the Director of the Bureau of Community Assistance, manage the Nonpoint Source Grant Program. Responsibilities include review of applications and cost share agreements and tracking program status and progress. Coordinate program with Water Resources, Property Management, Finance, department of Agriculture, Trade and Consumer Protection and other affected agencies.

Her goals and percentages are:

- 75% A. Advise and provide technical assistance to counties, cities, villages, regional planning commissions, UW-Extension, consultants and private citizens on the State Nonpoint Source Pollution Abatement Program. Review applications and cost share agreements for priority watershed projects.
- 20% B. Cost Share Agreement Specialist for the Nonpoint Source Grant Program.
- 5% C. Maintain the integrity of the Nonpoint Source computer tracking system.

Hoffland's CSS 2 PD bears a similarity to appellant's. She is under the general supervision of her Bureau director and provides information and reviews applications and cost share agreements for the Nonpoint Source Grant Program. Hoffland assists parties in applying for funding under a DNR program and reviews those applications. Her responsibilities are not restricted to a geographic area of the state. Included as minor aspects of Hoffland's responsibilities are a minimal level of coordination of her activities with other state agencies and she trains other staff and grantees. Her specialization, cost share agreements, is a narrow aspect of a larger picture.

Respondents identified the CSS 3 PD of Larry Freidig dated November 18, 1985 as an example of respondents' application of the CSS 3 position standard. Freidig's "Position Summary" states:

Coordinate and administer a statewide snowmobile trail aid program, a statewide all terrain vehicle aid program, a state motorcycle recreation [sic] and a statewide recreational boating facilities program. Department liaison for the Off Road Vehicle Council, the

Snowmobile Recreational Advisory Council, and the Wisconsin Waterways Commission. Coordinate Department involvement in the Wisconsin Conservation Corps program. Management of the Payment in Lieu of Taxes Program.

Freidig's CSS 3 PD reflects responsibilities that attribute complete responsibility to him in his specialty areas. His responsibilities encompass the entire five programs to which he is assigned. He must know his specialties and suggest innovations that might be advisable through administrative rule or procedures. Freidig develops legislation, policy and procedures (and updates them as necessary), maintains contact with organizations/agencies involved in his specialties, travels, and provides training. He broadly administers his programs by not only completing the grant/loan applications but by maintaining budgets on the programs. Presumably, if there is a problem with some aspect of these programs, Freidig is the responsible party. Appellant's PD does not reflect this breadth of connection to her specialty.

Appellant did not present evidence at the hearing either that her position was distinguishable from Hoffland's (or some other CSS 2) and/or that her position was comparable to Freidig's (or some other CSS 3).

When the majority of appellant's position responsibilities shifted to user charge systems (in 1990), her position evolved away from the CSS classification specifications. Instead of being a community-oriented type of position, it became more of a fiscal kind of position. Respondents recognized this change and ultimately reallocated appellant into the accountant series. Similarly, appellant also appeared to realize that her position no longer fell under the CSS series because when she requested her reclassification, she noted that her responsibilities were similar to Public Utility Rate Analysts at the Public Service Commission. However, the issue for hearing was stated only in terms of the CSS 3 classification. Appellant's duties in 1991 are better described at the CSS 2 level than the CSS 3 level.

ORDER


The action of respondents is affirmed and this appeal is dismissed.

Dated: September 21, 1994 STATE PERSONNEL COMMISSION


LAURIE R. McCALLUM, Chairperson

JE:Alme-Prop Dec


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.

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.)