

STATE OF WISCONSIN

PERSONNEL COMMISSION

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ERIN GAUTHIER, *

Appellant, *

v. *

Secretary, DEPARTMENT OF HEALTH *
& SOCIAL SERVICES [DOC]¹ and *

Secretary, DEPARTMENT OF *
EMPLOYMENT RELATIONS, *

Respondents. *

Case No. 93-0207-PC *

* * * * *

DECISION
AND
ORDER

This is an appeal of the denial of appellant's request that her position be reclassified from Institution Business Administrator 3 (IBA 3) to Institution Management Services Director (IMSD). A hearing was held on March 5, 6, and 7, and April 3, 1996, before Laurie R. McCallum, Chairperson. Respondents gave final argument orally on the last day of hearing and appellant gave her final argument in a brief filed May 3, 1995.

At all times relevant to this matter, appellant's position has functioned as the business manager for Ethan Allen School, a juvenile correctional facility. In this position, appellant's duties and responsibilities include oversight of the institution's: budget and all other fiscal matters (25%); facility maintenance, repair and replacement (25%); custodial, safety, environmental and laundry/sewing programs (10%); computerization, data processing, and communications (10%); and food service program (10%). In addition, this position supervises an administrative services staff of 44 positions, 8 of them directly (10%), and serves as a member of the institution's management team (10%).

¹ Pursuant to the provisions of 1995 Wisconsin Act 27, effective July 1, 1996, the authority previously held by the Secretary of the Department of Health and Social Services with respect to the position that is the subject of this proceeding is now held by the Secretary of the Department of Corrections.

Appellant's position was classified at the IBA 2 level when she was appointed to it in February of 1986. On or around November 1, 1992, appellant requested the reclassification of her position from the IBA 2 level to the IBA 3 level based on the following factors:

1. The addition of a computer system and its ongoing expansion and upgrading.
2. The enactment of the Americans with Disabilities Act which required that the institution survey, plan, and implement facility improvements.
3. The increase in the institution population from 550-600 in 1986 to 750-800 in 1992.
4. Increased responsibility for planning and administering building projects.

Respondent DHSS concluded that these factors were insufficient to justify the reclassification of appellant's position to the IBA 3 level but did approve the reclassification based on the complexities of the budget process for which appellant's position is responsible, i.e., Ethan Allen School receives the bulk of its operating revenues from Program Revenue-Other (PRO)-Youth Aids funding.

The specifications for the IBA 2 classification state as follows, in pertinent part:

This is administrative work supervising and directing all business management and support functions at such institutions as the Wisconsin Correctional Institution, the Wisconsin Correctional Camp System, Central State Hospital, and the largest juvenile correctional institutions. The employe in this class is responsible for the same functions identified at the lower level, such as fiscal management, purchasing, budget preparation and control, food service, stores and maintenance operations. Work at this level differs from that at the one level by the complexity of the programs and the size and scope of the overall institution program which provides for a higher level of administrative involvement. Work is performed under the general supervision of an institution superintendent.

The specifications for the IBA 3 classification state as follows, in pertinent part:

This is highly responsible administrative work directing all the business and support services at a major institution such as the colonies for the mentally retarded, Winnebago State Hospital, Mendota State Hospital, Wisconsin State Prison, and the Wisconsin State Reformatory. The programs at these institutions are significantly broader in scope than are those directed by positions allocated to lower levels in this series. The employee in this class is totally responsible for supervising all business management and support functions including fiscal management, budget development and control, purchasing and inventory systems, food service, housekeeping, power plant, buildings and grounds maintenance, farm and personnel management. The work includes program planning, policy formulation, and the coordination of management services programs as well as serving as a member of the administrative team in the development of overall institution programs. Work is characterized by the independence for making decisions and is subject to general review by the institution.

The specifications for the IMSD classification state as follows, in pertinent part:

This is advanced administrative work directing a highly complex management services program for one or more of the largest institutions in the Department of Health and Social Services. Work involves administering all phases of institutional support programs including accounting, fiscal control, budget preparation and development, purchasing, food service, safety, communications, personnel, housekeeping, laundry, power plant, and building and grounds maintenance and repair. The work includes integrating and coordinating institution management services policies and programs with other programs within the institution and division, as well as with the general programs and policies of the department. Work at this level is distinguished from that of the Institution Business Administrator series by the degree of flexibility for program administration, the influence of the director's decisions on the functions of the institution, and the considerable latitude for exercising individual judgment and initiative in administering the total management services program of the institution. Employees assist the superintendent in overall institutional program development by making decisions regarding the fiscal and managerial implications of new program proposals. Work is performed under general policy direction from an institution superintendent.

These IBA specifications were approved in 1972 and these IMSD specifications in 1976. Since that time, new institutions have been established and institutions mentioned in the specifications have been re-named and re-structured. The changes that have occurred have been recognized by respondent DER in its allocation of positions within these series. Although

there remains, as there should, a strong presumption in favor of matching a position to the classification which identifies the position, exceptions have been made where, as here, the specifications are outdated and where growth in the complexity of the position's duties and responsibilities so justifies. As a consequence, the business manager positions assigned to institutions in the DHSS Division of Care and Treatment Facilities (DCTF), i.e., the mental health institutions (Winnebago and Mendota) and developmental disability centers (Southern, Central, and Northern), are classified at the IMSD level in recognition of the complexities associated with satisfying the requirements imposed by their funding mechanisms even though such positions are identified in the specifications at the IBA 3 level. However, the business manager positions assigned to the larger adult correctional institutions in the Department of Corrections remain classified at the IBA 3 level because no corresponding growth in the complexity of their duties and responsibilities has occurred. The Commission's recognition of, and accord with, this classification scheme, and its view of the primary distinction between the IBA and IMSD classifications was set forth in Grams v. DOC and DER, Case No. 92-0762-PC (6/23/93) as follows:

The overriding difference between the duties and responsibilities of appellant's position [business manager at Waupun Correctional Institution] and the IMSD positions is the difference in the budget development and fiscal control responsibilities. The IMSD positions spend a substantial percentage of their time interpreting and applying the requirements of the Social Security, Supplemental Security Income, Medical Assistance, and Medicare programs to services delivered to residents of their institutions; and to interpreting and applying the requirements of applicable state and federal certification, licensing, and/or accreditation provisions. These requirements are very complex and affect every aspect of the administrative support operations.

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The IMSD specifications were obviously created to classify positions, of which there would be only a few, with one or more responsibilities of such unusual complexity, scope, and impact as to distinguish them from other administrative support responsibilities. This comports with the allocation pattern established to classify the chief administrative positions in the institutions. The responsibilities of the positions classified at the IMSD level relating to the Social Security, Supplemental Security Income, Medical Assistance, Medicare, and state and federal

certification/licensing/accreditation programs; the impact of these federal and state requirements on nearly every aspect of the institutions' programs; and the substantial percentage of time devoted by the IMSD positions to these functions, represent responsibilities of unusual complexity, scope, and impact, as contemplated by the IMSD classification specifications, and clearly distinguish these IMSD positions from IBA positions.

As a result of the complexities cited in Grams, the business manager positions at the DCTF facilities were placed in the IMSD classification (PR 1-18) even though they were specifically identified in the IBA 3 (PR 1-17) classification specification.

Here, appellant's position is specifically identified in the IBA 2 classification specifications. Primarily as the result of the complexities associated with PRO-Youth Aids funding, appellant's position has already been reclassified to a level higher than the IBA 2 classification. The record here does not provide justification for deviating further from the specific language of the IBA classification specifications and placing appellant's position in the IMSD series.

The following is a list of the primary factors cited by appellant in support of the requested reclassification of her position to the IMSD level and a discussion of each in the context of this appeal:

1. **The addition of a computer system and its ongoing upgrading and expansion.** Not only was this one of the factors cited by appellant in support of her previous reclassification from the IBA 2 to IBA 3 level, but appellant has failed to show how her duties and responsibilities in this regard would have been any different than those of other IBA positions dealing with the introduction of new technology in their institutions.

2. **Increased responsibility for planning and administering building projects.** Not only was this one of the factors cited by appellant in support of her previous reclassification from the IBA 2 to IBA 3 level, but appellant has failed to show how this delegation of increased responsibility to the institutions affected her position differently than it did other IBA positions. The record shows that this delegation was also made to DOC adult correctional institutions which have IBA 3 business managers, and that these institutions deal with the same facilities issues as Ethan Allen School.

3. **The complexities of the PRO budgeting process.** Not only was this the primary factor relied upon in the reclassification of appellant's

position from the IBA 2 to the IBA 3 level, but the record does not show that this budgeting mechanism, in which institution funding is directly proportional to population, presents the level of complexity, scope, impact, variety, or consequence of non-compliance as the funding mechanisms to which the DCTF institutions are subject. Although appellant attempted to present this issue in terms of the record-keeping and bookkeeping required to make application for and to account for the dollars received by or on behalf of the DCTF institutions, the issue is much broader. The decision in Grams and the record here establish that the requirements imposed on DCTF institutions by their funding sources are not simply record-keeping or bookkeeping requirements but numerous and detailed requirements which relate to and control every facet of resident care, operating procedures, and management policy decisions of these institutions and which, if not satisfied, jeopardize millions of dollars in continued funding and the continued certification of the institution as a qualified provider of care. Appellant has not cited here any comparable requirements imposed as the result of the receipt of PRO-Youth Aids funding.

4. **Expanded health and safety responsibilities.** It appears from the record that these resulted primarily from an Executive Order which became effective in July of 1993, and which affected all institutions under consideration here. Appellant has failed to show how this expansion of her duties resulted in a level or type of responsibility different to any degree from those assigned to IBA business managers at other institutions.

5. **Becoming a key player on the management team.** Appellant's position has been assigned, since at least her appointment to the position in 1986, to act as the third in command at Ethan Allen School. She points for purposes of this appeal to her serving as second in command when the deputy superintendent position was vacant. However, not only was this a temporary assignment which could not serve as the basis for a change in classification, but the record shows that it is common for IBA positions in correctional institutions to be key players on the management team and to serve as back-ups to the institution superintendents in their absence.

6. **The requirements imposed on Ethan Allen as the result of the educational component of the institution's mission.** This component of Ethan Allen's mission has not changed at least since the IBA specifications were approved in 1972 and had to be a consideration, as a result,

when the business manager positions at the larger juvenile correctional institutions were included within the language of the IBA 2 specifications. Although the educational component at Ethan Allen and Lincoln Hills Schools, the other large juvenile correctional institution, is more significant than at the correctional institutions to which IBA 3 positions are assigned, the evidence here does not show that the impact of this educational component on the administrative services function of the institution results in sufficient strengthening of the position to take it out of the IBA series. The primary impact of this component is on the institution's program, not its administrative services. Although it affects the type of equipment, supplies, and services procured; the types of records maintained; the type of vocational supervision provided by administrative services staff; and the hygiene and health and safety requirements the institution has to meet, the record does not show that the duties and responsibilities actually carried out by the appellant as the result of the educational mission of Ethan Allen School differ in any significant way from the procurement, record maintenance, vocational supervision, hygiene, or health and safety related duties of the IBA 3 business manager positions in the adult correctional institutions.

7. **The security issues which arise as the result of Ethan Allen's status as a juvenile correctional facility.** Obviously, security issues are a consideration for the administrative services function of any adult correctional facility. Although appellant attempted to show that the juvenile correctional population was more volatile than and, as a result, presented greater security concerns than, the adult correctional population, the record does not show that this difference would have any significant impact on the duties and responsibilities of appellant's administrative position vis a vis the IBA 3 business manager positions at the adult correctional institutions.

8. **The fiscal and reporting complexities due to the receipt of funds from numerous federal and other sources.** Appellant related this primarily to the receipt by Ethan Allen School of school lunch monies for the support of the institution's food program. Although appellant showed that this funding source had certain program and record-keeping requirements, appellant failed to show that these requirements were the type of unusually complex or pervasive requirements relied upon in Grams for the classification of the DCTF positions at the IMSD level. In addition, although appellant showed that these requirements differed in specifics from the nutrition, hygiene,

safety, purchasing, and record-keeping requirements imposed on the food programs in adult correctional institutions, she failed to show that these differences were significant from the perspective of the duties and responsibilities of the business manager positions in these institutions. In regard to other funding sources such as grant monies, the record shows that the number and variety of these received by Ethan Allen School are comparable to the number and variety received by some of the adult correctional institutions and, in fact, monies are received from many of the same sources in some instances.

9. **The variety of security levels and programming.** The record shows that other institutions in which there is an IBA 3 business manager position, e.g., Taycheedah Correctional Institution, have inmates/residents assigned to multiple security levels; and have a variety of program components, e.g., reception/intake, mental health programming, clinical programming, alcohol and drug abuse programming, under one roof.

10. **Comparability of certain administrative functions, e.g., telecommunications, fleet, risk management, procurement, food service, to those at DCTF institutions.** The record does show that, in general in regard to these functions, there is comparability between the business manager position at Ethan Allen School and the IMSD business manager positions at DCTF institutions. However, it is clear from the Grams decision that it was not the IMSD's duties and responsibilities in regard to these functions which formed the basis for the classification of these positions at the IMSD level. In addition, the record shows that, in general in regard to these functions, there is comparability between the business manager position at Ethan Allen School and the IBA 3 business manager positions at the adult correctional institutions.

Appellant would have had to demonstrate a clear distinction between the administrative duties of her position and those of IBA 3 positions at other institutions to justify the classification of her position at the IMSD level². Appellant has failed to sustain this burden.

² The language of this sentence was changed from that in the Proposed Decision and Order for purposes of clarification.

ORDER

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

Dated: July 5, 1996 STATE PERSONNEL COMMISSION


LAURIE R. McCALLUM, Chairperson


DONALD R. MURPHY, Commissioner

LRM:lrn


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 (except an order arising from an arbitration conducted pursuant to §230.44(4)(bm), Wis. Stats.) 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.)

2/3/95