

STATE OF WISCONSIN

PERSONNEL COMMISSION

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STEVE GUNDERSON,

Appellant,

v.

Secretary, DEPARTMENT OF
EMPLOYMENT RELATIONS,

Respondent.

Case No. 95-0095-PC

* * * * *

DECISION
AND
ORDER

This matter is before the Commission as an appeal from the denial of a reclassification request. Respondent denied the request to reclassify the appellant's position from University Benefits Specialist 2 (UBS 2) to either Educational Services Assistant (ESA) 3 or 4.

Effective February 9, 1992, respondent completed a classification survey that resulted in the creation of the UBS classification series. One of the personnel actions taken as a consequence of the creation of the new series was to reallocate a position then occupied by Kevin Burke in the Payroll & Benefits Office of the University of Wisconsin-System Administration to the UBS 1, or entry, level. Mr. Burke left the position later in the year and the appellant was hired to fill the vacancy at the UBS 2, or objective, level in August of 1992.

The UBS classification specification provides, in part:

A. Purpose of This Classification Specification

This classification specification is the basic authority... for making classification decisions relative to present and future positions which perform advanced individual benefit counseling services to University of Wisconsin employees....

B. Inclusions

This series encompasses positions which perform advanced individual benefit counseling services to the University of Wisconsin employees; manage and administer the State Benefits program for a campus or college; conduct seminars; advise and counsel academic, faculty, unclassified, and classified employees; and manage the Tax Shelter Annuity Program. These positions must perform these job duties a primary portion of the time (90% or more).

II. DEFINITIONS

UNIVERSITY BENEFIT SPECIALIST 1

This is entry level for positions performing duties described at the University Benefit Specialist 2 level. Work is performed under close to limited supervision.

UNIVERSITY BENEFIT SPECIALIST 2

This is the objective level for positions performing very complex individual benefit counseling services to University of Wisconsin employes. Work is performed under general supervision. Job duties will include:

*** The administration of the State Benefits Package**

Review all incoming benefit information, formulate policies and procedures, and establish relevant channels for dissemination. Participate in the development of major plan changes. Conduct fringe benefit surveys, analyze results, and forecast projected costs and impact. Develop language for policies relative to sick leave and vacation benefits for unclassified staff. Work directly with insurance carriers to resolve problems.

*** The counseling of University of Wisconsin staff**

Serve as resource person to academic, faculty, graduate assistants, critic teachers, fellowship staff and classified staff....

*** The development of employe training and development**

Determine policy, procedures and activities needed to meet Department of Employment Relations' Employe Development Training program development....

*** The management of the Tax Shelter Annuity Program (TSA)**

Review all information, establish policies and procedures, and disseminate information; provide information to faculty, academic staff and classified staff relative to the mechanics, IRS rules, policy, availability of plans, differences in plans and suited to individual needs.... (Emphasis in original)

The class specification also lists six representative positions at the UBS 2 level. According to respondent's witness who oversaw the survey process, the reason the Burke position was not identified as a representative position at the UBS 2

level was because the incumbent was still working at the entry level at the time of the survey.

The ESA classification specification provides, in part:

CHARACTERISTICS OF THESE SERIES

These series are designed to fill the gaps in classification of a wide variety of professional jobs not described in existing classes. Employees may serve as professional assistants in major educational departments and schools, or to faculty classified personnel serving in administrative capacities. Their assignments may include a variety of support services where a full-time position may not be justified in a specialty. Such work may entail personnel, budgeting, space allocation, and purchasing. The jobs could be located in areas such as student unions, book stores, recreation, admissions, registration, student affairs, and academic and instructional departments.

* * *

CLASS DEFINITIONS AND TYPICAL ALLOCATION PATTERNS

* * *

Educational Services Assistant 3

Positions allocated to this class are found in centralized business offices of educational facilities or serve as principal assistants to unit managers or directors. They may serve as either line or staff assistants in large and complex campus operations. Employees in this class are responsible for developing operating procedures and making recommendations on policies for review by higher level administrators. After approval, it is their responsibility to implement the plans and recommendations.

* * *

Educational Services Assistant 4

Positions allocated to this class perform line administrative or professional staff assistance in complex areas of higher education administration. Employees in this class direct the work of lower level professionals in management areas such as budget preparation, internal operations and liaison between the school and outside agencies. Employees have a great deal of latitude in areas of decision making and initiating action within a broad framework of administrative and department policies.

There are three position descriptions in the record for the appellant's position. One (App. Exh. E) is the initial position description for when appel-

lant filled in the position in 1992, another (App. Exh. F) is dated 1993 and the third (App. Exh. G) is dated February 4, 1994, and is the version that accompanied the reclassification request that is the subject of this appeal (See App. Exh. H). All three position descriptions list the following five goals:

- A. Leadership and Support of Campus-Based Staff Benefits Programs
- B. Provision of Individualized Staff Benefits Counseling to System Administration Employees and Institutional Executives
- C. Coordination and Administration of the Tax Sheltered Annuity (TSA), Alternate Funding and Deferred Compensation Programs
- D. Maintenance and Communication of Technical Knowledge
- E. Miscellaneous

In addition, the 1994 position description lists "Annual Statewide Benefits Staff Meeting" as Goal E., and allots 5% time to that goal. As to the five goals that are reflected on all three position descriptions (PDs), the chart below reflects the time allotments:

<u>Goal</u>	<u>1992 PD</u>	<u>1993 PD</u>	<u>1994 PD</u>
A	30%	30%	45%
B	30%	30%	25%
C	25%	20%	10%
D	10%	10%	10%
E	5%	10%	5%

Appellant's case is premised on the contention that only those duties encompassed by Goal B involve individual benefit counseling for the approximately 200 employees within UW-System's Central Administration and, therefore, fall within the scope of the UBS specification. Appellant argues that the remainder of his duties are system-wide responsibilities which are outside of

the UBS specification and can only be described by the more general language in the ESA specifications.¹

Even if this contention is valid and the appellant is able to show that his position is better described at the ESA 3 or 4 level, the appellant cannot meet his burden of establishing that respondent's decision to deny his *reclassification* request was incorrect.

Reclassification is proper where there has been "a logical and gradual change to the duties or responsibilities of a position." §ER 3.01(3), Wis. Adm. Code.² In contrast, *reallocation* of a position is appropriate in a variety of circumstances, including "the correction of an error in the previous assignment of a position." §ER 3.01(2)(e), Wis. Adm. Code. The distinction between reclassification and reallocation was carefully explained to the appellant during the course of the hearing. At least in part due to the fact that the appellant is no longer employed in the position in question, he specifically declined to pursue reallocation of the position. Therefore, the only question properly before the Commission is whether reclassification of the position would be appropriate.

Reclassification would clearly be inappropriate because those responsibilities that might, as of 1994, justify classification in the ESA series rather than at the UBS 2 level are responsibilities that also would have justified a higher classification for the position in August of 1992, when the appellant was hired. If, as appellant contends, only goal B on his various position descriptions falls within the UBS specifications, then his position should have been classified in the ESA series in 1992 rather than reclassified, effective in 1994, from UBS 2.³

¹The UBS specifications show that persons on the individual campuses within the UW-System handle the benefit counseling and administration of the benefits program for that particular campus or college. Except for goal B, the appellant's responsibilities extend beyond one campus to all of the campuses and colleges within the System. Appellant coordinates programs system-wide and provides leadership and support for the campus-based programs.

²This provision also permits reclassification upon "the attainment of specified education or experience by the incumbent." The classifications that are at issue in the present case are not progression series so this clause is inapplicable.

³It is noteworthy that the UBS specifications require that the duties described by that series be performed at least 90% of the time. Nothing in the record suggests that the appellant's position had less than 10% non-UBS duties when appellant was hired in 1992 and then changed to more than 10% non-UBS duties by the time of the reclass request in 1994.

Because the appellant has not met his burden of showing the decision not to reclassify his position was incorrect, that decision must be affirmed.

At the close of the hearing in this matter, the parties agreed to file written arguments according to the following schedule: Appellant's brief was due on May 6, 1996, i.e., 20 days after the conclusion of the hearing; respondent's response was due on May 27th, i.e., 20 days thereafter; and appellant's reply was due 10 days thereafter, or on June 6th. The appellant left a telephone message for the hearing examiner on June 14th, stating he believed his rebuttal brief was due on June 16th, a Sunday, and, therefore, he would submit it on June 17th. He asked if this was correct. The examiner in turn left a message for appellant indicating he could submit his brief on June 17th. The brief was hand-delivered on June 17th. Respondent has asked the Commission to reject the appellant's reply brief because it was dated eight days after the June 6th due date.

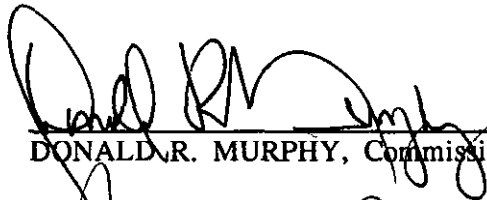
It appears that the appellant (incorrectly) understood that his reply brief was due 20 rather than 10 days after the respondent's brief. Given this misunderstanding and the lack of any difficulties caused by the delay, the Commission rejects the respondent's request and has considered appellant's reply brief.

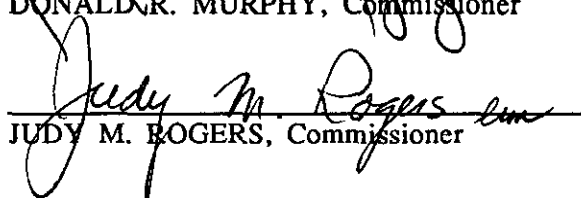
ORDER

Respondent's decision denying the request to reclassify the appellant's position from University Benefits Specialist 2 to Educational Services Assistant 3 or 4 is affirmed and this matter is dismissed.

Dated: August 5, 1996 STATE PERSONNEL COMMISSION

KMS:dpd


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 (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.)

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