

25% C. Register UC applicants and provide job-seeking skills and instruction services on a group or individual basis, including collecting occupational-related information during registration process; providing job-seeking skills instruction to enhance applicant's employability; providing and explaining local labor market information; and explaining the local office selection and referral process and other available services such as testing, counseling, and referral to other services.

3. During 1991, appellant was assigned to be the backup for the JSS position assigned primary responsibility for planning, coordinating, and conducting workshops relating to job-seeking skills and resources. During 1992, appellant spent 5-10% of her time conducting workshops. During 1993, appellant not only conducted UC workshops but began to play a larger role in planning and coordinating workshops and developing the curriculum for workshops. During 1994, appellant spent 25-30% of her time performing workshop-related functions and her role in workshop planning, coordination, curriculum, and marketing continued to expand. During 1995, appellant spent 50-60% of her time performing workshop-related functions.

4. The parties do not dispute that appellant's position was appropriately classified at the JSS 3 level at the time of the subject reclassification request.

5. There were two other JSS positions in the La Crosse office with duties and responsibilities in 1991 similar to those assigned to appellant's position, except that one of these positions had leadworker responsibilities. Although these positions were subsequently assigned to conduct workshops and were offered the opportunity to perform other workshop-related functions, these workshop-related functions consumed only a small percentage of time for these positions, i.e., less than 5%, and did not involve the planning, coordination, curriculum, and marketing functions assigned to appellant's position.

6. Respondent DILHR denied appellant's reclassification request based on the conclusion that the changes in the duties and responsibilities of the position did not occur logically and gradually; and the assignment of workshop-related functions was arbitrary in view of the other positions to which such functions could have been assigned and did not, as a result, satisfy the requirements for regrade. Respondent DILHR concluded that a new position had been created and was required to be filled through competition.

7. In January of 1994, DILHR's Job Service unit began to utilize self-service job board listings for UC applicants which reduced the amount of personal contact placement specialists had with UC applicants, and which, as a result, led to the increasing use of workshops and outreach activities to provide information and instruction relating to job-seeking skills and resources to UC applicants.

Section ER 3.01(3), Wis. Adm. Code, defines reclassification as follows:

"Reclassification" means the assignment of a filled position to a different class by the secretary as provided in s. 230.09(2), Stats., based upon a logical and gradual change to the duties or responsibilities of a position or the attainment of specified education or experience by the incumbent.

Section ER 3.01(4), Wis. Adm. Code, defines regrade as follows:

"Regrade" means the determination of the secretary under s. 230.09(2)(d), Stats., that the incumbent of a filled position which has been reallocated or reclassified should remain in the position without opening the position to other candidates.

Section ER 3.015, Wis. Adm. Code, states as follows, in pertinent part:

(2) Incumbents of filled positions which will be reallocated or reclassified may not be regraded if:

* * * *

(c) The secretary determines that the position should be filled by competitive examination under s. 230.15(1), Stats.

Section 230.15(1), Stats., states as follows, in pertinent part:

230.15 Appointments, promotions, changes in classified service. (1) Appointments to, and promotions in the classified service, shall be made only according to merit and fitness, which shall be ascertained so far as practicable by competitive examination.

Respondents' conclusion that the assignment of the workshop-related functions to appellant's position was not gradual appears to be based on a misunderstanding. The memo denying appellant's request for the reclassification of her position states that appellant had not conducted a

workshop before July of 1995. However, the record shows that appellant began conducting workshops some time in 1991 or 1992 and her responsibilities in this area gradually increased between 1991 and the date of her reclassification request. It is concluded as a result that the addition of the workshop-related duties and responsibilities to appellant's position was gradual.

Respondents also contend that these workshop-related duties and responsibilities were not a logical outgrowth of appellant's originally assigned duties and responsibilities. However, the record shows that, in 1991, a not insignificant percentage of appellant's position's time was devoted to providing instruction and information relating to job-seeking skills and resources to UC applicants. Because respondent DILHR instituted the use of a self-service process by UC applicants to obtain information about available jobs, there was less opportunity for personal contact between UC applicants and Job Service staff. As a result, the means by which information and instruction relating to job-seeking skills and resources was provided by Job Service staff to UC applicants changed. This change included greater use of workshops and outreach activities. Since 1991, appellant's position has had responsibility for providing information and instruction relating to job-seeking skills and resources to UC applicants. This responsibility has evolved to consume a greater percentage of appellant's time and a different manner of carrying out such responsibility. This type of growth and change is the type the reclassification process was designed to address, and the record here does not support a conclusion that this growth and change was not logical. See Knight v. DER, Case No. 85-0178-PC (9/17/86).

The final question here relates to whether regrade is appropriate. Commission precedent provides some guidance relating to the types of factors which should be examined in determining whether regrade is appropriate. In Sannes v. DER, Case No. 92-0085-PC (8/23/93), the Commission examined whether the initial assignment of the new or expanded duties and responsibilities was consistent with the position's classification at the time of such assignment; whether there has been a "wholesale change" in a position requiring a new set of abilities; and whether the change occurred all at once or gradually. It has already been concluded above that the change occurred gradually which would be consistent with a finding that regrade is

appropriate. The record also shows that the initial assignment to conduct workshops was a logical outgrowth of appellant's responsibility to provide information and instruction relating to job-seeking skills and resources and did not, as a consequence, result in a "wholesale" or fundamental change in appellant's position requiring a new set of abilities.² As a result, it is concluded that regrade is appropriate here.

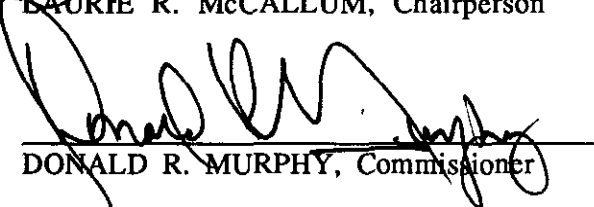
Order

The action of respondents is rejected and this matter is remanded for action in accordance with this decision.

Dated: October 22, 1996 STATE PERSONNEL COMMISSION


LAURIE R. McCALLUM, Chairperson

LRM:lrn


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

² The language deleted here from the Proposed Decision and Order was not necessary for the decision of this matter.

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