

LINDA BERG,
Appellant,

v.

President, UNIVERSITY OF WISCONSIN-SYSTEM, and Secretary, DEPARTMENT OF EMPLOYMENT RELATIONS,
Respondents.

FINAL DECISION AND
ORDER

Case No. 96-0110-PC

This is an appeal pursuant to §230.44(1)(b), Stats., of a classification transaction. The issue for hearing is set forth in the prehearing conference report dated September 23, 1996, as follows: "Whether respondents' decision to reclassify the appellant's position to Purchasing Agent-Objective rather than Purchasing Agent-Senior was correct." At all relevant times, appellant has been employed in the classified service in a position at UW-Parkside. Her position was reclassified from Educational Services Assistant 2 to Purchasing Agent-Objective,¹ effective April 16, 1996.

The Purchasing Agent class specification (Respondent's Exhibit 1) contains the following definitions of the three levels in this series:

PURCHASING AGENT

This is professional level work performed by Purchasing Agents. Positions allocated to this level are involved with the development of bids and contracts with limited authority to make decisions relative to the actual vendor award or to take action when problems with a given contract occur; or positions which develop and award simplified bids independently; gather supportive information used in the bidding process; work with selected vendors in assuring that the tenets of the established contracts are followed; solicit verbal and written quotes, price lists and catalogs; and receive delivery of orders and approve invoices. Work

¹ This classification will be referred to simply as "objective," and the Purchasing Agent-Senior classification as "senior."

performed by positions described in the first allocation is performed under close, progressing to limited, supervision.

PURCHASING AGENT - OBJECTIVE

This is objective level professional work performed by purchasing agents. In addition to activities performed at the prior level, positions at this level are granted authority to perform activities such as develop generic bid specifications; developing, conducting and awarding sealed bids. These activities include developing or reviewing and approving justification for bid waivers within delegated authority; developing Requests for Purchasing Authority; providing agency staff and management with training and advice regarding policies and practices; and conducting product research and effectively recommending standards for agency use. The individuals in this class are expected to function independently in their decision-making. The work is performed under general supervision.

PURCHASING AGENT - SENIOR

This is senior level professional purchasing agent work. Positions at this level may have responsibility for a group of commodities or services subject to market changes requiring the development of bids and/or contracts for multiple jurisdictions; and have responsibility for the development and award of Requests for Proposals. This includes assembling evaluation teams, evaluating technical and cost proposals, and negotiating with vendors. Additionally, positions at this level maintain and develop agency-specific contracts and/or vendor lists of unique items; and/or may conduct internal audits of individual agency purchasing programs. The individuals in this class exhibit significant discretion and judgment in the performance of their assigned duties and responsibilities through the interpretation of state statutes and the provision of consultation on purchasing rules, regulations and policies. The work is performed under general supervision.

Appellant's PD (position description) (appellant's exhibit 1) contains the following goals and time percentages:

- | | |
|-----|---|
| 45% | A. Procurement of commodities and services. |
| 10% | B. Audit delegated departments |
| 5% | C. Departmental liaison work |
| 5% | D. Vendor liaison work |

- 20% E. Administration of campus Auxiliary Accounting operation
- 10% F. Development and maintenance of purchasing office computerization program
- 5% G. Administration of capital inventory program

Appellant's position is somewhat hybrid in nature. It is undisputed that goals E, F, and G—i. e., 35% of the position—do not involve purchasing agent work but are financial service-oriented. Therefore, the question is whether the approximately 65% of the position which involves purchasing agent activities supports a senior rather than an objective classification. The purchasing agent goals (A-D) are broken down into a number of specific activities. This decision will address those activities which appellant contends are at the senior level.

ELEMENT FROM SENIOR DEFINITION

ACTIVITY FROM PD CLAIMED TO SATISFY SENIOR ELEMENT

[M]ay have responsibility for a group of commodities or services subject to market changes requiring the development of bids and/or contracts for multiple jurisdictions.

A5: Develop contracts and make available to multiple campuses and agencies.

Respondent took the position that this activity possibly could be at the senior level, primarily depending on the complexity of the work involved and whether it involved a definable "group of commodities or services." (emphasis added). Over a several year period, appellant developed only two contracts that other campuses borrowed for their own use. Her work on these contracts did not consume a significant amount of time. Appellant has not been responsible for a "group of commodities or services." Therefore, she does not satisfy this criterion for the senior classification.

[R]esponsibility for the development and award of Requests for Proposals [RFP's]. This includes assembling evaluation teams, evaluating technical and cost proposals, and negotiating with vendors.

A7: Prepare Bid packages, requests for waivers, requests for proposals, requests for purchasing approval as appropriate.

A9: Serve on evaluation committees.

A10: Review vendor bid/proposal submissions, notify department of results, review rejection of low bids/low-scoring proposals.

A16: Monitor vendor performance, negotiate settlements, and re-award contracts when vendor performance is unacceptable.

A17: Negotiate contract renewals.

Respondent took the position at hearing that there was so little work being performed on RFP's throughout the PA series that it should not be used as a distinguishing feature between the objective and senior levels. However, while respondent may choose not to view this element as a determinative factor, the class specification does associate it with the senior level, and to the extent that appellant does perform this kind of work, it should be credited as senior level. That said, appellant performed very little work in this area—two RFP's in a five to six year period. This work is identified explicitly as part of activity A7: "Prepare bid packages, requests for waivers, requests for proposals, request for purchasing approval as appropriate." While the RFP process also may be associated with activities falling under A9, A10, A16, and A17, as appellant implies in the foregoing chart, the limited degree of RFP work leads to the conclu-

sion that only a small part of these activities can be counted as senior level work on the basis of their association with the RFP process.

[M]aintain and develop agency-specific contracts and/or vendor lists of unique items.

A2: Develop specifications for contractual services in response to customer needs.

Respondent took the position at hearing that this activity could possibly be considered senior level depending on the complexity of the work involved. On the basis of evidence appellant presented, and in the absence of any contradictory evidence from respondent, it is concluded that appellant has satisfied her burden of proof with respect to this element.

[M]ay conduct internal audits of individual agency purchasing programs.

B1: Review delegated transactions for compliance with appropriate procedures and direct corrective measures for improperly prepared transactions.

B3: Conduct comprehensive annual audits of delegated transactions and recommend continuance, amendment or withdrawal of delegation based on audit results.

Respondent does not consider this work to be at the senior level. It is clear from appellant's testimony that she does not audit purchasing programs; rather, she does relatively simple post-audits of departmental delegated transactions. At UW-Parkside, the departmental purchasing delegation is limited to \$100 or less, and appellant testified that the great majority of these transactions were routine in nature.

[E]xhibit significant discretion and judgment in the performance of their assigned duties and responsibilities through the interpretation of state statutes and the provision of consultation on purchasing rules, regulations, and policies.

B1: Review delegated transactions for compliance with appropriate procedures and direct corrective measures for improperly prepared transactions.

C1. Advise departments on purchasing procedures.

C2. Advise departments on specification writing.

D2: Explain State purchasing procedures to vendors.

D3: Promote and report minority and sheltered workshop business activity.

With respect to B1, in light of appellant's testimony concerning the relatively simple and routine nature of the post-audits performed of department's delegated transactions of \$100 or less, it can not be concluded that this work satisfies the senior-level requirement of "significant discretion and judgment . . . through the interpretation of state statutes and the provision of consultation on purchasing rules, regulations, and policies." As to activities C1, C2, D2, and D3, Goals C and D are each 5% of appellant's time, so at best, these activities could not represent more than 4/7 of these two goals, or 2.9% of this position.

Appellant also relies on a comparison to other positions. Large parts of appellant's PD are essentially identical to a "generic" PD of the senior level PA's at UW-Milwaukee (UW-M). However, the facts of record do not support a finding that appellant's position is comparable from a classification standpoint with the UW-M positions. For example, as discussed above, while appellant's PD states that it "conducts audits of campus purchasing delegation programs," the record reflects that appellant is

merely doing routine post-audits of relatively simple transactions of \$100 or less. At UW-M, the level of delegation is at \$500, and the purchasing program is larger and more complex overall than at UW-Parkside. Another example is that while appellant's PD contains essentially the same language found in both the UW-M PD's and the senior class definition with respect to developing bids for multiple jurisdictions for a group of commodities or services, the record does not reflect that appellant actually has this responsibility.

In conclusion, while some aspects of appellant's position satisfy the senior level criteria, she has not satisfied her burden of persuasion to establish that respondents' decision to classify her position at the objective rather than the senior level was in error.

ORDER

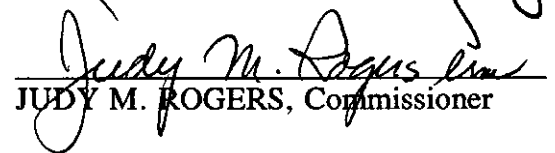
Respondents' action reclassifying this position to the objective rather than the senior level is affirmed and this appeal is dismissed.

Dated: May 7, 1997 STATE PERSONNEL COMMISSION

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LAURIE R. McCALLUM, Chairperson


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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