

JONATHON MORGAN,
Appellant,

v.

**Secretary, DEPARTMENT OF EM-
PLOYMENT RELATIONS,**

Respondent.

FINAL DECISION AND
ORDER

Case No. 96-0137-PC

This cases involves an appeal pursuant to §230.44(1)(b), Stats., of respondent's decision to deny a request for the reallocation of appellant's position from Health Services Supervisor 1 (HSS 1) to Health Services Supervisor 3 (HSS 3).

The HSS class specification includes the following definitions:

HEALTH SERVICES SUPERVISOR 1

Positions allocated to this level are located in the central office of the Division of Health and have supervisory and programmatic responsibility over a distinct unit within one of the following sections within the Bureau of Public Health: Maternal and Child Health; Chronic Disease Prevention and Health Promotion; Occupational Health; Emergency Medical Services. Also allocated to this classification level are the positions in the Bureau of Quality Compliance which supervise: (1) the Nurse Aide Training/Registry Unit or (2) the Community Based Providers Unit in the Hospital and Health Services Section.

Representative Positions:

Bureau of Public Health, Children's Special Health Needs Unit: Reports to the section chief, Maternal and Child Health Section, and supervises a variety of professional and clerical support staff working in the Children with Special Health Care Needs Program.

Bureau of Quality Compliance, Nurse Aid Training/Registry Unit: Reports to the Deputy Director and is responsible for all facets of the Nurse Aid Training/Registry Unit, supervising a variety of professional and clerical support staff.

Bureau of Quality Compliance, Community Based Providers Unit: Reports to the Chief, Hospital and Health Services Section, and is responsible for supervising, scheduling, monitoring and evaluating surveyors conducting home health, hospice and personal care surveys. . . .

HEALTH SERVICES SUPERVISOR 3

Positions at this level report to a deputy bureau director and function as section chief, managing and supervising a section within the Bureau of Public Health or the Bureau of Quality Compliance in the Division of Health, providing direction to multiple units comprised of a variety of professional staff in the provision of health services on a statewide basis.

Representative Positions:

Chief, Maternal and Child Health Section: Reports to the Deputy Director, Bureau of Public Health and manages the section's various units which provide health services in the areas of: Birth to 3; Congenital Disorders; Women, Infants, Children; Children with Special Health Care Needs; Nutrition; Health Start; Adolescent Health; Reproductive Health; Perinatal Health; and Oral Health.

Chief, Provider Regulation Section: Reports to the Deputy Director, Bureau of Quality Compliance, and manages the section's enforcement activities of all providers regulated by the Bureau and recommends state licensure and federal Title XVII and XIX certification for health care providers to assure the provision of quality health care in Wisconsin. Manages Bureau data processing operations and internal quality assurance.

Chief, Long Term Care Section, Bureau of Quality Compliance: Reports to the Deputy Director, Bureau of Quality Compliance, and manages the field office operations consisting of a variety of health care professionals who perform compliance survey activities of long term care facilities throughout the state.

Complainant's position has the working title of Chief, Emergency Medical Services (EMS). He is responsible for the management of the EMS Section within the Bureau of Public Health. His immediate supervisor is the Bureau's Deputy Director. The EMS Section has no formal subdivisions—i. e., units—although there are programmatic subdivisions. Appellant supervises a number of permanent classified posi-

tions, none of which are themselves supervisory, and none of which are considered at a professional level.

It is apparent that appellant's position does not fit explicitly within either the HSS 1 or HSS 3 definitions. The HSS 1 definition includes positions which "have supervisory and programmatic responsibility over a *distinct unit within* one of the following *sections* within the Bureau of Public Health: . . . *Emergency Medical Services.*" (emphasis added). Appellant does not supervise a *unit* within the EMS *Section*, he supervises the EMS section itself. Respondent argues that appellant's position actually does meet the HSS 1 definition in that it "has 'supervising [sic] and programmatic responsibilities over a distinct unit'—a one unit section; each of the 3 major goals of Appellant's position description relate to the EMS system program." (Respondent's posthearing brief, p. 7.) However, in order to satisfy the literal requirement of the HSS 1 definition, appellant's position must be responsible for a unit *within* the section, not what has been denominated formally as a section but which arguably can be characterized conceptually as a unit.

The HSS 3 definition provides as follows:

Positions at this level report to a deputy bureau director and function as section chief, managing and supervising a section within the Bureau of Public Health . . . providing direction to multiple units comprised of a variety of professional staff in the provision of health services on a statewide basis.

It is undisputed that appellant reports to a deputy bureau director and functions as a section chief within the Bureau of Public Health. However, it also is clear that the EMS section is not formally subdivided into units comprised of a variety of professional staff.

Under these circumstances, where appellant's position does not satisfy all the criteria for either of the classifications in issue,¹ the Commission must determine which of those classifications is the most appropriate, or the "best fit," for appellant's position. Appellant's appeal cannot be rejected summarily because of his failure to satisfy

¹ The HSS 2 classification is not applicable to appellant's position.

literally the last HSS 3 criterion (“providing direction to multiple units comprised of a variety of professional staff”) as respondent urges, not only because of the fact that his position does not fit within the literal criteria of either level, but also because respondent has classified other positions as HSS 3 that likewise do not satisfy the “multiple units” criterion, but which respondent has concluded have attributes which are comparable to that criterion. Appellant has the burden of proof, and must establish by a preponderance of the evidence that the HSS 3 classification is more appropriate than the HSS 1 classification.

There are on this record a number of factors supporting each party’s position. The factors supporting appellant’s case for the HSS 3 classification may be summarized as follows:

1) His position is the only section chief in the bureau in the HSS series which is not in the HSS 3 classification, and the only substantive or programmatic-oriented section chief in the bureau which is not at the HSS 3 or equivalent level.

2) His position is the only HSS 1 position in the bureau which is a section chief or which reports to the deputy director.

3) In the opinions of program experts in the division, appellant’s position is comparable to the other program-oriented section chiefs in the bureau in terms of program complexity and responsibility.

4) In the opinions of program experts in the division, appellant’s position is at a higher level in terms of program complexity and responsibility than the primary HSS 1 position relied on by respondent as a comparison to appellant’s position, the Asbestos Unit supervisor.

5) While the EMS section is not formally subdivided into units, it has three programmatic areas that function somewhat like units, and which could be organized into units.

6) DER has classified other positions at the HSS 3 level which do not have formal units, on the basis of the theory that they have other comparable aspects—e. g., regional offices.

The factors which weigh against the HSS 3 classification may be summarized as follows:

- 1) The EMS section is not comprised of multiple units.
- 2) Appellant's position does not supervise professional staff.
- 3) Unlike the other HSS 3 positions of record, appellant's position does not supervise other supervisors.

Of the three factors weighing against the HSS 3 classification, the only one that appellant has contested factually is the second one—supervision of professional staff. Appellant argues as follows in his post-hearing reply brief: “The position supervises subordinates that are involved with professional health care decisions including scope of medical practice issues for four levels of health care providers as well as legal and ethical questions.” In the absence of any definition of “professional” in the HSS class specification, the Commission must rely on the statutory definition, i. e., §111.81(15), Stats. While appellant may have subordinates who are involved to some extent with professional health care decisions, it was not established that any of these subordinate positions satisfy the statutory definition or are in classifications that are recognized in the classification system as professional—e. g., physicians. The witnesses who testified about professional employees in the EMS section did not state that they were basing their opinions on the statutory definition, or other recognized usage in the classification system. It is clear that to some extent these opinions were based on EMT (Emergency Medical Technician) licensure, but there is no foundation in the record that such licensure should be equated with professional status.

Thus, we have two class definitions (HSS 1 and HSS3) which are very specific in their descriptions of the positions they include, but for whatever reason do not include appellant's position in either classification. In fact, appellant's position categorically does *not* fit into either classification.² The HSS class specification does not in-

² To reiterate, the position does not have responsibility for “a distinct unit within . . . [the] Emergency Medical Services [section],” (HSS 1), nor does it provide “direction to multiple units comprised of a variety of professional staff ” (HSS 3).

clude any specific enumeration of class factors—i. e., general criteria to be applied in evaluating positions for placement within a level in the classification—so there is no guidance from that potential source. Under these circumstances, position comparisons are more significant than they would be in other cases where more guidance is available from the class specifications.

From a general standpoint, it can be said that appellant's position compares favorably to the other HSS 3 positions in the bureau in terms of the complexity and importance of the substantive programs. On the other hand, these other positions have substantially larger staffs, including professional level positions, and subordinate supervisors, as well as distinct units or their equivalents. Although the HSS class specification does not contain general classification factors, the HSS 3 class definition does recognize supervisory responsibilities. The other HSS 3 positions of record have more substantial supervisory responsibilities than appellant's position. While appellant has established that his position is at a higher level from a classification standpoint than the other HSS 1 positions, and that it is comparable in a number of respects to the HSS 3 positions, the HSS 3 positions are stronger in terms of their supervisory responsibilities. It can not be concluded on this record that appellant's position should be at the same classification level as the HSS 3 positions. For these reasons, the Commission concludes that appellant has not sustained his burden of proof.

ORDER

Respondent's action denying reallocation of appellant's position to the HSS 3 level is affirmed, and this appeal is dismissed.

Dated: August 13, 1997

STATE PERSONNEL COMMISSION


LAURIE R. McCALLUM, Chairperson

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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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