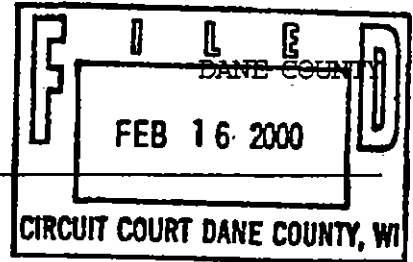


appeal from Murphy v. DAFS & DSR
98-0013-PC, 3-24-99

STATE OF WISCONSIN

CIRCUIT COURT
BRANCH 16



RUTH MURPHY,

Petitioner,

v.

WISCONSIN PERSONNEL COMMISSION,

Respondent.

Case No. 99 CV 944
DECISION AND ORDER

This matter comes before the court pursuant to §§227.52 and 227.53, Stats. for review of a decision of the Wisconsin Personnel Commission (Commission). The Commission determined that the decision of the Bureau of Personnel and Employment Relations denying a request by Ruth Murphy (Murphy) that her position be reclassified from Social Services Specialist 1 to Social Services Specialist 2 was correct. Petitioner Murphy has appealed this decision.

FACTS

The material facts in this case are largely undisputed. Since 1989, petitioner Murphy has been employed by the Wisconsin Department of Health and Family Services Division of Children and Family Services, Child Welfare Services Section (DCFS), in the Youth Independent Living Program (ILP). Petitioner's position is classified at the Social Services Specialist 1 (SSS 1) level. Since 1996, petitioner has been solely responsible for the Youth Independent Living Program. The ILP provides Federal grant money to qualifying counties, Native American tribes and correction

programs serving children exiting from the foster care system.

In or about November, 1997, petitioner requested a reclassification of her position to the Social Services Specialist 2 (SSS 2) level. The request of petitioner was reviewed by Ralph Hantke, Human Resources Specialist in the Department of Health and Family Services, Bureau of Personnel and Employment Relations. On Hantke's recommendation, Murphy was informed that the most appropriate classification for her position remained at SSS 1 and her request was denied. (Ex. R-1).

Petitioner appealed this decision to the Wisconsin Personnel Commission. Hearings were held on September 3, and November 5, 1998 before a Hearing Examiner appointed by the Commission. At the September hearing, testimony was heard from Barbara Barnard, previous DCFS section chief and a former supervisor of Murphy; Linda Hisgen, current Director of the Bureau of Program and Policy in the DCFS and a former supervisor; and Mark Mitchell, DCFS section chief and Murphy's supervisor at the time the hearing was held. Mitchell continued his testimony at the November 5 hearing, at which time testimony was also heard from Ralph Hantke.

On June 3, 1999, the Commission issued a final Decision and Order upholding the denial of reclassification to SSS 2. The final decision included the classification specifications relevant to this case:

SOCIAL SERVICES SPECIALIST I

This is the first level of responsible program and/or consultative work. Positions allocated to this level function as a statewide program consultant for a limited program area. Limited program area responsibility is

identified and defined in the following ways: (1) the range and scope of the program responsibilities performed does not constitute the full range of activities, e.g., program development, establishment of program policies and procedures, program implementation, consultation, monitoring program activities, and training local and/or state staff; (2) the program does not affect the majority of the state's population or it affects the majority of the population in an indirect manner minimizing the impact; or (3) the accountability for the program is limited by the assignment of program responsibilities to other staff along functional lines (i.e. more than one position carries responsibility for the program). Positions provide consultative services and perform program activities in a specialized service area, such as developmental disabilities, mental retardation, alternate care, child behavior and development, alcohol and other drug abuse, juvenile delinquency, etc.

REPRESENTATIVE POSITIONS:

. . . Division of Community Services, Bureau for Children, Youth, and Families: Reports to a section chief and assists in the implementation of an initiative to focus on transitional programming for youth in the community alternative care system under the lead worker of the Youth Independent Living Project. Performs contract administration and monitoring, on-site training, technical assistance and consultation to organizations and agencies as well as maintenance of program data and fiscal reporting systems.

Division of Community Services, Bureau of Community Mental Health: Reports to a section chief and administers Wisconsin Projects for Assistance in Transition from Homelessness, including monitoring federal funds, provision of consultation, technical assistance, and specialized program training to mental health homeless services providers, human services departments, mental health advocates, homeless shelters, and other professional groups to ensure provision of mental health services to persons who are homeless and mentally ill.

SOCIAL SERVICES SPECIALIST 2

Positions at this level report to a section chief or bureau director and have primary responsibility for providing statewide program development and consultative work in a specialized statewide program area which affects one of the largest segments of the state's population or affects a narrower segment of the

population in substantial ways (e.g., services for persons with multiple impairment). Positions at this level are responsible for performing the full range of activities (i.e., program development, establishment of program policies and procedures, program implementation, consultation, monitoring program activities, and training local and/or state staff) necessary to administer the program on a statewide basis under the direction of higher level program staff or managers. A limited number of positions may provide consultative services in selected program areas which require highly specialized training and skills. Positions at this level may also have responsibility for managing grants or leading lower level specialists in the performance of program activities but these activities do not comprise a majority of the position's time and are not determinative of the position's classification.

REPRESENTATIVE POSITIONS

. . . Division of Community Services, Bureau for Children, Youth and Families: Reports to a section chief and is responsible for identification of issues, development of adoption program policy, budgets, and department guidelines on adoption and post adoption services in interstate and inter-county adoptive placements of children involving the State of Wisconsin. Provides program consultation to agencies and individuals to ensure adoptive placements involve good practice and meet requirements of Wisconsin law and department policy and procedures.

The Commission determined that other programs in the Child Welfare Services Section were significantly more complex than the ILP, and generally required a program in every county while the ILP had programs in 40 counties. The Commission found that when compared to the ILP, other Child Welfare programs required more contentious negotiations with providers and staff, involved monitoring legislation and legislative proposals, had significantly larger budgets and served significantly larger populations. In addition, other programs, when compared to the ILP, involved a variety of types of grantees and involved significant policy and

program development responsibility at the state level. The Commission concluded that Murphy had failed to demonstrate that the decision to deny her request for reclassification was incorrect. The Decision and Order was served by mail upon petitioner on March 26, 1999.¹

Murphy filed the current petition for review of the Commission Decision and Order.² Both sides have now briefed the issues. Petitioner contends that the Decision and Order is not supported by substantial evidence in the record. Specifically, petitioner alleges that (1) the report which formed the basis for the denial of the reclassification request of Murphy and the Commission's affirmation of that denial was inadequate, and (2) the Commission ignored, misunderstood, or misinterpreted evidence about the nature and extent of Murphy's job duties and responsibilities. Respondent

¹ Section 227.42(2), Stats. provides that a final decision of the Commission concerning an appeal of the decision of the secretary of employment relations shall not be accompanied by findings of fact or conclusions of law. However, this section also provides that, once an appellant files a petition for review of a decision of the Commission pursuant to 227.53, Stats., the Commission is required to "issue written findings of fact and conclusions of law within 90 days after receipt of the notice" of the petition. Murphy filed a petition for judicial review, therefore, a Decision and Order containing Findings of Fact and Conclusions of Law was issued on June 3, 1999 to comply with the requirement of §227.47(2), Stats.

² Pursuant to §227.53(1)(c), Stats., a petition for review must be served and filed in the circuit court within 30 days after service of the decision. Not later than 30 days after the petition for review is filed in the circuit court, petitioner must also serve a copy on all parties who appeared in the proceeding before the Commission. The petition for review was filed in this court on April 23, 1999, within 30 days after service of the March 26 Decision and Order. The petition was served on the Commission on April 27, 1999; therefore, service under §227.53(1)(c), Stats., was timely.

contends that all of the evidence was considered and that Murphy's position does not meet the requirements for reclassification pursuant to Wis. Admin. Code §ER 3.01(3), and §230.09(1) and (2)(a), Stats. Petitioner requests that the Decision and Order be reversed and remanded with directions to grant the petitioner's reclassification request.

STANDARD OF REVIEW

The findings of fact of the agency must be supported by substantial evidence in the record. §227.57(6), Stats. Substantial evidence is "evidence sufficient to permit a reasonable finder of fact to reach the conclusion of the agency." Abbyland Processing v. LIRC, 206 Wis. 2d 309, 317-18 (Ct. App. 1996). The agency's findings must be affirmed, even if they are against the great weight or clear preponderance of the evidence, as long as a reasonable person could reach the same conclusion based on the evidence in the entire record. See Hamilton v. DILHR, 94 Wis. 2d 611, 617-18 (1980). The court has no authority to substitute its judgment for that of the agency as to the weight of the evidence on any disputed finding of fact. §227.57(6), Stats. Therefore, the decision of the agency may be set aside only when a reasonable person would be unable to reach the same decision from the evidence in combination with inferences drawn from that evidence. See Sterlingworth Condominium Ass'n v. DNR, 205 Wis. 2d 710, 727 (Ct. App. 1996).

DISCUSSION

The burden of proof in a proceeding to review an agency action

is on the party seeking to overturn the action. Racine Education Ass'n v. Com'r of Ins., 158 Wis. 2d 175, 182 (Ct. App. 1990). In her brief in support of her request for review of the Commission Decision, petitioner makes several claims attempting to establish that the Decision was not based on substantial evidence. Petitioner's arguments will be addressed separately.

Murphy contends that the process used by Ralph Hantke in his review of petitioner's request for reclassification was insufficient. Specifically, petitioner points out that Hantke did not contact the persons classified as SSS 2 who were previously involved with the ILP or any of Murphy's former supervisors. In addition, petitioner claims Hantke placed too much emphasis on the fact that the Youth Independent Living Project position is listed under the Representative Positions for SSS 1 classification. Petitioner believes that Hantke did not make any effort to determine exactly what work Murphy performs in her job.

A review of the record demonstrates that Hantke based his recommendation upon an appropriate variety of relevant evidence. Hantke did rely on the listing of Murphy's position under the Representative Positions section of the SSS 1 specifications. At the hearing, Hantke testified that

[W]hen DER identifies a position on the class specification, it is attempting to tell the reader that a position as described here meets most, if not all, of the criteria for that particular classification. If it takes the is this or is this not a Social Services Specialist 1, it takes that question out of the ball game. (sic)
This is a Social Services Specialist 1 position. This meets the criteria as identified in the specification for Social Services Specialist 1. Frankly, it's cut and

dried. That's the purpose of the representative positions. (Tr 164-65)

Hantke then went on to testify about the other evidence which influenced his decision. Hantke explained that he also relied on the Reclassification Review Form (Ex. R-14). In the Request for Reclassification, Murphy describes the changes in her job duties and responsibilities and provides examples of decisions her position makes on a regular basis. Hantke also looked at both the old and current position descriptions (Ex. R-3 and R-4), and the notes about the position description which Murphy had prepared, but which Mitchell did not approve. (Tr. 165) Although Hantke was aware that Murphy did not approve of the most recent position description, Hantke believed that the differences between the position descriptions were minimal. (Tr. 165) Murphy was also provided an opportunity to discuss her reclassification request with Hantke during an on-site interview.

Hantke relied on other relevant evidence in reaching his conclusions. He testified that he analyzed the description of an SSS 1 position comparable to Murphy's position, and contrasted it with two SSS 2 position descriptions. (Tr. 169-70) These position descriptions were from a program similar in scope to the program in which Murphy worked. According to Hantke, the comparison of the job duties of the employee seeking reclassification to duties of employees in the same classification and to employees of a higher classification is an important feature of any classification action. (Tr. 167) Hantke also referred to the class specifications prepared by the Department of Employee Relations,

which in this case were for Social Services Specialist 1 and 2.³ (Tr. 162) The record demonstrates that substantial evidence justifies the conclusion of Hantke that petitioner's position was correctly classified as SSS 1.

In the second claim raised by the petitioner, Murphy contends that the Commission ignored, misunderstood, or misinterpreted the testimony of Murphy about the nature and extent of her job duties and responsibilities, and relied instead upon testimony of individuals with second-hand knowledge of petitioner's job. Specifically, Murphy argues that the Commission gave no credence to petitioner's testimony that the ILP position performs the full range of activities necessary to be classified as SSS 2, even though she is the only person with a truly detailed knowledge of how she performs her job and how the Independent Living Program functions. According to Murphy, the Decision of the Commission is not supported by substantial evidence in the record.

Pursuant to Wis. Admin. Code §ER 3.01(3), reclassification is based upon a logical and gradual change to the duties or responsibilities of the position. Each classification shall include all positions which are comparable with respect to authority, responsibility and nature of work required. §230.09(1), Stats. Furthermore,

³ Pursuant to Wis. Admin. Code §ER 2.04(2), class specifications shall be the basic authority for the assignment of positions to a class. Class descriptions include definition statements, representative examples of work performed, and other information to facilitate the assignment of positions to the appropriate classification. Wis. Admin. Code §ER 2.04(1).

After consultation with the appointing authorities, the secretary shall allocate each position in the classified service to an appropriate class on the basis of its duties, authority, responsibilities or other factors recognized in the job evaluation process. The secretary may reclassify or reallocate positions on the same basis.

§230.09(2)(a), Stats.

The question of what classification Murphy's duties entitle her to is one where judgment must be exercised to determine the "best fit". See, e.g., Department of Employment Relations v. Wisconsin Personnel Comm'n (Ralph Doll), No. 79-CV-3860 (Dane County Cir. Ct., Sept. 10, 1980). The Social Services Specialist 2 class specification states that positions at this level are responsible for performing the full range of activities: program development, establishment of program policies and procedures, program implementation, consultation, monitoring program activities, and training. Petitioner contends that her testimony and exhibits provided evidence that she performs the full range of activities necessary to satisfy the criteria of the SSS 2 classification.

First, petitioner contends that the scope of her job duties includes program development. Murphy testified about her involvement in various pilot programs at the ILP. She developed a scholarship program for youth ages 16-21 in out-of-home care which began in 1995 or 1996 which she continues to administer. (Tr. 74, 75) Murphy also testified that she solicited proposals from counties in order to develop a program to prevent minority youth from being inappropriately placed in the corrections system, then combined proposals from three counties into a program that was part of the ILP. (Tr 69) Petitioner also that she approved funding to

set a program in Jefferson County to employ youth so they could gain employment skills. (Tr 70) Petitioner cites a memo from DCHS Administrator Dreyfus to Murphy as an example of an effort to coordinate program development (Ex. A-19), and a survey petitioner designed to determine how to encourage collaboration between Family Preservation and Support and the ILP. According to Murphy, the evidence supports her claim that her position involves program development and refinement.

Petitioner also contends that her position has a role in the establishment of program policies and procedures. Murphy points to the survey mentioned above which she designed as an example of her efforts to refine program development. (Ex. A-19) Petitioner contends that she was also involved in the creation of the Independent Living Program Standards and Requirements for Youth Report (Ex. A-31), which formalized and consolidated the policies and procedures of the ILP. In addition, Murphy created forms to measure the effectiveness of services offered by the program. (Ex. A-33)

According to petitioner, her job duties included program implementation. Murphy contends she implements the Federal Independent Program mandates at the State level. This requires ensuring at least annually, or if one time funding is available, that money supplied to counties and service providers is used for appropriate purposes. Exhibit A-34, submitted by petitioner includes the annual request for funds and a proposal for services that each service provider submits to Murphy. Petitioner claims

she reviews each request to determine whether the request is appropriate under Federal program guidelines. Petitioner also testified that she helps counties implement Independent Living programs in terms of helping to identify resources and type of training counties might want to provide. (Tr. 81) She argues that the evidence demonstrates that she implements the Federal program on a state-wide level.

Another requirement of the SSS 2 classification is consultation. Murphy points to her efforts to encourage collaboration between the ILP and the Family Preservation Program (Ex. A-19) as evidence that she consults with other state agencies in her job. She contends that she also consults directly and indirectly with service providers in each county, tribe, and state agency which provides services in the ILP.

Petitioner also contends that she monitors program activities as part of her job. Murphy argues that she is essentially monitoring the program when she assimilates annual information from each provider into the Annual Report to the Federal Government (Ex. A-6, Ex A-28, Ex. A-32).

The final requirement of the SSS 2 criteria is training. Murphy testified that when staff turnover occurs in counties that provide ILP services, she trains new staff in the "Pass It On" program. (Tr 83, 84) Petitioner also testified that she contracts with somebody else to do the Independent Living training, (Tr 83), and has contracted with the National Resource Center for different types of training programs. (Tr. 85) According to petitioner,

substantial evidence supports her contention that her job responsibilities include the six activities required by the SSS 2 classification specification.

Respondent contends that more than substantial evidence exists in the record to support the decision to deny Murphy's request for reclassification. Mark Mitchell was DCFS section chief at the time of the review hearing and was Murphy's immediate supervisor. Mitchell reported that the budget of the ILP is about \$1.8 million annually and serves approximately 900 kids, compared to the Out-of-Home Care program which has a budget of \$100 million annually and serves approximately 14,000 kids. (Tr 13) Mitchell explained that the ILP covers 40 counties, two tribes and the Division of Juvenile Corrections, the Out of Home Care program affects all 72 counties and 11 tribes. (Tr 13,14) According to Mitchell, the ILP is basically a funding program which provides federal grant money for activities such as training, skills, and development which allow kids to live independently when they leave care. (Tr. 12, 39)

Mitchell testified that he believes no significant changes in petitioner's duties and responsibilities occurred in recent years. (Tr 22, 23) The basic application process for the ILP and handling applications remained essentially unchanged, although generally minor funding changes occur at the local level. (Tr 19-20, 41-42) Mitchell contends that the technical assistance Murphy provides to various county agencies does not substantially change from year to year. (Tr. 42)

Ralph Hantke, who recommended to the Commission that the

reclassification request of Murphy be denied, also testified at the hearing on November 5, 1998. Petitioner points out in her brief that after the SSS 2 position in the ILP was eliminated, these responsibilities were added to her SSS 1 duties without a resulting increase in her classification to SSS 2. At the hearing, Hantke testified that the only differences in Murphy's position since the SSS 2 position was eliminated were that she no longer reported to a lead worker, and that the Division had been changed because of the reorganization of the Department from Division of Community Services to the Division of Children and Family Services. (Tr 164) Hantke explained that he reached his conclusions about Murphy's position by reviewing the old and new position descriptions (Ex. R-3 and R-4), both SSS 1 and SSS 2 classification specifications, and after interviewing Murphy and Mitchell. (Tr 154-56) He also reviewed a program that had both SSS 1 and SSS 2 positions where the SSS 1 position had job duties comparable to the duties of Murphy's job (Tr 169-71) Hantke concluded that Murphy performed duties and responsibilities at the SSS 1 classification level.

The Commission determined that Murphy did not meet the criteria necessary to be classified as an SSS 2. Although Murphy disputes this outcome, substantial evidence in the record supports the Commission's findings. Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. City of Superior v. DILHR, 84 Wis. 2d 663, 666 (1978). The Commission relied upon relevant evidence such as the denial memo of Hantke (Ex. R-1), the Reclassification Request Form

which contained the reasons why Murphy felt her position should be reclassified, and the comments of Mitchell regarding the validity of her statements. (Ex. R-14) In addition, both the old position description and the new description which Murphy opposed were submitted into evidence. (Ex. R-3, R-4) Murphy also submitted over thirty exhibits detailing her job duties.

Despite the substantial evidence provided by the exhibits, Murphy claims that if her testimony been given the appropriate weight, the only conclusion the Commission could reach from all the evidence was to grant reclassification. She claims that the Commission ignored her testimony even though her credibility was not attacked.

The Commission was the sole judge of the credibility of the witnesses at the review hearing. In determining the credibility of witnesses and the weight given to the testimony of each witness, the hearing examiner was entitled to look at a variety of different factors. These factors include the interest or lack of interest of the witness in the result of the proceeding, the conduct and demeanor of the witness on the stand, the bias or prejudice of the witness if any has been shown, the clearness or lack thereof, of the recollection of a witness, and the opportunity of the witness for observing and knowing the matters and things given in evidence by them. Wis. JI-Civil 215. The record reveals that the hearing examiner questioned petitioner at length about her job duties, and petitioner was given ample opportunity to explain the details of her job. The credibility of the witnesses and weight given to

their testimonies was a matter for the Commission, and not for the reviewing court.

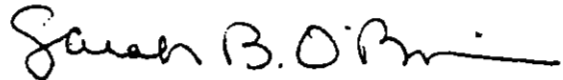
In sum, the evidence before the Commission and the inferences that could reasonably be drawn therefrom establish substantial evidence from which the Commission could conclude that Murphy's request for reclassification should be denied. Evidence was provided which showed that the elimination of the SSS 2 position did not result in a significant change in petitioner's job duties and responsibilities and that even if a gradual and logical change in Murphy's position had occurred, her duties did not satisfy the SSS 2 classification requirements. The hearing examiner heard testimony from both sides and no evidence exists to support petitioner's theory that her testimony was ignored. The Commission's Final Decision and Order in regard to the reclassification of Murphy's position will therefore not be set aside.

CONCLUSION AND ORDER

For all of the reasons stated above, the decision and order of the Wisconsin Personnel Commission is AFFIRMED. The findings made by the Commission are supported by substantial evidence in the record.

Dated this 16 day of February, 2000.

BY ORDER OF THE COURT:



Sarah B. O'Brien
Sarah B. O'Brien, Judge
Circuit Court, Branch 16

cc: Atty Lawrence E Classen
Atty John D. Niemisto
Atty Jennifer Sloan Lattis