

STATE OF WISCONSIN  
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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**VICKI FREDRICK**, Appellant,

vs.

**Superintendent, DEPARTMENT OF PUBLIC INSTRUCTION, and  
Secretary, DEPARTMENT OF EMPLOYMENT RELATIONS**, Respondents.

Case 601  
No. 62338  
PA(der)-62

(Previously Case No. 01-0027-PC)

**Decision No. 30879**

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**Appearances:**

**Randall B. Gold**, Fox & Fox, 124 West Broadway, Monona, WI 53716, appearing on behalf of the Appellant.

**Sheri Garvoille**, Attorney, DPI, PO Box 7841, Madison, WI 53707-7841, appearing for Respondents.

**INTERIM ORDER ADOPTING PROPOSED DECISION**

This matter was initially filed with the Wisconsin Personnel Commission (PC) as an appeal arising from the decision to deny a reclassification request. A hearing was held before an examiner appointed by the PC and a Proposed Interim Decision and Order was issued on June 23, 2003. On July 22, 2003, respondents filed written objections and requested oral argument. Before the Appellant's opportunity to reply was complete, the PC was abolished pursuant to 2003 Wis. Act 33 on July 26, 2003, and authority over this matter was transferred to the Wisconsin Employment Relations Commission (the Commission). The same legislation reorganized the executive branch so that the former Secretary of the Department of Employment Relations is now the Director of the Office of State Employment Relations.

Dec. No. 30879

The Commission granted the Appellant's request for oral argument and the argument was held on February 9, 2004.

Having considered the arguments of the parties and being fully advised in the premises, the Commission makes and issues the following

**ORDER**

The Proposed Interim Decision and Order, a copy of which is appended hereto, is adopted as the Interim Decision and Order of this Commission. The Commission will provide the Appellant an opportunity to submit a motion for costs.

Given under our hands and seal at the City of Madison, Wisconsin, this 13th day of April, 2004.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Judith Neumann /s/

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Judith Neumann, Chair

Paul Gordon /s/

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Paul Gordon, Commissioner

Susan J. M. Bauman /s/

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Susan J. M. Bauman, Commissioner

**Department of Public Instruction and Department of  
Employment Relations (Fredrick)**

**MEMORANDUM**

In its written objections and during the oral argument in this matter, the Respondents referenced specific language in Chapter 332 of the Wisconsin Personnel Manual (now the Wisconsin HR Manual). That document was not part of the record in this matter. The Commission is not required to take official notice of the document under §227.45(4), Stats., because it is not an administrative rule. Given that it was not part of the record and as a matter of fairness, the Commission declines to consider the document under §227.45(3).

The Respondents' written objections and oral argument incorrectly indicated that the Proposed Interim Decision and Order found that the Appellant "leads" Education Consultants. There is an important distinction between serving as a leadworker and satisfying the term "team leader" that is used in the Education Consultant Coordinator (ECC) classification. The Commission agrees with the examiner's conclusion that the majority of the Appellant's work "involves the *coordination* and implementation of the administrative needs of a team comprised of Education Consultants and the performance of the line functions of the program" as set forth in the "Inclusions" statement of the ECC specifications. This conclusion is something other than finding that the Appellant has been designated as the formal "leadworker" of the Education Consultants. Leadworker status refers to an employee who is assigned the responsibility to train other employees who are typically in the same classification series, to answer their "how-to" questions and to review their work. If the intent of the ECC specifications had been to require leadworker status, it would have been accomplished by referring to serving as "leadworker" rather than "team leader."

Dated at Madison, Wisconsin, this 13th day of April, 2004.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Judith Neumann /s/

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Judith Neumann, Chair

Paul Gordon /s/

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Paul Gordon, Commissioner

Susan J. M. Bauman /s/

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Susan J. M. Bauman, Commissioner

**VICKI FREDRICK,**  
*Appellant,*

v.

**Superintendent, DEPARTMENT OF  
PUBLIC INSTRUCTION, and  
Secretary, DEPARTMENT OF  
EMPLOYMENT RELATIONS,**  
*Respondent.*

PROPOSED  
INTERIM  
DECISION  
AND  
ORDER

Case No. 01-0027-PC

This matter is before the Commission<sup>1</sup> on the following statement of issue for hearing:

Whether respondents' decision to deny the appellant's request to reclassify her position from Education Program Specialist to Education Consultant Coordinator, was correct.

The effective date for the transaction was December 15, 2000.

Education Program Specialist (EPS)

The relevant language from the Education Program Specialist classification specification reads as follows:

I. INTRODUCTION

A. Purpose of this Classification Specification

. . . . This classification specification will not specifically identify every eventuality or combination of duties and responsibilities of positions that currently exist, or those that result from changing program emphasis in the future. Rather, it is designed to serve as a framework for classification decision-making in this occupational area.

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<sup>1</sup> The Commission regrets the delay in issuing this ruling. Due to the state's ongoing budget problems, the commission has been understaffed in professional positions by 20% since May 2000, 40% since February 2002, and 60% since January 2003.

B. Inclusions:

. . . . Positions allocated to this classification typically are responsible for analyzing competency-based testing (CBT) technical issues; developing statistical models for use in evaluating CBTs; conducting research of special education and alcohol and other drug programs; coordinating agency efforts in assisting local education agencies in identifying the educational needs of academically and economically disadvantaged youth; developing, implementing and evaluating the Equivalency Clock Hour program; providing technical assistance and coordination to school districts participating in the Competency-Based Testing program; developing the Standard Third Grade Reading test and program test instruments; and providing services to local educational agency officials on the implementation and evaluation of projects under Chapter 2.

II. DEFINITIONS

This is specialized professional work in the Department of Public Instruction . . . . Positions in this class are responsible for analyzing, developing, coordinating, monitoring, and providing technical advice in areas such as competency-based testing . . . . Positions in this class carry out their assigned responsibilities within established guidelines, using independent judgment in deciding how to accomplish goals in the provision of service. . . .

The Education Program Specialist specifications went into effect on November 3, 1991.

Education Consultant Coordinator (ECC)

The relevant language from the Education Consultant Coordinator classification specification reads as follows:

I. INTRODUCTION

A. Purpose of this Classification Specification

This classification specification is intended to be used to classify professional positions which function as team leaders over Education Consultants with responsibility for coordinating all activities of a statewide educational program. Because of the changing nature of both state and federal educational programs, it is recognized that this classification specification may not specifically identify every combination of duties and responsibilities which may exist in the future. Rather, it is intended to serve as a basic framework for classification decision-making by identifying and allocating to classification levels those groupings of duties and responsibilities that currently exist.

## B. Inclusions:

These positions function as team leaders in the Department of Public Instruction. The majority of the work involves the coordination and implementation of the administrative needs of a team comprised of Education Consultants and the performance of the line functions of the program.

## C. Exclusions

Excluded from this classification are the following types of positions:

6) Positions which, for a majority of time (i.e., more than 50%), function as team leaders for programs in which the primary emphasis is on coordination, administration and review and/or for the development of new educational guidelines, methods and program directions and do not lead professional Educational Consultants. These positions are more appropriately classified as Education Program Coordinators. . . .

## D. Entrance Into this Classification

Entrance into this classification will normally occur by competition.

## II. DEFINITION

Positions function as team leaders over Education Consultants with responsibility for the coordination of major state and/or federal programs which have numerous and significant ongoing projects. Positions at this level are responsible for planning, developing, implementing and evaluating significant statewide educational programs. Employees usually make the most complex decisions affecting their program with some of these decisions subject to only occasional review. Work is performed under general supervision.

## IV. ADMINISTRATIVE INFORMATION

This classification was originally created on January 22, 1995 to implement a major reorganization within the Department of Public Instruction . . . . Positions allocated to Education Program Coordinator 1, 2, or 3 formerly functioned as Section Chiefs with full supervisory responsibilities. Under the new structure (which emphasized floating teams rather than a fixed subordinate unit), these positions functioned as management's team representatives. As such, this series was originally allocated to the non-represented, managerial unit based on projected responsibilities for the formulation, determination and implementation of management policies. Within six months it became apparent that the management responsibilities were diminutive and therefore these positions were more correctly allocated to the Professional Education Bargaining unit. This classification specification was modified to

remove management responsibilities, but retain team leadership. . . . Positions in this classification were previously classified as Education Program Coordinator 3 which was also abolished effective April 9, 2000.

### Background

At all times relevant to this proceeding, the appellant has been employed by respondent Department of Public Instruction (DPI).

The appellant's most recent position description, signed by her on March 28, 2001, includes the following summary and list of specific goals and activities:

This position serves as team leader and is responsible for (1) providing leadership, coordination, planning, development, implementation and reporting of the state mandated Wisconsin Reading Comprehension Test (WRCT) (s. 121.02(r)), (2) providing linkages associated with external organizations and agency teams in elementary reading assessment, curriculum, school improvement, and professional development, and (3) providing consultation and innovative leadership related to the assessment of elementary reading skills and arts within the state and nationally. The WRCT is [a] custom-developed reading comprehension test administered to approximately 60,000 students in 416 school districts each year. The results of this examination are used to inform teachers, administrators and the public on the status of elementary reading in the state. Annually, 4,000 public school students are considered for possible reading remediation based upon this exam. Additionally, approximately 3,000 private school students in 125 private schools participate in the assessment.

50% A. Provide leadership for the coordination planning, development, implementation, administration and reporting of the WRCT Program.

A1. Coordinate the activities of relevant assessment professional staff to facilitate test development, administration and reporting activities.

A2. Coordinate the work of the State Superintendent's Advisory Committee, which makes recommendations regarding WRCT. Work with agency's curriculum consultants to keep membership current. Call, coordinate and lead periodic Advisory Committee meetings throughout the testing cycle.

A3. Direct and coordinate WRCT item development team. Team membership includes department assessment and curricular staff, selected school district personnel and vendor experts.

A4. Collaborate with other agency teams to develop WRCT program guidelines and policies for special student populations (e.g., LEP students and students with disabilities).

25% B. Coordinate and manage the development of the WRCT.

B1. Serve as agency's principal contact for the WRCT.

B2. Develop and coordinate initiatives and materials to help educators in linking WRCT to *Wisconsin's Model Academic Standards*.

B3. Develop documents, website information and links, and workshops associated with the proper administration, use and interpretation of the WRCT.

B4. Coordinate the development of RFPs and participate in proposal evaluations for the WRCT. Negotiate contract renewals.

B5. Coordinate, direct, and assure the quality of vendor products. Review and approve all vendor products and procedures and resolve problems that may occur.

B6. Coordinate and direct the development of innovative assessment methods and scoring procedures. Recommend future directions for the WRCT to the director.

B7. Train educators in assessment development techniques for selected and constructed-response items.

B8. Coordinate and direct the constructed-response scoring of the WRCT. Develop quality assurance measures for the vendor and oversee the scoring process. Train item raters hired by the vendor to score field tests, linking tests and statewide assessment.

B9. Provide budget, policy and legislative advice related to the WRCT or other assessments to the director of the Office of Educational Accountability.

B10. Represent the agency on issues related to elementary reading assessment to state or national organizations.

B11. Review the literature and keep informed of current instructional trends that may affect reading instruction and assessment development and implementation.

20% C. Provide leadership, coordination and consultation to agency and district staff, state and national organizations, and the public at large regarding various assessment issues specifically including assessment of the arts.

C1. Provide leadership and consultations regarding arts assessment to various arts groups such as the State Superintendent's Blue Ribbon Commission on Arts Education and the National Assessment of Educational Progress (NAEP) Arts Standing Committee, and the Council of Chief State School Officers (CCSSO)/State Collaborative on Assessment and Student Standards (SCASS) Arts Education Consortium.

C2. Coordinate and provide leadership for arts assessment activities and products as recommended by various arts groups (see above).



C3. Collaborate with agency's music, visual art, and theatre curriculum consultants to develop appropriate arts assessment items.

C4. Coordinate activities and provide leadership for Wisconsin's participation in the development of arts assessment items and exercises for NAEP and CCSSO/SCASS Arts Education Consortium.

C5. Coordinate dissemination of information to school districts and others regarding the National Standards in the Arts, State Standards in the Arts, the inclusion of arts in NAEP in the Arts, and the CCSSO/SCASS Arts assessment products and services.

5% D. Perform general program related activities

D1. Develop descriptive materials on assessment.

D2. Review, critique, and revise materials written by other OEA staff members.

D3. Respond to telephone calls, e-mail, and letters regarding assessment issues.

D4. Attend workshops and conferences to gain further knowledge and keep current on assessment related issues.

D5. Perform other relevant activities as assigned by the director of the Office of Educational Accountability.

The position description was accurate as of the effective date in question.

During the relevant time period, Nancy Burke was appellant's immediate supervisor. Ms. Burke reported to H. Gary Cook, Director of Educational Accountability. Mr. Cook reported to John Fortier, Administrator of the Division for Learning Support: Instructional Services.

The appellant was assigned on DPI's organization chart to the Educational Accountability Team. There are also teams within/between teams.

The appellant served as the coordinator for the WRCT (Wisconsin Reading Comprehension Test) team within DPI.

The WRCT team is a "floating team" in DPI.

As of December of 2000, and with respect to the WRCT team, the appellant coordinated the work of at least 2 Educational Consultants.

Appellant also performed line functions relating to the WRCT.

The combination of the appellant's coordinating function and line functions relating to the WRCT represented a majority of her work time.

The legislation requiring testing of 3<sup>rd</sup> graders' reading was passed in 1989. Initially named the 3<sup>rd</sup> Grade Reading Test, it was essentially a pass/fail test that was

developed within DPI. The students were grouped into those who were reading at an acceptable level, and those who were not. Gradually, the testing became more complex and DPI contracted out both the responsibilities for developing the test as well as the responsibilities relating to production, distribution, scoring and reporting. The test was renamed the WRCT. The “acceptable level” was subdivided into several groups, and DPI was required to collect substantially more demographic information about the students who were taking the test. A bar coding system was added for recording student demographics, and the WRCT team provided instructional assistance for teachers in terms of how to use the test for improving their instruction.

As these changes occurred, DPI underwent numerous staffing changes and the responsibility for coordinating the WRCT logically and gradually devolved to the appellant.

DPI underwent a major reorganization in 1993 or 1994. By that time, the appellant was already performing significant coordinative functions relating to the WRCT. Many employees moved into a “team” concept, and staffing limitations required forming of cross-agency teams. For example, there had been an Educational Consultant (EC) in reading employed in the Office of Educational Accountability, but that position was eliminated so that there was only one EC in reading in the entire department. The WRCT team became made up of persons from across DPI’s organizational structure.

Appellant’s supervisor at the time of the reorganization, Darwin Kaufman, identified appellant as the team leader for the WRCT team. That designation was consistent with the appellant’s role in the program before the reorganization.

Relevant staffing changes are also accurately described in the following portion of a memo prepared by appellant’s second-level supervisor, Gary Cook (AE2):

The WRCT is an examination that first entered legislation in 1987. Initially, the WRCT was developed by the DPI. In 1989, the assessment program had 13 professional staff with two section chiefs. In 1992, the WRCT program was reduced from two teams to one, with one section chief and eight staff members. The reduction in staff resulted from moving more activities to the assessment vendor. In 1994, we had further reductions in WRCT program staff – from nine to six. Mind

you, services provided by the WRCT team (e.g., workshops and district support) were not reduced as a result of this reduction. Further reductions occurred in 1995-now with only three staff members (Frank Evans, John Fortier, and Vicki Fredrick). [John Fortier was] reassigned to the Model Academic Standards project in '96-97 and eventually promoted to assistant superintendent. This reduced the staff to two.

The reduction in staff from 1994-97 forced several of the workshop and district support activities provided by the WRCT staff to cease. However, development, production, distribution, scoring and report activities continued to be provided – by the now greatly reduced staff. As staff size was reduced, Ms. Fredrick assumed more and more responsibility. Ms. Fredrick began assuming a team leader role as a result of this reduction.<sup>2</sup>

For classification purposes, the appellant's duties are stronger than those assigned to the following positions:

- a. The EPS position filled by Frank Evans. Mr. Evans' work is primarily technical and statistical and he lacks the oversight and coordination responsibilities that the appellant has.
- b. The EPS position filled by Joseph Maurer. Mr. Maurer develops test items in the social studies area and is not a coordinator.

### Discussion

This is a reclassification appeal, filed with the Personnel Commission pursuant to §230.44(1)(b), Stats. The underlying decision denied the appellant's request for reclassification from the EPS classification to the ECC classification. The burden of proof is on the appellant to show that this conclusion was incorrect and that her position should be classified at the EEC level. *Carpenter v. DOC & DER, 97-0115-PC, 11/18/98* (The issue in an appeal arising from a decision to deny appellant's

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<sup>2</sup> Mr. Cook's memo goes on to read:

Instead of coordinating staff consultants, she was coordinating, organizing and directing vendor and advisory committee members in the development of the program. Essentially, the leadership activities performed by Ms. Fredrick were redirected from DPI personnel to non-DPI appointees (who were compensated for their work) and vendor professional staff.

While this portion of Mr. Cook's memo is, in large part, accurate, it fails to recognize the role that certain Educational Consultants within DPI continued to provide to the WRCT team.

reclassification request was not the appropriateness of the appellant's existing classification, but whether appellant had established that his position should be classified at the requested level.) However, the Commission conducts a *de novo* review. *Klein v. UW & DER*, 91-0208-PC, 2/8/93 (In an appeal of a reclassification, the proceeding before the Commission is a *de novo* review of the classification of the appellant's position and the procedure that was followed by the respondents in reviewing the appellant's request for reclassification need not be evaluated in order to resolve the appeal.)

The Commission first addresses how the language in the ECC specification should be interpreted.

The first sentence of the "Purpose" portion of the specifications reads:

This classification specification is intended to be used to classify professional positions which function as team leaders over Education Consultants with responsibility for coordinating all activities of a statewide educational program.

DPI's classification analyst, Mr. Boetzer, testified that the clause beginning with the words "with responsibility for coordinating" modifies or refers to Education Consultants rather than to "team leaders." While this interpretation is logical grammatically, the Commission concludes that when this language is read in conjunction with the other language in the specifications, the "responsibility for coordinating" refers to the team leaders, i.e. to the positions that are properly classified at the ECC level. This conclusion is based on the sentence in the "Inclusions" section of the specification that reads: "The majority of the work involves the coordination and implementation of the administrative needs of a team. . . ." This conclusion is also supported by the first three sentences in the "Definition" section:

Positions function as team leaders over Education Consultants with responsibility for the coordination of major state and/or federal programs which have numerous and significant ongoing projects. Positions at this level are responsible for planning, developing, implementing and evaluating significant statewide educational programs. Employees usually make the most complex decisions affecting their program with some of these decisions subject to only occasional review.

While the first sentence in this section tracks the same problematic language that is in the “Purpose” section, the next sentence indicates that “positions at this level”, i.e., the ECC level, are the ones that are responsible for the educational programs. The next sentence indicates that it is the person filling the EEC level position that makes “the most complex decisions affecting *their* program.”

Another question is the meaning of the term “team” as it is used in the specifications. Mr. Boetzer testified that in order to be at the ECC level, you had to have multiple Education Consultants *permanently* assigned to your team in a superior/subordinate relationship. He phrased it in the Analysis portion of his reclassification denial letter (Resp. Exh. 101, p. 4) as follows: “Without subordinate staff in permanent Education Consultant positions Ms. Fredrick’s position cannot be classified as an Education Consultant Coordinator.” At hearing, Mr. Boetzer acknowledged that he reached this conclusion without being aware of the reference to “floating teams” in the third sentence of the “Administrative Information” section of the ECC specifications. This portion of the specifications explains that the ECC classification replaced the Education Program Coordinator 3 classification, that the former classification reflected “full supervisory responsibilities,” and that the new classification structure reflected DPI’s new structure, “which emphasized floating teams rather than [] fixed subordinate units.” This form of organization would not be reflected in DPI’s official organization charts. Those charts would instead show the traditional supervisor/subordinate structure of the agency. All three of the official organization charts that are in the record (Resp. Exh. 105, 106 and 107) are laid out in traditional fashion. The Content and Learning Team, which includes Ms. Karbon, reports to Susan Grady who is classified as an Education Administrative Director. (Resp. Exh. 105) The Licensing Team and the Teacher Education/Professional Development Team both report to Kathryn Lind, who is classified as an Education Administrative Director. (Resp. Exh. 106) The Educational Accountability Team (Resp. Exh. 107) reports to Nancy Burke, who is also classified as an Education Administrative Director. The appellant is assigned to the Educational Accountability

Team. All of these organization charts support the conclusion that “team leader” as used in the context of the ECC specifications means something other than a team organized in a supervisor/subordinate relationship.

Respondent’s other witness, Wil Mickelson,<sup>3</sup> who has extensive experience classifying positions and applying specifications, testified that the term “team leader” in the ECC specifications equated to the term “leadworker.” Ms. Mickelson testified that the term “team leader” referred to a position that is responsible for leading the work of 2 or more permanent full-time state employees, consistent with how the term “leadworker” is used elsewhere in the State’s classification structure. Ms. Mickelson’s interpretation fails to reflect the “floating team” structure at DPI. It also fails to explain why the specifications were not written using “leadworker” which is a commonly used term. The concept of “leadworker” is reflected in *Davidson v. DP*, 81-291-PC, 1/20/83, where the Commission found the appellant was not a leadworker, as the term was used in the Management Information Technician 4 position standard, where the appellant provided certain training and technical advice for other technicians in her unit, but there was no evidence that indicated she assigned work or was accountable for the majority of the work of the other technicians. The Commission concludes that the term “team leader” in the ECC specifications does not mean the same thing as “leadworker” because a team leader does not have responsibility for providing training and technical advice to the others on the team, nor is the team leader accountable for the majority of the work of the others on the team.

Jack Fortier, appellant’s second level supervisor at the time in question, and a Division Administrator, testified that the WRCT and Arts Assessment programs are “cross-agency teams.” Appellant testified as to the distinction between administrative teams, i.e. teams as might be shown on an organization chart where a supervisor has the authority to discipline and evaluate, and “floating” or functional teams, where the person coordinating the efforts of the team has no such authority. Jacque Karbon confirmed that the WRCT team was a floating team.

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<sup>3</sup> Ms. Mickelson acknowledged that she based her analysis of the reclassification request on only a few documents.

The Personnel Commission often relies on comparison positions as a basis for interpreting specifications and for classifying the position that is the subject of an appeal *Harder v. DNR & DER*, 95-0181-PC, 8/5/96 (Use of comparable positions is a well established tool in classification cases and it can be useful to demonstrate how respondent has interpreted or applied the criteria listed in the classification specifications.) But when a comparison position is clearly misclassified and the respondent has acted to remedy the mistake, the appellant cannot rely on the mistaken classification. *Mortensen v. DER*, 94-0276-PC, 12/7/95. In at least one instance the Commission has rejected a comparison when respondent has not taken any action other than to admit the error. *Gold v. UW & DER*, 91-0032-PC, 6/11/92 (To rely on the incorrect classification of a comparable position as a basis for classifying appellant's position would simply perpetuate the error, where respondents' witnesses acknowledged the position was misclassified, although no action had been taken to correct the error, and where the misclassification was based on the unambiguous language of the specifications.)

The hearing in the present case was given over the course of two days. Ms. Karbon's testimony and Mr. Fortier's testimony that related to the degree to which ECC positions occupied by Gerhard Fischer and Janice Zmrazek coordinated the work of Educational Consultants, arose on the first day of hearing. Ms. Karbon testified that the appellant carried out more oversight, coordination and organizational work than Mr. Fischer. Mr. Fortier testified that Ms. Zmrazek did not have any Educational Consultants on the "SAGE" team which, according to her position description (App. Exh. 7, was the team and program she was coordinating. Mr. Boetzer, the DPI employee who performed the classification review of the appellant's position, testified on the second day. Mr. Boetzer stated that based on the information provided during the first day, DPI had already begun to review both the Fischer and the Zmrazek positions to see if they were correctly classified.

The record does not reflect the results of DPI's review. However, the fact that respondent had commenced such a review based on information relating to comparison

positions that would be inconsistent with the interpretation of the ECC specifications being advanced by respondents serves to undermine the value of both the Gerhard Fischer and the Janice Zmrazek positions as comparable positions to the appellant.

Appellant also contended that she should be credited with coordinating the work of persons employed by the WRCT contractor engaged by DPI, as long as they fit within the general category of education consultants. This argument fails to account for the fact that the ECC specifications consistently capitalizes the term “Education Consultants” which clearly indicates an intent to include only those positions that are formally assigned to the State of Wisconsin’s Education Consultant classification. The Commission ruled on a somewhat similar contention in *Felsner et al. v. DER*, 91-0197-PC, etc., 7/8/92. There, the Commission concluded that non-state employees could not be considered, for classification purposes, as fitting within the references in the specifications to “a small to medium unit (1 to 10 FTE [full-time equivalents] of senior or advanced civil engineers” and to “11 or more FTE of senior civil engineers.” In *Germanson et al. v. DER*, 91-0223-PC, etc., 5/20/93, the appellants were project managers who directed the work of other state-employed architects and engineers and oversaw the work of “contract employees” who were paid by the state but were not in the classified service. The Commission held: “Even if appellants could overcome the fact that these employees are outside of the classified service and, therefore, do not meet the requirement identified in *Felsner*, the contract employees report to [a section other than the appellants’ section.]” In the present case, the reference in the ECC specifications to “Education Consultants” is a reference to those positions in the state civil service that are classified as Education Consultants.

Finally, the Commission notes that the ECC specifications do *not* provide that the majority of a position’s work must involve coordination responsibilities. The Commission reaches this conclusion based primarily on the language of the “Inclusions” section of the specifications:

The majority of the work involves the coordination and implementation of the administrative needs of a team comprised of Education Consultants *and* the performance of the line functions of the program.



The italicized “and” in this sentence clearly indicates that the *combination* of line functions and the “coordination and implementation of the administrative needs of a team” must comprise the majority, i.e. more than 50% of the work.

This interpretation is consistent with the other language in the specifications:

A. Purpose of This Classification Specification

This classification specification is intended to be used to classify professional positions which function as team leaders over Education Consultants with responsibility for coordinating all activities of a statewide educational program.

II. DEFINITION

Positions function as team leaders over Education Consultants with responsibility for the coordination of major state and/or federal programs which have numerous and significant ongoing projects. Positions at this level are responsible for planning, developing, implementing and evaluating significant statewide educational programs.

The specifications are written so that as a team leader over Education Consultants, the position must perform *some* coordination. However, this coordination, by itself, need not be a majority of the position’s responsibilities in order to satisfy the requirements of the specifications. The coordination work along with the line function work must constitute the majority of the position’s responsibilities.

Appellant’s position

The testimony at hearing established that appellant led two teams. (Mr. Boetzer’s testimony) The record shows that the WRTC team and the Arts Assessment team are “floating teams” (Appellant’s and Ms. Karbon’s testimony) and, therefore, “teams” within the meaning of the EEC specifications. The evidence also established that, as to the WRTC team, the appellant coordinated work of 1) Mr. Fortier when he was an Education Consultant, 2) Ms. Karbon, who is classified as an Education Consultant, and 3) Tim Boals, who is classified as an Education Consultant. (Testimony of Mr. Fortier, Ms. Karbon and the appellant) As of the effective date for the reclassification in question, the appellant coordinated the work of Ms. Karbon and Mr. Boals. The evidence also established that, as to the Arts Assessment team, the

appellant coordinated work of Education Consultants 1) Mel Pontius, 2) Marty Rayala, 3) Ken Wagner, and 4) Will Gray. (Appellant's testimony) Line functions are the day-to-day operations of a program. (Testimony of Mr. Boetzer) The appellant also spent significant time performing the line functions of these two teams. She spent a majority of her time on the coordinating responsibilities and the line functions as to these teams. (Testimony of Mr. Fortier, Mr. Cook, Appellant and Ms. Karbon)

Evidence also established that the appellant performs coordinative work while the EPS positions held by Mr. Evans (Testimony of Ms. Karbon and Mr. Evans) and Mr. Maurer (Testimony of Mr. Fortier and Mr. Evans) do not. The Inclusions section of the EPS specifications provide examples of responsibilities properly classified at that level. The listed responsibilities reflect roles that are more as "cogs in the wheel" rather than as coordinators. EPS positions analyze technical issues relating to competency-based testing, provide technical assistance for the individual school districts, conduct research, or actually do the test development. This is a narrower scope than the appellant's position. Therefore, the appellant's position is better described by the ECC classification than the EPS classification.

#### Logical and gradual change

Pursuant to §ER 3.01(3), Wis. Adm. Code, reclassification is only appropriate when there has been "a logical and gradual change to the duties or responsibilities of a position."<sup>4</sup> The decision of whether a position has undergone a logical and gradual change is based on the time period after the appellant's position was previously analyzed for classification purposes. *Murphy v. DHFS & DER*, 98-0013-PC, 3/24/99; affirmed Dane County Circuit Court, 99-CV-0944, 2/16/00. Appellant's position was reallocated when the EPS specifications became effective on November 3, 1991. There is no evidence that there was a subsequent classification review performed by respondents until the decision being reviewed in the present case. Therefore, the question is whether the appellant's position both logically and gradually assumed

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<sup>4</sup> This provision also allows for reallocation upon "attainment of specified education or experience by the incumbent" but the specifications at issue are not differentiated in this way, i.e. as a progression series, so this potential basis for reallocation is not available, nor was it argued.

additional responsibilities that changed its proper classification from EPS to ECC between November of 1991 and December of 2000.<sup>5</sup>

There were a variety of changes to the process used for testing the reading of Wisconsin's 3<sup>rd</sup> grade students. The legislation requiring testing of 3<sup>rd</sup> graders' reading was passed in 1989. Initially named the 3<sup>rd</sup> Grade Reading Test, it was essentially a pass/fail test that was developed within DPI. The students were grouped into those who were reading at an acceptable level, and those who were not. Gradually, the testing became more complex and DPI contracted out both the responsibilities for developing the test as well as the responsibilities relating to production, distribution, scoring and reporting. The test was renamed the WRCT. The "acceptable level" was subdivided into several groups, and DPI was required to collect substantially more demographic information about the students who were taking the test. A bar coding system was added for recording student demographics, and the WRCT team provided instructional assistance for teachers in terms of how to use the test for improving their instruction.

DPI also underwent significant structural changes that affected the appellant's duties. The record shows that this program 1) was reduced from teams in two sections of DPI, with each section headed by a different section chief and with more than 8 DPI staff members assigned to the program, to one team in one section and 8 staff members, then to 6 employees, then to 3 staff and finally to 2 staff in the Educational Accountability Team (appellant and Mr. Evans); and 2) also reflected the reorganization in 1993 when respondent created cross-agency or floating teams rather than a fixed organization structure.

According to Mr. Cook, Mr. Fortier and the appellant, modifications to the WRCT program and in DPI staff assigned to the program gradually caused changes in appellant's responsibilities regarding the WRCT.

In some of the other cases interpreting the "logical and gradual" concept, the Commission been faced with specific and readily identifiable changes that have caused

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<sup>5</sup> The fact that the ECC specifications state that "Entrance into this classification will normally be by competition" does not preclude reclassification of a position that has both logically and gradually assumed the responsibilities that warrant classification at the ECC level.

the subject position to be better described by a different classification specification. *Phelps v. DOR & DER*, 91-0003-PC, 5/20/93. (a reorganization that caused appellant to assume 70% of the duties of another position was not gradual); *Wacker v. DOT & DER*, 92-0251-PC, 12/17/92 (management's decision to reassign a Civil Engineer-Transportation Senior to appellant for supervision was not gradual where the classification specifications were differentiated on the basis of whether the employee supervised any Senior or Advanced engineers).

In the present case, the key differentiation in order for the appellant to satisfy the ECC specifications is serving as the team leader for a "floating" or cross-agency team. That responsibility was granted to the appellant on the date that the respondent reorganized itself from a more traditional structure into basing much of its operations on cross-agency teams. The record shows that this occurred sometime in 1993 or 1994 and that it was a reflection of the appellant's role related to the WRCT immediately prior to the reorganization:

Appellant's direct testimony, Tape 2, 2635, after admission of App. Exh. 12:

Q Did Mr. Kaufman [Darwin Kaufman, appellant's former supervisor] make any other statements to you about how he felt your job was becoming more complicated, more time-consuming and more complex.

A Yes he did. In fact when the DPI was reorganizing and moving to the teams structures, he designated, he came to a staff meeting with documents designating individuals in Assessment as team leaders for various programs. I was designated as team leader for WRCT program and he indicated to me that I was the one who was managing that program and coordinating it, therefore, I should be the team leader.

The appellant's testimony establishes that Mr. Kaufman's action of denominating the appellant as team leader for the WRCT program merely reflected the fact that the appellant was *already* managing and coordinating the program. As is indicated by the appellant's 1990 position description, she had already been responsible for "development and implementation of [the reading test], administration of contracts, technical assistance, and development of . . . test instruments" at that time. However,

between 1991 and the Mr. Kaufman's statement in 1993 or 1994, the appellant had logically and gradually assumed additional responsibilities with respect to the program so that she both managed it and coordinated it.<sup>6</sup>

Given these circumstances, the Commission concludes that the appellant both logically and gradually assumed the responsibilities that would subsequently justify classification of her position at a higher level.

### ORDER

Respondents' decision denying the appellant's request for reclassification of her position from Education Program Specialist to Education Consultant Coordinator, effective in December of 2000, is rejected. The matter is remanded to respondents for action in accordance with this decision.

Dated: \_\_\_\_\_, 2003 STATE PERSONNEL COMMISSION

\_\_\_\_\_  
ANTHONY J. THEODORE, Commissioner

KMS:010027Adec1.1

Commissioner Theodore is the sole sitting commissioner; the other two commissioner positions are vacant. Therefore, Commissioner Theodore is exercising the authority of the Commission. *See* 68 Op. Atty. Gen. 323 (1979).

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<sup>6</sup> The Commission also notes that the ECC classification was, according to the language in the "Administrative Information" section of the specifications, created in January of 1995, which was well after the appellant began carrying out the coordinative duties for two Educational Consultants, Ms. Karbon and Mr. Fortier, and was also after she had been formally denominated as the WRCT team leader. There was no indication in the record that, during the time period leading up to 1993 or 1994, the gradual assumption of coordinative responsibilities had some classification significance in terms of the classifications that existed at that time. Likewise, there is no indication in the record that Mr. Kaufman's action of formally identifying the appellant as the WRCT team leader in 1993 or 1994 would have had some classification significance in terms of the classifications that existed at that time. It was not until new specifications were adopted in January of 1995 that the consequences of these logical events could become significant for classification purposes.

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