

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

VALARIE ROH, Appellant,

vs.

Director, OFFICE OF STATE EMPLOYMENT RELATIONS, Respondent.

Case 563

No. 62786

PA(der)-25

Decision No. 30951-A

Appearances

Valerie Roh, 1837 Sunset Lane, LaCrosse, WI 54601, appearing on her own behalf.

Howard I. Bernstein, Legal Counsel, Department of Workforce Development, P.O. Box 7946, Madison, WI 53707-7946, appearing on behalf of Respondent.

INTERIM DECISION AND ORDER

This matter is before the Employment Relations Commission on an appeal of Respondent's decision to reallocate Appellant's position, effective May 18, 2003, from the Job Service Specialist series to the Employment and Training Specialist (ETS) classification (at pay progression level B) rather than the ETS – Lead classification. At the time the case was filed with the Wisconsin Personnel Commission in June of 2003, the Secretary of the Department of Employment Relations (DER) was identified as the appropriate Respondent. While the case was pending, the Personnel Commission was abolished pursuant to 2003 Wis. Act 33, effective July 26, 2003, and the authority for processing this matter was transferred to the Wisconsin Employment Relations Commission. The same legislation reorganized the executive branch so that the position of the Secretary of the Department of Employment Relations became the Director of the Office of State Employment Relations (OSER) in the Department of Administration. The Commission's decision in this matter is premised on the statutes and rules that existed at the time the appeal was filed and all quoted provisions are those in existence in June of 2003 unless otherwise noted.

A hearing was held in this matter on March 12, 2004 before Commissioner Paul Gordon, who served as the designated hearing examiner. The sole question before the Commission is whether the Appellant qualified as a leadworker for purposes of the ETS classification series. For the reasons set forth below, it is the Commission's decision that Appellant served as a leadworker and her position was better described at the Employment and Training Specialist – Lead classification level.

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At all times relevant to this proceeding, the Appellant has been employed by the Department of Workforce Development (DWD) in its LaCrosse Job Service office.

Respondent conducted a classification survey that resulted in the creation of the ETS (pay progression levels A and B) classification and the ETS – Lead classification, effective May 18, 2003. The ETS classification specification includes the following language:

Inclusions

This series encompasses professional positions . . . whose primary purpose is to provide job placement services to applicants and employers as workshop coordinators, program coordinators and in marketing and employment relations. . . .

DEFINITION

This is field Job Center work in the State Job Center Program. Positions in this classification perform varied job placement activities in a field Job Center

ADMINISTRATIVE INFORMATION

. . . . There are no distinctions in the definition of the work performed for the A or B [pay progression] levels. Those levels are associated with pay progression only.

The ETS – Lead classification specification includes the following language:

Inclusions

This series encompasses professional positions . . . whose primary purpose is to lead staff that provide job placement services to applicants and employers. . . .

DEFINITION

Positions allocated to the advanced level function as leadworkers or teamleaders of the State Job Center Program and are responsible for: 1) leadworking Employment and Training Specialists; or 2) providing leadership to a Job Center joint collaboration team. In addition to their advanced lead functions[,] positions at this level will: [perform the same varied job placement activities in a field Job Center that are identified in the ETS definition.]

At all times relevant to this matter, the Appellant has provided job services to applicants and employers as part of the Food Stamp Employment and Training (FSET) program. She has also periodically provided employment services with Job Service's Workforce Attachment and Advancement (WAA) and Trade Adjustment Act (TAA) programs. The parties agree that the job services Appellant provides to applicants and employers are the various job placement activities identified in the ETS definition. Appellant concedes she is not a "teamleader" as that term is used in the ETS - Lead specification.

Between January 1998 and January of 2004, the Appellant was assigned to serve as the leadworker for a permanent full-time position held by Pattie Dockham. Ms. Dockham spent 100% of her time during this period providing job services to applicants and employers as part of the FSET program. Since January of 2004, Ms. Dockham has spent only 25% of her time performing FSET duties for which the Appellant continues to serve as leadworker. Ms. Dockham spends the remaining 75% of her time performing TAA responsibilities. Her TAA work is led by Vicki Spiten.

Heather Olson is another full-time employee in the LaCrosse office. From January 2001 to November 2003 she worked primarily on the Workforce Advancement and Attachment (WAA) program but also was assigned to perform FSET program work for 25% of her time. Appellant served as the leadworker for Ms. Olson in terms of her FSET responsibilities, only.

At various times between November of 1997 and November of 2003, DWD also assigned at least one of four full-time limited term or project employees to the FSET program. Appellant served as the leadworker for all of these employees in regard to their FSET duties. However, as of May 18, 2003, Appellant was not serving as the FSET leadworker for any limited term or project employees.

By March 12, 2004, the date of the hearing in this matter, the Appellant's leadwork responsibilities related solely to the 25% of Ms. Dockham's duties that were part of the FSET program.

Appellant was responsible for training, assisting, guiding and instructing Ms. Dockham, Ms. Olson and the employees filling the limited term and project positions described above, in terms of their FSET responsibilities. Appellant also assigned and reviewed their FSET work.

The Appellant's revised position description, which accurately described her duties and responsibilities as of May 18, 2003, includes the following goal and worker activities:

30% B. Direction and Lead Functions

B1. Instruct co-workers and W2 program providers regarding the proper use of CARES, a complex computer program used to track statistical information and case management activities.

- B2. Insure that all work deadlines are met.
- B3. Involve program staff in the development of corrective action plans and assign responsibility for implementing the components of the plans.
- B4. Serve as the liaison or contact person between program staff and higher levels of authority such as unit supervision and contract administrators. Elevate questions and concerns and provide a common response to all program staff to insure consistency.
- B5. Serve as the lead for other program specialists. Provide advanced level technical expertise.

ORDER

Respondent's decision to reallocate the Appellant's position to the ETS classification (progression pay level B) rather than the ETS – Lead classification is rejected and this matter is remanded for action in accordance with this decision. The Commission will retain jurisdiction in order to consider any timely application for fees and costs under Sec. 227.485, Stats.

Given under our hands and seal at the City of Madison, Wisconsin, this 1st day of October, 2004.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Judith Neumann /s/

Judith Neumann, Chair

Paul Gordon /s/

Paul Gordon, Commissioner

Susan J. M. Bauman /s/

Susan J. M. Bauman, Commissioner

Parties:

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Department of Administration (Roh)

MEMORANDUM ACCOMPANYING INTERIM DECISION AND ORDER

This matter, though ostensibly focused on the question of leadwork, actually turns on the effective date of the transaction.

The two classifications at issue, ETS and ETS – Lead, are differentiated solely in terms of performing leadwork. Respondent contends that in order to meet the requirements of the higher classification, an employee must serve as the leadworker for “one or more permanent full time state employees.” (Brief, p. 2) Respondent acknowledges the Appellant may have satisfied this standard when she was leading the work of Ms. Dockham, who was employed in a full-time permanent position until January of 2004. However, Respondent contends that Appellant’s position should not be reallocated because Appellant does not “presently” satisfy the standard. (Brief, p.2)

The relevant class specifications, set forth in part above, do not define the terms “leadwork” or “leadworker” and these terms are not defined in either the relevant statutes or administrative rules.

Respondent is charged with the responsibility to establish the classification structure for the State’s classified service and to then allocate, reclassify or reallocate every position in the classified service into one of the established classifications. Sec. 230.09(1) and (2), Stats. Respondent has issued a “Glossary of Human Relations Terminology” that includes the following definition:

Lead worker: An employee whose assigned duties include training, assisting, guiding, instructing, and assigning and reviewing the work to one or more employees in the work unit. Lead workers do not have supervisory authority . . . which include[s] hiring, disciplining, and firing an employee. (App. Exh. 7, Resp. Exh. 8)

There is no testimony or other evidence suggesting that this definition does not accurately describe the “leadwork” referenced in the ETS – Lead classification specifications and the Commission will apply this definition as it considers the present appeal. 1/

1/ This definition is not identical to the definition applied in RUNYON v. DNR & DER, 90-0234-PC, 12/13/90, although it is substantially similar in all material respects. In RUNYON, the Personnel Commission chose to rely on the testimony of a personnel specialist who suggested that leadwork “is performed when someone is responsible on an ongoing basis for assigning, reviewing and evaluating the work of permanently assigned staff.” There is no indication that a written definition was part of the record in that matter.

The evidence of record showed that Appellant trained, assisted, guided and instructed any and all other positions performing employment services work for the FSET program in the LaCrosse Job Center. The evidence also showed that Appellant assigned and reviewed the FSET program work of these employees. However, to the extent these same employees were performing work for other Job Service programs, Vicki Spiten or another DWD employee served as the leadworker for that work.

The Commission notes that the “Inclusions” portion of the ETS – Lead specification provides that the “primary purpose” of a position classified at that level is to “lead staff that provide job placement services.” There is nothing in the record to suggest there is a specific minimum time percentage that a position must spend on leadwork responsibilities in order to satisfy the “Inclusions” language. Appellant’s position description, accurate as of May 18, 2003, indicates she spent approximately 30% of her time performing “direction and lead functions.” In the absence of any comparison positions that are classified at either of the class levels at issue and that spend specific percentages of time on leadwork responsibilities, there is insufficient evidence to find that the Appellant fails to satisfy the “primary purpose” standard. It should also be noted that the terms “leadworker” and “supervisor” reflect a status or authority that exists whether the employee is leading/supervising 300 employees or only one employee. For all of these reasons, the Commission finds that the Appellant satisfies the “primary purpose” language.

Nevertheless, the amount of time that Appellant spent leading the FSET program work of other employees varied during the period between September of 1997 and the date of the hearing in this matter, March 12, 2004. As of May 18, 2003, the effective date of the decision being appealed, the Appellant: 1) served as the leadworker for Ms. Dockham, who was employed in a full-time permanent position and spent 100% of her time on the FSET program; and 2) assigned and reviewed the work and trained, assisted, guided and instructed Ms. Olson, who filled a full-time permanent position, for that portion (25%) of time she spent on the FSET program. By the time of the hearing, the number of Job Service employees in the La Crosse office who were assigned to perform FSET work had declined dramatically. Appellant was only serving as leadworker for the 25% of the Olson position that involved performing FSET program responsibilities.

Respondent has failed to provide any support for its contention that the Commission should base its decision on Appellant’s responsibilities as of the date of hearing rather than on her responsibilities as of the effective date of the decision being appealed. Reliance on the hearing date, as proposed by the Respondent, would provide an incentive for the parties to delay processing a classification appeal until such time as reality changed to better support those facts the party desired to establish. It would also mean that two employees filing simultaneous appeals from identical classification actions who happened to have different hearing dates could end up with inconsistent results.

In contrast, there is strong support for the conclusion that the Commission must decide a reallocation case based on those duties assigned as of the effective date of the transaction.

The effective date is case-specific and is readily determined. Once an effective date is established, the employee will not be adversely affected by delays attributable solely to the Respondent.

Where, as here, Respondent reviews the class levels of numerous positions as part of a classification survey that results in the promulgation of new class specifications, and then reallocates individual positions into the newly established classifications, the effective date is invariably the effective date for those new specifications. These are reallocations described in the Sec. ER 3.01(2)(b), WIS. ADM. CODE, as being based on “[t]he creation of new classes” which is only one of several possible justifications, listed in Sec. ER 3.01(2), for reallocating a position:

“Reallocation” means the assignment of a position to a different class by the secretary as provided in s. 230.09(2), Stats., based upon:

- (a) A change in concept of the class or series;
- (b) The creation of new classes;
- (c) The abolishment of existing classes;
- (d) A change in the pay range of the class;
- (e) The correction of an error in the previous assignment of a position;
- (f) A logical change in the duties and responsibilities of a position; or
- (g) A permanent change in the level of accountability of a position such as that resulting from a reorganization when the change in level of accountability is the determinant factor for the change in classification.

In *NELSON v. DER*, 92-0310-PC, 9/17/96, the Personnel Commission described the time period to be examined when reviewing a reallocation decision that was made as part of a classification survey:

Appellant’s position was reallocated pursuant to the implementation of a personnel management survey of the classifications of certain financial positions by respondent DER. When a position is surveyed for classification purposes, its duties and responsibilities are evaluated during a discrete and limited period of time immediately prior to the effective date of the survey, i.e., a “snapshot” of the position is taken during this period of time. As a result, only the duties and responsibilities actually assigned to the position during this period of time will determine its classification.

This topic was considered further in a subsequent decision involving the review of another reallocation decision arising from a classification survey. In *MUELLER v. DOT & DER*, 93-0109-PC, 2/27/97, the employee worked as a member of a pool of engineering

technicians who were assigned to individual highway construction projects. The projects varied in complexity and the relevant classification specifications were differentiated, in part, by the complexity and cost of the projects assigned. The specifications became effective on June 17, 1990:

Part of the difficulty of this case is due to the length of the work assignments that are made to construction pool employees. One hypothetical example is a project manager who completed a 2 year, \$4 million project with 200 contract items on May 1, 1990, and then, while waiting for a similar project which began on August 1st, worked as project manager on a \$250,000 bridge project that lasted only three months. The Commission has previously held that the duties and responsibilities actually assigned to a position during a “discrete and limited period of time immediately prior to the effective date” of a personnel management survey will determine the position’s classification. NELSON V. DER, 92-0310-PC, 9/17/96. However, it is clear that the hypothetical employee would be properly classified based upon her \$4 million projects rather than based upon the \$250,000 project that occupied the employee on June 17, 1990, when the classification survey was effective. This result reflects the fact that individual projects could last for many months and the fact that the mix of projects and employees at any given time might preclude assigning an employee to a project of similar complexity to those projects normally assigned the employee.

In contrast to the hypothetical facts described in MUELLER, the key responsibilities assigned to the Appellant in the instant case did not vary over the course of the several months immediately before and after the effective date of the subject reallocation decision. DWD assigned Appellant the responsibility to serve as leadworker for 100% of Ms. Dockham’s duties for more than 5 years commencing in September of 1997. This assignment was still in place at the time the new classification specifications became effective and there is no indication that by May of 2003, DWD considered this leadwork responsibility to be temporary^{2/} rather than permanent.

2/ A true “temporary” assignment should not be considered in the classification analysis. STENSBERG ET AL. V. DER, 92-0325-PC, ETC., 2/20/95. However, the Commission is not required to accept management’s denomination of an assignment as “temporary” if the evidence establishes that the assignment is actually of a permanent, or at least not temporary, nature. FREDISDORF ET AL. V. DP, 80-300-PC, 3/19/82; HOLUBOWICZ ET AL. V. DHSS & DER, 88-0039-PC, 1/25/89; DOLSON V. UW & DER, 93-006-PC, 5/21/94.

In light of the language in the class specifications, the operative definition of “lead worker” and the fact that Appellant was leading the work assigned to the permanent, full-time position occupied by Ms. Dockham as of the effective date of the decision being reviewed, it is unnecessary for the Commission to decide whether the Appellant would be properly classified at the ETS – Lead level if her leadwork responsibilities were limited to the FSET work performed by Ms. Olson. 3/

3/ The Commission is unaware of any precedent directly addressing that question. However, in CIRILLI & LINDNER v. DP, 81-39-PC, 8/4/83, the Personnel Commission addressed the effect of team management in the context of a classification review. The two appellants in that matter served as co-directors of a work unit.

The Appellant has satisfied her burden of establishing that her position was better described at the ETS – Lead level as of May 18, 2003, the effective date of the transaction being reviewed.

Dated at Madison, Wisconsin this 1st day of October, 2004.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Judith Neumann /s/

Judith Neumann, Chair

Paul Gordon /s/

Paul Gordon, Commissioner

Susan J. M. Bauman /s/

Susan J. M. Bauman, Commissioner