

**STATE OF WISCONSIN**  
**BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION**

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**PEGGY A. NORRIS-DUNN**, Appellant,

vs.

**Secretary, DEPARTMENT OF NATURAL RESOURCES and**  
**Director, OFFICE OF STATE EMPLOYMENT RELATIONS**, Respondents.

Case 540  
No. 62750  
PA(der)-2

Formerly Case No. 02-0043-PC

**Decision No. 31298**

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**Appearances:**

**Peggy A. Norris-Dunn**, 509 East Burleigh Street, Milwaukee, Wisconsin 53212, appearing on her own behalf.

**Daniel Graff**, Assistant Legal Counsel, Wisconsin Department of Natural Resources, 101 South Webster Street, Madison, Wisconsin 53707-7921, appearing on behalf of the Respondents.

**DECISION AND ORDER**

This matter is before the Wisconsin Employment Relations Commission on Peggy Norris-Dunn's appeal of Respondents' decision to deny her request to reclassify her position from Program Assistant 1 (PA 1) to Program Assistant 2 (PA 2). The appeal was filed August 29, 2002 with the Wisconsin Personnel Commission which identified the Department of Employment Relations as one of the Respondents. While the matter was pending, the Personnel Commission (PC) 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 former Secretary of the Department of Employment Relations is now the Director of the Office of State Employment Relations in the Department of Administration. Commissioner Paul Gordon, serving as the designated hearing examiner, conducted an administrative hearing on February 11, 2004. Appellant was granted a delay in the post-hearing briefing schedule so she had an opportunity to prepare a hearing transcript. The record was closed on October 1, 2004, the date the final briefs were due. The hearing examiner issued a proposed decision on April 7, 2005. No objections were filed by the requisite due date of May 9, 2005. For the reasons set forth below, the decision of the Respondents is affirmed.<sup>1</sup>

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<sup>1</sup> The Appellant may have had a basis for understanding that her written arguments were due as late as December 30, 2004. Even if she had that understanding, she never filed a post-hearing brief.

Appellant holds a position with the Wisconsin Department of Natural Resources (DNR) at the Department's Milwaukee Service Center. Her position was reclassified from Word Processor 2 to PA 1 in August of 1998.

In 2001, Appellant sought reclassification of her position from PA1 to PA2. The parties have stipulated that the proper effective date of the request is September 8, 2001.<sup>2</sup>

Ms. Norris-Dunn's duties during the period immediately preceding September 2001 are accurately reflected in her position description (PD) dated August 14, 2001, which provides in pertinent part:

**Position Summary:**

This position provides customer service for members of the public who request to review files maintained by the Bureaus of Wastewater, Drinking Water & Groundwater, Solid & Hazardous Waste, Remediation & Redevelopment and Air Management. This position also provides internal customer service for all programs located at Southeast Region Headquarters and the Regional Management Team.

**Time %      Goals and Worker Activities**

- 70%      A.      As a multi-program representative for the Department, serve as a primary point of contact for analyzing and responding to all customer needs pertaining to Freedom of Information Act (Open Records) requests.
- A1.      Understand the custodial requirements of file management in a state agency. Apply department statutory requirements to customer Open Records request; advise customers of Open Records policies and procedures.

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<sup>2</sup> After she filed this appeal and as part of an effort to resolve this matter informally, the Appellant submitted a revised position description and accompanying materials relating to the duties she was performing in November 2002. Respondents informally reviewed these materials but no settlement agreement was reached so the appeal, which is premised on an effective date in September 2001, proceeded to hearing. While some of the evidence that Appellant presented at hearing related to the revised position description, the Commission's decision is not based on any duties that were initially assigned to the Appellant on a date after September 8, 2001.

- A2. Access and review program databases to identify permit docket number, Federal Identification Number or site specific information when customer provides partial information pertaining to program permits and/or files. Requires proficient use of the following program databases: BRRTS (Remediation & Redevelopment, Air Management, and Water programs), SHWIMS (Solid & Hazardous Waste), EQ Tracking (multi-program database).
- A3. Advise customers as to how to contact other service centers within the region or the Department of Commerce for files transferred to those offices.
- A3. Follow established procedures to file, retrieve, edit and update corrections of stored documents; respond to customers in writing when files do not exist and documentation of this fact is requested. Advise program staff when filing errors or inconsistencies are identified.
- A4. Coordinate scheduling of Public file review with customers and program staff; assist customer with all facets of file review.
- A5. Coordinate copying of files requested by customers with copy service providers; assist contractor when questions or problems exist. Notify supervisor when problems with copy service provider are not corrected in a timely fashion. Assist supervisors at Milwaukee and Waukesha service centers in selecting copy service providers that meet agency criteria.
- A6. Maintain appropriate logs to meet overall goals and objectives of good customer service pertaining to Open Records requests.
- A7. Serve as file room manager of the Central File System; repair file folders using the appropriate coding system established by each Bureau; maintain the integrity of the Central File System by correctly re-entering folders into the file system using established procedures.

- 20% B. Serve as primary point of contact for the development of the weekly itinerary for SER Headquarters, Annex and Sturtevant staff.
  - B1. Collect weekly staff itinerary via e-mail or hard copy; key schedules into Excel itinerary spreadsheet; distribute itinerary to staff on a weekly basis.
  - B2. Notify appropriate staff when schedules are missing.
- 7% C. As a multi-program representative for the Department, serve as a primary point of contact for responding to internal customer needs pertaining to support services.
  - C1. Produce letters, reports, memos, electronic files from paper draft and dictated materials. Consult with authors to ensure that all work is being done according to author's specifications.
  - C2. Provide data entry for Law Enforcement Special Hunt Permit program.
- 3% D. Assist with the daily operation of the Service Center and Regional Headquarters.
  - D1. Serve as program staff's point of contact for copy and fax equipment; trouble-shoot when problems arise; contact repair technicians when required; obtain monthly copy totals and complete report for Finance Department.
  - D2. Review and recommend changes in policies, procedures and guidelines that help improve operating effectiveness of the service center.
  - D3. Other duties as required to meet service center needs.

Ms. Norris-Dunn does not have delegated authority to act on behalf of a program head. Her programmatic involvement is very limited.

Since the reclassification of her position in August 1998, Ms. Norris-Dunn has been dealing with an increasing volume of records requests, both from the public and from internal customers. Many of the files and records kept by Appellant's office contain confidential information. However, employees other than Norris-Dunn are responsible for deciding what records are to be kept confidential. Appellant is required to seek review by others for those decisions and she abides by the decisions. Both members of the public and internal (DNR)

customers periodically request copies of records. Appellant is authorized to provide up to nine (9) pages of free photocopying in response to an Open Records request by a member of the public. If the request requires more than 9 pages of copies, Norris-Dunn connects the requester with an outside copy service.

Appellant has gradually increased the amount of time she spends on providing support services to DNR program staff since 1989.

The Program Assistant Position Standards state in pertinent part:

#### PROGRAM ASSISTANT 1

This is work of moderate difficulty providing program support assistance to supervisory, professional or administrative staff. Positions allocated to this level serve as the principle support staff within a specific defined program or a significant segment of a program. Positions at this level are distinguished from the clerical Assistant 2 level by their identified accountability for the implementation and consequences of program activities over which they have decision-making control. Therefore, although the actual tasks performed at this level may in many respects be similar to those performed at the Clerical Assistant 2 level, the greater variety, scope and complexity of the problem-solving, the greater independence of action, and the greater degree of personal or procedural control over the program activities differentiates the Program Assistant functions. The degree of programmatic accountability and involvement is measured on the basis of the size and scope of the area impacted by the decision and the consequence of error in making such decision, which increases with each successive level in the Program Assistant series. Work is performed under general supervision.

#### PROGRAM ASSISTANT 2

This is work of moderate difficulty providing program support assistance to supervisory, professional or administrative staff. Positions are allocated to this class on the basis of the degree of programmatic involvement, delegated authority to act on behalf of the program head, level and degree of independence exercised, and scope and impact of decisions involved. Positions allocated to this level are distinguished from the Program Assistant 1 level based on the following criteria: (1) the defined program area for which this level is accountable is greater in scope and complexity; (2) the impact of decisions made

at this level is greater in terms of the scope of the policies and procedures that are affected; (3) the nature of the program area presents differing situations requiring a search for solutions from a variety of alternatives; and (4) the procedures and precedents which govern the program area are somewhat diversified rather than clearly established. Work is performed under general supervision.

#### PROGRAM ASSISTANT 1 - WORK EXAMPLES

Plans, assigns and guides the activities of a unit engaged in specialized clerical duties.

Serves as acknowledged expert who resolves the most difficult problems of a complex clerical nature.

Performs most intricate clerical operations, processing documents and performing other clerical operations where comprehensive knowledge of legislation, or organization is required.

Sets-up, maintains detailed budget ledgers posting debits and credits, issuing credits and refunds, and generally insures all records are accurate and up-to-date.

Purchases and requisitions supplies, including capital purchases and services, and follows up to insure merchandise or services are received and priced accurately.

Gathers and organizes information into summary reports, as assigned.

Maintains department or program schedule.

Develops and revises operating procedures affecting the immediate work unit.

Composes and types correspondence, requiring knowledge of departmental operations and regulations, which may not be reviewed by a superior.

Counsels and assists the public when applying for services provided by the program assigned, and may interview applicants to determine eligibility for program benefits and/or services.

#### PROGRAM ASSISTANT 2 - WORK EXAMPLES

Provides administrative assistance to supervisory, professional and administrative staff, head of a department or program.

Schedules department facilities usage.

Maintains inventory and related records and/or reports and orders supplies.

Conducts special projects: analyzes, assembles, or obtains information.

Maintains liaison between various groups, both public and private.

Directs public information activities and coordinates public or community relations activities.

Prepares budget estimates, plans office operations, controls bookkeeping functions and handles personnel transactions.

Plans, assigns and guides the activities of subordinate employees engaged in clerical program support work.

Corresponds with various outside vendors or agencies to procure goods or information for program operation.

Develops and recommends policies, procedures, guidelines and institutions to improve administrative or operating effectiveness.

Screens and/or reviews publications; drafts or rewrites communications; makes arrangements for meetings and maintains agendas and reports; arranges schedules to meet deadlines.

Maintains extensive contact with other operating units within the department, between departments or with the general public in a coordinative or informative capacity on a variety of matters.

Prepares informational materials and publications for unit involved, and arranges for distribution of completed items.

Attends meetings, workshops, seminars.

The duties assigned to Ms. Norris-Dunn are comparable, from a classification standpoint, to those assigned to the PA 1 position occupied by Glenda Banaszynski in DNR's Northeast Region. Ms. Banaszynski is responsible for "the management and security of NER Spill data files" (40%), provides internal customer service and program assistance (30%), and provides general operational support, primarily for a satellite office, by answering the phone, providing general program information in response to requests from the public, inventorying supplies and preparing requisitions (30%).

Ms. Norris-Dunn's responsibilities are also comparable to those assigned to Diane Johnson who performs PA 1 responsibilities in DNR's Appleton office. Ms. Johnson responds to phone and written inquiries from the general public and from other agencies. She requisitions supplies and helps retrieve files and records in response to open records law requests (35%); provides general program information and guidance to the public regarding hunting and fishing licenses as well as boat, snowmobile and ATV registration requests (25%); and provides general program support for the Appleton office (30%).

The scope of the Appellant's responsibilities is narrower than that of the typical PA2 position found at parks and recreation areas. Those positions are responsible for providing specific program information regarding, for example, fishing and hunting regulations, and provide a variety of customer-related services.

The majority of Appellant's time is spent in activities that are better described at the PA 1 classification level rather than the PA 2 level.

The Commission issues the following

**ORDER**

Respondents' decision to deny the request to reclassify Ms. Norris-Dunn's position from Program Assistant 1 to Program Assistant 2 is affirmed and the appeal is dismissed.

Given under our hands and seal at the City of Madison, Wisconsin, this 12<sup>th</sup> day of July, 2005.

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

**Parties:**

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**DNR & OSER (Norris-Dunn)**

**MEMORANDUM ACCOMPANYING DECISION AND ORDER**

The underlying question raised by this appeal is whether, based on the duties assigned to Ms. Norris-Dunn as of the effective date of September 8, 2001, her position was better described at the PA1 or PA2 level.

The appeal arises from a written reclassification denial dated July 15, 2002. After she had filed her appeal and in an effort to resolve the matter informally, Appellant submitted another PD that reflected her duties as of November of 2002. Respondents reviewed the updated information but the parties were unable to reach an agreement on the proper classification of this more recent set of duties and the pending appeal proceeded to hearing on the original claim. While Ms. Norris-Dunn's more recent November 2002 PD is of record (Appellant's Exhibit 1), the duties that she acquired after the effective date of September 9, 2001 are irrelevant to the resolution of the matter now before the Commission. *BLOOM v. DER*, CASE NO. 92-0088-PC, (PERS. COMM. 8/25/93) (duties and responsibilities first assigned after the effective date of a classification decision are not relevant in a review of the correctness of that decision). This case focuses on Appellant's duties during the period ending on September 8, 2001.<sup>3</sup> The Commission is convinced that Appellant's August 2001 PD accurately describes her duties as of the September 2001 effective date, and, as a consequence, the Commission has relied upon that PD as the basis for its analysis.

It is Appellant's burden of proof to show that the decision to deny the request to reclassify her position to the PA 2 level was in error. *COX v. DER*, CASE NO. 92-0806-PC, (PERS. COMM. 11/3/94); *HARDER v. DNR & DER*, CASE NO. 95-0181-PC, (PERS. COMM. 8/5/96). Ms. Norris-Dunn must establish by a preponderance of the evidence that the decision was incorrect. *MILLER v. DHSS & DER*, CASE NO. 92-0840-PC, (PERS. COMM. 1/25/94).

The basic authority for classifying positions is the classification specifications, or position standards, as they are written and adopted. *ASLAKSON ET AL. v. DER*, CASE NO. 91-

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<sup>3</sup> Even if the parties had stipulated to addressing the question of the proper classification of the Appellant's position as of November 2002, the limited information of record would not support a conclusion that the majority of her permanently assigned duties were better described at the PA2 level as of that date.

0135-PC, ETC., (PERS. COMM. 10/22/96).<sup>4</sup> The Program Assistant position standard includes specific language designed to serve as a basis for differentiating PA1 and PA2 class levels. There are four criteria identified in the PA2 class description for distinguishing positions at the two levels:

(1) the defined program area for which this level is accountable is greater in scope and complexity; (2) the impact of decisions made at this level is greater in terms of the scope of the policies and procedures that are affected; (3) the nature of the program area presents differing situations requiring a search for solutions from a variety of alternatives; and (4) the procedures and precedents which govern the program area are somewhat diversified rather than clearly established.

One example of how these criteria have been applied in the past is reflected in the decision of the Personnel Commission in *DUNN-HERFEL V. DOJ & DER*, CASE NO. 94-0043-PC, (PERS. COMM. 12/14/94). Ms. Dunn-Herfel worked with the Crime Victim program at the Department of Justice. She carried out part of the initial processing of Crime Victims Compensation applications and provided a variety of support services for different aspects of the Crime Victim program. The PC held that the scope, complexity and impact of her work and her limited independence did not justify reclassification from PA1 to the PA2 level:

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<sup>4</sup> In its recent decision in *DOC & OSER (SCHMIDT)*, DEC. NO. 31134 (WERC, 3/18/05), the Commission summarized some of the considerations it will typically apply on reviewing classification decisions:

In classification appeals a classification specification must be reviewed in its entirety as one document. Segmenting a specification and attempting to find specific words or phrases which can be attached to the duties and responsibilities assigned to a position is not dispositive of the appropriate classification of a position. The duties and responsibilities of the position and the classification specification must be reviewed in their entirety to determine the best fit. Classification specifications are comparable to administrative standards. Their application to a particular position involves first determining the facts as to the position and then exercising judgment as to which classification best describes, encompasses or fits the position. Although that process involves some discretion in weighing factors against each other, it is essentially the application of a standard to a set of facts. The overlap of two or more job specifications in describing a given position is usual and expected. Once a factual determination has been made as to the specifics of an incumbent's job they must be applied to the various specifications. The specification providing the "best fit" is used to determine the actual classification. The "best fit" is determined by the specification reflecting job duties and activities within which the employee routinely spends a majority of his or her time. Where an appellant's position can plausibly be described by the definition statements of both of the classifications in issue, determination of the appropriate level rests primarily on the examples of work performed and a comparison to other positions in the series. (citations omitted)

[A]pplication processing primarily involves determining whether an applicant has completely answered all the questions on the application form and contacting the applicant if they did not; sending forms to law enforcement agencies, physicians, and employers for them to complete and return; referring non-routine claims as well as completed claims files over to Claims Specialists; and performing related routine clerical work. The only duties appellant's position is assigned in this area which involve the exercise of some discretion are those relating to responding to inquiries relating to the requirements and procedures of the Crime Victim Compensation program, and the screening of non-routine applications. These duties consume only a small percentage of appellant's position's time. Moreover, in view of the narrow scope of this program and the routing by appellant to other positions of inquiries and applications which are other than routine, these assignments fall well within the range of PA 1 duties. . . .

The child support duties of appellant's position primarily involve checking applicant social security numbers against a list provided by the Department of Health and Social Services and, if there is a match, determining whether the applicant owes only birthing expenses or owes support or maintenance payments; and if the applicant owes support or maintenance payments, sending the applicant and other interested entities the applicable form letter or memorandum. Even though appellant's position is assigned to respond to inquiries relating to this child support aspect of the Crime Victim Compensation program, this aspect of the program has so few variables and is so well-defined that these duties also fall well within the range of PA 1 duties.

Finally, the restitution duties of appellant's position are routine bookkeeping duties and also fall well within the range of PA 1 duties. . . .

The record shows that the procedures and requirements relating to the aspects of the Crime Victim Compensation program with which appellant's position works are so limited in scope and variety and so well-defined that the variables applicable to them have been reduced in large part to a checklist format.

In the present matter, Ms. Norris-Dunn's responsibilities are also limited in scope, complexity, impact and independence. She spends the majority of her time (70%) on the central file system for the Milwaukee Service Center, removing and returning files at the request of other DNR employees as well as upon Open Records requests submitted by the public. In doing so she understands and applies existing requirements, follows established procedures to access and revise documents in the files, schedules file reviews in response to

Open Records requests, maintains a log of those requests, and copies up to 9 pages of documents from the files. If there are any questions about whether a document falls within an exception to the Open Records law, Ms. Norris-Dunn is required to pass the question on to someone else for a decision. Her work on the central file system tends to impact individuals rather than entire programs or large groups of individuals. In addition to her file system responsibilities, Appellant spends about 20% of her time using an existing spreadsheet program to create weekly itineraries for staff and another 7% on data entry and document production. These duties are all quite limited in terms of scope, impact and discretion.

Appellant's position focuses on providing office support for several DNR programs rather than on carrying out the various programs. This distinction supports classifying Norris-Dunn's position at the PA1 level rather than the PA2 level. *RATCHMAN v. UW & DER*, 86-0219-PC, 11/18/87 (most decisions made at the PA1 level are clerical or administrative in nature and PA2 decisions are more typically programmatic or substantive in nature); *VOLTZ v. DP*, 82-171-PC, 1/18/84 (where the employee's primary duties related to development and maintenance of records and data, production of typed copy and general office management and she was not directly involved with the substantive aspects of the employer's program, the position was better described at the PA1 level).

If, for the sake of argument, the Commission could reasonably conclude that both the PA1 and PA2 class descriptions plausibly describe Ms. Norris-Dunn's duties, the Commission would resort to an analysis of how her duties fit within the work examples that are listed in the position standard and how Appellant's position compares to other civil service positions at the two class levels. *FAY v. DER*, DEC. NO. 92-0438-PC (PERS. COMM. 7/7/94); *RHODES v. DOT & DER*, CASE NO. 92-0024-PC (PERS. COMM. 8/5/96).

The PA position standard lists work examples for both the PA1 and PA2 level. Several of the work examples at the PA1 level describe most of Appellant's activities. Her work on the central filing system can be viewed as an "intricate clerical operation . . . where comprehensive knowledge of legislation or organization is required." She "assists the public" who wish to invoke the Open Records law in order to obtain copies of documents found in the files maintained at the Milwaukee Service Center. Her work to develop weekly itineraries is consistent with someone who "maintains [the] department or program schedule." She "types correspondence, requiring knowledge of departmental operations and regulations."

Conversely, there are few PA2 work examples that describe her work duties and they do not constitute a majority of her activities. She serves as a liaison between Open Records requesters and the private photocopying company that supplies copies in excess of the nine that Ms. Norris-Dunn may provide. The corresponding PA2 work example is: "Maintains liaison between various groups, both public and private." Part of Goal D in Ms. Norris-Dunn's PD is also consistent with the PA2 work example of "recommend[ing] policies, procedures, guidelines . . . to improve . . . operating effectiveness." However, because Appellant only spends 3% of her time on Goal D of her PD, this similarity has an insignificant effect on the classification of her position.

Finally, positions comparable to Appellants' are classified at the PA1 level. The Banaszynski PA1 position is the closest comparison because it has a significant time component assigned to managing files and the remaining time is spent providing internal customer support and operational support with little emphasis on programmatic responsibilities. The focus of the Johnson PA1 position is also on support rather than programmatic duties, in comparison to the PA2 positions at parks and recreation areas which provide specific program information to the public. These comparisons all support the conclusion that the Appellant's position is best described at the PA1 level.

Appellant maintains that she performs more work than the incumbents in the Banaszynski and Johnson positions. However, Appellant failed to provide any reliable first-hand evidence to that effect and merely related some comments made by other people in different DNR service areas. Even if the Commission could rely on Appellant's hearsay evidence, she would merely establish a difference in the volume of work and not a distinction in the scope, impact and complexity of the duties. Volume of work is not a classification factor identified in the PA position standard. As long as the nature of the work is properly described at the PA1 level, an increase in the volume of that work will not tend to move Appellant's position into a higher class level.

Appellant also contends there has been an increase in the types of duties she performs. While this is true, the new duties are insufficient to place the majority of her work at the higher level. Appellant's 2001 PD reflects mostly PA1 level duties.

Appellant has the burden of establishing that the Respondents' decision was incorrect, and that her position should be classified at the higher PA2 level. She has not sustained her burden.

Dated at Madison, Wisconsin, this 12<sup>th</sup> day of July, 2005.

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