

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

STEVEN M. DANIELSON, Appellant,

v.

Director, WISCONSIN OFFICE OF STATE EMPLOYMENT RELATIONS, Respondent.

Case 736
No. 66180
PA(der)-168

Decision No. 31977

TERRI A. SMITH, Appellant,

v.

Director, WISCONSIN OFFICE OF STATE EMPLOYMENT RELATIONS, Respondent.

Case 753
No. 66232
PA(der)-184

Decision No. 31978

Appearances:

Steven M. Danielson, appearing on his own behalf.

Terri A. Smith, appearing on her own behalf.

David J. Vergeront, Chief Legal Counsel, P.O. Box 7855, Madison, WI 53707-7855, appearing on behalf of the Office of State Employment Relations.

ORDER GRANTING MOTION FOR SUMMARY JUDGMENT

These matters, which arise from the reallocation of the Appellants' positions to the classification of Inventory Control Coordinator (ICC) rather than ICC-Advanced, are before the Wisconsin Employment Relations Commission (the Commission) on Respondent's motion for summary judgment. The final date for submitting written arguments was November 24, 2006.

Dec. No. 31977
Dec. No. 31978

Having reviewed the record and being fully advised in the premises, the Commission makes and issues the following

FINDINGS OF FACT

1. Appellants Danielson and Smith are employed by the Department of Veterans Affairs in the Bureau of Materials Management Services at the Wisconsin Veterans Home in King, Wisconsin. The bureau contains the following units: 1) Purchasing; 2) Commissary; and 3) Printing & Medical Supplies.

2. The Appellants, as well as the three other positions within the Commissary unit, all report directly to Materials Management Director Nancy O'Connell. The other positions in the Commissary unit are another ICC position that was vacant as of the effective date of the reallocation decision, a 50% Seamstress position, and a Motor Vehicle Operator position.

3. Jerome Balthazor fills the storekeeper position in the Printing & Medical Supplies unit. He serves as the leadworker for two full-time Materials Reprocessing Assistant-Objective positions that are also within the Printing & Medical Supplies unit.

4. Mr. Danielson serves as the storekeeper in the Commissary unit for the facility's maintenance inventory. In that capacity he periodically informs other employees of the facility about the procedures for obtaining and returning equipment and supplies. He also provides some guidance to two Limited Term Employees (LTEs) who were hired to perform the duties that had been assigned to Mr. Danielson before he assumed his current position.

5. Ms. Smith is the storekeeper in the Commissary unit in charge of inventory management and purchasing for clothing, comfort supplies and shoes at the Veterans Home. Her shoe purchasing program responsibilities include creating vouchers and coordinating up to 8 trips per year for residents ("members") to purchase shoes. She is also responsible for office supplies for the entire facility and for the medical supply inventory in each of the nursing buildings. Eight residents ("members") of the facility assist Ms. Smith and she also provides some direction to the 50% seamstress position.

6. Appellants' position descriptions have identical goals and activities and identify each other as "employees performing similar duties." The Position Summary for both positions reads:

Under the general supervision of the Director of the Materials Management Bureau, this position is responsible for managing the operations of a warehouse/store environment. The position maintains and monitors a computerized stock inventory, fills internal supply orders from a variety of users, and replaces stock levels within the established budgetary allowances. This position also provides shipping, receiving and delivery services. A valid drivers' license is required.

The goals that are identified for each position are:

- 45% A. Utilize a just-in-time inventory management system.
- 35% B. Receive, inspect, accept and distribute incoming deliveries from a variety of carriers. Prepare outgoing parcels for shipment.
- 15% C. Maintain a clean and safe work environment.
- 5% D. Provide assistance in other areas of the Bureau of Materials Management.

7. Effective June 26, 2006, Respondent reallocated the Appellants' positions to the newly created classification of ICC. Mr. Balthazor's position was reallocated to the ICC-Advanced level.

8. The classification specification for the ICC series includes the following language:

II. DEFINITIONS

INVENTORY CONTROL COORDINATOR

Positions allocated to this classification are at the objective level and work under general supervision. Positions in this classification are responsible for the daily operations of a stores, warehouse, or similar setting such as a store/canteen operation in a state operated institution. Positions in this classification are responsible for overseeing the daily inventory and supply levels, the shipping and receiving for the store or warehouse, utilizing computer systems and software, and budgeting. Positions allocated to this classification perform any combination of the following duties and responsibilities:

Supplies/Inventory

- Issue supplies
- Requisition, receive, issue and record transactions for supplies and equipment
- Coordinate physical inventory counts
- Estimate stock needs
- Purchase/Order supplies
- Organize inventory floor plan
- Determine proper quantity for reorder
- Utilize a just-in-time inventory system
- Receiving, storing, determining, and maintaining inventory levels
- Daily receipt, storage, maintenance, inventory, restocking and final disposition of designated inventory stored at the Records Center
- Act as primary contact with vendors to order supplies, solicit prices for competitive bidding, or expedite delivery of supplies

Shipping and Receiving

- Determine appropriate shipping method or schedule delivery of items
- Research shipping costs and timetables, obtain quotes, and select vendor
- Fill orders for shipment and pick-up
- Receive, inspect, and accept incoming items
- Arrange for proper storage of items
- Receive and distribute deliveries from various carriers (e.g., UPS, Fed EX, Spee Dee, Airborne/DHL)
- Prepare forms for damaged or lost goods
- Contact vendors to arrange for returns and/or replacement of merchandise
- Perform check-in operations of returning inventory by scanning labels with handheld electronic bar code scanner
- Audit invoices for accuracy and match with receiving reports

Computer Systems and Software

- Utilize automated inventory database/system
- Generate reports on a monthly, quarterly, or annual basis
- Utilize databases
- Update prices in computerized system
- Download inventory check-in, stocking and re-stocking data from bar code scanners into database

Budgeting

- Manage/Monitor cadet/inmate accounts
- Provide input into budget estimates
- Order supplies based on budget for division, unit, section, department
- Charge backs to departments or divisions
- Audit requisitions from departments for proper completion and account information

Other

- Maintain equipment
- Complete Hazmat sheets
- Maintain Material Safety Data Sheets (MSDS)
- Operate canteen
- Monitor inmate work activities/Supervise students
- Operate a pallet jack and fork lift

Representative positions:

Inventory Control Coordinator for the State Lottery: This position is responsible for maintaining the security of millions of dollars worth of lottery tickets from the time they arrive at the warehouse until they are sold or

destroyed by the Lottery. This position is responsible for the complete stores operation including estimating, requisitioning, receiving, storing, issuing and maintaining inventory records.

Inventory Control Coordinator for the State Records Center: This position is responsible for serving state agencies in the daily storage, maintenance, inventory, retrieval and final disposition of records stored in the Records Center. Perform data entry for new boxes, reels of microfilm, records series, personnel files and other necessary file maintenance. Maintain accurate inventory data in the records management software.

Inventory Control Coordinator for an Institution Canteen: This position is responsible for maintaining and operating the Institution canteen, receiving and storing merchandise in the store and canteen, maintaining a high-risk security environment.

Inventory Control Coordinator University of Wisconsin – Madison Warehouse: This position is responsible for the receiving, storing, and shipping of dry food stores and supplies, maintenance and cleaning supplies, small and large equipment for the Division of University Housing’s Central Warehouse. Duties include monitoring computer-based daily reports, placing orders and maintaining stock levels of designated warehouse items, updating assigned storage location of each item into a computerized inventory database, and maintaining building offices, the warehouse area, grounds and equipment.

INVENTORY CONTROL COORDINATOR—ADVANCED

The Inventory Control Coordinator—Advanced has the following allocations:

First allocation – Performing complex inventory control duties for a majority of time

Second allocation – Leadworker

In order for positions to be classified at this level, they must be of similar scope and complexity to those listed as representative positions below.

First Allocation – Complex Duties

In addition to the work performed at the Inventory Control Coordinator level, positions in this classification are responsible for performing additional complex inventory control duties for a majority of the time. Positions at this level may be the sole person for the operation. In addition, positions at this level may perform unique duties. Duties consist of:

Supplies/Inventory

- Review requests for new items and recommend products to be sold
- Research products, determine cost, and selling price
- Make personal contacts regarding items available for sale
- Write specifications for materials or supplies to be purchased

Computer Systems and Software

- Manage computerized inventory database/system
- Utilize internet for purchasing, shipping, and determining selling cost
- Post items for sale online

Representative Positions:

University of Wisconsin – Stevens Point: This position is responsible for coordinating the Surplus Property Office at the University of Wisconsin – Stevens Point, which includes market development; campus surplus property assessments, student staff employee selection and supervision, program development, development and maintenance of computer systems designed to maintain and improve operational efficiency.

University of Wisconsin – La Crosse: This position is responsible for the implementation of the computerized inventory database and receiving system of the Bookstore Operation. The position participates in the coordination of the book, school, and shipping and receiving departments of a major University Bookstore. Additionally, this position is responsible for creating, maintaining and updating computerized inventory database, contact with vendors on selection and ordering of merchandise, contact with faculty concerning specific material requirements, supervision of student employees, determine retail pricing of merchandise, approve invoices for payment, and storing and stocking of merchandise.

Second Allocation – Leadworker

Positions functioning as leadworkers over two or more staff in the stores and warehouse operations area meet the definition of Inventory Control Coordinator – Advanced. Positions lead the work of Inventory Control Assistants and Inventory Control Coordinators.

Leadworker: An employee whose permanently assigned duties include training, assisting, guiding, instruction, assigning and reviewing the work of two or more permanent full-time equivalent classified employees in the employee's work unit as assigned and documented on the work units

organization chart. Leadworkers do not have supervisory authority as defined under s. 111.81(19), Wis. Stats. Leadworkers cannot “share” the responsibility of leading the work of employees. For example, if two leadworkers lead the work of one employee each and together jointly lead the work of one more employee, neither position will meet the definition of leadworker.

Representative Position:

Department of Corrections: In order to be classified as an Inventory Control Coordinator-Advanced at the Department of Corrections, positions must meet the definition of leadworker. Position is responsible for directing the daily activities of the correction’s institution warehouse and/or inmate canteen. Operation includes commissary items sold to inmates using computerized/scanner sales system; determining and directing storage plans and procedures; distribution of goods; inventory management and purchasing or requesting; record keeping; and responsibility for physical maintenance of assigned storeroom areas. Maintain and control of high-risk security environment in accordance with institution security policies and procedures, while directing and training inmate workers. This position functions as the lead worker to all Inventory Control Coordinators on a shift. In addition, this position assists in the coordination and planning of work flow, provides training and direction to other Inventory Control Coordinators.

9. The Appellants’ positions do not satisfy either allocation of the ICC-Advanced classification.

Based on the above and foregoing Findings of Fact, the Commission makes and issues the following

CONCLUSIONS OF LAW

1. This matter is properly before the Commission pursuant to Sec. 230.44(1)(b), Stats.
2. Respondent has the burden to show that there are no genuine issues of material fact and that Respondent is entitled, as a matter of law, to judgment in its favor.
3. Respondent has satisfied that burden.

Based on the above and foregoing Findings of Fact and Conclusions of Law, the Commission makes and issues the following

ORDER¹

Respondent's motion is granted and these matters are dismissed.

Given under our hands and seal at the City of Madison, Wisconsin, this 9th day of January, 2007.

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

¹ Upon issuance of this Order, the accompanying letter of transmittal will contain the names and addresses of the parties to this proceeding and notices to the parties concerning their rehearing and judicial review rights. The contents of that letter are hereby incorporated by reference as a part of this Order.

OSER (Danielson) & OSER (Smith)

**MEMORANDUM ACCOMPANYING ORDER
GRANTING MOTION FOR SUMMARY JUDGMENT**

The Commission may summarily decide a case when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. *BALELE V. WIS. PERS. COMM.*, 223 WIS.2D 739, 745-748, 589 N.W.2D 418 (CT. APP. 1998). Generally speaking, the following guidelines apply. The moving party has the burden to establish the absence of any material disputed facts based on the following principles: a) any disputed facts that would not affect the final determination are immaterial and are insufficient to defeat the motion; b) inferences to be drawn from the underlying facts contained in the moving party's material should be viewed in the light most favorable to the party opposing the motion; and c) doubts as to the existence of a genuine issue of material fact should be resolved against the party moving for summary judgment. *See GRAMS V. BOSS*, 97 WIS.2D 332, 338-9, 294 N.W.2D 473 (1980) and *BALELE V. DOT, PERS. COMM.*, 00-0044-PC-ER, 10/23/01. The non-moving party may not rest upon mere allegations, mere denials or speculation to dispute a fact properly supported by the moving party's submissions. *BALELE, ID.*, citing *MOULAS V. PBC PROD.*, 213 WIS.2D 406, 410-11, 570 N.W.2D 739 (CT. APP. 1997). If the non-moving party has the ultimate burden of proof on the claim in question, that ultimate burden remains with that party in the context of the summary judgment motion. *BALELE, ID.*, citing *TRANSPORTATION INS. CO. V. HUNTZIGER CONST. CO.*, 179 WIS.2D 281, 290-92, 507 N.W.2D 136 (CT. APP. 1993).

The Commission's predecessor agency, the Personnel Commission, determined that it is appropriate to apply the above guidelines in a flexible manner, after considering at least the following factors that are relevant to resolution of a matter filed under §230.44, Stats. (*BALELE, ID.*, pp. 18-20):

1. *Whether the factual issues raised by the motion are inherently more or less susceptible to evaluation on a dispositive motion.* Subjective intent is typically difficult to resolve without a hearing whereas legal issues based on undisputed or historical facts typically could be resolved without the need for a hearing.
2. *Whether a particular Appellant could be expected to have difficulty responding to a dispositive motion.* An unrepresented Appellant unfamiliar with the process in this forum should not be expected to know the law and procedures as well as an Appellant either represented by counsel or appearing *pro se* but with extensive experience litigating in this forum.
3. *Whether the Appellant could be expected to encounter difficulty obtaining the evidence needed to oppose the motion.* An unrepresented Appellant who

either has had no opportunity for discovery or who could not be expected to use the discovery process, is unable to respond effectively to any assertion by Respondent for which the facts and related documents are solely in Respondent's possession.

4. *Whether the Appellant has engaged in an extensive pattern of repetitive and/or predominately frivolous litigation.* If this situation exists it suggests that use of a summary procedure to evaluate his/her claims is warranted before requiring the expenditure of resources required for hearing.

This method of analysis was adopted in DOC & DER (SCOTT), DEC. NO. 30767 (WERC, 1/04)

The Commission now turns to applying the above factors to this case. The present motion does not focus on subjective intent and instead relies upon undisputed and fundamental facts. The Appellants should readily know those responsibilities they have been assigned by their employer. To the extent determination of Respondent's motion relies on the nature of the Appellants' responsibilities, the Appellants are able to identify any areas of responsibility that are in dispute. However, the Appellants appear before the Commission without an attorney, and there has been no showing that either Appellant has engaged in an extensive pattern of repetitive and/or predominately frivolous litigation.

Given these circumstances, and in recognition of the fundamental nature of the facts relating to Respondent's motion, the Commission concludes it should use a method of analysis that is comparable to that of a court addressing a motion for summary judgment and that Appellants should be held to the requirement that, in responding to the motion for summary judgment, they demonstrate there are genuine issues of disputed facts, and that Appellants are entitled to a hearing on their claims. However, in analyzing Appellant's showing, appropriate procedural consideration must be given to the fact that they prepared their own response to the Respondent's motion. Thus, although Appellants filed no affidavits in opposition to the present motion, their assertions in all of their submissions have been considered.

The Appellants contend they have leadwork responsibilities that justify allocation of their positions to the ICC-Advanced level. In his letter of appeal, Mr. Danielson wrote:

I think the main reason or question in being denied the "Advanced" position was, "Am I a lead worker in assigning work, training, and guiding to at least 2 other employees?"

When I moved up into my present position, because of a resignation, I instructed and guided the new employee who took my old position. When he accepted a new position in State service, two L.T.E's were hired and I instructed them, and still continue to guide them in their new positions.

Naturally, I feel responsible if any mistakes are made by them. If permanent employees are hired in the future, I will be the one to instruct and guide them also.

I am also a lead worker in assisting maintenance personnel, plumbers, electricians, steamfitters, etc., in proper use of making out requisitions for ordering equipment or where and which vendors to use for acquiring the items they need. I guide other bureaus on proper procedures of ordering, making out R.M.A.'s, if an item needs returning, or procedures for claiming short or damaged orders.

So I do feel I am a lead worker of more than two employees which should make me eligible for the "Advanced" position of "Inventory Control Coordinator".

Ms. Smith described her own "leadwork" responsibilities as follows:

I feel I have been a leadworker since becoming a Store Keeper in 1991. As a Storekeeper, I developed a labeling system and computerized my inventories and instructed other Storekeepers in computerizing their inventories. I have between 6-8 members who work at the Commissary. I interview, hire, train, schedule their hours, document time cards and assign work. I also prioritize work for the seamstress and direct projects for her. I have done training videos to be used throughout the nursing department.

Neither of these statements adequately addresses the very specific language of the relevant classification specifications that define leadworker as an employee who is "training, assisting, guiding, instructing, assigning and reviewing the work of *two or more permanent full-time equivalent classified employees.*" (Emphasis added.) The organization chart for the Bureau of Materials Management Services does not show either one of the Appellants in a leadworker role for any other position, nor are there references in the Appellants' position description that would support such a conclusion. Other than the three storekeepers,² there are only two other positions in the work unit and one of those positions is half-time rather than full-time. The residents who assist Ms. Smith in the Commissary are not classified employees so they may not be relied upon for satisfying the leadworker definition.

² The third storekeeper position in the Commissary unit was vacant as of the effective date of the reallocation decisions. At least conceptually, the facility could have made one of the two Appellants the leadworker for the third permanent position. This did not occur. Mr. Danielson contends in his written argument that he had "spent 9 days directing and training" the person hired late in 2006 to fill the vacancy. The responsibility to "direct and train" a new employee does not equate to a permanent responsibility to serve as leadworker for the position. All employees require orientation to a new job. The Commission understands that Mr. Danielson was assigned much of the (temporary) responsibility to orient the new employee but he was never assigned the permanent and ongoing responsibility to train, assist, guide, instruct and to assign and review the work of the third Commissary storekeeper position.

In contrast, Goal B in the Balthazor position description shows that he spends 30% of his time “as leadworker and a primary contact regarding capital and non-capital equipment and reusable medical supplies utilized by the Bureau of Nursing.” His Position Summary provides that he “functions as leadworker over the [two full-time] Materials Reprocessing Assistants” who are classified employees.³

The Appellants do not allege that they satisfy the second allocation at the ICC-Advanced level, which describes positions that are “responsible for performing additional complex inventory control duties for a majority of the time” and includes a specific list of six duties that are “complex” for classification purposes. Even if the Appellants perform one or more of the six duties, there is no suggestion that they do so for a majority of their work hours.

To the extent the Appellants believe that their work is as difficult as that performed by Mr. Balthazor (who is classified at the higher level), concepts of “fairness” do not override the language of the specifications. The Commission must apply the specifications as they are written and may not rewrite them for purposes of equity. *DOEMEL V. DER*, CASE NO. 94-0146-PC (PERS. COMM. 5/18/95).

For the reasons set forth above, the Respondents’ motion must be granted.

Dated at Madison, Wisconsin, this 9th day of January, 2007.

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

³ The leadworker allocation specifically references leading “the work of Inventory Control Assistants and Inventory Control Coordinators.” In contrast, Mr. Balthazor serves as leadworker for two Materials Reprocessing Assistants. It is beyond the scope of the present ruling to determine whether the language of the specification is broad enough to encompass Materials Reprocessing Assistants.