

STATE OF WISCONSIN  
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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**DEBORAH HEWKO**, Appellant,

v.

**Director, WISCONSIN OFFICE OF STATE EMPLOYMENT RELATIONS**, Respondent.

Case 798  
No. 68068  
PA(der)-223

**Decision No. 32714**

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**Appearances:**

**Deborah H. Hewko**, appearing on her own behalf.

**David J. Vergeront**, Legal Counsel, Office of State Employment Relations, 101 East Wilson Street, 4<sup>th</sup> Floor, P.O. Box 7855, Madison, Wisconsin 53707-7855, appearing on behalf of the Office of State Employment Relations.

**DECISION AND ORDER**

This matter is before the Wisconsin Employment Relations Commission as an appeal of a decision to deny the Appellant's request to reclassify her position. The parties stipulated to the following statement of the issue for hearing:

Whether Respondent's decision denying the Appellant's request to reclassify her position from University Services Associate 2 to IS Resources Support Technician-Intermediate, effective approximately November 1, 2007, was correct.<sup>1</sup>

A hearing was conducted on October 7, 2008 before Kurt M. Stege, a member of the Commission's staff serving as the designated Hearing Examiner. The parties made closing statements and the matter was ready for decision. The examiner issued a proposed decision on April 9, 2009 and the Appellant filed objections. The final date for submitting a written response was May 21. The Commission has adopted the proposed decision with certain modifications that are either self-evident or identified by footnote.

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<sup>1</sup> The Appellant had also requested reclassification to the IS Comprehensive Support Technician-Intermediate class, but she withdrew that claim at the commencement of the administrative hearing.

Dec. No. 32714

For the reasons that are explained below, the Commission affirms the Respondent's decision.

The Appellant is employed within UW-Madison's School of Human Ecology (SoHE). SoHE includes several academic departments, including the Department of Consumer Science. The contracts for approximately 20% of the faculty within SoHE are "bought out" by UW's Cooperative Extension Services and it is these 12 or 13 faculty positions that Appellant serves.

Appellant is formally supervised by David Riley, a UW-Madison professor and the Associate Dean of SoHE. He provides her with some of her work but nearly all of Appellant's work assignments are made directly to her by the other Extension-funded faculty rather than by Riley. Riley works in the building next door to where Appellant works and he has supervised Appellant for approximately four years.

Appellant receives no more than general supervision<sup>2</sup> from Riley.

Riley surveyed these 12 or 13 faculty members in approximately August or September of 2007 to generate a list of major projects that Appellant had worked on and an estimate of the number of hours that Appellant spent on her various responsibilities.

For the period relevant to the effective date of the classification decision that is the subject of this appeal, the Appellant's duties and responsibilities, as understood by Riley, are reflected in an "official" position description signed on March 14, 2008.<sup>3</sup> The document includes the following language:

- 75% A. Provide support for ongoing program and publications activities.
  - A1. 20% Assist faculty in the design and production of publications (e.g. reports, brochures, newsletters, questionnaires, flyers, etc.), including copy editing, proofreading, layout and printing.
  - A2. 15% Assist faculty in the development of presentations and displays (e.g. PowerPoint presentations, digital video presentations, table-top displays, posters, etc.) using computer-generated graphs, charts, slides and other graphics using a variety of software programs.

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<sup>2</sup> As reflected in both of the class specifications that are at issue, the other two levels of supervision that may be applied are "limited" and "close." Both apply more constraints on the employee than general supervision.

<sup>3</sup> Appellant signed her name on the document to acknowledge having received it, but she did not agree with the accuracy of the official position description.

- A3. 15% Assist faculty in website updating and maintenance through document conversion, posting and updating of information on the SoHE and UW-Extension web sites.
  - A4. 15% Assist faculty in website development, design web sites using markup language suitable for navigation. Position and manipulate the text and graphic elements using markup language and/or cascading style sheets, utilizing software such as Dreamweaver and FrontPage. Incorporate search engine (e.g. Google) with websites. Exchange links and create affiliations with other websites. Insure that websites meet the criteria mandated by the Federal Rehabilitation Act – Section 508 of the American with Disabilities Accessibility Standards. Manage access by other users/contributors to the developed web sites.
  - A5. 10% Create and maintain digital databases (e.g. for mail lists, lists of workshop participants, evaluation data, etc.) Under the direction of faculty, mail questionnaire surveys and/or develop web-based data collection systems, enter [received] data, move data between databases, write queries to perform calculations, develop charts, reports, mail labels, and other products, maintain project tracking systems where needed, and maintain electronic records on projects. As needed, integrate databases with other software such as Publisher, Word, Excel, etc.
- 15% B. Administrative Support.
- B1. Coordinate preparation, assembly and distribution of educational resource materials such as presentation handouts and training packets.
  - B2. Prepare materials including corr[e]spondence for mailing using FAX, US Postal Service Federal Express and UPS.
  - B3. Arrange for duplication or printing of various types of materials.
  - B4. Schedule fleet care, (sic) facilities, and needed services for travel, conferences, and meetings.

- B5. Order materials using purchase card or via MDS. Provide weekly purchase card reports and comply with other purchase card auditing requirements. Reconcile weekly records of credit card purchases corresponding with purchasing statements to verify items and prices.
  - B6. Coordinate assignments to student assistant with other extension support staff.
- 10% C. Miscellaneous.
- C1. Provide support as requested for faculty who have special assignments such as chairing committees or conferences.
  - C2. Attend classes/workshops to update skills.
  - C3. Other tasks as assigned by supervisor.

For the same relevant time period, the Appellant believes her duties and responsibilities are better described by an alternative position description she prepared. The alternative position description includes the following goals and activities:

- 85% A. Program activities
- A1. Website development and maintenance: Web Design, conceptualization, page layout, planning, and content delivery via Internet in the form of Markup language suitable for interpretation by the web browser, convert information into appropriate formats, set up navigation and insure that graphics and text flow throughout to show consistency, and that the style is professional, appealing and relevant. Position and manipulate web design elements and objects (text, bit-mapped images – GIFs, JPEGs, and PNGs, etc.) by means of Cascading Style Sheets (CSS) and HTML/XHTML code utilizing Dreamweaver and FrontPage. Incorporate search engine (Google) with websites, exchange links and create affiliations with other websites. Analyze and respond to requests for additions and modifications to website.
- Design and maintain websites to meet the criteria mandated by the Federal Rehabilitation Act – Section 508 of the American with Disabilities Accessibility Standards. Ensure that pages are compatible across web browsers.

Administrator of Contribute, regulating and management of access rights of users. Coordinate and manage the activities of personnel working on site.

Participate in continuous education through regular training courses and learning opportunities to keep websites up to date.

A2. Develop and maintain various relational databases. Move/exchange data between databases. Perform calculations, develop charts and graphs, queries for retrieving and manipulating data, links to external data sources, forms for data entry, reports for aggregating and analyzing data, macros to automate tasks, data-tracking, and import, export and convert data. Enter program data into appropriate databases; collect survey response data, maintain electronic records of program information. Integrate databases with applications for user access via Web-based database connectivity.

A3. Design, assist, consult and prepare in the production of publications, brochures, newsletters, award certificates, presentations, flyers, and other materials.

Develop computer-generated graphs, charts, slides, and graphics as well as revise/modify existing graphics, images, & text using various software programs to obtain the best results for internet publishing and departmental materials.

A4. Provide technical assistance, troubleshooting, consulting and problem solving for assigned specialists and student in use of various software applications, internet, e-mail, and equipment. Refer problem to the next level when necessary.

10% B. Other Support

B1. Coordinate, prepare, assemble and distribute educational resource materials such as presentation handouts and training packets.

- B2. Coordinate assignments to student and with other Extension support staff
  - B3. Arrange for duplication of various types of materials.
  - B4. Schedule facilities and needed services for conferences and meetings, Fleet Car and Ag Fleet.
- 5% C. Purchasing
- C1. Order materials using purchase card or via MDS.
  - C2. Provide weekly purchase card reports and comply with other purchase card auditing requirements.
  - C3. Reconcile weekly records of credit card purchases corresponding with purchasing statements to verify items and prices.
  - C4. Analyze departmental expenditures by using UW-Madison WISDM financial system.

SoHE has a central IT staff that is under the direction of John Hilgers. SoHE websites are on the SoHE server which is controlled by the central IT staff rather than by the Appellant. Appellant is not a subordinate of Hilgers but she does receive services from that unit.

Greg Johll is the Director of the Cooperative Extension Technology Services unit. It has a staff of eight who provide a range of technology services to all faculty and staff of Cooperative Extension. Johll's staff has provided IT support for Appellant and will do so when requested by Appellant. Appellant does not have access to the Extension website.

Appellant prefers to use the Dreamweaver® software program for her website work. The program can be used to publish pages onto a server and to modify an existing website. Appellant prefers not to use Contribute® which is the program that UW-Extension wants to have used for updating its websites.

The IS Resources Support Technician classification specification provides, in part:

B. Inclusions

This series encompasses technical positions responsible for supporting information technology resources, which may include applications, databases, inventories, website content, training, or security for an agency, division, bureau, institution or campus.

C. Exclusions

Excluded from this series are . . .

. . .

2. Clerical, paraprofessional or professional program policy development and/or implementation positions in which the assigned duties require the incumbent to utilize complex computer applications and databases in performing work duties but whose duties do not support IS resources greater than 50% of the time. . . .

II. DEFINITIONS

For classification purposes, a position must meet the level definitions and perform job duties the majority of the time (greater than 50%) as described in Section II.B.

A. Level

. . . ENTRY

Positions at this level work under close supervision and perform the most routine duties with clearly defined and specific objectives, guidelines, and instructions, exercising limited decision-making discretion. Assignments are narrow in scope.

. . . INTERMEDIATE

Positions at this level work under limited supervision and perform duties that are more varied in nature than at the entry level.

. . . SENIOR

Positions at this level work under general supervision. This is the full performance level that an employee can reasonably expect to obtain based on duties described in one or more of the job groups under II.B. Positions at this level may also participate in planning, coordination, and implementing new or modified systems, and/or training new employees.

B. Job Group

Positions in this series perform duties from the job group listed below for a majority (greater than 50%) of the time.

## RESOURCES

Positions in this group perform IS technical-related work for a majority of the time which may include any of the following duties: training customers in the use of application components, operation, and features; performing routine technical-level computer programming, coding, testing and debugging; developing complex macros using word processing, spreadsheet, database, or specialized software; coding, indexing, scanning and archiving imaged documents; providing web content services, including page formatting, text conversion and internet publishing; providing first-level network security; or maintaining complex inventories of information system vendors, products, supplies, software licenses, documentation and resource materials.

The University Services Associate 1, 2 classification series provides, in part:

### B. Inclusions

This series encompasses positions that support student programs, social programs that compliment classroom learning, instructional programs, or research programs that are unique to higher education for the majority of time (more than 50%) and report to professional or administrative staff. These positions are located in an administrative unit or academic department within a University of Wisconsin System campus or system office and perform routine to complex program-related and/or administrative support to administrators, faculty, academic and/or research staff. . . .

### E. Terminology Used in this Classification Specification . . . .

Close Supervision: Implies that the work is performed according to detailed instructions and that supervision is available on short notice. . . .

General Supervision: Implies that the work is performed independently. The incumbent seldom refers matters to supervisor except for clarification of policy. . . .

Limited Supervision: Implies that the incumbent proceeds on his or her own initiative while complying with policies, practices and procedures prescribed by the supervisor. The supervisor generally answers questions only on the more important phases of the work. . . .

## II. DEFINITIONS

### UNIVERSITY SERVICES ASSOCIATE 1

. . . . Positions allocated to the objective level provide routine duties in support of an office or department which is primarily responsible for a student program or a program area unique to higher education. . . .



*ROUTINE ADMINISTRATIVE-RELATED FUNCTIONS:*

Positions at this level may type and compose correspondence, schedule and maintain appointments and meetings; verify and reconcile monthly expenditures; compile data; order office supplies and equipment; coordinate office management duties; answer routine inquiries about university or program policies and procedures; screen and direct calls; prepare meeting minutes and written agendas; maintain office records and files; assist with travel arrangements; enter information into a database; maintain database files; open and sort mail; schedule facilities and rooms; operate various office equipment; provide administrative support to search and screen committees; maintain department budget; and prepare end of month reports.

**UNIVERSITY SERVICES ASSOCIATE 2**

This is the objective level for positions that provide complex duties for a majority of time (more than 50%) under limited, progressing to general supervision, in support of an office or department which is primarily responsible for a program area unique to higher education. These positions perform program-related and/or administrative functions which support student programs, social programs that compliment classroom learning, instructional programs, or research programs. Positions at this level provide support to administrators, faculty, academic and/or research staff. Positions at this level require analytical or independent reasoning and duties are more complex than those performed at the lower level. Positions at this level review program related documents to determine if they meet program requirements and are in compliance with a variety of complex rules and regulations. Consequence of error at this level is greater than the work described at the lower level. Performance of these worker activities requires extensive contact with operating units within the department, between campus departments, affiliated programs offering internships and clerkships, the general public, and may also include contact with students. Positions at this level may guide the work of permanent staff, students or LTEs. Positions may perform duties listed in the entry level definition above, however the objective level also requires the ability to exercise judgment and independent decision-making along program lines. Positions might not have direct interaction with students or direct involvement in the specific student or higher education program area administered by the office or department. . . .

*COMPLEX ADMINISTRATIVE-RELATED FUNCTIONS:*

Positions at this level perform complex administrative functions such as develop program or operating policies and procedures; reconcile budget or grant items; prepare and process grant/financial reports and records; monitor and analyze

financial reports; analyze and process for payment invoices, travel vouchers, and other specialized invoices; respond to program specific questions; interpret program policies and procedures; analyze documents and compile program data; serve as liaison for the program with internal and external constituents; procure supplies and equipment; function as vendor liaison for supplies, equipment, software; lead and/or train staff on program policies and procedures; provide hardware/software support to users; maintain databases; enter program data into complex databases; update and publish program related web pages.

The Commission makes and issues the following

**ORDER**<sup>4</sup>

Respondent's classification decision is affirmed and the appeal is dismissed.

Given under our hands and seal at the City of Madison, Wisconsin, this 2<sup>nd</sup> day of July, 2009.

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

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<sup>4</sup> Upon the 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.

**Office of State Employment Relations (Hewko)**

**MEMORANDUM ACCOMPANYING DECISION AND ORDER**

The appeal arises from Respondent's decision to deny Appellant's request to reclassify her position from University Services Associate 2 (USA 2) to IS Resources Support Technician-Intermediate.

In her response to Appellant's objections to the proposed decision, the Respondent moved to strike the objections because Appellant had submitted them electronically and without five supplemental copies. We decline to grant Respondent's motion in light of an email exchange between the Appellant and the examiner in which the Appellant asked: "Can I e-mail the materials for objections as opposed to U.S. mailing?" The examiner responded by expressly permitting the submission via email. Respondent also has not suggested that the medium of Appellant's objections has had a prejudicial effect.

Respondent also moved to strike various documents that Appellant incorporated into her objections. Respondent's motion is granted and the Commission has not considered extra-record materials submitted with the objections.

**Merits**

The issue in an appeal arising from a decision to deny a reclassification request is not the appropriateness of the Appellant's existing classification, but whether she has established that her position should be classified at the requested level. *CARPENTER V. DOC & DER*, CASE NO. 97-0115-PC (PERS. COMM. 11/18/1998), citing *ELLINGSON V. DNR & DER* (CASE NO. 93-0057-PC (PERS. COMM. 5/28/1998)).<sup>5</sup>

In this instance, there is a dispute between the parties in terms of which of two position descriptions better describes the Appellant's actual responsibilities during the relevant time period. In addition, certain language within the relevant class specifications is interpreted differently by the parties. Both the USA specification and the IS Resources Support Tech series classification include some language that at least generally relates to the Appellant's duties.

However, there is no dispute that the Appellant was the recipient of a "general" level of supervision, rather than the "limited" level of supervision that is necessary for correctly assigning a position to the classification being requested. Appellant's official position description refers to general supervision and David Riley, her supervisor, offered express

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<sup>5</sup> In *ELLINGSON*, the appellant's existing class specifically excluded supervisory positions and the appellant established that he was a supervisor. Nevertheless, the appellant in that matter did not prevail because he failed to establish that he satisfied the standards for classification at the requested level.

testimony that he provided her with general supervision rather than some other level. Appellant failed to offer any contrary evidence. The different levels within the IS Resources Support Tech series are differentiated on the basis of the level of supervision that is provided to the position. As indicated by the definition statements in the classification specifications, Entry level positions in the series work under close supervision, Intermediate level positions work under limited supervision, and Senior level positions work under general supervision.

The Resources Support Tech comparison positions of record support the distinction reflected in the specifications. The position description for James Hoey, classified at the Intermediate level, specifies that he receives limited supervision.<sup>6</sup> The Position Summary for the Intermediate level position filled by Caryl Knutsen specifies that she “will work under limited supervision.”<sup>7</sup>

In addition, it is the Resource Support Tech - Senior level, rather than the Intermediate level, that is identified as the “full performance level that an employee can reasonably expect to obtain” for duties that fall within the IS Resources job group definition. Appellant has not offered any evidence to suggest she is performing at something other than the objective or full performance level in terms of the duties she has been assigned. The USA 2 classification is the objective level for positions performing primarily complex, rather than routine, duties in that series. Evidence that Appellant is performing at the objective or full performance level is consistent with the USA 2 classification and is consistent with the Resources Support Tech – Senior (but not Intermediate) class.

Given these discrepancies, the Appellant has failed to sustain her burden of showing that her position fits the requested classification of IS Resources Support Tech – Intermediate.

We recognize that our decision in this matter is focused on the very narrow topic of Appellant’s level of supervision, rather than on some broader classification concepts that would support a decision of wider application. There are a variety of complicating factors that cause us to rely solely on the level of supervision and not to reach the other issues relating to whether Appellant’s position would be better described in the IS Resources Support Tech series: 1) There is a dispute between the parties as to the more accurate position description; 2) Appellant is relatively isolated from her supervisor or any other individual in a position to be familiar with the amount of time she spends on specific tasks; 3) two comparison positions at the requested level (IS Resources Support Tech – Intermediate) either appear to place hands-on web construction and maintenance work within the IS Resources Support Tech series or

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<sup>6</sup> The same position description lists Janet Deutsch, Tech Senior, as the former incumbent. It makes sense that Deutsch would have filled the position at the Senior or full performance level and that Hoey was hired at a lower class level reflecting the normal progression of the position incumbent through the class series.

<sup>7</sup> The cover page to the Knutsen position description apparently incorrectly refers to a general level of supervision.

raise questions about the general nature of IS “support” work; 4) the record does not include examples of IS Resources Support Tech positions outside of the university setting; and 5) even though one might expect there to be a wide gulf between the two class specifications, they both include one phrase that bears a relationship to web construction services.<sup>8</sup>

### **Evidentiary Objection**

At the request of the Respondent, the Commission sets forth (and concurs in) the following ruling made by the designated hearing examiner at the commencement of the hearing.

The relevant administrative rules provide that the parties are to exchange certain information in advance of a hearing. Pursuant to Sec. PC 4.02, Wis. Adm. Code:

With the exception of rebuttal matter, names of witnesses and copies of exhibits shall be filed and served at least 3 working days before the commencement of the hearing. . . . If no good cause is shown for the failure to comply with this section, the hearing examiner or commission may exclude the evidence after consideration of the following factors:

- (1) The prejudice or surprise experienced by the party against whom the evidence is being offered;
- (2) The ability of that party to cure any prejudice;
- (3) The extent to which waiver of the requirement would disrupt the orderly and efficient hearing of the case;
- (4) Bad faith or willfulness in failing to comply with the requirement; and
- (5) Other factors relevant to the determination.

Prior to the hearing in this matter, the Appellant had timely filed and exchanged her proposed exhibits but had failed to list possible witnesses. At the commencement of her case, Appellant asked to call two witnesses who had been listed by Respondent and were available at the site of the hearing. Respondent objected to the request because the Appellant had not supplied the names prior to hearing. The examiner overruled the objection, noting that while Appellant had not shown good cause for failing to list the individuals at least three working days in advance of the hearing, the factors listed in the administrative rule did not support a ruling that would prevent Appellant from having them testify as part of her own case. Respondent still intended to have the two individuals testify later in the proceeding and there was no indication that allowing the testimony would create some hardship for Respondent or disrupt the case, or that the Appellant had been acting in bad faith. As to the second witness,

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<sup>8</sup> The two phrases are “providing web content services, including page formatting, text conversion and internet publishing” and “update and publish program related web pages”. The Commission has added this paragraph to the proposed decision to better explain our rationale.

the examiner also noted that the Appellant intended to ask him (her supervisor) about the percentage of time she spent performing website work, an important aspect of the underlying dispute. A weighing of these factors properly led the examiner to conclude that Respondent's objections should be overruled.

Dated at Madison, Wisconsin, this 2<sup>nd</sup> day of July, 2009.

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