

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

GWENDOLYN DELAOSSA, Appellant,

v.

**Secretary, WISCONSIN DEPARTMENT OF TRANSPORTATION and Director,
OFFICE OF STATE EMPLOYMENT RELATIONS**, Respondents.

Case 27
No. 68687
PA(der)-245

Decision No. 32734-A

SANDRA L. GRAF, Appellant,

v.

**Secretary, WISCONSIN DEPARTMENT OF TRANSPORTATION and Director,
OFFICE OF STATE EMPLOYMENT RELATIONS**, Respondents.

Case 28
No. 68688
PA(der)-246

Decision No. 32733-A

Appearances:

Gwendolyn DeLaOssa appearing on her own behalf.

Sandra L. Graf, appearing on her own behalf.

Kathleen Chung, Assistant General Counsel, Department of Transportation, P.O. Box 7910, Madison, Wisconsin 53707-7910, appearing on behalf of the Department of Transportation (DOT) and the Office of State Employment Relations (OSER).

DECISION AND ORDER

These matters are before the Wisconsin Employment Relations Commission as appeals of decisions to reallocate the Appellants' positions. The parties stipulated to the following statement of the issue for hearing:

Whether Respondents' decisions reallocating Appellants' positions to Transportation Customer Representative – Senior rather than Transportation Customer Representative – Advanced were correct.

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A hearing was conducted on June 23, 2009 before Kurt M. Stege, a member of the Commission's staff serving as the designated Hearing Examiner. The parties submitted post-hearing briefs, the last of which was received on August 21, 2009. The hearing examiner issued a proposed decision on October 26, 2009. Any objections were due by November 20, 2009 but none were filed.

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

The Appellants are employed in the Citations and Withdrawals Section, which is in the Bureau of Driver Services, Division of Motor Vehicles, in the Department of Transportation (DOT). Erin Egan is the section chief. Responsibilities of the section include maintaining driver records. The term "driver record" is defined in Sec. Trans 103.02(1), Wis. Adm. Code, as "the abstract of convictions and other information related to a driver maintained by the department in its computer database."

There are four units within the section, one of which provides computer services. Within the three remaining units, i.e. Unit 1, Unit 2 and Unit 3, there are seven work groups. Appellant DeLaOssa is in one of the three groups in Unit 2. Appellant Graf is in one of the two work groups in Unit 1.

Prior to the decisions that generated these appeals, the Transportation Consultant Representative classification series was a progression series with 6 class levels, including two for leadworkers. It was a progression series¹ through level 4. Both Appellants were classified as Transportation Consultant Representative 3s but were part way through the transition from 3 to 4. The transition included receiving training in new program areas.

Effective January 4, 2009, the old Transportation Consultant Representative specifications were abolished and a new set of specifications for the identically named series was adopted. The new specifications identified four class levels: Transportation Customer Representative (TCRep), Transportation Customer Representative - Senior (TCR-Senior), Transportation Customer Representative - Advanced (TCR-Advanced), and Transportation Customer Representative - Leadworker (TCR-Leadworker).

The new specifications encompass positions with responsibilities relating to driver records as well as positions handling vehicle records. The Appellants work with driver records, only. The specifications include the following language:

¹ The term "progression series" is defined in Sec. ER 1.02(32), Wis. Adm. Code, as

A classification grouping whereby the class specifications or position standards specifically identify an entry and full performance objective level. The full performance objective level within a progression series means the classification level that any employee could reasonably be expected to achieve with satisfactory performance of increasingly complex duties or the attainment of specified training, education, or experience.

TRANSPORTATION CUSTOMER REPRESENTATIVE

. . . Positions at this objective level perform duties that are administrative/ clerical in nature. Such duties include but are not limited to:

- scanning driver licensing and motor vehicle registration documents into the Imaging System
- maintaining files . . .
- mailroom duties . . .
- preparing materials for bulk mailings
- limited scope processing

Positions at this level have limited external customer contact. The majority of customers are internal to DOT.

TRANSPORTATION CUSTOMER REPRESENTATIVE SENIOR

This is the objective level for positions in the central office which provide a full range of complex information to the general public through the mail, on the phone, and/or through electronic correspondence. Positions require considerable knowledge of DMV rules and state statutes that deal with a greater variety of processes, and consider more variables than at the Transportation Customer Representative level. Positions provide vehicle or driver products and services which require extensive knowledge of one or more major program areas. Positions require the ability to analyze, problem solve, and make corrections for complex situations involving customer transactions, including specialized programs, and DMV automated systems. In addition, positions are responsible for analyzing documents and records for authenticity and accuracy and to ensure that the documents are complete. Work is performed under general supervision. . . .

TRANSPORTATION CUSTOMER REPRESENTATIVE ADVANCED

This is the objective level for positions in the central office which serve as consultants to DMV employees, business partners, governmental entities, law enforcement, courts, and the general public. Positions provide the full range of services to the most complex and multifaceted DMV programs and are responsible for independently resolving highly complicated problems requiring extensive knowledge of multiple major program areas that cross program lines. Positions often require knowledge of federal and other state laws related to driver licensing and motor vehicle registration and titling. Some positions handle financial collections or commitments of significant dollar amounts. In addition, positions are responsible for final review and approval of documents for document authentication and detecting fraudulent documents.

As consultants, positions are considered the business area experts, and provide training to internal staff and external customers. Positions serve as a liaison to vendors and other third party partners. Positions serve as program experts for automated DMV systems and have significant involvement in the development, testing, and implementation of automated DMV systems. Positions require extensive knowledge of DMV computer system and subsystem business rules and relationships. Work is performed under general supervision.

Those persons primarily responsible for drafting the new specifications and initially allocating existing positions to the different class levels within the series interpret the TCRRep class to include the “support” positions in the Citations and Withdrawals Section, the TCR-Senior level to include the “processing” positions performing a range of simple to complex work, and the TCR-Advanced class to include positions filled by “consultants” who respond to contacts initiated by the public.

Most of the work that is distributed to Citations and Withdrawals Section employees in the TCRRep-Senior and TCRRep-Advanced classifications arrives in written form or is received electronically via interactive webpages, such as traffic citations that are entered electronically by the officer issuing the citation, or conviction information entered by the courts. Some work is also received via the telephone.

Of the categories of work performed that are relevant to these appeals, the most complex is handling telephone calls from the general public, which are also known as Problem Driver calls. The high level of complexity arises from the unpredictability of those calls, the wide range of topics they cover, and the confrontational stance frequently taken by the callers. DOT provides additional training to those employees who handle Problem Driver calls. The person receiving a Problem Driver call is expected to retain and resolve the most complex matters, while the less complex may be referred to other staff for processing.

As part of the classification survey implemented in January 2009, all those positions in the section that spend a majority of their time addressing Problem Driver calls were reallocated to the TCR-Advanced level.

The Citations and Withdrawals Section positions classified at the TCR-Advanced level include the following goal in their position descriptions for at least 55% of their time:

Independently provide direct assistance and disseminate information affecting operating privilege and covering a broad array of complex driver licensing issues via the telephone with department personnel, police departments, courts, attorneys, the general public, and other states and agencies.

In contrast, the position descriptions for the Appellants’ positions provide that they spend at least 80% of their time on:

Independent review of complex information from courts, law enforcement agencies, the Wisconsin driver record, other state agencies or driver licensing agencies in other states and determination of driver licensing withdrawal action.

Appellant Graf does not receive any phone calls from the general public unless the calls have been misdirected. She deals with more predictable and less complex calls from other sources. She also handles work received in writing and by interactive webpages. Like many of her co-workers, DOT has assigned Appellant Graf to deal with the records associated with one or more specialized programs. In her case, it is the Motor Carrier Safety Improvement Act (MCSIA) and the Traffic Safety School program. The procedures that Appellant Graf must follow to perform her MCSIA work are somewhat more complex than for some of the programs assigned to her co-workers. Nevertheless, her employer provided her with a set of written instructions and she can consult with a leadworker to resolve novel MCSIA issues. Traffic Safety School work is of no more than average complexity.

Appellant DeLaOssa takes Problem Driver calls over the lunch hour and on a fill-in basis. During the relevant time period, this represented approximately 15% of her time. Her other work is similar to the work performed by other positions classified at the TCR-Senior level.

In light of the allocation pattern put into place with the 2009 classification survey, the Appellants' positions are more appropriately identified at the TCR-Senior level.

The Commission makes and issues the following

ORDER²

Respondent classification decisions are affirmed and the appeals are dismissed.

Given under our hands and seal at the City of Madison, Wisconsin, this 8th day of December, 2009.

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

² 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.

**Department of Transportation and
Office of State Employment Relations (DeLaOssa and Graff)**

MEMORANDUM ACCOMPANYING DECISION AND ORDER

Appellants have the burden of proof to demonstrate that their duties “best fit” the TCR-Advanced class rather than the TCR-Senior class. JACKSON V. STATE PERSONNEL BOARD, DANE COUNTY CIRCUIT COURT, 164-086, 2/26/1979. The “best fit” is determined by the classification specification that reflects the job duties on which the employee routinely spends a majority of her time. BROOKE V. UW & DER, CASE No. 99-0034-PC (PERS. COMM. 2/28/2002). Appellants seek to overturn the decisions to reallocate their positions after the adoption of a new classification specification. The duties on which the decision must be based are those that were permanently assigned to the Appellants as of the January 4, 2009 effective date of the new specifications.

The origins of these appeals can be traced to the classification specifications that existed prior to the effective date of the two reallocation decisions³ that are the actual subjects of the appeals. The Appellants were poised to be reclassified as a consequence of the progression built into the old class structure. The new structure eliminated that progression and interfered with the Appellants’ expectations. The old specifications are not relevant except to the extent they may help us to understand one aspect of the Appellants’ motivation.

The current specifications for the Transportation Customer Representative series provide relatively clear boundaries for delineating both the TCRep and the TCR-Leadworker levels, but are more ambiguous in terms of the dividing line between the TCR-Senior and TCR-Advanced levels. The specifications provide, in part:

TRANSPORTATION CUSTOMER REPRESENTATIVE SENIOR

This is the objective level for positions in the central office which provide a full range of complex information to the general public through the mail, on the phone, and/or through electronic correspondence. . . . Positions provide . . . driver products and services which require extensive knowledge of one or more major program areas. Positions require the ability to analyze, problem solve, and make corrections for complex situations involving customer transactions, including specialized programs, and DMV automated systems. In addition, positions are responsible for analyzing documents and records for authenticity and accuracy and to ensure that the documents are complete. . . .

³ Appellants DeLaOssa and Graf are two of the eight persons in the Citations and Withdrawals Section who filed appeals with the Commission. The other six appeals are being held in abeyance pending resolution of these two cases.

TRANSPORTATION CUSTOMER REPRESENTATIVE ADVANCED

This is the objective level for positions in the central office which serve as consultants to DMV employees, business partners, governmental entities, law enforcement, courts, and the general public. Positions provide the full range of services to the most complex and multifaceted DMV programs and *are responsible for independently resolving highly complicated problems requiring extensive knowledge of multiple major program areas that cross program lines*. Positions often require knowledge of federal and other state laws related to driver licensing

As consultants, positions are considered the business area experts, and provide training to internal staff and external customers. Positions serve as a liaison to vendors and other third party partners. Positions serve as program experts for automated DMV systems and have significant involvement in the development, testing, and implementation of automated DMV systems. Positions require *extensive* knowledge of DMV computer system and subsystem business rules and relationships. . . . (Emphasis added.)

The highlighted language indicates the Senior and Advanced classes are distinguished, at least in part, by the greater complexity of the problems that are encountered, the degree of knowledge of multiple program areas, and the degree of knowledge of the DMV computer system.

The Transportation Customer Representative classification series serves as the basis for classifying numerous positions at DOT outside of the Citations and Withdrawals Section, so the language in the specifications is hardly specific to the Appellants' positions.

Two persons who were instrumental in drafting the specifications testified to the concepts underlying the different class levels. Both were familiar with the Appellants' positions. They suggested that TCRRep describes "support" positions; TCR-Senior is the "processing" level that encompasses a full range of work, some of it simple and some of it complex; and positions at the TCR-Advanced level serve as "consultants" to the general public where the public initiates the contact. Those concepts are reasonably consistent⁴ with the language actually used in the specification once coupled with the information that the most complicated work carried out in the relevant work units is responding to calls on the telephone queue referred to as the Problem Driver queue. Other categories of driver record work reaching the Appellants and their co-workers are relatively predictable and have a narrower focus.

⁴ The Commission has added this footnote to the Proposed Decision. The conceptual framework for classifying the Appellants' positions was described by Barb Paltz, DOT's classification survey coordinator, and Diane Siegler, another DOT employee who worked on the survey. The framework is reasonably consistent with the specifications but it is not clearly articulated within them. We believe this lack of clarity was an important element underlying these appeals and a more explicit reference in the specifications would have gone a long way towards increasing the transparency of Respondents' classification decisions to the Appellants as well as to the Commission.

Only specially-trained employees in the Citations and Withdrawals Section process calls from the Problem Driver queue. Appellant DeLaOssa received that training shortly before the effective date of the reallocation decision being appealed. But in contrast to the other employees who perform this work for at least 55% of their time, Ms. DeLaOssa handles these calls for a one-hour period in mid-day when the other employees are at lunch. She may also fill-in on occasion. The total amount of time she spends on this activity is approximately 15%. Appellant Graf takes no Problem Driver queue calls.

Respondents have consistently applied Problem Driver queue responsibilities as the basis for allocating positions in the Citations and Withdrawals Section to the TCR-Advanced class levels. All four employees who are assigned this work for a majority of their time are classified at the TCR-Advanced level.⁵

Like the other TCR-Seniors, as well as the TCR-Advanced positions, both Appellants receive information and enter it into driver records that are maintained electronically by DOT. They receive most of their work in written form or by interactive web pages. They also produce information that is relied upon within and outside of the agency, including the courts. Appellants' position descriptions are substantially identical to those of co-workers who are also assigned to the TCR-Senior level. The relevant position descriptions rarely reference individual/specialized programs on which specific employees may focus.⁶ However, these specific programs are fundamentally similar and narrower in scope than the range of programs, topics, issues and problems that typically arise out of calls from the Problem Driver queue.

There are definitely similarities between Appellants' work and some of the work assigned to TCR-Advanced positions in the Citations and Withdrawals Section, but there is a significant distinction as well. Handling phone calls arriving at the section on what is identified as the Problem Driver queue is viewed as the most complex work due, in part, to unpredictability and breadth of knowledge required. While the Advanced positions spend a majority of time on that function, the Appellants do not. The specifications draw distinctions between "full range of complex information" to "full range of services to the most complex and multifaceted DMV programs." The Appellants did not show that the Advanced level is the best fit for their positions.

In their post-hearing briefs, Appellants state that section chief Erin Egan testified "there is no difference between TCR Seniors and TCR Advanced in our unit." The recording of the hearing reflects the following exchange during the direct examination of Ms. Egan by

⁵ Comparable and contrasting positions can be useful for demonstrating how the employer has interpreted or applied the criteria listed in the class specifications. See *JACOBSON v. DER*, CASE NO. 92-0147-PC (Pers. Comm. 4/20/1995)

⁶ For example, Appellant Graf testified she spent up to half of her time on records relating to the Motor Carrier Safety Improvement Act and the Traffic Safety School program, neither of which is referenced in her position description.

Q So processing does call for independent discretion and exercise of judgment?

A Some decision-making, true.

Q So is there really pretty much no difference then between the Advanced and the Seniors?

A No, that's not . . . no. Our Advanced, their independent decision-making comes from their phone calls.

Q Any other differences between Senior and Advanced?

A Not in our section.

Ms. Egan testified that there *is* a difference between the TCR-Senior and TCR-Advanced positions in her section. Her testimony indicates that the distinction is premised on the Problem Driver queue phone calls.

Under these circumstances, the Appellants have failed to sustain their burden of showing that Respondents' actions are incorrect.

Dated at Madison, Wisconsin, this 8th day of December, 2009.

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

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