

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.

CIVIL SERVICE COMMISSION

One Ashburton Place: Room 503
Boston, MA 02108
(617) 727-2293

CHRISTINE KURKER,
Appellant

v.

C-08-16

DEPARTMENT OF CONSERVATION
AND RECREATION
Respondent

Appellant's Attorney:

Pro Se
Christine Kurker

Respondent's Representative:

Frank E. Hartig, Esq.
Assistant General Counsel
Department of Conservation
and Recreation
251 Causeway Street
Boston, MA 02114

Commissioner:

Daniel M. Henderson

DECISION

Pursuant to the provisions of G.L. c. 30, s. 49, the Appellant, Christine Kurker (hereafter "Appellant" or "Kurker"), the Appellant is appealing the Respondent Department of Conservation and Recreation's (DCR) initial denial and is appealing the

October 31, 2007 decision of the Human Recreation Division (HRD) denying her request for reclassification from the position of Program Coordinator I (PC 1) to the position of either Program Coordinator II or III (PC II or III). The appeal was timely filed and a hearing was held on March 4, 2008 at the Civil Service Commission in Boston, MA. One tape was made of the hearing.

FINDINGS OF FACT:

Thirteen (13) exhibits were entered into evidence at the hearing. Based on the documents submitted into evidence and the testimony of:

For the Appointing Authority:

- Cheryl Ferrando, Personnel Analyst, Department of Conservation and Recreation;
- Karen Valerie, Personnel Analyst, Department of Conservation and Recreation;

For the Appellant:

- Adam Parr, Deputy Chief of Rangers, Department of Conservation and Recreation;
- Christine Kurker, Appellant;

I make the following findings of fact:

1. The Appellant filed an appeal to her then current classification title of Ranger II, Grade 16 to a Grade 20 on January 10, 2005, which the Department of Conservation and Recreation (DCR) Human Recreation Department (HRD) received on January 13, 2005. (Ex. 8)
2. In conjunction with her request to be reclassified as a Program Coordinator III (PC III), DCR sent the Appellant an Audit Interview Guide that included detailed

3. In the Interview Guide, the Appellant lists as her basis for appeal that her position manages the crossing guard program, supervises employees, and oversees day-to-day operations and thus fits more accurately within the specifications and scope of a program coordinator. (Ex. 5)
4. The Appellant stated in her Interview Guide that the primary purpose of her position is to ensure that the more than 30 crossing locations through urban parks are staffed daily with competent employees when school is in session. (Ex. 5)
5. The results of the Audit Appeal were presented to an audit committee for the DCR who found that

“The title of Program Coordinator III is the third level supervisory position in this series and as such, is at a higher level of responsibility than that of the Appellant. The level of Program Coordinator II and III within DCR is utilized for employees who oversee department wide programs and provide overall direction to employees such as the Appellant. The Deputy Chief Ranger, the Appellant’s immediate supervisor, is classified as a Program Coordinator III.”

They determined that the Appellant’s job duties and responsibilities of the Ranger series no longer describe her duties associated with the Crossing Guard Program and found that she should be reclassified as a Program Coordinator I. The Chief Ranger and Deputy Chief Ranger agreed with that recommendation. (Ex. 4)

6. The Classification Coordinator recommended that the Appellant be reclassified from a Ranger II to a Program Coordinator I and the Commissioner of the DCR approved that recommendation. (Ex. 4)

7. On April 27, 2006, the Appellant was notified of the reclassification from a Ranger II to a PC I. (Ex. 3)
8. The Appellant notified HRD on May 18, 2006 that she agreed with the reclassification into the Program Coordinator series, but that she was incorrectly classified as a PC I and requested to be upgraded to a PC II. (Ex. 2)
9. HRD denied Appellant's appeal on October 31, 2007. (Ex. 1)
10. The Appellant filed this appeal to the Civil Service Commission on January 18, 2008. (Civil Service Docket)
11. The Appellant began employment with the former Metropolitan District Commission, now Massachusetts Department of Conservation and Recreation in July 2001 as a Ranger in the Mounted Unit. (Ex. 6)
12. In 2002, the Appellant, as a Ranger II in the Mounted Unit, became the Crossing Guard Supervisor under the Park Ranger Program. (Ex. 6, 8)
13. As Crossing Guard Supervisor, the Appellant schedules and manages approximately 40 part-time seasonal state contract workers as crossing guards in the Urban Parks district of the DCR during school sessions. During non-school periods and summer, the Appellant's duties involve preparing the program for the next school session, recruiting and interviewing applicants for crossing guard positions in the upcoming school year. (Ex. 4)
14. The Appellant's assigned duties and tasks are full-time year round despite the crossing guards being employed only seasonally. (Testimony Parr)
15. The Appellant organizes and implements recruiting and sets up training sessions for crossing guards that are conducted by an outside agency. Also, the Appellant prepares

16. Crossing Guards work part-time when school is in session from the end of August to the third week of June when their contracts expire, but their contracts are issued and renewed for those who return each year. (Testimony Appellant, Parr, and Valeri)
17. The Crossing Guard Program is a single unit program within the Ranger Unit; the Appellant manages temporary, part-time, non-state employee contract workers and does not have administrative staff or supervise state employees. (Testimony Appellant, Ferrando)
18. The Appellant provides basic initial training personally over the summer to employees, sets up a more advanced training later in the year, designs and develops documentation and presentation materials for instructor-led classroom training and web-based courses, manages and updates training materials, leads evaluation teams for web-based training products, and more. (Ex. 9, Testimony Parr, Appellant)
19. The Appellant created a checklist which she provided to all employees explaining the expectations, standards, and procedures required for all crossing guards. These standards refer specifically to proper procedures for crossing pedestrians, safety, uniform guidelines, calling-in procedures, and more. (Ex. 11, Testimony Appellant)
20. When hiring new crossing guards, the Appellant reviews a great deal of paperwork for accuracy and reviews employment ads and update letters to employees for content and accuracy. (Administrative Notice Attachment to Appeal, Case Docket)

21. The Appellant works with her supervisor to ensure the program meets its objectives; with Finance to secure pay increases for crossing guards, to go over budget projections, and to make sure her program stays within its budget (the Appellant also handles the payrolls for all of the employees); with Engineering to maintain the crosswalk, lights, and signs and to make any modifications to crosswalk procedures or locations due to weather conditions to ensure safety for her employees and the pedestrians that they cross; with other employees to track inventory and make sure there are adequate uniforms; and with parents and schools to field concerns and complaints, to determine school schedules and make sure crossing locations are staffed at the appropriate times, and to determine designated crosswalk locations. (Ex. 5, Testimony Parr, Appellant)
22. The Appellant managed and updated the repository of training materials, including product information, course presentations, and other training-related Recreation; participated in review teams made up of subject matter experts and development members to ensure timely updates to the instructors and training materials; executed training needs analysis through formal and informal surveys for internal and external customers; and designed and developed electronic and paper-based storyboards as a prototype for online courseware. As a result, employee retention increased from 63% to 89% over a period of three years. In addition to that, the Appellant is also responsible for determining if an employee is not meeting the expectations of the job and either providing remedial training, which she can order herself, or terminating the employee, which she would need to confer with her supervisor about. (Ex. 5)

23. HRD of the Executive Office of Administration and Finance, formerly known as Massachusetts Department of Personnel Administration, published Classification Specifications for the Program Coordinator Series in July 1987 which have never been revised. (Ex. 12)
24. These Specifications provide three organizational levels: Program Coordinator I, Program Coordinator II, and Program Coordinator III. (Ex. 12)
25. The differences between PC I and PC II according to the job specifications are that PC II positions require supervisors to provide on-the-job training and orientation for employees; develop and implement guidelines to accomplish assigned agency program objectives and goals; review reports, memoranda, etc for completeness, accuracy and content; confer with management staff and other agency personnel to determine program requirements and availability of Recreation and to develop the criteria and standards for program evaluation; evaluate program activities to determine progress and effectiveness and make recommendations concerning changes as needed; receive general, not direct, supervision from higher grade employees who do not provide training and instruction; and exercise direct supervision over 1-5 professional, technical, or administrative personnel and indirect supervision over 1-5 professional, technical, administrative, and/or other personnel. (Ex. 12)
26. These series are old and generic and the DCR fits job classifications to individual job specifications in the organizational structure through Form 30's. The fitting of job classifications to individual job specifications was complicated by the recent merging or combining of two state agencies, (DEM & MDC) to form the new DCR.
- (Testimony Valeri)

27. The difference the DCR uses to determine whether an employee is a PC I or PC II are whether the employee has more technical expertise, oversees a statewide program, holds a position that is heavy on supervision, or oversees multiple programs or programs covering multiple areas. These determinate factors cause the PC II to be a “higher level of programmatic responsibility”. (Testimony Valeri)
28. The Appellant directly reports to Deputy Chief Ranger Adam Parr, a Program Coordinator III. (Testimony Appellant, Parr)
29. Parr, in addition to supervising and overseeing the Crossing Guard program, is responsible for the supervision of 60 Park Rangers at the State House, 65-70 additional state employees, Program Coordinator II Chris Williams and the seasonal Ranger program, Program Coordinator II Kevin Tucker and the statewide communications program, and Program Coordinator I Kathy DeLucca and the Ranger Parking Ticket program. (Testimony Parr)
30. Chris Williams, a PC II, is responsible for State Park and Urban Park Ranger field operations statewide and supervises permanent and seasonal Rangers. (Testimony Parr)
31. Kevin Tucker, the other PC II in the department, is a specialized and highly trained technician responsible for the statewide radio communications program for the Ranger Division, which is based out of the State House. (Testimony Parr)
32. Kathy DeLucca, a PC I, administers the Ranger Parking Ticket program for the Urban Parks Division and directly supervises one full-time state employee, an Administrative Assistant I. (Testimony Valeri)

33. Subsequent to the Audit Interview, the Office of Human Recreation, with the approval of the Appellant's supervisor, prepared a Form 30 Position Description for the Appellant's new position and classified it as a PC I position with the functional title of Crossing Guard Supervisor. The duties and responsibilities of the position as detailed in the Form 30 are roughly the duties and responsibilities that the Appellant has. (Ex. 9)
34. There are six other employees classified as PC II or PC III who do not supervise employees or perform statewide duties. (Ex. 11)
35. The Appellant has shown that she performs the level distinguishing duties of a PC II which are relevant to this appeal more than 50% of the time, on a regular basis. Specifically, the Appellant has shown that she supervises up to forty contract employees in over thirty locations throughout the state in all of the three areas covered by the Urban Parks Division. (Ex. 4, testimony of Parr and Appellant)
36. The Appellant has stated in her testimony and on her Form 30 that she spends 65% of her time supervising 40 crossing guards. In order to effectively carry out the goal of the program - "to staff all crossing locations with competent and reliable employees", the Appellant must recruit, train, and schedule enough crossing guards to staff between 30-35 locations during school hours. The job specifications of a PC II regarding supervising employees require the PC II to directly supervise between 1-5 administrative, technical, or professional employees and indirectly supervise 1-5 other employees. (Ex. 9, testimony of Appellant and Parr)
37. The Appellant reviews reports, memoranda, etc. for completeness, accuracy, and content. When hiring new crossing guards, the Appellant reviews a great deal of

38. The Appellant is a competent, valued, and dedicated employee. She must anticipate potential problems and be prepared to address them. She is a self-starter with little or no need for supervision. (Testimony Valeri, Ferrando, and Parr)

Conclusion

After careful review of the testimony and evidence presented in this appeal, the Commission concludes that the decision of the state's Human Recreation Division (HRD) denying the Appellant's reallocation request to the position of Program Coordinator II should be overturned and the Appellant should be classified as a Program Coordinator II.

The Appellant has shown that she performs the level distinguishing duties of a PC II which are relevant to this appeal more than 50% of the time. Specifically, the Appellant has shown that she supervises up to forty contract employees in over thirty locations throughout the state in all of the three areas covered by the Urban Parks Division. (Ex. 4) While the Department of Conservation and Recreation states that a PC II must supervise state employees and oversee a statewide program, they have also said in their testimony that they are flexible in applying the job specifications to positions since the specifications are 21 years old and general in nature. (Testimony Valeri, Ferrando)

The Appellant has stated in her testimony and on her Form 30 that she spends 65% of her time supervising 40 crossing guards. In order to effectively carry out the goal of the program - "to staff all crossing locations with competent and reliable employees",

the Appellant must recruit, train, and schedule enough crossing guards to staff between 30-35 locations during school hours. The job specifications of a PC II regarding supervising employees require the PC II to directly supervise between 1-5 administrative, technical, or professional employees and indirectly supervise 1-5 other employees. The Appellant directly supervises 40 employees – much more than the maximum PC II requirement of 10 – and it is a much more difficult task to recruit, interview, train, schedule, and work with 40 part-time contract employees than it is to manage 10 full-time employees. The fact that these employees only work when school is in session makes the Appellant's job harder because she needs to recruit, interview, and train new employees constantly as opposed to the 10 full-time employees who will likely remain in their position for a much longer period of time. These employees require more supervision because they may not take their jobs as seriously – something the Appellant attested to in her testimony – and because they do not have as much experience as a full-time worker who exercises his duties eight hours every day. It is also more difficult because with 40 part-time employees, there are more scheduling conflicts that the Appellant must manage. In order to effectively supervise all of the employees, she must travel throughout the region to ensure all locations are staffed and to assist with any problems an employee may have. She also communicates with the employees through email and by phone.

The Appellant has presented evidence that there are two employees in the Bureau of Rangers, to which the Appellant belongs, that are operating as PC II's and not overseeing statewide programs and supervising state employees. The Statewide Tele-Communications Technician does not supervise anyone, but because he has a higher level

of technical responsibilities, the DCR felt it was appropriate to classify him as a PC II. The Operations Deputy Chief Park Ranger does not directly supervise any employees, but because he runs multiple programs, the DCR classified his duties and responsibilities as those of a PC II. Because the Appellant is able to effectively schedule and supervise 40 employees and because the DCR has made exceptions to the job specifications, the Appellant meets the minimum requirements of a PC II in terms of supervision. The DCR admitted that there are people

The job specifications state that the differences between a PC I and a PC II are as follows: a PC II has the duties and responsibilities of a PC I but also provides on-the-job training and orientation for employees; develops and implements guidelines to accomplish assigned agency program objectives and goals; reviews reports, memoranda, etc for completeness, accuracy and content; confers with management staff and other agency personnel to determine program requirements and availability of Recreation and to develop the criteria and standards for program evaluation; and evaluates program activities to determine progress and effectiveness and make recommendations concerning changes as needed. The Appellant completes these tasks full-time throughout the entire year and recruits, trains, and supervises 40 contract workers, so the Commission finds that she performs the duties and responsibilities of a PC II more than 50% of the time, on a regular basis.

The Appellant provides basic initial training personally over the summer to employees, sets up a more advanced training later in the year, designs and develops documentation and presentation materials for instructor-led classroom training and web-

based courses, manages and updates training materials, leads evaluation teams for web-based training products, and more. (Ex. 9, Testimony Parr, Appellant)

The Appellant also develops and implements procedures and outlines to accomplish the agency's objective of staffing all crossing locations with competent employees. The Appellant created a checklist which she provided to all employees explaining the expectations, standards, and procedures required for all crossing guards. These standards refer specifically to proper procedures for crossing pedestrians, safety, uniform guidelines, calling-in procedures, and more. (Ex. 11, Testimony Appellant)

The Appellant reviews reports, memoranda, etc. for completeness, accuracy, and content. When hiring new crossing guards, the Appellant reviews a great deal of paperwork for accuracy and reviews employment ads and update letters to employees for content and accuracy.

The Appellant confers with management staff and other agency personnel to determine program requirements, availability of Recreation, and to develop the criteria and standards for program evaluation. She works with her supervisor to ensure the program meets its objectives; with Finance to secure pay increases for crossing guards, to go over budget projections, and to make sure her program stays within its budget (the Appellant also handles the payrolls for all of the employees); with Engineering to maintain the crosswalk, lights, and signs and to make any modifications to crosswalk procedures or locations due to weather conditions to ensure safety for her employees and the pedestrians that they cross; with other employees to track inventory and make sure there are adequate uniforms; and with parents and schools to field concerns and

complaints, to determine school schedules and make sure crossing locations are staffed at the appropriate times, and to determine designated crosswalk locations. (Ex. 5, Testimony Parr, Appellant)

The Appellant evaluates program activities to determine progress and to make recommendations as needed. This is most apparent in her evaluations of the training materials. She managed and updated the repository of training materials, including product information, course presentations, and other training-related Recreation; participated in review teams made up of subject matter experts and development members to ensure timely updates to the instructors and training materials; executed training needs analysis through formal and informal surveys for internal and external customers; and designed and developed electronic and paper-based storyboards as a prototype for online courseware. As a result, employee retention increased from 63% to 89% over a period of three years. In addition to that, the Appellant is also responsible for determining if an employee is not meeting the expectations of the job and either providing remedial training, which she can order herself, or terminating the employee, which she would need to confer with her supervisor about. (Ex. 5)

I base my conclusion on the documentary evidence and credible testimony of the witnesses. The Appellant supervises well over the maximum required employees of a PC II and fulfills the other duties and responsibilities of a PC II. While she does not oversee a statewide program or supervise full-time state employees, it is more difficult to supervise 40 part-time seasonal workers with conflicting schedules than 10 full-time workers. These employees need closer supervision than full-time employees who know their

responsibilities well and will take them more seriously. Recruiting is time consuming and performed on a regular basis by the Appellant for these part-time positions. Valeri testified that the job specifications were not hard and fast and that in order to classify someone as a PC II, that person would need to show more technical expertise, oversee a statewide program, have a position that is heavy on supervision, or oversee multiple programs. The Appellant's position is heavy on supervision and thus DCR should appropriately classify her as a PC II.

However, the Appellant's position does not qualify her to be a PC III as a PC II best fits her job duties and responsibilities. Thus the classification that best fits the Appellant's duties and responsibilities is that of PC II and the Appellant has shown that she performs those duties more than 50% of the time on a regular basis throughout the year.

For these reasons, the Appellant's Appeal under Docket No. C-08-16, in which she seeks to be reclassified as a PC II, is hereby *allowed*.

Daniel M. Henderson,
Commissioner

By a 3-2 vote of the Civil Service Commission (Bowman, Chairman voted No, Stein voted Yes, Henderson voted Yes, Marquis voted No and Taylor voted Yes, Commissioners) on June 25, 2009.

A true record. Attest:

Commissioner

Either party may file a motion for reconsideration within ten days of the receipt of a Commission order or decision. Under the pertinent provisions of the Code of Mass. Regulations, 801 CMR 1.01(7)(l), the motion must identify a clerical or mechanical error in the decision or a significant factor the Agency or the Presiding Officer may have

overlooked in deciding the case. A motion for reconsideration shall be deemed a motion for rehearing in accordance with G.L. c. 30A, § 14(1) for the purpose of tolling the time for appeal.

Under the provisions of G.L. c. 31, § 44, any party aggrieved by a final decision or order of the Commission may initiate proceedings for judicial review under G.L. c. 30A, § 14 in the superior court within thirty (30) days after receipt of such order or decision. Commencement of such proceeding shall not, unless specifically ordered by the court, operate as a stay of the Commission's order or decision.

Notice:

Christine Kurker (Appellant)

Frank Hartig, Esq. (DCR)