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 LESTER SCHULTZ,  
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 Appellant,  
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 v.  
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 C. K. WETTENGEL, Director,  
 State Bureau of Personnel,  
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 Respondent.  
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 Case No. 73-61  
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**OFFICIAL**

OPINION AND ORDER

Before: JULIAN, Chairperson, SERPE, and STEININGER, Board Members.

FINDINGS OF FACT

Appellant is a permanent employee in the classified service. Effective on or about April 15, 1973, he was reallocated from Right of Way Agent 3, salary range 1-14, to Real Estate Agent 4, salary range 1-14. He appealed this reallocation to the Personnel Board. During the pendency of the appeal the Appellant submitted a new position description questionnaire for reclassification consideration (to Real Estate Agent 5, salary range 1-15). This reclassification was denied. Both personnel actions (i.e., the initial reallocation and the subsequent denial of reclassification) were considered at a Personnel Board hearing held January 25, 1974. During the hearing it was agreed that the personnel analyst involved in the matter from the beginning, Fred Disch, would review the Appellant's classification once again and report back to the Board. This, he did in a letter dated February 8, 1974, signed by the Director, in which he reaffirmed his previous position. The Appellant responded to Mr. Disch's report in a letter to the Board dated February 25, 1974. The question before the Board is whether Appellant is more properly classified a Real Estate Agent 4 or 5.

The class specifications for these positions are appended hereto.

The relevant parts of the definition section are as follows:

Real Estate Agent 4

Definition:

This is lead and advanced professional real estate work performed in connection with state improvement projects. The employees in this class function as either: 1) district project leaders on major and complex real estate projects; or 2) central office coordinators for a specialized real estate program. Duties and responsibilities of employees functioning as district project leaders include: guiding a staff of agents involved in the appraisal and negotiation, lands management, or relocation assistance activities of a major real estate project; and providing district-wide coordination in specialized real estate area, such as utilities or litigation. Employees who function as central office coordinators provide statewide coordination between the central office and district operations in a specialized real estate program, such as scenic easements, roadside development, and administrative services. Work is performed in accordance with program and/or project guidelines and is reviewed through program reports and progress conferences with a real estate supervisor.

Real Estate Agent 5

Definition:

This is highly specialized professional real estate work performed in connection with state improvement projects. The employees in this class function as either: 1) central office review appraisers; or 2) central office coordinators for a specialized real estate program. As review appraisers, the employees in this class function as the final level of technical review for all property appraisals and have the authority to establish the proposed offering price to be utilized in acquisition actions. As central office program coordinators, employees are responsible for providing statewide coordination between the central office and district operations in guiding the activities of a specialized real estate function in the relocation assistance, negotiations, or lands management program areas. The program coordinators in this class are differentiated from those of the preceding level by the scope of programs coordi-

nated and the program's impact upon the organization's overall real estate functions. Work is performed independently in accordance with applicable state and federal guidelines, and is reviewed through reports and conferences with a real estate supervisor and/or manager.

Appellant works in the central office of the Department of Transportation, Division of Highways, Bureau of Right of Way. He is responsible for the statewide coordination of the scenic easement aspect of the Outdoor Recreation Act Program (ORAP). This consumes about 85% of his time. The remainder of his time is spent in negotiation for the acquisition of federal, state, and Indian agency land.

The Appellant's activities as statewide coordinator of the scenic easements program encompass a wide range of duties:

1. The Appellant plans future activities of ORAP programs such as planning projected sites for easements and making improvements in the manner of effectuating conveyances and other transactions.
2. He administers the program budget on an ongoing basis as funds are made available and committed, including directly budgeted state money as well as that from special sources such as federal beautification programs.
3. He administers the ongoing activities of the ORAP program. This requires the evaluation of proposals submitted by the various districts and the determination of which projects should be financed, the nature of the restrictions to be imposed in the easements, the size of the easement, whether the project should be acquired in fee simple rather than by easement, and the supervision of other functional aspects of the projects submitted.

4. The Appellant reviews plats, appraisals, and recommended offering prices. This duty deals with technical aspects of these items as well as with a full review of the discretionary aspects such as the establishment of the price involved in the appraisals. The Appellant has an express agency to preapprove offering prices up to \$5,000 prior to the formal approval of the Highway Commission.
5. He supervises the process of acquisition of scenic easements, including, in addition to a general superintending authority, making adjustments in the original easement restrictions and corresponding revisions in the offering price subject to commission approval. He also supervises the processing of condemnations when these become necessary.
6. He reviews requests for variances on easements prior to their submission to the commission and/or governor.

With respect to the negotiation of direct acquisitions, Appellant actually performs this function, as opposed to supervising other employees engaged in this operation.

The Appellant works very independently under the limited supervision of George Halverson, who is a Real Estate Manager 2 and the Chief of Acquisition in the Bureau of Right of Way. Appellant had previously worked under the nominal supervision of Homer Peck, who had been Chief of Negotiations and Training prior to the reallocation of April 15, 1973, which triggered this appeal.

At the time the Appellant was reallocated to Real Estate Agent 4 effective April 15, 1973, two other Right of Way Agent 3's, W.F. Watchorn and M.B. Dreginski, were similarly reallocated. Mr. Watchorn has been at all times relevant hereto in charge of reviewing subdivision plats. He is responsible for ensuring that subdivision plats comply with provisions of state law and that proposed highway access complies with law and agency procedures in this area. For the most part his work involves a determination that proposals are or are not in compliance with existing rules. If variances in access are approved he prepares the appropriate documents. He does not have the authority to make final determinations with regard to the foregoing matters. He does not have responsibility for budgeting or appraisal or evaluation of property or for program development.

Mr. Dreginski was at all times relevant hereto solely responsible for conducting and defending appraisals in litigations.

Mr. R.B. Smith at all relevant times was classified as a Real Estate Agent 5 and has functioned as property management supervisor. He supervises the disposal of excess properties, which is frequently realty in excess of that required for the actual highway purpose that may be acquired because it is a very small leftover piece of a parcel of little use to the owner, as well as items of personalty. The districts usually recommend how this property is to be disposed of - usually by public sale - and he reviews these proposals and has the authority to approve relatively routine ones. He furnishes functional guidance to the district office staffs, reviews and makes

recommendations on properties to be declared excess by the commission, and obtains necessary concurrences of the Governor, federal and state agencies. He coordinates land use activities, site clearance programs, air space agreements and property rentals. He is responsible for the receipt of sales reports and funds, the audit of properties sold and funds received, and other related accounting functions. He makes recommendations to the section chief on the foregoing matters and in the absence of the section chief acts on these matters.

Mr. Halverson proffered the opinion and we find that Appellant's responsibilities are at least as great as Mr. Smith's. We further find that the scope of the programs coordinated by Appellant and the programs' impact upon the organization's real estate functions are at least equal to those of Mr. Smith and greater than Mr. Watchorn's or Mr. Dreginski's.

#### CONCLUSIONS OF LAW

The question before the Board is whether Appellant is more properly classified a Real Estate Agent 4 or 5. This is a very close case involving a complicated classification problem. Both class description definitions include the phrase "central office coordinators for a specialized real estate program." The Real Estate Agent 4 definition further defines the duties as follows:

Employes who function as central office coordinators provide statewide coordination between the central office and district operations in a specialized real estate program, such as scenic easements, roadside development, and administrative services.

The comparable Agent 5 part of the definition is as follows:

As central office program coordinators, employes are responsible for providing statewide coordination between the

central office and district operations in guiding the activities of a specialized real estate function in the relocation assistance, negotiations, or lands management program areas. The program coordinators in this class are differentiated from those of the preceding level by the scope of programs coordinated and the program's impact upon the organization's overall real estate functions. (Emphasis supplied.)

Appraising the Appellant's duties, it is more accurate to say that his statewide coordination activities fall into a guidance role as contrasted to strictly coordination, and thus would be closer to an Agent 5 in this respect. However, the Agent 4 definition states by way of example of specialized real estate programs scenic easements, which of course is what the Appellant administers. The Agent 5 area rather than providing examples of program functions specifies three functional areas - relocation assistance, negotiations, or lands management. Scenic easements fall into none of these areas. To further complicate matters the next sentence of the Agent 5 definition goes on to differentiate this class from the Agent 4 class on the basis of the scope of the programs coordinated and its impact on the organization's overall real estate functions. In this regard we found that the Appellant's program was comparable to Mr. Smith's, an Agent 5, in property management and greater than Mr. Watchorn's or Mr. Dreginski's, who are or were both classified as Agent 4's.<sup>1</sup>

The class specifications for Agent 4 include the following examples of work performed for central office coordinators:

Serves as statewide coordinator, in a specialized real estate area, between the central office and the district

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<sup>1</sup>Comparisons between classifications or positions are not determinative of the correctness of a classification. However, such comparisons may have some probative value particularly where, as here, differences between classifications depend to some extent on relative factors such as differences in scope and impact and the positions used for comparison are not clearly misclassified.

operations by insuring uniform application of related program guidelines and standards and by providing program information to interested parties. (Emphasis supplied.)

The examples under Agent 5 are much more expansive:

Serves as statewide coordinator by providing liaison and consultation between the central and district offices to ensure uniformity of program application and timely expedition of program activities.

Recommends procedural modifications in order to increase program effectiveness and efficiency.

Recommends and implements policy and procedural measures pertaining to the administration of a specialized real estate program area.

Consults with public, state, local and interdepartmental personnel regarding real estate functions which may be of concern to them.

Serve as expert witness in court.  
(Emphasis Supplied.)

The underscored language for the Agent 4 position does not imply the duty of and responsibility for the development of programs and policies, but rather the review and implementation of existing programs and policy. The Appellant's duties, however, do include responsibility for the administration of the entire scenic easements acquisition program and this includes discretionary decision-making regarding policy and the development of programs. These duties fall into the areas contained in the second and third subparagraphs of the Agent 5 examples of work performed, and particularly the underscored language.

In sum, the Appellant's duties and the class specifications for the two positions overlap in various areas, and the process of determining the correctness of the classification is complex. The



views of the personnel analyst involved in the reallocation and request for reclassification provide some insight into the more generic and abstract aspects of this problem. These are summarized in the Director's letter to the Board dated February 8, 1974, marked as Respondent's Exhibit 7, page 2:

As indicated during the formal appeal hearing, the functions of a statewide coordinator of a specialized real estate are identified at both the Real Estate Agent 4 (PR1-14) and 5 (PR1-15) classification levels. The program coordination functions identified at the Real Estate Agent 5 classification level are differentiated from those found at the Real Estate Agent 4 level in terms of the scope of programs coordinated and the program's impact upon the organization's overall real estate acquisition function. Those program functions which are identified by the Real Estate Agent 5 class specification (see Attachment D) are directly involved in the acquisition of real estate for state improvement projects. Programs of this type are typically involved in such specialized real estate areas as relocation assistance, negotiations, and lands management. These program functions are an integral and necessary part of any comprehensive real estate acquisition program.

The specialized real estate program coordination functions identified by the Real Estate Agent 4 class specification are generally not in direct line with the overall real estate acquisition process. These program areas such as scenic easements, roadside development and administrative services perform more ancillary or support functions in relation to the total real estate acquisition processes. Although these programs are an important facet of the total real estate acquisition process, the nature of these programs are such that they do not involve the same time constraints and level of acquisition activity found in the programs allocated to the Real Estate Agent 5 classification level.

This is consonant with Mr. Disch's testimony at the hearing, T. pp. 93-94:

However, the major function of his job of course is his statewide program coordination, and this was another function of his job that we evaluated. Basically, the statewide program coordinator jobs in the central office

we saw as two levels. The thing we used to break these two levels down was the function that the statewide coordinators performed was in direct line with the acquisition of personal property for the state highway construction. In other words, was it direct line or a necessary part of the acquisition process. Here again, Mr. Schultz's area is a necessary part of it in that it, not saying it's not important. However, in comparison to program areas such as appraisal, relocation assistance, and property management, it's not in the direct line of the acquisition process. In other words, it's more we equated on the level of support type programs such as administrative services, training programs, this sort of thing which are an essential part of any real estate program, but not in the direct line of the acquisition process, and that is how we broke the two program areas out. (Emphasis supplied.)

Thus the Respondent draws a distinction between programs that are in the "direct line" of the acquisition process and programs that are not. The Respondent has not presented any evidence that would have provided a connection between this distinction and the more general criteria utilized in the classification process -- i.e., "scope of programs coordinated and the program's impact upon the organization's overall real estate functions" (class specifications, Real Estate Agent 5, Appellant's Exhibit 8) and "time constraints and level of acquisition activity" (February 8, 1974, letter from the Director, Respondent's Exhibit 7).

The Appellant, in the discharge of his burden of proof and burden of going forward, presented persuasive evidence that his job duties were comparable in scope and impact to another position classified Real Estate Agent 5 and involved in the "direct line of the acquisition process," as defined by Respondent, that of property management supervisor. Appellant thus argues that simply because his job is not in the "direct line" of acquisition as defined by Respondent, this is no barrier to a conclusion that he should be classified an Agent 5, based on Respondent's criteria. In

the absence of any evidence to this effect, we have no basis for concluding that merely because Appellant's duties are not in the "direct line of the acquisition process" that they are not comparable in terms of these classification criteria developed and utilized by Respondent. There are no intrinsic differences between the acquisition of easements and the acquisition of land in fee that would enable us to reach this conclusion.

The acquisition of an easement involves the acquisition of certain rights to realty. "Direct" acquisition presumably means acquisition of the fee simple, which involves certain rights to real property. Both acquisitions require the establishment of consideration (price) and the preparation and execution of legal documents conveying the property rights involved. We found that the Appellant was engaged in the review and supervision of the nature of the easements to be sought (including the character of the restrictions on the abutting landowners use of his or her property), the price to be offered, and the nature of the instruments of conveyance to be used, among other duties. We have no basis for concluding that these activities should be downgraded in terms of an evaluation of their significance because of the fact that the state ultimately obtains a legal interest in the property other than a fee simple.

We also note that the program areas of relocation assistance and lands management listed in the Agent 5 specifications are not, as a logical proposition, most appropriately classified as in the "direct line of the acquisition process."

Thus we conclude that those aspects of the class specifications most detrimental to Appellant's contentions, the inclusion of the

scenic easement program in the examples listed in the definition section of the Real Estate Agent 4 class and its exclusion from the Real Estate Agent 5 class, are on this record, not only not required by, but also inconsistent with, the classification criteria developed and utilized by the Respondent. We further conclude that Appellant was improperly reallocated to Real Estate Agent 4 effective April 15, 1973, and should have been classified ever since that date as Real Estate Agent 5, and that he is entitled to the difference in salary and benefits that he would have received had he been so classified.

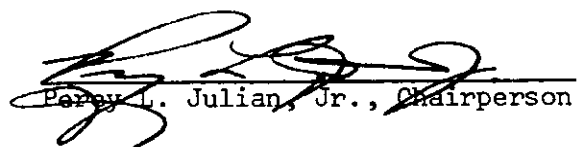
It is appropriate to note that, as is often the case in classification appeals, the Appellant's supervisor testified on behalf of Appellant and in favor of the reclassification. This is perfectly appropriate. However, to avoid possible misunderstanding and undue magnification of middle-management's role, it should be emphasized that the position of an employe's supervisor, by itself, is not crucial to such appeals. What may be important is the evidentiary basis which forms the foundation of the supervisor's position.

ORDER

IT IS HEREBY ORDERED that the actions of Respondent appealed from are rejected and this matter is remanded to the Director for further action not inconsistent with this opinion.

Dated September 30, 1975.

STATE PERSONNEL BOARD

  
Percy L. Julian, Jr., Chairperson