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 JAMES L. BICHA,
 Appellant,
 v.
 ZEL RICE, Secretary,
 Department of Transportation, and
 VERNE KNOLL, Deputy Director,
 State Bureau of Personnel,
 Respondents.
 Case No. 76-12
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OFFICIAL

OPINION
AND
ORDER

Before: Laurene DeWitt, Chairperson, Nellie Wilson, Vice Chairperson,
James Morgan, Dana Warren and Calvin Hessert, Board Members.

NATURE OF CASE

This is an appeal of a denial of a reclassification request from Real Estate Agent 2 to Real Estate Agent 3.

FINDINGS OF FACT

The appellant is a permanent employe in the classified service with the Department of Transportation where he works for the District 8 office of the Division of Highways. On October 20, 1975, reclassification requests were submitted for the appellant and a co-worker, Michael Gallagher. Michael Gallagher's request was granted and he was reclassified to Real Estate Agent 3. The appellant's request was denied despite the fact that he had been informed the requests were comparable. The Personnel Office of the Department of Transportation, in a memorandum to appellant's supervisor (Appellant Exhibit 1) indicated that the District 8 ratio of Real Estate Agents 2 and below to the advanced Real Estate Agents was very low. This was viewed as inappropriate since the Real Estate Agent 2 class was the fully functional level and the higher class were advanced professional levels not attainable by all Real Estate Agents.

Although the majority of District 8's work load is not complex or sensitive, appellant's duties require him to spend 60% of his time on assignments of a non-routine nature, i.e., assignments considered complex or sensitive. Appellant also functioned for two years as a lead worker in the areas of Property Management and Roadside Control when he took over a portion of the duties of Paul Anderson who was temporarily on a task force assignment in another district. (Appellant's Exhibit 3).

When Michael Gallagher was reclassified as a Real Estate Agent 3, 80% of his assignments were above the routine level and he was the lead worker on the Advertising Sign Acquisition Program and the Right of Way Acquisition projects. (Appellant's Exhibit 5). Paul Anderson was reclassified as a Real Estate Agent 3 in October of 1973. At that time, 75% of his assignments were above the routine level and he was the lead worker on Property Management and Roadside Control Activities. (Respondent's Exhibit 4 and Transcript p. 22).

CONCLUSIONS OF LAW

The class specifications for Real Estate Agent 3 describe the class as an advanced level and distinguish it from the Real Estate 2 class on the basis of the complex and sensitive nature of the work involved.

"This is advanced professional real estate work performed in connection with state improvement projects. The employes in this class function as a real estate specialist responsible for handling the most complex situations in the area of appraisal and negotiation, lands management and/or relocation assistance. The work in this class differs from that of lower real estate agents in the complexity and sensitivity of real estate situations encountered with the employes in this class functioning as professional staff experts providing judgmental guidance in areas where no guidelines or standards currently exist. Work is performed independently under the general direction of a real estate supervisor." (Respondent's Exhibit 1) (Emphasis added).

The subject matter of the work is not the distinguishing factor between the two classes. Both classes deal with the areas of appraisal, negotiations, lands management, and relocation assistance. (See class specifications - Respondent's

Exhibit 1). For this reason, the position descriptions are insufficient to distinguish the two classes. To remedy this problem, the Personnel Office of the Department of Transportation has developed a Supervisor's Check List (see for example, Appellant's Exhibit 3) to differentiate positions on the basis of the complexity and sensitivity of the duties of a position.

Appellants Check List indicates that 60% of his time is spent on complex assignments (no sensitive assignments are indicated). Moreover, appellant functioned for two years as a lead worker. Appellant's position, however, does not meet the Department of Transportation's requirement that a "vast majority" of time be spent on complex assignments. Appellant's only argument is that Michael Gallagher's reclassification request was comparable and that he was reclassified. Yet the record shows that 80% of Michael Gallagher's time involved complex assignments. A similar picture emerges in examining Paul Anderson's reclassification. His check list indicates that 75% of his time was spent on complex assignments.

Nor, can it be concluded that the "vast majority" requirement is unreasonable. The Real Estate Agent 2 class is the fully operational level for individuals in that series. The Real Estate 3 class is an advanced level in that series. Since the only basis on which to distinguish the two classes is the complex and sensitive nature of the work, the requirement of more than a simple majority of time spent on complex assignments is not an unreasonable requirement to distinguish the advanced from the fully operational level of work.

The appellant voices dissatisfaction with the suggestion in the memorandum that his request was denied because his reclassification would cause District 8 to exceed an arbitrary ratio of Real Estate Agents 2 and below to the higher classes. However, the record indicates no improper use of a ratio. The ratio referred to in the correspondence memorandum was used to explain the difference

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between the fully functional Real Estate Agent 2 level and the advanced Real Estate Agent 3 level to the appellant's supervisor. The ratio was not used as a justification for denying appellant's reclassification request.

ORDER

The respondent's decision is sustained and this appeal is dismissed.

Dated August 25, 1977.

STATE PERSONNEL BOARD


Laurene DeWitt, Chairperson