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 LYLE JOHNSON, \*  
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                   Appellant, \*  
 \*  
 v. \*  
 \*  
 Secretary, DEPARTMENT OF \*  
 TRANSPORTATION, and \*\*  
 Administrator, DIVISION OF \*  
 PERSONNEL, \*  
 \*  
                   Respondents. \*  
 \*  
 Case No. 81-326-PC \*  
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 \* \* \* \* \*

DECISION  
 AND  
 ORDER

This matter is before the Commission as an appeal from the denial of a reclassification request. Pursuant to the terms of the prehearing conference report, the issue for hearing read as follows:

Whether the respondent's decision denying the appellant's request for reclassification from Real Estate Agent 2 to 3 was correct.  
 Subissue: Whether appellant's position is most appropriately classified as Real Estate Agent 2, 3, or 4.

The respondent objected to consideration of the Real Estate Agent 4 classification but the parties agreed that a ruling on the objection would be deferred until after the hearing on the merits.

FINDINGS OF FACT

1. At all times relevant to this proceeding, the appellant has been employed within the Department of Transportation, District 1, Real Estate Section.

2. The general responsibility of the Section is to acquire and dispose of land for DOT highway construction and improvement programs. The acquisition process involves four separate areas: appraisal, negotiation, relocation assistance, and land management. Appraisal is the determination of the fair value of the land being acquired. Negotiation is the process of dealing

with the land owners or their agents by explaining the appraisal and reaching a mutually agreeable value for the property. Relocation assistance applies when people are dislocated as a consequence of an acquisition. Land management involves leasing state owned lands and disposing of excess properties.

2. Over the course of the past decade, there have been substantial changes in the highway projects undertaken by DOT. The volume of work has decreased substantially and the mix of projects has changed from new road construction to improving existing roads. Due to the change in project mix, there is a "lesser impact" on the properties involved. Current acquisitions are more apt to involve the taking of a narrow strip of land along existing frontage thereby causing far less secondary damage to the landowner's use of the remaining property than normally occurs where an entirely new road is built. Relocation work has therefore also decreased.

3. As a consequence of the change in responsibilities, the number of staff in the Real Estate Section of District 1 has been substantially reduced.

4. As of the time he submitted his request for reclassification, the appellant spent 45% of his time doing negotiation work, 45% in relocation assistance and 10% appraising.

5. During the period prior to the appellant's reclassification request, Henry Golbac a Real Estate Agent 4 (REA4) also performed negotiation functions within District 1.

6. Different projects were assigned to the negotiators within District 1 by Jack Curtis, the appellant's first line supervisor. In making his assignment decisions, Mr. Curtis considered the nature of the project or the particular parcel involved. He obtained information from the design engineer, who prepared the construction plan, and the appraisers. Mr. Curtis is able to make

a reasonably accurate assessment of the difficulties that will be encountered by the negotiator with respect to both projects and individual parcels. However, Mr. Curtis cannot anticipate all of the negotiation difficulties that may be caused by the particular personalities of the individual landowners and their agents.

7. As a general rule, Mr. Curtis assigns the more difficult projects and, in many instances the more difficult individual parcels to Mr. Golbach for negotiation. However, if Mr. Golbach is unavailable to take a particular parcel or project, it may be assigned to the appellant. Mr. Golbach performs substantially more of the most complex negotiation work than the appellant.

8. Until July of 1980, the vast majority of appellant's time was spent in the negotiations area. However, in August of 1980, Mr. Grant Hendrickson, who had primary responsibility for District 1's relocation function, died. Mr. Hendrickson had been reclassified from REA2 to REA3 in 1979 soon after his supervisor retired and he took over the entire relocation assistance function.

9. Upon Mr. Hendrickson's death, the appellant was given the responsibility of completing the two relocation projects that had been left unfinished by Mr. Hendrickson. The Dayton project involved the acquisition of a mobile home in the Village of Dayton. The Barber Hill project included the acquisition of one rural residence and the relocation of some mobile homes within a mobile home court. Mr. Hendrickson had done a significant amount of work on both projects prior to his death.

10. In performing his relocation responsibilities, the appellant has access to extensive federal and state guidelines on the subject and obtains advice from DOT's central office.

11. As of the time of his reclassification denial, the appellant had not processed a relocation project from beginning to end and was performing his relocation work in a training level rather than at full performance level, even though no one else within District 1 has been assigned relocation responsibilities.

12. The class descriptions for the Real Estate Agent series include the following definitions:

Real Estate Agent 2

Definition:

This is responsible professional real estate work performed in connection with state improvement projects. Employees in this class function at the full performance level in a major real estate program, such as appraisal and negotiation, lands management, and/or relocation assistance. Work at this level can be differentiated from that of the preceding level, by the variety and complexity of real estate activities performed and the independence of action in performing these activities. The real estate functions are carried out in accordance with state and federal guidelines and the final product is generally subject to the review of a higher level agent and/or supervisor.

Real Estate Agent 3

Definition:

This is advanced professional real estate work performed in connection with state improvement projects. The employees 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 level real estate agents in the complexity and sensitivity of real estate situations encountered with the employees 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.

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 employes 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 areas, such as utilities and litigation. 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. 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.

13. In applying the class descriptions to particular positions within DOT, respondent has developed a "supervisor's checklist." On the checklist, the supervisor evaluates the level of difficulty of the assignments given to the subject employe, dividing them into basic, progressively responsible, advanced (journeyman) and most complex categories. In a memo explaining the categories, the following definition of "most complex" is provided:

The vast majority of the Agent's assignments are beyond the technical complexity and sensitivity normally found at the advanced level. Courses of action are seldom if ever identified without extensive evaluation of alternatives. The Agent provides judgmental guidance in areas where no guidelines or standards currently exist. In view of the nature of the assignments, technical job knowledge and human relations skills have been fine-tuned and must be utilized to the fullest extent possible, since most situations require extensive proficiency in both areas.

The checklist also indicates the level of supervision required by the employe and the employe's "knowledge and application of applicable policy, practices and theory."

14. Mr. Curtis evaluated the appellant's assignments as 70% progressively responsible, 20% advanced (journeyman), and only 10% most complex. Mr. Curtis also indicated that the appellant required an "average" amount of supervision and had "extensive" "knowledge and application" in the negotiation area but only "some" "knowledge and application" in the areas of appraisal, relocation and land management.

15. Mr. Curtis is "not especially familiar" with the document (Respondent's

Exhibit #6) that provides the definitions for the various categories of work assignments used on the supervisor's checklist.

16. The following positions serve as relevant comparables to the appellant's position:

- A. Eugene E. Parfitt, District 1, REA3, Appraisal. Mr. Parfitt was reclassified from the REA2 to REA3 level in June, 1979. The reclassification was based, in part, on the following statement:

Upon the promotion and departure of the former incumbent (R.L. Reynolds, Real Estate Agent 3) in 1975, this employe has assumed full responsibility for the appraisal of the most complex and potentially sensitive parcels of real estate. In addition, when new programs such as outdoor advertising and abandoned railroad acquisition have required appraisal efforts, this employe has been assigned to develop the valuation premises and, in doing so, is required to function in areas where no standards or guidelines exist.

The supervisor's checklist for Mr. Parfitt's reclassification indicated that his assignments were 60% in the "most complex" category.

- B. Margaret Zastrow, District 5, REA2. Ms. Zastrow spends approximately 85% of her time with appraisal and negotiation functions and an additional 10% in relocation assistance. Ms. Zastrow's assignments are, according to her supervisor's checklist, substantially similar to the appellant's in terms of complexity or difficulty.
- C. Henry Golbach, District 1, REA4, Negotiations. Mr. Golbach spends approximately 60% of his time in negotiations, the complexity of which has previously been described, and an additional 35% of his duties involves the review of highway work being done by local governments.

17. The appellant's position is more appropriately classified at the REA2 level.

18. The appellant initially submitted his request for reclassification to the REA3 level in mid-1981. Respondent's decision denying the request was appealed to the Commission and at a prehearing conference on June 22, 1982, the parties agreed to a hearing on September 17, 1982 and established the issue for hearing set out above, subject to the respondent's objection to the reference to the REA4 level.

#### CONCLUSIONS OF LAW

1. This appeal is appropriately before the Commission pursuant to s.230.44(1)(b), Wis. Stats.
2. The appellant has the burden of proving by a preponderance of the credible evidence that the respondents erred in denying his reclassification request.
3. The appellant has failed to meet his burden of proof.
4. The respondents' decision to deny the request for reclassification of appellant's position was correct.

#### OPINION

##### A. Scope of the Issue for Hearing

Given the facts produced at the hearing in this matter and the conclusion that the appellant was appropriately classified at the REA2 level, there is no need to address the question of whether the REA4 issue is appropriately before the Commission.

##### B. Merits

The Burden is on the appellant to show that his position is more properly classified at the REA 3 or 4 level. The appellant offered testimony by a faculty member of the University of Wisconsin-Extension's School for Workers in support of his claim that he performed work that was comparable to the work

performed by persons classified at the higher level. However, the faculty member's testimony failed to adequately respond to statements offered by the respondent's witness. In particular, the Commission is satisfied that 1) Mr. Curtis is able to reasonably predict the difficulty of negotiations for different parcels and projects, even though he cannot predict the inner workings of a landowner's psyche; 2) the projects actually assigned to Mr. Golbach, e.g. Hwy. 18 & 151 from Mount Horeb to Dodgeville, were more complex than the Hwy. 14 and Hwy. 12 projects assigned to the appellant; and that 3) appellant's relocation work was, at the time of his reclassification request, still developing and had not reached the level of performance supplied by Mr. Hendrickson.

The appellant's position does not bear up to a comparison of the Golbach and Parfitt positions within District 1. A comparison to a position outside the district, e.g. the Zastrow position, also does not support reclassification although the value of the comparison is diminished due to Mr. Curtis's unfamiliarity with Respondent's Exhibit 6, which provides definitions for the various categories of work assignments used on the supervisor's checklist. While familiarity with these definitions may not be essential for classification consistency within a given district, familiarity with the definitions should exist in order to assure inter-district uniformity.

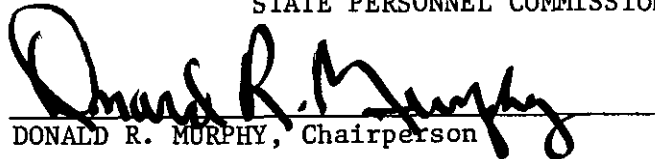


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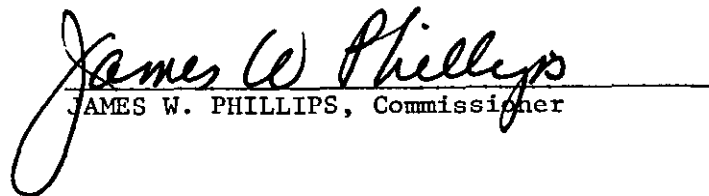
The respondent's decision denying the reclassification of appellant's position is affirmed and this appeal is dismissed.

Dated: March 17, 1983

STATE PERSONNEL COMMISSION

  
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LAURIE R. McCALLUM, Commissioner

  
JAMES W. PHILLIPS, Commissioner

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