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 HENRY SCHIFFER,  
                     Appellant,  
 v.  
 Administrator, DIVISION OF  
 PERSONNEL,  
                     Respondent.  
 Case No. 81-342-PC  
 \* \* \* \* \*

DECISION  
 AND  
 ORDER

This matter is before the State Personnel Commission on appeal of a denial of appellant's request to reclassify his state classified civil service position from Civil Engineer 4-Transportation Supervisor (CE4-TS) (PR1-15) to Civil Engineer 5-Transportation Supervisor (CE5-TS) (PR1-16).

FINDINGS OF FACT

1. Appellant, Henry Schiffer, was first employed by the Department of Transportation (DOT) in 1958 as an Engineer 2 and has continued to work for that department to the present date.

2. Between 1958 and 1969, appellant progressed in the Transportation Division, District 9 from an Engineer 2 to an Engineer 4.

3. In 1969 appellant began work in the traffic section, Division of Highways, designing sign and marking projects. In 1976 he was reallocated to the position of Civil Engineer 4-Supervisor. From 1972-1980 appellant supervised the design staff and the field crews in the traffic section of District 9.

4. In August 1980, as a result of a reorganization of the Division of Highways, District 9 was merged with District 2. The newly formed district was designated District 2.

5. The merger included restructuring the traffic section. The new traffic section was headed by the Chief Traffic Engineer, a CE7-Supervisor; and three unit supervisors, at the CE5-Supervisor level. Appellant was assigned to an assistant supervisor position in the marking and signing unit, remaining at the CE4-Supervisor level.

6. On October 2, 1980, appellant requested that his position be reclassified from CE4-Transportation Supervisor to a CE5-Transportation Supervisor. After reviewing the position, DOT denied the request by a letter dated December 3, 1980. Appellant appealed the decision to the Personnel Commission, and the same was designated Case No. 81-4-PC.

7. Later, it was determined that DOT lacked authority to decide appellant's reclassification request and it was referred to the respondent, Division of Personnel for review. On May 5, 1981, respondent affirmed the conclusion of DOT and denied appellant's request to be reclassified to the CE5-TS level.

8. Appellant appealed respondent's reclassification denial to the Personnel Commission within thirty days of receiving notice of the denial.

9. The instant case and Case Number 81-4-PC were consolidated, but, subsequently, Case Number 81-4-PC was dismissed by this Commission for lack of subject matter jurisdiction.

10. At the time of the reclassification request, appellant was serving as the assistant supervisor for the District 2, Marking and Signing unit. His primary responsibilities, as indicated on his position description, included supporting the unit supervisor by: supervising the Milwaukee-based marking and signing crews, and supervising the design of district signing and marking installations.

15. The CE5-TS classification best fits the duties and responsibilities of appellant's position. He has independent responsibility for marking and signing assignments in the Milwaukee area and district-wide responsibilities for design.

#### CONCLUSIONS OF LAW

1. The Personnel Commission has jurisdiction over the parties and subject matter in this action under §230.44(1)(a), Stats.

2. Appellant has met the burden of proving that respondent's decision denying reclassification of appellant's position from Civil Engineer 4-Transportation Supervisor to Civil Engineer 5-Transportation Supervisor was incorrect.

3. Appellant's position is more properly classified at the Civil Engineer 5-Transportation Supervision level.

#### OPINION

The relevant, undisputed factual background in this matter reveals that prior to the merger of District 9 and District 2, appellant's predecessor and counterparts in other districts served at the Civil Engineer 5-Supervisor classification level. However, appellant with duties comparable to other CE5-Supervisors, was classified as a CE4-Supervisor. His working title prior to the merger was District Marking and Signing Supervisor for District 9.

As a result of the merger, District 9 and District 2 became the East and West Divisions, respectively, of the newly created District 2. Appellant retained supervisory responsibilities for marking and signing functions in the East Division, formerly District 9. Appellant's former design functions were expanded to include both divisions of the district. A Mr. Rake was assigned to the West Division in Waukesha.

11. Appellant was, in fact, responsible for all marking and signing functions in the East Division of District 2 and district-wide design functions. Supervision of appellant was minimal and included such functions as handling time sheets and annual equipment acquisitions. Appellant reported technical matters directly to the District Chief Traffic Engineer and consulted with a central office staff member at the CE-7 level regarding design functions.

12. Appellant's supervisor, a CE5-TS, had primary responsibility for marking and signing functions in the West Division of District 2. He reported to the District Chief Traffic Engineer.

13. The pertinent parts of the state Position Standards for Civil Engineer are as follows:

Civil Engineer 4 - Transportation

Assistant District Traffic Operations Supervisor -  
Responsible to the District Chief Traffic Engineer for a specific major portion of the traffic program such as all district planning in a large urbanized district, and/or responsible for special projects and coordinating such activities as speed zone analysis, accident location analysis, traffic placement control, etc.

Civil Engineer 5-Transportation

District Traffic Operations Supervisor -  
Responsible for a specific and major portion of the traffic engineering program in a district involving complex urban traffic problems.

14. There is no state-wide or DOT allocation pattern with respect to CE4-TS or CE5-TS positions. Civil Engineer 5 positions in the Traffic Section of DOT were allocated only to district supervisor positions, while Civil Engineer 5 positions in Construction and Maintenance were required only to have geographical area supervisory responsibilities.

He managed the marking and signing crews in that division and had district-wide marking and signing supervisory responsibilities. His position was classified at the Civil Engineer 5-Supervisory level, while appellant's remained at the Civil Engineer 4-Supervisory level.

With this factual setting, respondent argues that "the Civil Engineer Position Standard requires that a CE-5 position 'direct and supervise the traffic engineering and operations of the district; (emphasis added)." Respondent also argues that Mr. Rake's position is allocated to the CE-5 level because he has overall accountability for marking and signing functions in the division, and because he has direct supervisory responsibilities over appellant's position.

The CE5-Transportation Position Standard referred to by respondent is as follows:

Civil Engineer - 5 Transportation

District Traffic Engineer

(Reporting through Maintenance) - Directs and supervises the traffic engineering and operation activities of district, including signing, pavement marking, lighting, traffic control devices and measures, accident location investigation, and geometric design in relation to traffic operations.

We observe, based upon the evidence presented, that neither the appellant nor Mr. Rake, a CE5-TS, "supervised the traffic and engineering operation activities of the district" as required by this standard. This function is the combined responsibility of the District Chief Traffic Engineer (CE-7) and the District Traffic Operations Supervisor (CE5-TS). Both the appellant and Mr. Rake are engaged in marking and signing and not traffic engineering operations. The Position Standard for a Civil Engineer 5-Transportation District Traffic Operations Supervisor is more applicable as it requires that the position be charged with responsibility for a specific, major portion of the traffic engineering program, such as marking and signing,

within a district involving complex urban traffic problems. The respondent argues that the district-wide accountability for marking and signing functions assigned to Mr. Rake distinguishes that position from appellant's. We are not persuaded by that argument.

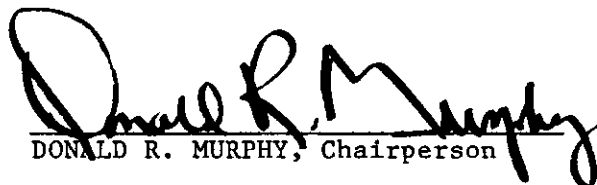
While the organizational chart of the Traffic Section and corresponding position descriptions indicate that Mr. Rake was assigned district marking and signing functions, in practice the appellant and Mr. Rake operated autonomously, performing comparable duties, within the East and West Division which they serviced, respectively. The uncontradicted testimony was that Mr. Rake's supervision of the appellant was minimal. Only fifteen percent of his time was allocated to the function of district supervisor. There was no discussion between the appellant and Mr. Rake regarding work assignments or crew management. On occasion there was communication by Mr. Rake with appellant about a sign system or deployment of a particular sign over the entire district. Mr. Rake supervised appellant in the acquisition of materials and equipment, but no one in the district supervised appellant's design function, which was a significant component of his work.

In performing his design function responsibilities, appellant reported directly to the DOT Central Office. We conclude that the appellant performed at the Civil Engineer 5-Transportation Supervisor level after the reorganization of the Traffic Section in 1980. While Mr. Rake did supervise appellant to a limited degree, such supervision did not in any way detract from the level of appellant's job responsibilities. With the exception of Mr. Rake's district-wide supervision and accountability for the marking and signing function, the position held by Mr. Rake and the appellant were comparable. The appellant's position was also not inconsistent with other CE-5 positions in other sections of the DOT. We therefore reject respondent's decision.

ORDER

Respondent's decision denying reclassification of appellant's position is reversed and this matter is remanded to respondent for action in accordance with this decision.

Dated: July 21, 1983 STATE PERSONNEL COMMISSION

  
DONALD R. MURPHY, Chairperson

DRM:jmf

  
LAURIE R. McCALLUM, Commissioner

  
DENNIS P. MCGILLIGAN, Commissioner

Parties

Henry Schiffer  
c/o Attorney William A. Wiseman  
111 E. Wisconsin Avenue, Suite 1470  
Milwaukee, WI 53202

Howard Fuller, Secretary  
DER\*  
P.O. Box 7855  
Madison, WI 53707

\*Pursuant to the provisions of 1983 Wisconsin Act 27, published on July 1, 1983, the authority previously held by the Administrator, Division of Personnel over classification matters is now held by the Secretary, Department of Employment Relations.