

STATE OF WISCONSIN

PERSONNEL COMMISSION

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 WILLIAM J. BROSKE,  
                   Appellant,  
 v.  
 Secretary, DEPARTMENT OF  
 EMPLOYMENT RELATIONS,  
                   Respondent.  
 Case No. 84-0171-PC  
 \* \* \* \* \*

DECISION  
AND  
ORDER

NATURE OF THE CASE

This is an appeal of a reallocation decision. At a prehearing conference held on September 28, 1984, the parties agreed to the following issue:

Whether the respondent's decision to reallocate the appellant's position from Marketing Inspector 3 (PR5-10) to Marketing Inspector 3 (PR5-10) rather than Food Inspector 2 (PR5-12) was correct?

Hearing in the matter was held on November 1, 1984, before Dennis P. McGilligan, Hearing Examiner. The parties did not file written arguments.

FINDINGS OF FACT

1. At all times material herein, the appellant has been employed in the classified civil service by the Department of Agriculture, Trade & Consumer Protection, Food Division - Madison Region as an Inspector/Grader.

2. Effective June 10, 1984, appellant's position was reallocated from Marketing Inspector 3 to Marketing Inspector 3 as a result of a personnel survey conducted by respondent. Subsequently, appellant filed a timely appeal of this reallocation with the Commission.

3. The duties and responsibilities of appellant's position are accurately described in the position description signed by the appellant on

April 6, 1984, a copy of which is attached hereto and incorporated by reference as if fully set forth as a part of this finding.

4. The Marketing Inspector position standard provides, in relevant part, as follows:

A. Purpose and Use of This Position Standard

This position standard is the basic authority for making classification decisions relative to present and future positions performing fruit, vegetable, eggs, butter and cheese inspection and grading duties. This position standard will not specifically identify every eventuality or combination of duties and responsibilities of positions that currently exist or those that result from changing program emphasis in the future. Rather, it is designed to serve as a framework for classification decision making in this occupational area.

B. Inclusions

This series encompasses positions involved in the shipping point inspection of produce and commodities to obtain samples for inspection, grading, and certification of fruit and vegetable produce, eggs, cheese or butter according to Federal Standards. Certain duties of these positions may be identified in other classifications, but they would not comprise a majority of these positions' work time.

C. Exclusions

Excluded by this standard are positions responsible for spending a majority of their work time in the performance of the following functions:

- 1) Inspection, grading and certifying of grain in accordance with the United States Grain Standards Act;
- 2) Inspection of dairy farming operations;
- 3) Investigations relating to civil violations of State and Federal laws, rules and regulations;
- 4) Supervisory and managerial duties as statutorily defined.

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II. CLASS CONCEPTS AND REPRESENTATIVE POSITIONS

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MARKETING INSPECTOR 3

(PR5-10)

This is difficult and specialized field work in promoting and enforcing compliance with laws, regulations and grading standards in the production and processing of a variety of dairy products. Employees in this class perform highly skilled grading and inspection work in the butter, egg and cheese industry with

responsibility for maintaining uniform grading standards. The nature of the work in this class differs from that of lower level inspectors in the complexity of enforcement situations involved and the necessity for specialized knowledge of plant processes and grading techniques. The work is performed independently under the direction of the field supervisor.

5. The Food Inspector position standard provides, in relevant part, as follows:

A. Purpose and Use of This Position Standard

This position standard is the basic authority for making classification decisions relative to present and future positions performing technical inspectional work in promoting and enforcing compliance with sanitation, labeling, advertising and trade practice laws, regulations and standards in the dairy, food and general business fields. This position standard will not specifically identify every eventuality or combination of duties and responsibilities of positions that currently exist or those that result from changing program emphasis in the future. Rather, it is designed to serve as a framework for classification decision making in this occupational area.

B. Inclusions

This series encompasses positions which carry out comprehensive and technical field inspection, regulation and service responsibilities in establishments involved in the production, processing and distribution of Grade "A" and manufactured milk products, foodstuffs, or other specialized areas. Duties include conducting comprehensive and technical inspections of dairy farms, milk and dairy product processing and distributing establishments, food processing, distributing and retailing establishments, informing management of violations, and suggesting methods that may be used to comply with regulations. Certain duties of these positions may be identified in other classifications, but they would not comprise a majority of these positions' work time.

C. Exclusions

Excluded by this standard are positions responsible for spending a majority of their work time in the performance of the following functions:

- 1) Investigations or inspections pertaining to criminal violations;
- 2) Investigations relating primarily to civil violations;
- 3) Inspections of slaughtering, manufacturing, processing, and merchandising of meat and meat food products; and
- 4) Supervisory and managerial duties as statutorily defined.

II. CLASS CONCEPTS AND REPRESENTATIVE POSITIONS

\* \* \*

FOOD INSPECTOR 2

(PR5-12)

This is objective level inspectional work in promoting and enforcing compliance with sanitation; labeling; and trade practice laws, regulations, and standards, in the dairy, food, and general food business fields. Positions at this level differ from those at the lower level in that the employes have assumed and demonstrated their ability to successfully carry out the responsibility for three or more of the following areas: food inspection, Grade A milk inspection, dairy inspection (manufactured milk), automated food plant inspection and fresh and processed fish inspection, or any comparable specialties, and have successfully completed all required training and certification requirements.

6. As indicated in appellant's position description, Broske spends a majority of his time in the performance of grade verification of butter, cheese and eggs. Appellant also spends a significant proportion of his time in the surveillance of egg disposition under the USDA Egg Products Inspection Act. Finally, appellant performs some duties which are not reflected in his position description. For example, appellant performs certain sanitation inspection and related work for the aforesaid Department. However, he spends only approximately 12% of his time on this type of work.

7. From a classification standpoint, the appellant's position is at a lower level than the following positions which are classified as Food Inspector 2:

a. Peter L. Pett presently occupies a position with this classification in the Food Division of the Agriculture, Trade & Consumer Protection Department. Pett basically has an almost evenly-split hybrid mix of responsibilities including both food inspector and multiple product grader duties. According to Pett's position summary,

the major goals of his position are two-fold: 1) inspection of dairy farms and plants, bakeries, confectioneries, retail food stores, food processors, warehouses and other related food operations to determine compliance with applicable laws, regulations and standards; sampling of various raw and finished products for laboratory analysis for adulteration and composition; discussion of the results of inspection and investigations with appropriate persons and follow up on appropriate enforcement action as detected when noncompliance has been disclosed, and 2) inspection of possible violations of grade and quality standards of butter, cheese, eggs and poultry products; enforcement of USDA Egg Surveillance Act and USDA Poultry Product Inspection Act; and performance of related tasks that may be assigned.

b. Martin J. Kehrein also presently occupies a position with this classification in the aforesaid division and Department.

Kehrein's position summary describes the major goals of his position:

This is technical inspection work in planning and performing inspections of dairy farms, dairy plants, bakeries, confectioneries, retail food stores, food processors, warehouses and other related food handling operations to determine compliance with applicable laws, regulations and standards concerning sanitation, ingredient standards for processed products and product label validity. Sample various raw and finished products for laboratory analysis and composition to determine if the product is adulterated and if the product composition meets the standard. Discuss the results of inspections and investigations with appropriate persons and to follow up with enforcement action as determined when non-compliance has been discovered.

According to his position description, Kehrein spends 78% of his time in the

Enforcement of sanitation laws, regulations and standards governing the production and processing of food products and handling of milk on farms under authority of Wisconsin Statutes.

In addition, Kehrein spends 14% of his time in the enforcement of certain sanitation requirements, labeling standards and advertising and trade practice laws/regulations governing wholesale and retail food handling establishments and 7% of his time in the reconciliation of complex consumer and industry complaints concerning sanitation, public health hazards and trade practice violations.

12. The appellant's position is best described by the Marketing Inspector position standard at the Marketing Inspector 3 level, and is most appropriately classified as a Marketing Inspector 3.

#### CONCLUSIONS OF LAW

1. This appeal is properly before the Commission pursuant to §230.44(1)(b), Stats.
2. The appellant has the burden of proof.
3. The appellant has not sustained his burden of proof.
4. The respondent's decision reallocating appellant's position to Marketing Inspector 3 instead of to Food Inspector 2 was not incorrect.

#### OPINION

The question before the Commission is whether the appellant's position should be classified as a Marketing Inspector 3 (PR5-10) or a Food Inspector 2 (PR5-12). In order for appellant to prevail, Broske must satisfy his burden of proving that his position meets the Food Inspector 2 definition and is more properly classified in that classification.

Appellant argues that his position is more properly classified as a Food Inspector 2 because of the additional sanitation work assigned to him which is not reflected in his position description. However, appellant's sanitation duties comprise only a small percentage of his work, and are not sufficient in themselves to warrant classification at the higher level.

Appellant also argues that a major portion of his work is oriented toward providing safe and wholesome food for human consumption which "relates to" the Food Inspector 2 goal regarding same. It is true that the impact of appellant's work is "to provide safe and wholesome food for human consumption" as noted on appellant's position description. It is also true that generally this is the aim of both the Marketing Inspector 3 and Food Inspector 2 classifications. However, according to appellant's position description 65% of his time is spent in the performance of grade verification of butter, cheese and eggs. The class specifications for Marketing Inspector 3 provide that "employees in this class perform highly skilled grading and inspection work in the butter, egg and cheese industry with responsibility for maintaining uniform grading standards." Since appellant spends a majority of his time in the grading of dairy products, he would appear to meet the specific requirements for being classified at the Marketing Inspector 3 level according to the language noted above. In fact, two of appellant's own witnesses, Mike Dean and Al Breseman, testified that the aforesaid class specifications for a Marketing Inspector 3 accurately described Broske's duties.

Appellant further argues that in tasting certain dairy products he is exposing himself to health risks which warrant classification at the higher level. Assuming arguendo only Food Inspector 2's as compared to Marketing Inspector 3's perform duties which involve health hazards, the class specifications for Food Inspector 2 do not recognize same as a basis for reclassification. In the same vein, appellant maintains that he should be classified at the higher level since he needs multiple licenses (5) to perform his duties. However, said licenses are recognized in appellant's position description in the assignment of his work duties and, therefore,

warrant his classification at the Marketing Inspector 3 level as noted above.

In addition, appellant maintains that the quality of his work is more important than the type and amount of time spent on a particular kind of work and warrants classification at the Food Inspector 2 level. However, as previously noted, appellant's duties satisfy the Marketing Inspector 3 class specifications. The quality of appellant's work is not an issue before the Commission. Nor is it an issue recognized by the aforesaid survey when making classification decisions. Appellant appears to disagree with the classification structure for Marketing Inspector 3 and Food Inspector 2 positions within the Food Division of the aforesaid Department. Since the Commission can only hear appeals from specific classification decisions, and in so doing must adhere to the existing class specifications or position standards, it cannot address this kind of contention. Changes in the fundamental structure of classifications within the State Civil Service must be made by the Secretary of the Department of Employment Relations. Section 230.09(2)(am), Stats. (1983-84).

Finally, appellant maintains that his combination of grading and food inspector duties qualifies him for the Food Inspector 2 classification. However, as noted above, appellant does not spend a sufficient amount of his time performing sanitation or food inspector duties to warrant classification at the higher level. Nor does he work with the variety of food types necessary to be classified as a Food Inspector 2. Unlike Peter L. Pett, who is classified as a Food Inspector 2, appellant spends a majority of his time performing grading duties and is limited to working with dairy products.



The parties are in agreement over the importance of appellant's work to the dairy industry in Wisconsin. In addition, the record reveals the appellant's dedication and commitment in the performance of his responsibilities. However, in making a decision on appellant's proper classification, the Commission is limited to the record evidence including the position standards developed by respondent. Based on same, and all of the foregoing, the Commission finds that the answer to the issue as stipulated to by the parties is YES, the respondent's decision to reallocate the appellant's position to Marketing Inspector 3 (PR5-10) was correct and should be affirmed.

ORDER

The respondent's reallocation decision is affirmed and the appellant's appeal is dismissed.

Dated: Jan 2, 1984 STATE PERSONNEL COMMISSION

  
DONALD R. MURPHY, Chairperson

DPM:jmf  
JEN3/1

  
LAURIE R. McCALLUM, Commissioner

  
DENNIS P. MCGILLIGAN, Commissioner

Parties:

William Broske  
875 Hollmen Street  
Platteville, WI 53818

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

POSITION DESCRIPTION

DER-PERS-10 (Rev 1-78)  
State of Wisconsin  
Department of Employment Relations  
DIVISION OF PERSONNEL

1 Position No. 018662	2. Cert/Reclass Request No. SURVEY	3. Agency 115
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4. NAME OF EMPLOYEE  William J. Broske	5. DEPARTMENT, UNIT, WORK ADDRESS  Agriculture, Trade & Consumer Protection Food Division - Madison Region 4702 University Avenue, PO Box 7883 Madison, WI 53707
6 CLASSIFICATION TITLE OF POSITION  Marketing Inspector 3	<i>Survey Reallocation</i> <i>eff date: 6-10-84</i>
7. CLASS TITLE OPTION (To be Filled Out By Personnel Office)	8. NAME AND CLASS OF FORMER INCUMBENT
9. AGENCY WORKING TITLE OF POSITION  Inspector/Grader	10 NAME AND CLASS OF EMPLOYEES PERFORMING SIMILAR DUTY Kerry Garland - Marketing Inspector 3 Robert R. Tlachac - Marketing Inspector 3
11. NAME AND CLASS OF FIRST-LINE SUPERVISOR  Al Bowers - Agricultural Supervisor 2	12. FROM APPROXIMATELY WHAT DATE HAS THE EMPLOYEE PERFORMED THE WORK DESCRIBED BELOW?

13. DOES THIS POSITION SUPERVISE SUBORDINATE EMPLOYEES IN PERMANENT POSITIONS? Yes  No  IF YES, COMPLY AND ATTACH A SUPERVISORY POSITION ANALYSIS FORM (DER-PERS-84).

14. POSITION SUMMARY - PLEASE DESCRIBE BELOW THE MAJOR GOALS OF THIS POSITION  
This is technical inspection and grading work to determine violations of grade and quality standards of butter, eggs, cheese, USDA poultry products; enforce USDA surveillance and inspect miscellaneous products such as fruits and vegetables and perform related tasks that may be assigned.

15. DESCRIBE THE GOALS AND WORKER ACTIVITIES OF THIS POSITION (Please see sample format and instructions on back of last page.)  
-GOALS: Describe the major achievements, outputs, or results. List them in descending order of importance.  
-WORKER ACTIVITIES: Under each goal, list the worker activities performed to meet that goal.  
-TIME %: Include for goals and major worker activities.

TIME %	GOALS AND WORKER ACTIVITIES	(Continue on attached sheets)
65%	<p><u>GOAL A:</u> Performance of grade verification of butter, cheese and eggs. (IMPACT - To provide safe and wholesome food for human consumption. Food and food products inspected are sold in Wisconsin and exported other states and countries. The objective is to provide a uniformity of standards for eggs, cheese and butter. Wis. Stats. 93, 97, 100. Ag 81, 82, 83, 84, 85, 90, 108)</p> <p>A.1: Inspect and check for proper grade designation butter, cheese eggs at various locations; i.e., point of production, various channels of distribution and at retail. (Wis. Stats. 93, 97, Ag 81, 82, 83, 84, 85, 90, 108)</p>	(Continued)

16. SUPERVISORY SECTION - TO BE COMPLETED BY THE FIRST LINE SUPERVISOR OF THIS POSITION (See Instructions on Back of last page)

a. The supervision, direction, and review given to the work of this position is [ ] close [ ] limited [ ] general.  
b. The statements and time estimates above and on attachments accurately describe the work assigned to the position. (Please initial and date attachments.)

Signature of first-line supervisor Albert Bowers Date 4-6-84

17. EMPLOYEE SECTION - TO BE COMPLETED BY THE INCUMBENT OF THIS POSITION

I have read and understand that the statements and time estimates above and on attachments are a description of the functions assigned my position.  
(Please initial and date attachments.)

Signature of employee William J. Broske Date 04-06-1984

18. Signature of Personnel Manager Erwin A. Sheltz Date 6-26-84

GOALS AND WORKER ACTIVITIES (Continued):

- A.2: Conduct necessary examination of eggs as may be necessary; i.e., candling, weight determination, etc., to ascertain whether proper grade and size has been applied. (Wis. Stats. 93, 97. Ag 90, 108. CFR 7 part 56)
- A.3: Conduct necessary examination of butter and cheese; i.e., plugging and tasting to ascertain whether proper grade has been applied. (Wis. Stats. 93, 97, 100. Ag 81, 82, 83, 84, 85)
- A.4: Obtain samples of butter, cheese and other dairy products when assigned or necessary. (Wis. Stats. 97, 100. CFR 21-133)
- A.5: Check for proper labeling of products under surveillance to determine compliance with statutes and regulations. (Wis. Stats. 97. U.S. Public Law 91-597)

GOAL B: Surveillance of egg disposition under USDA Egg Products Inspection Act. (IMPACT - To prevent the movement or sale for human food of eggs and egg products which are adulterated or misbranded or otherwise in violation of this act. Wis. Stats. 97. U.S. Public Law 91-597)

23%

- B.1: Make determination through physical and other means necessary that the shell eggs covered by the act are in compliance. (Wis. Stats. 97. Ag 90. U.S. Public Law 91-597)
- B.2: Supervise transfer of eggs from point where offered as shell eggs to location where eggs are to be used for other purposes. (Wis. Stats. 97. Ag 90, 108. U.S. Public Law 91-597)
- B.3: Complete surveillance by supervising use of eggs and completing forms as required.

GOAL C: Performance of destination inspection under USDA Poultry Production Inspection Act. (IMPACT - Assure wholesome poultry products for school lunches. Wis. Stats. 97. U.S. Agriculture Marketing Act 1946)

2%

- C.1: Inspect poultry product for quality at various distribution points and at schools where used for school lunch and other locations to assure compliance with the Act. (Wis. Stats. 97. U.S. Agriculture Marketing Act 1946)
- C.2: Take necessary action to remove from use any product found not in compliance with quality standards set forth in the Act. (Wis. Stats. 97. U.S. Agriculture Marketing Act 1946)

GOALS AND WORKER ACTIVITIES (Continued):

GOAL D: Performance of related duties.

- 8% D.1: Check and make recommendations for approval of applications for licensing industry graders.
- D.2: Maintain contacts with industry, consumers and the general public to provide and disseminate information about the multiple grading program.
- D.3: Perform other tasks as may be assigned.
- D.4: Take necessary enforcement actions by (1) issuing original holding or disposal orders and, (2) issuing a warning notice with intent to prosecute if violations are not corrected.
- D.5: Testify in hearings and court actions as required.
- D.6: Perform select duties of Food and Trade Inspector.

GOAL E: Establishment and implementation of weekly work activities schedule.  
(IMPACT - Effectively use resources of time and knowledge in assuring food in assigned area is properly graded.)

2%

- E.1: Analyze monthly, semiannual inspection requirements and records for area establishment; update information; and special assignments.
- E.2: Organize work assignments in a systematic and efficient manner in order to achieve best utilization of available time.
- E.3: Prepare weekly activity reports indicating time spent on assignments, mileage, etc.

POSITION DESCRIPTION - PART B

I. ESSENTIAL KNOWLEDGE, SKILLS AND ABILITIES REQUIRED

- A. Considerable knowledge of laws, regulations and standards governing product quality in the production, processing and distribution of cheese, butter, eggs and poultry products.
- B. Some knowledge of Federal laws, regulations, and standards governing disposal of eggs.
- C. Ability to effectively interpret laws.
- D. Ability to effectively communicate both orally and in writing.
- E. Considerable knowledge of the investigative methods and procedures used to collect, document and preserve evidence which can be admissible in a court of law.
- F. Ability to organize work assignments in a systematic and efficient manner.
- G. Some knowledge of the industry's production, processing and retail distribution channels.
- H. Ability to be decisive, to acquire and maintain effective working relationships with the various publics served, and to appreciate the needs and concerns of others.
- I. Employees in this classification have completed a comprehensive training program including on-the-job and structural university instructions.

II. PERSONAL CONTACTS AND THEIR PURPOSE

- A. This position requires continuous contact with Wisconsin shell egg producers, egg handlers, distributors, hatcheries, retail outlets, cheese and butter points of production, points of assembly, distribution and warehouses. The purpose of these visits is to make inspection and may create a conflicting environment. The Multiple Product Grader also visits with persons performing grading work in food processing and distribution operations and also visits with management of these firms to effect necessary changes. Again, some of these visits are not solicited or wanted by managers and owners of the establishment. Solutions must be achieved in a conflict environment.
- B. All shell egg establishments are visited four times a year by the inspector; retail outlets and egg handlers once a year. Cheese and butter grading establishment frequency of visits varies with the type of operation. Normal inspection takes from 3 to 8 hours. Poultry

POSITION DESCRIPTION - PART B (Continued)

Product Inspection is programmed as assigned by Central Office upon time of arrival. Normal inspection takes 2-3 hours depending on travel time.

- C. The purpose of all the above contacts is to determine whether the minimum grading standards for eggs, cheese and butter are being met and also to initiate corrective action on the farm, distribution point, warehouse or retail outlet where grades are below acceptable standards.
- D. Inspector-grader will meet with industry experts, U.S. Department of Agriculture officials, U.S. Food and Drug officials, county health officials, district attorneys and others in resolving grading and labeling problems in egg, cheese and butter production, processing and distribution.

III. DISCRETION AND ACCOUNTABILITY

- A. Multiple Product Graders are assigned a specific geographic area within the state and are accountable for enforcing responsibilities under ss. Chapter 97, and regulations adopted thereunder. Within that area they inspect retail stores, bakeries, food processors, hatcheries, egg farms, warehouses. Each inspector-grader is responsible to establish his/her own schedule to meet quarterly goals in an assigned district of the state. These inspections are made to determine compliance with the requirements for grading facilities and sanitation of the establishments and for the proper grading and labeling of the food products. Inspector-grader takes appropriate enforcement action as the situation requires by issuing holding orders and disposal agreements or by court proceedings or other legal means.
- B. Inspector-grader conducts investigations on consumer complaints concerning alleged adulteration, frauds, misbranding or other violations of grading regulation and laws. The inspector-grader develops his/her own schedule and places priorities on areas that need inspection or additional attention.
- C. The USDA has developed detailed inspection and compliance procedures. Also the Food Division has developed detailed policy guidelines to assist in inspections, sampling and legal action. Field supervisors are available in cases where additional experience and help are needed. The Division also has three technical specialists available to assist graders and inspectors in the areas of grading, food and dairying. Also various reports are analyzed through a computer system with statistical results available to supervisory staff as well as inspectors. The inspector-grader can modify his/her schedule in the areas where deficiencies are noted.

POSITION DESCRIPTION - PART B (Continued)

- D. The inspector-grader develops his/her own inspection schedule and usually makes all inspections and samplings alone. Supervision is accomplished by reviewing weekly reports and through quarterly MBO procedures. As a rule, the inspector will not be working directly with his Field Supervisor.
  
- E. The Multiple Product Grader is accountable for grade inspection work within his/her district of the state. To a lesser extent, the USDA may inspect some of the establishments; however, efforts are made to eliminate all duplication of inspection through USDA consultation. A list of firms covered by USDA is sent to the grader.

IV. WORKING ENVIRONMENT

- A. This position requires a minimum of office work with most of the time allocated to grading location or driving between the sites. The employee at times will be in uncomfortable surroundings where the plant manager will express his disapproval with the inspection. This adverse climate has been increasing in recent years. Also, graders have been threatened and physically accosted.
  
- B. The employee is exposed to some hazards on the job. Bump hats should be worn in all food processing operations. Multiple Product Graders are instructed in defensive driving training. Safety precautions are also necessary around electrical circuitry at retail and other grading locations. Hostile farm dogs also present a problem to the grader.