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RONALD TILLEY,  
 Appellant,  
 v.  
 Secretary, DEPARTMENT OF  
 EMPLOYMENT RELATIONS,  
 Respondent.  
 Case No. 90-0334-PC

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DECISION  
 AND  
 ORDER

This matter is before the Commission on appeal of the Department of Employment Relations' decision to reallocate Ronald Tilley's position to Mechanical Engineer Advanced 1 instead of Mechanical Engineer Advanced 2. The following findings are based on a hearing held before Donald R. Murphy, Commissioner.

FINDINGS OF FACT

1. At all times relevant, Ronald Tilley, appellant, was employed at the Department of Industry, Labor and Human Relations (DILHR) as a mechanical engineer, a classified civil service position.
2. The Department of Employment Relations (DER), a state agency and respondent, is responsible for personnel and employment relations policies and programs for state government as an employer.
3. As the result of an engineer survey, effective June 17, 1990, Tilley's position was reallocated by DER to Mechanical Engineer Advanced 1 (ME Adv. 1).
4. Tilley, availing himself of respondent's informal appeal procedure, sought reconsideration of the reallocation decision
5. Documentation describing Tilley's position and detailing its functions called a composite was submitted to a rating panel of nine engineers
6. Based on the ratings received from the rating panel, DER determined it had correctly allocated Tilley's position to the Advanced 1 level and by letter dated May 10, 1991, informed Tilley that his appeal was denied.

7. Prior to May 10, 1991, Tilley had filed a formal appeal with the Commission and the Commission deferred action pending completion of DER's informal appeal process. After DER's denial, Tilley's appeal was reactivated.

8. Appellant's position description at the time of reallocation was:

#### Goals and Worker Activities

- 25% A. Communication with architects, engineers, designers, contractors, owners, and the general public.
- A1. Notify architects, engineers, designers, contractors and/or owners of the plan review determination in writing and by telephone, explaining the action taken.
  - A2. Make written and telephone follow-up inquiries or responses regarding the status of unresolved code requirements or problems.
  - A3. Respond to telephone and written questions regarding plan submittal, fees and plan review actions for projects assigned.
  - A4. Respond to telephone and written general, non-project or future project specific questions regarding plan submittal, fees and code application.
- 30% B. Examination of building construction, structural, and HVAC plans, including the more complex, difficult plans, to ensure that minimum standards are maintained to protect the health, safety and welfare of the public and employees.
- B1. Examine and interpret multi-paged, complex, difficult plans, specifications and calculations.
  - B2. Determine compliance to the ILHR Codes by reviewing such things as: proper type of construction vs occupancy uses, isolation of hazards, means of egress, occupant density, fire department access, area/height limitations, fire protection and detection systems, structural stability, energy consumption restrictions, outside/inside design temperatures, ventilating and air standards, heating equipment ratings, safety controls, air delivery systems, chimneys, vents, etc.
  - B3. Perform priority reviews of plans, as assigned.
  - B4. Determine if plans are to be approved, conditionally approved, withheld, or not approved.

- B5. Write, dictate or computer generate a letter of action setting forth the determined action and reasons for the action.
- 5% C. Conduct preliminary reviews of proposed projects, either in person or by mail, to resolve problems and concerns of the project designer with respect to code application and interpretation.
- C1. Schedule an appointment with the requester to conduct a preliminary review in our office, or, with approval of the Plan Review Section supervisor at a location other than our office. Schedule mail in preliminaries for review at the earliest possible date.
- C2. Review the preliminary plans and documents, and calling on code intent and history knowledge, and experience, respond to the designers questions. Determine how the code requirements will be applied to the project. Prepare a written Preliminary Design Review form for all preliminaries clearly stating the problems and determined resolution of the problems, such determinations being binding on the Bureau.
- C3. While responding to the questions posed by the designer, if other questionable items are noted in the plans, documents or conversation, call these items to the attention of the designer and determine a resolution.
- C4. Retain a copy of the preliminary plans for our files, and send copies of the Preliminary Design Review form to the owner and designer.
- 5% D. Issuance of permits to start construction.
- D1. Assure the plan package is complete.
- D2. Review plans for code compliance with respect to building setback, area, footing and foundation design, class of construction, and exits out of the building.
- D3. Review other areas of plan for obvious noncode compliance.
- D4. Explain the reasons behind a decision to reject a plan and provide instructions explaining the steps necessary to gain plan approval.
- D5. Maintain availability to accommodate walk-in requests for permits to start construction as well as mail-in requests.

5% E. Inspection of construction sites, buildings and structures to determine compliance with the code and construction in accordance with the approved plans.

E1. When directed by the Plan Review Section supervisor, perform field inspections under the supervision and direction of the Inspection Section Supervisor and/or inspection region supervisor.

E2. Perform physical initial and follow-up inspections of construction sites, buildings and structures, complete and process all required paperwork associated with field inspections, and discuss the results of the inspection with architects, engineers, designers, contractors and owners.

5% F. Maintenance of code knowledge and uniform and consistent application.

F1. Maintain an extensive knowledge of the code.

F2. Maintain a working knowledge of obsolete codes and codes utilized by other Sections in the Division and other State Agencies.

F3. Apply the intent of the codes and standards uniformly and consistently while examining plans, specifications and calculations, and while performing field inspections, and performing other code related duties.

F4. Read and study technical publications, magazines, trade journals, and national standards to maintain a broad knowledge of code trends and requirements.

F5. As directed, attend seminars, lectures, conferences and conventions to keep abreast of current technology in code and standard applications.

10% G. Assume responsibilities and perform duties for plan review of Amusement Rides (ILHR 34) and Ski Tows (ILHR 33) for the Bureau of Safety Inspection.

G1. Based on knowledge of the codes, code intent and experience, provide technical and procedural advice and assistance to plan submitters.

G2. Develop a close working relationship with other program personnel for the purpose of trading information, coordination and maintenance of consistency between the leadworker sections.

G4. Train, or provide for training, of new staff members.

- G5. Keep the Plan Review Section supervisor advised of plan review and workload problems and anticipated problems. Provide advice to the supervisor on problem solutions.
- 15% H. Act as a staff resource expert in the area of HVAC (ILHR 64), Energy Conservation (ILHR 63), Industrial Ventilation and Exhaust Systems, Hospitals, Nursing Homes and Places of Detention in order to help assure uniform code application.
- H1. Become thoroughly familiar with the administrative rules pertaining to the specialties areas and their intent.
- H2. Study, and become familiar with model code requirements, nationally accepted standards, federal requirements, and industry standards related to these specialty areas.
- H3. Maintain current knowledge of trends in specialty areas by reading trade journals, papers, reports, etc.; and by attending conferences, seminars, lectures and conventions.
- H4. Answer complex technical questions and resolve complex technical problems, related to specialties, presented by staff and the general public.
- H5. When directed, attend code development and discussion committee meetings concerned with specialties to ensure consistency in application, and to provide expert technical input into the decision making process.
- H6. Suggest changes to the code, and code interpretations, related to specialties, in accordance with established procedures, to ensure that the code and current application of the code requirement is current and in keeping with industry standards.
- H7. When directed, present lectures, seminars and speeches, for the benefit of staff and outside groups, on subjects related to the specialty areas.

9. The classification specifications for the Mechanical Engineer series includes:

Mechanical Engineer - Advanced 1  
Mechanical Engineer - Advanced 1-Management

This is advanced level mechanical engineering work performing very complex design, project management, troubleshooting, and consultation

involving mechanical engineering projects. Positions at this level differ from lower level positions in that the range of assignments is broader, more complex, the level of decision-making is broader allowing positions to make decisions on allocating funds for projects, and the level of direction given to the employe is general policy direction. Work is performed under general supervision.

#### REPRESENTATIVE POSITIONS

##### Department of Administration

##### HVAC Specialist - Division of State Facilities Management

Responsibilities include review and approval of design and analysis work done by consultants hired by the State and done by other agency staff; development of plans and specifications for state and agency projects which are not assigned to outside consultants; provision of specialized technical support for the testing and balancing of air and water side mechanical systems; direction and provision of mechanical engineering troubleshooting, inspection and evaluation services to state agencies; and provision of project management and contract administration services for assigned projects.

##### Department of Industry, Labor and Human Relations

Building Plan Reviewers - Positions at this level perform the full range of plan review functions performed at the lower levels and, in addition, provide expertise regarding specialty plans or unique conditions presented in plans, such as barrier-free design, controversial or experimental procedures, specialty code application requiring knowledge of the special code provisions, or other highly specialized issues. Positions at this level apply the most complex of engineering principles to situations presented and are able to resolve the most difficult building plan design problems.

Building Code Consultant - This is full-performance level for positions involved in Code Development and Applications work. Such positions independently perform all aspects of administrative code development and application, including resolving the most complex and controversial code application issues, requiring knowledge of specialized building code provisions; responsibility for overall coordination of all phases of the rule-drafting process, including analyses of the practical and fiscal applications of proposed codes, writing and evaluating the most complex final rule drafts, management of advisory Committees and Councils, and performance as a department hearing examiner. Positions at this level perform these functions with a greater degree of independence and authority than at the Senior level.

Uniform Dwelling Code Consultant - This is the full performance level for positions functioning as Uniform Dwelling Code Consultants. These positions independently perform all aspects involved in the administration and coordination of the State's

Uniform Dwelling Code program. This position serves as the State's lead expert and Consultant regarding all Uniform Dwelling Code issues.

University of Wisconsin

Mechanical Engineer - Advanced 1 - Located at the University of Wisconsin - Madison, Physical Plant. Responsibilities include management of campus building heating, air conditioning and ventilating systems; develop remodeling plans, review operating maintenance and safety programs, implement energy conservation projects, oversee the preparation of plans, specifications and bidding documents for HVAC maintenance projects, develop and manage a computerized project cost system.

Mechanical Engineer - Advanced 2

Mechanical Engineer - Advanced 2-Management

This is the most advanced level mechanical engineering work performing the most complex assignments in mechanical engineering for a statewide program. Positions at this level are involved in policy, standards and procedure development, evaluation and administration for the specialty area. Employees at this level function as the chief consultant to other architects, engineers, managers and supervisors on assigned projects. Work is performed under general policy direction with the authority to make final statewide decisions on major technical/professional matters, including allocating resources for major projects.

REPRESENTATIVE POSITIONS

Department of Administration

Plumbing and Fire Specialist - Division of State Facilities Management. Responsibilities include review and approval of design and analysis work done by consultants hired by the State and done by other agency staff; development of plans and specifications for state and agency projects which are not assigned to outside consultants; provision of specialized technical support for plumbing and fire protection system design requirements; direction and provision of mechanical engineering troubleshooting, inspection and evaluation services to state agencies; and provision of project management and contract administration services for assigned projects.

Department of Health and Social Services

Chief Mechanical Engineer - Division of Management Services, Engineering Section. Under the general policy direction of the Section Chief, this position is responsible for providing mechanical and civil engineering expertise to the Department and all its institutions in the areas of building mechanical systems design,

construction, remodeling, and maintenance. Responsibilities include the design of complex mechanical systems and related site utilities for DHSS Institutions; the implementation and monitoring of the Department's approved construction program to ensure quality of work and compliance with state codes, Life Safety Code, Title XIX and other departmental and federal regulations; management of environmental hazards at all Institutions, including asbestos and underground fuel tanks; elimination of building and heating plant deficiencies, failures and code violations; development of the Department's construction program, including cost estimates, budgets and timetables; and elimination of functional and code deficiencies in institution water supply and storm and sanitary sewers.

### III. QUALIFICATIONS

The general qualifications for all positions included in this Engineering series are graduation from an accredited college or university with a Bachelor's degree in engineering; or possession of an engineer-in-training certificate; or registration as a professional engineer by the Wisconsin Examining Board of Architects, Professional Engineers, Designers and Land Surveyors or eligibility therefore, or equivalent work experience. (Eligibility therefore is defined as registration in another jurisdiction in which the requirements for licensure are of a standard not lower than those in Wisconsin)

Specific qualifications for a position will be determined at the time of recruitment. Such determinations will be based on an analysis of the goals and worker activities performed and by an identification of the education, training, work or other life experience which provide reasonable assurance that the knowledge and skills required upon appointment have been acquired. Registration as a professional engineer may be required, on a case-by-case basis, for all positions classified at the Senior, Advanced 1 or Advanced 2 levels.

10. At the time of reallocation, appellant's general work function was that of a Plan Examiner. Others classified as Plan Examiners in appellant's division included James Smith, Herman Hinrich, Duane Peterson, Randall Baldwin and Carl Schaefer.

11. Each Plan Examiner has assigned specialty areas.

12. Appellant was the bureau's advanced engineer consultant on matters of building code interpretation and application for Ski Tows and Amusement Ride structures. He also was the principle backup for Heating and Ventilation issues and backup for Hospital and Nursing Home structures.

13. Appellant's duties with respect to Ski Tows and Amusement Rides expended approximately 10% of his assigned time. He was the only plan examiner with these duties.



14. Appellant's position descriptions, used in his reallocation, do not reflect involvement in policy standards and procedure development, evaluation and administration, but appellant was a member of the Board for Ski Lift and Amusement Rides and was well respected by people in the industry for his technical ability and input into that board.

15. Appellant's rating panel score was 396.3. The cutoff point for allocation to Advanced 2 was 441.4.

16. Appellant's rating panel score was 57 points below the score given James Quast, a fellow engineer in DILHR, who received 454 points.

17. Appellant's position is more comparable to the Plan Examiner positions held by Smith, Hinrich, Peterson, Baldwin and Schaefer, who were reallocated to the Advanced 1 level.

18. The classification specifications for Mechanical Engineer - Advanced 1 more appropriately describe appellant's position.

#### CONCLUSIONS OF LAW

1. The Commission has authority to hear this matter pursuant to §230.44(1)(b), Stats

2. Appellant has the burden of proving respondent's decision reallocating his position to Mechanical Engineer - Advanced 1 instead of Mechanical Engineer - Advanced 2 was incorrect.

3. Appellant has not met that burden of proof.

4. Respondent's decision not to reallocate appellant's position to the Civil Engineer - Advanced 2 level was correct.

#### DISCUSSION

In support of his assertion that his position is at the Mechanical Engineer - Advanced 2 level, appellant argues that he was expressly hired to administer DILHR's Ski Lift Plan Review, Inspection and Safety Training Program because of his background in Diesel Electric Locomotive Design and several years of experience in machine design. In addition, again because of his Mechanical Engineering background, he was designated the bureau's source person for Heating, Ventilating and Air Conditioning (HVAC) systems.

Appellant's argument is that DER altered its original allocations based on the panel scores by reallocating some appealed Senior level positions like Larry Stilen's and Carl Schaefer's to Advanced 1. Therefore, based on the clear

distinctions between his position and those, his position's proper allocation is Advanced 2. In support, appellant directs attention to memorandums of his division's Deputy Administrator, Ron Buchholz, and Bureau Director, John Eagon, and the testimony of John Eagon.

Buchholz, in his memorandums, recognized a distinction between plan examiner positions with "specialty" areas requiring specific knowledge or experience in a particular field and plan examiner positions with "specialty" areas involving highly specialized issues and unique expertise. Buchholz recognized appellant's position as being the latter and supported reallocation to Advanced 2. Eagon's testimony corroborated the memorandums, attesting to the uniqueness of appellant's position and the complex area of engineering issues involved.

In brief, respondent argues that the review panel's rating, which resulted in the allocation of appellant's position to the Advanced 1 level, and the Advanced 2 classification specifications, which require such positions to perform "the most advanced level mechanical engineering work" and "the most complex assignments ... for a statewide program" demonstrate that its decision was correct.


The evidence shows that appellant's duties in some instances parallel those of positions at the 2 level. Like Advanced 2's at DHSS and DILHR, appellant must work with several different kinds of specialized building codes. However, in most respects, little distinction can be drawn between appellant's position and other Advanced 1 level positions in his bureau, such as those held by James Smith and Herman Hinrich. Also the evidence does not establish that appellant's position involves "policy, standards and procedure development, evaluation and administration" nor performs the most advanced engineering work and the most complex assignments as expressed in the Advanced 2 classification specifications.

For the reasons stated and based on the record, the Commission must find against appellant.

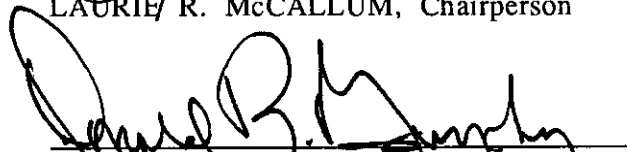
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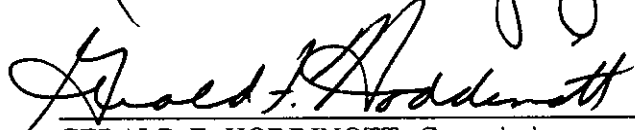
Respondents decision is affirmed and appellant's appeal is dismissed.

Dated: January 8, 1993 STATE PERSONNEL COMMISSION

  
LAURIE R. McCALLUM, Chairperson

DRM:rcr

  
DONALD R. MURPHY, Commissioner

  
GERALD F. HODDINOTT, Commissioner

Parties:

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**NOTICE**  
**OF RIGHT OF PARTIES TO PETITION FOR REHEARING AND JUDICIAL REVIEW**  
**OF AN ADVERSE DECISION BY THE PERSONNEL COMMISSION**

**Petition for Rehearing.** Any person aggrieved by a final order may, within 20 days after service of the order, file a written petition with the Commission for rehearing. Unless the Commission's order was served personally, service occurred on the date of mailing as set forth in the attached affidavit of mailing. The petition for rehearing must specify the grounds for the relief sought and supporting authorities. Copies shall be served on all parties of record. See §227.49, Wis. Stats., for procedural details regarding petitions for rehearing.

**Petition for Judicial Review.** Any person aggrieved by a decision is entitled to judicial review thereof. The petition for judicial review must be filed in the appropriate circuit court as provided in §227.53(1)(a)3, Wis. Stats., and a copy of the petition must be served on the Commission pursuant to §227.53(1)(a)1, Wis. Stats. The petition must identify the Wisconsin Personnel Commission as respondent. The petition for judicial review must be served and filed within 30 days after the service of the commission's decision except that if a rehearing is requested, any party desiring judicial review must serve and file a petition for review within 30 days after the service of the Commission's order finally disposing of the application for rehearing, or within 30 days after the final disposition by operation of law of any such

application for rehearing. Unless the Commission's decision was served personally, service of the decision occurred on the date of mailing as set forth in the attached affidavit of mailing. Not later than 30 days after the petition has been filed in circuit court, the petitioner must also serve a copy of the petition on all parties who appeared in the proceeding before the Commission (who are identified immediately above as "parties") or upon the party's attorney of record. See §227.53, Wis. Stats., for procedural details regarding petitions for judicial review.

It is the responsibility of the petitioning party to arrange for the preparation of the necessary legal documents because neither the commission nor its staff may assist in such preparation.