STATE OF WISCONSIN PERSONNEL COMMISSION

DOMINICK MANGARDI,

Appellant,

v.

Secretary, DEPARTMENT OF EMPLOYMENT RELATIONS,

Respondent.

Case No. 90-0335-PC

DECISION AND ORDER

A proposed decision and order was mailed to the parties on November 22, 1993. Appellant requested and received an opportunity to present oral arguments to the full commission. Oral arguments were presented to the full commission by both parties on January 5, 1994.

The Commission having consulted with the examiner adopts the Proposed Decision and Order as the final decision in this matter, except as noted in the following amendments which are made to better reflect the record:

1. In paragraph 16 of the FINDINGS OF FACT, delete the sentence referring to handicap accessibility issues which appears in the sentence immediately preceding the chart on job duties and time percentages.

2. In paragraph 24 of the FINDINGS OF FACT, delete from the last portion of the first sentence, the following language: "or related to his narrow specialty area."

3. In the DISCUSSION section, change the term "PD" to "job duties" in the last sentence of the first paragraph on page 12 of the decision.

DISCUSSION

At oral arguments, appellant (through his representative) advanced several arguments. The main arguments are discussed in the following paragraphs.

1. Use of the Entire Record: Appellant faulted the proposed decision for containing background facts about the survey process and panel results. Those facts, however, were derived from testimony elicited by appellant, including a special day of hearing on January 14, 1992. The background was not confined to discovery. Rather, appellant made it part of the record. There is nothing improper about including those facts as part of the decision for background information and clarity.

2. Citing to the Record: Mr. Mangardi argued that the Commission's decision must specifically cite the record evidence relied upon for each finding of fact. The Commission first notes that the proposed decision references some record exhibits and contains some discussion of the testimony issues. In further reply, the Commission notes that no transcript exists at this stage of proceedings to enable a specific cite to supporting testimony. While it is true that each factual finding must be supported by the record, the Commission knows of no requirement for its decisions to contain specific cites to the record in support of each finding of fact.

3. DER Witnesses: Mr. Mangardi expressed concern that the hearing examiner relied too heavily on DER witnesses' testimony even though DER's witnesses were not expert engineers. He is mistaken.

The hearing examiner's general approach was to accept the appellant's own testimony describing his actual job duties, and only considered giving it less weight if unexplained contradictions existed between such testimony and the appellant's position description or earlier-completed WQES.

Furthermore, it is evident from the proposed decision that not all of DER's case theory was accepted. The weaknesses of DER's theories were noted and attempts made to provide appellant with the same opportunities DER gave to other engineers. In particular, the traditional method of comparing duties to class specifications was done in the decision and, yet, the analysis did not end there. Instead, other methods also were reviewed, including a review of the panel scores, because the record indicated some other engineers obtained the Advanced 2 level solely by this alternative method. Frankly, the Commission was surprised that appellant faulted the proposed decision for making these additional efforts to provide appellant with the same array of opportunities as DER provided to other engineers.

Nor should the order of the additional analyses in the proposed decision be viewed as a reflection of their importance. The Commission is well aware that a traditional analysis involves a review of the class specifications. The placement of various analyses in the proposed decision was based not upon degrees of importance, but upon ease of reading and comprehending the many facts involved in this complex case.

4. Deference to Witnesses with Engineering Expertise: Mr. Mangardi suggested the hearing examiner should have accepted certain conclusions reached by witnesses with engineering expertise over contrary conclusions reached by DER's non-engineering witnesses. Some specific examples are discussed in later paragraphs, while a general response appears here.

The examiner did give deference to testimony from expert engineer witnesses to the extent that such testimony involved engineering opinions. The examiner, however, properly did not automatically accept their testimony on certain conclusions about the class specifications. Paragraph 23 of the Findings of Fact in the proposed decision contains one example where an engineer's understanding of the class specification language "uncharted areas" was rejected.

5. Specific Allegations of Incorrect Findings of Fact:

a. The accuracy of paragraph 12 of the Findings of Fact was questioned on the basis that "cross-program ties" were not part of the class specifications. This is incorrect. Cross-program boundaries are part of the Advanced 1 text. (See par. 15 of the Findings of Fact.) As noted in the DISCUSSION section of the proposed decision (p. 12, par. 3) this was found to be one important distinction between the positions classified at the Advanced 1 and 2 levels.

b. The wording of paragraph 12 of the Findings of Fact also was faulted for including the example of wells. The criticism was that the wells example was not argued by appellant. It may not have been argued by appellant's attorney in the post-hearing briefs, but the example was given in testimony by appellant himself.

c. Appellant also contested the wording of paragraph 23 of the findings of fact on the grounds that the record lacked support for the conclusion that there are few known solutions to lake pollution. The Commission disagrees. The fact is supported by the record as shown by the

following examples of evidence. Mr. Wedepohl's position description (PD) (R's. Exh. 9, p. 5) contains the following language: "There are very few established criteria in this field and no comparable peers...", a statement supported by the specific duties recorded in the PD and by the testimony of Ms. Steinmetz who was familiar with both Mangardi and Wedepohl's positions. Ms. Steinmetz described Mr. Wedepohl's work as including lake-renewal issues which she described as being innovative work and as involving unique engineering responsibilities many of which have never been tried before. Also supportive were Mr. Wedepohl's answers to the WQES questionnaire (R's. Exh. 10). See in particular the following sections of his WQES: Part IV, E [his work sets national standards for...tools available for protection and improvement of lakes] and Part V, B [no specific detailed instructions available].

d. The discussion in paragraph 23 of the Findings of Fact relating to uncharted areas was criticized for failure to address Mr. Halloway's testimony of appellant's work in uncharted areas. Mr. Halloway is appellant's supervisor and an engineer himself. He testified that appellant's work in uncharted areas included some hydraulic modelling, some waste treatment projects and some well projects. Mr. Halloway testified that about 15 - 25% of appellant's hydraulic modelling was in uncharted areas. He did not provide any estimates for the remaining types of uncharted areas, nor was this gap filled elsewhere in the record. The evidence was insufficient to meet appellant's burden to show that his work "typically" involved uncharted areas.

e. Appellant faulted paragraphs 16 and 24 of the Findings of Fact as incorrectly stating that appellant's specialty area is handicap access. The Commission acknowledges these errors and has made the necessary correcting amendments in the final decision.

f. Appellant also faulted paragraph 24 of the Findings of Fact for noting that appellant's direction to other engineers occurs on a project-specific basis, whereas Wedepohl's occurs on a much broader basis. Specifically, appellant wondered what this distinction had to do with job complexity. The cited paragraph does not indicate a connection with job complexity. The distinction was made, however, because of the potential

impact on the class specification factors of: consequence of error, effect of actions and amount of discretion.

g. The final main specific criticism raised by Mr. Mangardi involved paragraph 18 of the Findings of Fact which compared the positions held by Mr. Wedepohl and appellant based on a review of the second panel scores. The particulars of his argument were unclear, but he felt the information in paragraph 18 would have left appellant with a higher score than Wedepohl if the factors of knowledge and complexity were isolated. First, the Commission notes it is unaware that isolation of the few factors suggested by appellant would be a useful way to compare the positions.

Paragraph 18 of the Findings of Fact, in a nutshell, reviewed only the factors which the second panel scored the position held by Mr. Wedepohl higher than the position held by appellant. The factors where appellant received the higher scores were not reviewed in the paragraph on the assumption that appellant would not dispute his higher scores. The conclusion of paragraph 18 is that the hearing record supports a higher score for Wedepohl than appellant on the factors of: knowledge, discretion, effects of action and personal contacts. It was unclear to the Commission how these conclusions supported appellant's argument that the facts of paragraph 18 would support his claim for the Advanced 2 classification.

ORDER

That the Proposed Decision be adopted as the final decision, with the amendments noted above.

Dated March 29, 1994.

STATE PERSONNEL COMMISSION

LAURIE R. McCALLUM, Chairperson

DONALD R. MURPHY, Commissioner

JUDY M. ROGERS, Commissioner

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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.

Pursuant to 1993 Wis. Act 16, effective August 12, 1993, there are certain additional procedures which apply if the Commission's decision is rendered in an appeal of a classification-related decision made by the Secretary of the Department of Employment Relations (DER) or delegated by DER to another agency. The additional procedures for such decisions are as follows:

1. If the Commission's decision was issued after a contested case hearing, the Commission has 90 days after receipt of notice that a petition for judicial review has been filed in which to issue written findings of fact and conclusions of law. (§3020, 1993 Wis. Act 16, creating §227.47(2), Wis. Stats.)

2. The record of the hearing or arbitration before the Commission is transcribed at the expense of the party petitioning for judicial review. (§3012, 1993 Wis. Act 16, amending §227.44(8), Wis. Stats.

STATE OF WISCONSIN PERSONNEL COMMISSION

DOMINICK MANGARDI,

Appellant,

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Secretary, DEPARTMENT OF EMPLOYMENT RELATIONS,

Respondent.

Case No. 90-0335-PC

PROPOSED DECISION AND ORDER

The record in Mr. Mangardi's case includes the following: 1) Testimony taken on January 14, 1992, which was common to Mr. Mangardi's case as well as to the following cases: a) Allen J. Hubbard v. DER, (Case No. 91-0082-PC), b) Sanders v. DER, (Case No. 90-0346-PC), c) Allan Lulloff v. DER, (Case No. 90-0347-PC) and d) Nile Ostenso v. DER, (Case No. 91-0070-PC); 2) Mangardi-specific testimony taken over two hearing dates which included (by stipulation) the following portion of the record established in the Lulloff case: a) testimony of Suzanne Steinmetz which described her own training and experience; 3) testimony from all companion cases given by Judy Burke which described her own training and experience ; and 4) Stipulated facts signed by the parties on July 31, 1992. Commissioner Gerald F. Hoddinott presided for all hearing dates.

A status conference was held on October 19, 1993, to resolve remaining procedural matters. Both parties indicated they had no objection to using the portion of Exhibit D attached to the stipulation dated July 31, 1992, even though the exhibit is incomplete. Both parties waived objections to the form of this decision being issued with detailed findings, etc., which otherwise would have been issued in summary form, pursuant to s. 227.47(2), Stats., created by 1993 Act 16, s. 3020.

The hearing issue agreed upon by the parties is shown below.

> Whether respondent's decision to reallocate appellant's position to Natural Resource Engineer-Advanced 1 instead of Natural Resource Engineer-Advanced 2 was correct.

FINDINGS OF FACT

1. In 1988 and 1989, the Department of Employment Relations (DER) conducted a survey for all engineers employed by the State of Wisconsin. DER worked with state agencies which employed engineers to identify positions in the agencies which were representative of the types of work engineers did in each agency. Seventy-seven representative positions from 12 agencies were identified for assessment by a panel of 13 experts (the Master Rating Panel) chosen for their knowledge of the engineering work done in various state agencies, including two panel members from the Department of Natural Resources (DNR). The positions reviewed are hereafter referred to as the "Benchmark Positions".

2. The 77 incumbents of the Benchmark Positions each completed a Wisconsin Quantitative Evaluation System (WQES) questionnaire. The questionnaire asked each incumbent in the Benchmark Position to provide information specific to the Benchmark Position on the following nine factors: knowledge, complexity, discretion, consequence of error, effect of actions, physical effort, personal contacts, hazards and surroundings. Each panel member also had a copy of all 77 positions descriptions (PDs), as well as a description of the related agency programs. All information provided was to be accurate as of June 17, 1990.

3. Based on the information noted in the prior paragraph, each panel member scored the complexity factor for all 77 positions. DER staff scored individuals for the hazards and surrounding factors. The panel members were split into two groups with each group scoring half of the remaining factors for each benchmark position.

4. DER arrived at a total score for each of the 77 Benchmark Positions by taking the panel's score for each factor and multiplying it by a set figure to give "weight" or emphasis to the factors. DER listed the resulting scores numerically along a continuum. Some positions clustered near or at similar scores, whereas other positions fell between clusters. DER assigned the between-cluster positions to the cluster immediately above or below it, depending on which cluster was most like the between-cluster position.

5. The classification levels were created for each cluster of Benchmark Positions. Pay range assignments were determined through bargaining with

the union which represented engineers in classified civil service. DER finalized class specifications based upon the Master Rating Panel results and the bargaining process. After bargaining, all non-benchmark engineering positions were evaluated by comparison to the Benchmark Positions using one of three methods authorized by DER. DNR chose the method referred to as "whole-job analysis."

6. Mr. Mangardi worked at DNR. His position was not a Benchmark Position rated by the Master Rating Panel. Rather, his position was evaluated by a DNR panel using the "whole-job" analysis. DNR sent the results to DER and DER assigned classifications to the results. DER classified Mr. Mangardi's position as a Natural Resource Engineer-Senior.

7. Suzanne Steinmetz, a specialist from DNR's personnel office worked with DER on the DNR positions to determine whether the results which placed no DNR positions above the senior level were correct. After this re-review, about 23 of DNR's 90 engineering positions were placed at the Advanced 1 level. Mr. Mangardi, however, remained at the senior level.

8. Mr. Mangardi filed an informal appeal with DER to pursue classification at the Advanced 1 level. He later modified his appeal to request classification at the Advanced 2 level. DER provided Mr. Mangardi an opportunity to submit a WQES and any other information about his job for consideration in the informal appeal process and he did so. (Respondent's Exh. 3).

9. DER convened a second panel in February 1991, to consider the informal appeals which is hereafter referred to as the Second Panel. About 40 engineers were like Mr. Mangardi in feeling their positions should have been classified at the Advanced 2 level. The Second Panel did not compare positions to the class specifications. Rather, the Second Panel reviewed positions to arrive at a numerical score as did the Master Rating Panel, except Second Panel members evaluated all factors (except hazards and surroundings) for all positions and such evaluation took into account the information considered by the Master Rating Panel (where the position was a Benchmark Position), as well as information submitted by the engineers for their informal appeals. About 30 of these 40 positions went to the Advanced 2 level as a result of the Second Panel process. Mr. Mangardi's position went to the Advanced 1 level,

but not the requested 2 level so he filed a formal appeal with the Personnel Commission.

10. The 40 appeals mentioned in the prior paragraph were submitted to the Second Panel in 26 packets, with some packets applying to more than one position. The resulting total scores were adjusted due to demonstrated bias which panel members from one agency (not DNR) showed to individuals employed by that agency.

11. A DNR engineering position held by Richard Wedepohl was evaluated by the Second Panel as meriting the lowest score for qualification to the Advanced 2 level. The Second Panel scores for Mr. Mangardi and Mr. Wedepohl are shown in the chart below, as is the average score given for the 26 packets reviewed by the Second Panel.

Factor	Mangardi	Wedepohl	Ave. Score	Weight
Knowledge	6.22	6.56	6.64	25
Discretion	3.67	3.78	3.68	15
Effect/Acts	3.00	3.56	3.79	10
Complexity	4.56	4.11	4.18	20
Conseqc/Err	5.11	4.89	5.21	10
Phys. Effort	1.22	1.11	1.21	5
Pers Contacts	3.47	4.47	3.58	10
Hazards	1.77	1.77	1.88	2.5
Surroundgs	2.25	2.00	1.55	2.5
Total	(433.6)	(446.9)	(433.56)	
Adjusted Total	428.1	441.4	437.35	

12. Mr. Wedepohl's position is classified as a Water Resource Engineer at the Advanced 2 level. His position is located in DNR's Division of Environmental Quality, Bureau of Water Resources Management in the Education and Special Projects Section. He is solely responsible statewide for designing specific controls for lake restoration and protection projects and for setting standards for use by engineering firms retained by individual communities to complete specific projects. Few established criteria or guidelines exist leaving the majority of his work in uncharted areas. The complexity and knowledges required of this position are great as evidenced by cross-program ties involving multiple engineering areas. Specific cross-program ties include: Wastewater (discharge to lakes); Tech Services (laboratory certification), Solid Waste (landfill sitings, hazardous waste cleanup), Air (atmospheric deposition of mercury, PCB's, nutrients); Water Regulation (shoreland zoning and Ch. 30

permits), Parks (management of lake use and park grounds); Fisheries (stocking and habitat improvement practices), and Wildlife (wetland habitat management, new site construction). Some further details of his position are noted below using the organization shown in section 15 of his PD.

Time %	Worker Activities
35%	A. Direct the development of the technical aspects of a comprehensive, statewide, lake management program and provide guidance on the same to federal agencies. Includes a broad range of duties related to lake restoration and protection projects on a statewide basis.
15%	B. Obtain, manage, and direct the use of state and federal grants for lake protection and improvement projects. Includes supervision of state and federally funded lake projects to ensure use of sound engineering principles and practices.
25%	C. Provide engineering direction and consultative services to lake organizations and their engineering consultants, other department and state agency program staff, and federal agencies for lake studies and implementation projects. Consultation covers all aspects of lake management strategy including study design, monitoring and development of necessary engineering documents for project implementation. Responsible for assisting and guiding other DNR Bureau programs in developing comprehensive and coordinated solutions to lake related problems.
25%	Serve as the primary state expert and spokesman on complex lake water quality and comprehensive management issues. Such expertise is provided to lake associations, districts, government units, legislature and consultants to lake communities.

13. The class specifications for Water Resource Engineers (Mr. Wedepohl) and for Natural Resource Engineers (Mr. Mangardi) contain the following classification levels listed in order of hierarchy: Entry, Developmental, Journey, Senior, Advanced 1 and Advanced 2.

14. Both of the class specifications for Water Resource Engineers (Mr. Wedepohl) and for Natural Resource Engineers (Mr. Mangardi) are based on the same factors which include: i) knowledge required, ii) job complexity, iii) consequence of error, iv) effect of actions, v) amount of discretion, vi) physical effort, vii) surroundings, viii) hazards, ix) personal contacts and x) supervisory responsibilities.

15. The class specifications for Water Resource Engineers (Mr. Wedepohl) and Natural Resource Engineers (Mr. Mangardi) contain similar language for the Advanced 1 and Advanced 2 levels. The text pertinent to Mr. Mangardi's position is shown below.

> **Advanced 1:** This is very difficult advanced natural resources engineering work. Employes in this classification serve as the department expert in a broadly defined segment of the assigned program area. The area of responsibility will normally cross program boundaries, require continually high level contacts with private consultants and engineers regarding highly sensitive and complex engineering reviews and have significant programwide policy impact. The area of expertise will represent an important aspect of the program, involve a significant portion of the position's time and require continuing expertise as the field progresses. The knowledge required at this level include a broader combination than that found at the Natural Resource Engineer-Senior level. Assignments are broad in scope and continually require the incumbent to use independent judgement in making professional engineering decisions. Positions at this level make independent decisions and perform work in response to program needs as interpreted by the employe with the work being reviewed after the decisions have been made.
>
> **Advanced 2:** This is very difficult and technically complex professional natural resources engineering work. Employes in this class perform the most complex engineering reviews for the assigned area. The work assigned is typically in uncharted areas with essentially no guidance to follow. Employes at this level typically provide direction to other engineers assigned to the project. Work involves the development of policies, standards, procedure development, evaluation and administration. Employes at this level function as the chief technical consultant. Employes at this level are delegated authority to make the final engineering decision.

16. Mr. Mangardi's position in DNR is located in the Natural Resource Engineering Unit of the Engineering Section of the Bureau of Property Management in the Division of Resource Management. Mr. Reddick is the section chief. Mr. Holloway is the unit leader. A summary of the responsibilities of Mr. Mangardi's position in June 1990, are given below using the organization shown in section 15 of his PD. The Department of Administration (DOA) routinely delegates to DNR projects with budgets of $30,000 or less. Projects involving larger budget may be delegated by DOA to either DNR or an outside contractor. Mr. Mangardi was unable to estimate the percentage of his projects which involved budgets greater than $30,000. His

specialty area involves handicap accessibility issues related to construction/design requirements.

Time %	GOALS AND WORKER ACTIVITIES

50% A. Provide engineering services for planning, design, construction, maintenance, repair, alteration and remodeling of a variety of proposed natural resource related projects, including: 1) Resource management facilities to improve anthropogenic ecosystems such as dikes, dams and impoundments; effluent treatment and disposal systems for public facilities; water impoundments or diversions to create or improve habitat for waterfowl and other wildlife, and related items, and 2) Facilities to create or enhance public access to and use of Department of Natural Resources controlled lands and waters.

The nature of his work varies depending upon the project involved and the portion of the project assigned to him. He is expected to be able to handle the financing aspects of assignments such as preparing cost estimates and reviewing bids. He is expected to perform professional engineering work such as design or plan review. His professional seal goes onto his own designs as the person responsible for the professional engineering work. His assignments can include responsibility for compliance with various state-agency administrative codes.

30% B. Provide Construction Management (Supervision and Administration) on projects delegated to DNR by the Department of Administration (DOA).

Duties here may involve all aspects of professional engineering work which were included as expectations in section A above, as well as construction management duties. Such additional duties include scheduling construction and coordinating efforts of contractors and subcontractors. He also would be expected to obtain all necessary permits, including those from local government zoning agencies.

10% C. Provide reports, information and recommendations as required. Includes attending public meetings and formal public hearings representing DNR as DNR's engineering and bioengineering expert; which includes an educational component.

10% D. Miscellaneous. Includes providing professional engineering advice/recommendations to clients and others in the Bureau, as well as preparing Program Statements to justify projects to higher authorities (such as the Natural Resources Board and the State Building Commission).

17. Mr. Mangardi provided examples of his project work. He designed a siphon system to fit a small space at Ernie Swift Youth Camp's project to replace a septic system ($16,000 project). He was responsible for the surfacing and construction of the 32-mile Military Ridge recreation trail ($400,000 project). He prepared the plans and specifications for the 18-mile Great River recreational trail ($300,000 project), including bridge design which set a DNR quality standard. Additionally, he was involved with the Kewaunee Fish Egg Collection Facility doing the analyses for hydraulic backwater and for dam break, as well as the construction of two high-capacity wells. He used innovative solutions (existing products used in new fashion) to address erosion problems at Point Beach State Forest and to address potentially dangerous spring areas at the Ottowa Lake Beach.

18. The Second Panel gave Mr. Wedepohl a slightly higher score on **knowledge** than it gave Mr. Mangardi, a result supported by the record. Both positions require knowledge of multiple-engineering topics. Mr. Wedepohl's position, however, requires such knowledge for application to multiple program areas and this distinction supports the higher score. Mr. Wedepohl also received a slightly higher score on the **discretion** factor due to the program-management function of his position. Mr. Wedepohl also received a higher score on the **effects-of-action** factor, a conclusion supported by the record. Mr. Mangardi's work impacts on visitors to park areas and to some degree, on the effected community and the surrounding environment. Mr. Wedepohl's work on lake restoration impacts on the same groups but in larger numbers. The only other factor which Mr. Wedepohl scored higher than Mr. Mangardi was on **Personal Contacts**. Mr. Mangardi has contact with project-specific contractors, and at times with affected community groups and with staff from other government agencies. The nature of these contacts for Mr. Mangardi are project-specific. Mr. Wedepohl has contact with these and other groups and the nature of the contact is broader being on a policy-setting base and also could occur on a project-specific base.

19. Appellant felt his job was similar to David Kaul's. Mr. Kaul is an Advanced 2 Civil Engineer for the Department of Administration (DOA). Mr. Kaul was on a one-year probationary period of which he had served only 5 months at the time of hearing. He had not yet had the opportunity to perform

all tasks in his PD, but expected he would as his job longevity increased. He was assigned to write the master civil engineering specifications for state projects performed by outside consultants, and such duties comprised about 25% of his position prior to the hearing date. The duties expected of his position include oversight of projects delegated to state agencies, oversight of projects awarded to outside contractors, as well as hands-on performance of professional engineering duties such as design and project management. A summary of the duties in his PD is shown below.

45% A. Provide project management services for assigned civil and environmental engineering program areas. Projects include site work, utilities, correctional facility security fencing, underground storage tank removal/replacement and waste water treatment/disposal systems. Work performed here is similar to section B. of Mr. Mangardi's PD.

30% B. Serve as project design (drafting and plan development), specification and construction engineer responsible for varied, difficult and complex, statewide civil and environmental engineering projects for all state agencies. Design athletic developments, storm and sanitary sewer systems, water distribution systems, irrigation systems, roads, underground tank removal/replacement and waste water treatment/disposal systems. Review plans and specifications for civil and environmental engineering projects developed by outside (architect/engineers) for conformance to agency program requirements, state design guidelines and applicable codes. Write specifications for civil and environmental engineering projects to insure an economically acceptable project in conformance with state standards and codes. Project construction engineer for state-wide civil engineering projects, insuring compliance with design specifications. Duties here could vary depending on the nature of the project and the portion assigned to Mr. Kaul.

10% C. Provide consulting services to all state agencies in the preparation of programs for future projects and problem solving at existing facilities.

5% D. Coordinate projects with federal, state, county and municipal agencies to assure compliance with codes and regulations. Anticipate future building program budget impacts due to changing legislation and code revisions.

5% E. Conduct studies to insure that designs and materials are economical, safe and meet standards of quality necessary for intended use. Revise and maintain civil and environmental engineering master specifications.

20. Mr. Kaul provided examples of his project work. He reviewed plans and specifications from outside consultants for the Eau Claire Library expansion ($4-5 million project). He was the project manager for upgrading and renovating Ethan Allan's waste water facility ($1 million project). He was project manager for a new wastewater facility at Kettle Moraine Correctional Institute ($2.5 million project). He was the project manager assigned to assess the fire protection and water-distribution system at the Eau Claire campus.

21. Mr. Kaul was hired after the survey process was completed. Therefore, the record lacks a specific WQES rating by the Master Rating Panel and the Second Panel making comparison somewhat more difficult. However, the basic differences between Mr. Kaul's job as compared to Mr. Mangardi's can be noted and analyzed. The major differences include the dollar amounts involved with the projects, the statewide oversight responsibilities in Mr. Kaul's position, and the responsibility Mr. Kaul has for writing master civil engineering specifications. These differences would impact favorably for Mr. Kaul on the following class specification factors: job complexity, consequence of error, effect of actions and amount of discretion.

22. Mr. Mangardi does some plan-review work and, historically, such review has included some of the most complex reviews in his unit.

23. The classification of Natural Resource Engineer at the Advanced 2 level is not the best fit for Mr. Mangardi's position. He does not meet the class specification language that assigned work typically involve uncharted areas with essentially no guidance to follow. Mr. Mangardi felt his work with wells would meet this language because you cannot predict what will be found after drilling. It appears he misunderstands the nature of the term "uncharted areas" as used here. An example of engineering in an uncharted area is Mr. Wedepohl's work which attempts to reverse lake pollution, a goal with few known solutions.

24. Mr. Mangardi does provide direction to other engineers but such direction is typically project specific or related to his narrow specialty area. This does not compare favorably with Mr. Wedepohl's position which provides direction to other engineers on a broad policy-program basis, or with Mr. Kaul whose work includes direction to other engineers on a project basis as well as

on a wider basis such as through the master civil engineering specifications which he writes.

25. Mr. Mangardi does set the construction and material standards where he performs the design work for the project. However, this does not compare favorably with Mr. Wedepohl's or Mr. Kaul's position involvement with development of policies, standards, procedure development, evaluation or administration. Again, Mr. Wedepohl's work in these areas is very broad being based on his management of the entire lake restoration program. Mr. Kaul's work on writing master civil engineering specifications also takes his influence beyond the project-specific arena.

26. Mr. Mangardi felt his design work met the advanced 2 class specification language of functioning as the chief technical consultant. Once again, however, his work is project-specific which does not compare favorably to the broader-base consultation provided by Mr. Wedepohl.

Conclusions of Law

1. This matter is properly before the Commission pursuant to s. 230.44(1)(b), Stats.

2. The appellant has the burden to show that respondent's decision to reallocate his position to Natural Resource Engineer-Advanced 1 level was incorrect.

3. The appellant has not met this burden.

4. The respondent's decision to reallocate appellant's position to Natural Resource Engineer-Advanced 1 instead of Natural Resource Engineer - Advanced 2 was not incorrect.

Discussion

The evidentiary standard for reallocation cases in a nutshell is as follows: The employe who is asserting that his position should be classified at a higher level has the burden of proof, and must establish the requisite facts by a preponderance of the evidence. Furthermore, if the trier of fact feels the evidence on each side of a disputed issue is equally weighed, or that the respondent's evidence is more weighty, then the appellant cannot prevail as to that factual issue. Tiser v. DNR & DER, 83-0217-PC.

Trying to determine the difference between an Advanced 1 and Advanced 2 engineer might have been easier for everyone concerned if the class specifications had been used for comparison against all engineering positions. Instead, the class specifications were derived from perceived common threads from the Master Rating Panel scores without a later attempt to determine if the score for each individual position was consistent with the class specifications developed. The Second Panel also used the numerical scoring system and, again, there was no attempt to determine if the results were consistent with the class specifications. Thus two potential routes to the Advanced 2 level appeared to exist: those positions which merited a sufficiently high numerical score to warrant the cutoff without strict regard to the class specifications and those positions which met the class specifications. Wherever the record was sufficient, the hearing examiner attempted to do both a numerical analysis as well as a more traditional analysis for comparing PDs to the class specifications.

The DOA position held by Mr. Kaul was similar to Mr. Mangardi's position. Mr. Kaul's testimony, however, was not very helpful for comparing the two jobs because of the short time he had spent in the position prior to hearing. A more persuasive witness would have been one of his more experienced co-workers. Comparison also was difficult because no DOA engineers were reviewed by the Second Panel. Furthermore, the Commission could not determine from the record which DOA position reviewed by the Master Rating Panel corresponded to Mr. Kaul's predecessor (if any did). Therefore, a more refined comparison than what appears in the decision was not possible.

The record supports a conclusion that multiple engineering disciplines and multiple program areas appeared as common factors with most Advanced 2 positions. Furthermore, these distinctions made sense in terms of the classification factors common to all engineering positions, as well as in regard to the language used in the Advanced 1 and 2 class specifications. The exceptions to this rule appeared to involve positions which met DER's panel-score cutoff for Advanced 2 without regard to the class specifications.

A dispute existed as to whether the dollar amount of a project could accurately reflect the project's complexity or the knowledge required to

complete the project. The evidence established that the correlation is not perfect. In other words, a small-dollar job may involve many complex issues (such as space limitations) which require innovative resolutions. A large dollar amount, however, would warrant a higher rating on the factor of consequence of error and, perhaps, on the factor of effect of actions.

ORDER

That respondent's action is affirmed and this appeal is dismissed.

Dated:_____, 1993 STATE PERSONNEL COMMISSION

_____
LAURIE R. McCALLUM, Chairperson

JMR

_____
DONALD R. MURPHY, Commissioner

_____
JUDY M. ROGERS, Commissioner

cc: Richard Thal
David Vergeront