

* * * * *

TIM KUBALA,

Appellant,

v.

Secretary, DEPARTMENT OF
EMPLOYMENT RELATIONS,

Respondent.

Case Nos. 90-0338-PC
 92-0107-PC

* * * * *

*
*
*
*
*
*
*
*
*
*
*
*

DECISION
AND
ORDER

These cases involve appeals pursuant to §230.44(1)(b), stats., of reallocations. As a result of the engineering survey, appellant's position was reallocated in 1990 from Engineering Technician 5 (ET 5) to Engineering Specialist-Senior (ES-Sr.). As a result of the maintenance mechanic and related survey, appellant's position, was reallocated in 1992 from ES-Sr., to Instrument Maker-Advanced (IM-Adv.).

There is no real dispute about the duties and responsibilities of appellant's position which is in the Department of Chemistry machine shop, UW-Madison. Appellant's position description (Respondent's Exhibit 2) essentially accurately describes his basic duties and responsibilities. The position summary sets forth the major goals of the position as follows: "Design, construct and refine sophisticated laboratory instrumentation for ultra-high vacuum, optical, particle beam, and surface research in the Department of Chemistry." This position primarily involves work with high vacuum and ultra-high vacuum (UHV) systems, and working from general requests through complicated design processes to the actual construction of highly precise and sophisticated mechanical components. The general goals of this position are set forth on the position description as follows:

- 20% A. Design of mechanical instrumentation components and systems to be used for research and instructional purposes in the Chemistry Department. These include high precision moving parts for optical (e.g. laser) systems, large and complex high

vacuum and ultra-high vacuum system components involving arc welding, and many other similar items.

60% B. Actual construction of items of the type described in part A.

20% C. Repair, modification and improvement in existing mechanical instrumentation systems.

Appellant works under the very general supervision of the shop supervisor, Allan L. Behling. Mr. Behling has little or no expertise in the field of UHV welding, and therefore cannot provide supervision of appellant's work per se. Appellant provides guidance and advice to others in the shop with respect to UHV welding, particularly Instrument maker Edward Vasiukevicius. However, appellant does not act as a supervisor as such.

DER included positions such as appellant's in the engineering survey even though it had determined that these were not appropriately included in that vocational group. DER's rationale was that this was a temporary expedient, primarily for compensation purposes, until another survey could be completed. These positions were "parked" in the ES series as a result of the reallocations that effectuated the engineering survey in 1990. They were studied during the maintenance mechanic and related survey and then reallocated in 1992 into the IM series.

Appellant contends that his position should have been reallocated to the ES-Advanced 1 level rather than the ES-Sr. level in 1990, and then should have been retained at that level in 1992, rather than having been reallocated to IM-Advanced.

The ES position standard (Respondent's Exhibit 1), includes the following definitions of the Senior and Advanced 1 levels:

Engineer Specialist - Senior

This is senior level engineering specialist work. Employees at this level differ from lower level positions in that the engineering specialist has responsibilities for a specific program. The incumbent develops and follows broadly defined work objectives and the review of the work is limited to administrative evaluation by the supervisor. Positions at this level have extensive authority within their assigned program area. The engineering specialist is considered the expert in the assigned area. Work is performed under direction.

Engineer Specialist - Advanced 1

This [is] very difficult and advanced engineering specialist work. Employees in this classification may serve as the department expert in a broadly defined segment of the assigned program area. The area of responsibility may be implemented statewide. The knowledge requirements at this level require a broader combination than that found at the Engineering specialist - Senior level. Assignments are broad in scope and continually require the incumbent to use independent judgement in making professional engineering decisions in the assigned specialized area. Work is reviewed normally after the decisions have been made.

Appellant's position fits within the ES-Sr. definition. Appellant is responsible for a specific program which involves high vacuum and ultra-high vacuum systems. The difference between the ES-Sr. and ES-Advanced 1 definitions is primarily a matter of degree. The Advanced 1 definition uses the term "very difficult and advanced engineering work" (emphasis added), and states that the "knowledge requirements at this level require a broader combination than that found at the Engineering Specialist-Senior level." The Advanced 1 definition also states that "[e]mployees in this classification may serve as the department expert in a broadly defined segment of the assigned program area," as opposed to the senior level reference to "responsibilities for a specific program." Respondent relied heavily on the latter distinction in deciding that appellant's position should be at the ES-Sr. rather than the ES-Advanced 1 level.

The distinction between "a broadly defined segment of the assigned program area" and "responsibilities for a specific program" is illustrated in the context of this case by comparing appellant's position with a position at the Synchrotron Radiation Center occupied by Thomas Nelson. Nelson's position was reallocated from ET 6 (one level higher than the ET 5 classification of appellant's position) to ES-Advanced 1 as a result of the engineering survey, and then retained in that classification following the maintenance mechanic and related survey. The PD (Respondent's Exhibit 10) for this position has the following "position summary":

Responsible for the establishment and maintenance of the machine and welding shop facility of the Synchrotron Radiation Center. Supervise permanent staff, assigned help from other departments, students and

users, in product design, machine operation and applied techniques. Designs and constructs highly specialized, complex instrumentation in the prototype phase. Coordinates machining, welding, assembling, testing of SRC assemblies.

This PD has a 30% goal of: "B. Design, Construction, Inspection, Assembly and Testing of highly specialized equipment," which is very similar to appellant's position. However, it has a 60% goal of: "Establish, Maintain, Update and supervise the Operation of a Machinery/Welding Facility for the Synchrotron Radiation Center." Respondent's rationale for its conclusion with respect to the classification level of this position is summarized in an August 24, 1992, letter to appellant as follows:

Mr. Nelson does have some specific responsibilities for not only student and users, but for permanent staff assigned to this work unit. While he is not a supervisor per Wisconsin Statutes sec. 111.81, he does have specific oversight of the work unit and employees therein on a continuous and ongoing basis. The scope of this work unit makes this position a department expert in a broadly defined segment of the assigned program (as compared to a specific program, found at the Senior level). The knowledge requirements of dealing with all the students, users, and permanent staff's projects makes this position very difficult and performing advanced engineering specialist work.

Since respondent relies so heavily on this position comparison, and appellant also bases his case primarily on this comparison, it is at the center of this controversy. Respondent's case is also supported by the ES-Advanced 1 position occupied by Richard Pfeifer in the Space Astronomy Lab, which appears to be at a higher level than appellant's position. On the other hand, appellant established that his work is at a more advanced level than the other ES-Senior position in the Department of Chemistry, occupied by Harlan Friske, which has little involvement in UHV welding. In cases of this nature, the appellant has the burden of proof and must establish by a preponderance of the evidence that respondent's decision was incorrect. See Vranes v. DER, 83-0122-PC (7/19/94), Jackson v. State Personnel Board, Dane Co. Cir. Ct., 164-086 (2/6/79).

On its face, respondent's distinction between appellant's and Mr. Nelson's positions appears plausible. Mr. Nelson's position is identified in the ES class specification as a representative ES-Advanced 1 position. While appellant's work is highly complex, he is only responsible for his own projects

in his own program area and also serves as an advisor to others regarding UHV welding. Mr. Nelson has responsibilities that involve the entire shop and the projects of a number of other employees in various areas, and appears to fit within the ES-Advanced 1 provision of: "may serve as the department expert in a broadly defined segment of the assigned program area." Appellant attempts to analogize his role in the UHV welding area to Mr. Nelson's oversight or quasi-supervisory role in the SRC by emphasizing the advanced nature of his expertise and the decisions for which he is responsible in project design. While the record reflects that appellant makes very complex design decisions, and plays a very significant role in the department's fulfillment of its program goals, this does not address the broader scope of Mr. Nelson's work, which is not concentrated almost exclusively in the field of projects that involve UHV welding as is appellant's work. To the extent that appellant relies on the testimony of his witnesses concerning the significant role he plays in the department's fulfillment of its program goals, it adds little to his case. In absence of comparative evidence that his role is more significant than Mr. Nelson's, this evidence concerning the significance of appellant's role can not serve as the basis for a conclusion that it is more significant than Mr. Nelson's.

Appellant also testified that his work is rendered more difficult as compared to Mr. Nelson's because the SRC has substantial mechanical engineering and computer resources lacking in the chemistry department, and that as a result Mr. Nelson gets his designs fully documented and engineered with autocad-generated drawings and dimensions, while appellant has to rely on himself to go through these steps. He testified that this impacted the design component of these jobs.

In the Commission's opinion, while this is a close case, appellant has not satisfied his burden of proof. While the design component of appellant's job appears to be more difficult and complex than Mr. Nelson's, due to the absence of the support staff available in the SRC, the broader scope of Mr. Nelson's job places it in the provision in the ES-Advanced 1 definition of "broadly defined segment of the program area" as opposed to the "responsibilities for a specific program" language in the ES-Advanced 1 definition. Also, this broader scope of Mr. Nelson's position relates to the language in the ES-Advanced 1 definition: "The knowledge requirements at this level requires a broader

combination than that found at the Engineering Specialist-Senior level." (emphasis added). Also, the record reflects that extensive design work is associated with the ES-Senior level. For example, Mr. Ganjes ES-Senior position description (Respondent's Exhibit 3) contains this activity: "Work from rough sketches, verbal descriptions, and current literature to make detailed plans and drawings for new and refined instruments."

With respect to the issue of IM-Advanced versus ES-Advanced 1, appellant's position is more specifically described by the IM-Advanced position standard, which specifically refers to UHV welding in the IM-Advanced determination. However, Mr. Nelson's position also is relatively specifically described by the IM-Advanced position standard. Notwithstanding respondent's original intent to classify that position at the IM-Advanced level, as demonstrated by its identification in the examples of work performed, respondent decided to keep it at the ES-Advanced 1 level because its broader scope of responsibility is not identified in the IM-Advanced definition. As noted above, this broader scope of responsibility brings it within two distinguishing aspects of the ES-Advanced 1 definition - the "broadly defined segment of the program area" and the "broader combination" of knowledge requirements.

In the Commission's opinion, appellant also has not satisfied his burden of proof of establishing that respondent's reallocation of his position to IM-Advanced was incorrect.

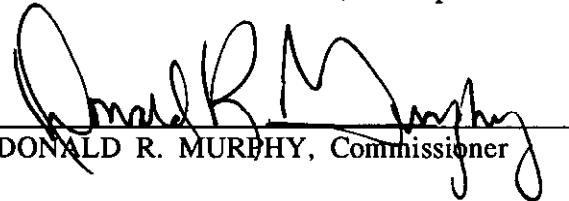
ORDER

Respondent's actions reallocating appellant's position to ES-Senior and IM-Advanced are affirmed and these appeals are dismissed.

Dated: February 23, 1994 STATE PERSONNEL COMMISSION


LAURIE R. McCALLUM, Chairperson

AJT:rcr


DONALD R. MURPHY, Commissioner

Parties:

Tim Kubala
2306 Willard Avenue
Madison, WI 53704

Jon Litscher
Secretary, DER
P.O. Box 7855
Madison, WI 53707-7855

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 per-

sonally, 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.