

made it part of the record. There is nothing improper about including those facts as part of the decision for background information and clarity.

Inclusion of the background information also enabled the Commission to attempt to provide Mr. Sanders with the same methods for achieving the Advanced 2 classification as existed for some other architects. Specifically, it appeared that other architects could have achieved the Advanced 2 classification by panel scores on the WQES factors alone without regard to class specification language. The Commission therefore considered whether the panel results made sense in light of all the knowledge gained at hearing about what Mr. Sanders' position entails. The analysis indicated the panel results were correct. Therefore, the Commission did not reach the question of whether incorrect panel results would be sufficient to support an Advanced 2 classification where the class specifications were unmet.

2. DER Witnesses: Mr. Sanders argued that DER's witness, Judy Burke, displayed no knowledge of Sanders' position and the comparables, aside from the information noted in the position descriptions (PDs). He concludes DER was required to have an expert architect witness and lack of such expert witness means a decision should be entered in his favor. The Commission disagrees.

The lack of a DER witness expert in the field of architecture meant the hearing examiner could not give overriding effect to any architectural opinion given by the non-expert witnesses. Nor was this done. 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 the testimony and his PD and/or his WQES.

3. Deference to Witnesses with Different Areas of Expertise. As noted in the prior section, the examiner gave deference to testimony from expert architects to the extent that such testimony involved architectural opinions. The examiner, however, properly did not automatically accept the architect's opinion on conclusions about the class specification requirements.

Appellant offered the testimony Mr. Terrance Steiger (an engineer) as an expert in classification based on his one-day participation in reviewing 15-20 of the engineer/architect positions at the University of Wisconsin (UW) as part of the survey process. Mr. Steiger compared appellant's position to an

architectural position held by Meredith and concluded that his assessment of the factor score on "consequence of error" would be about the same for both positions. The record contains a definition of this term as part of the WQES factors and as part of the class specifications. Mr. Steiger was not uniquely qualified to apply the facts to the definition. Further, Mr. Steiger acknowledged the difference between the second panel scores for the Meredith and Sanders' positions and stated he could not say the second panel was wrong because the second panel had the WQES for Mr. Meredith which Mr. Steiger did not have.

4. PDs as Hearsay: Appellant acknowledged at oral arguments that the PDs are admissible evidence, but argued that reliance on the information contained in the PDs without supporting testimony from the incumbent is error.

Appellant could not contend that PDs were inadmissible because even if PDs were considered hearsay they could be admitted. As noted in PC 5.03(5), Wis. Admin. Code, the Commission is not bound by common law or statutory rules of evidence. However, the Commission could not base a finding of fact on hearsay evidence alone.

The Commission, however, finds that the PDs are not hearsay. Rather they are an exception to hearsay, under s. 908.03(24), Stats., as regularly-kept business records dated and signed as correct by the incumbent and the incumbent's supervisor. PDs are documents upon which many significant decisions are routinely made such as classification, pay range, inclusion in a bargaining unit, etc. Furthermore, appellant's counsel did not raise a hearsay objection at hearing. Such argument raised after the proposed decision was mailed and at oral arguments before the Commission (and without prior notice to the opposing party) comes too late.

5. The Marx and the Germanson Decisions: Each party in arguments to the Commission relied upon Commission findings in other cases which are not part of the hearing record in Mr. Sanders' case. Respondent noted the Commission found in Germanson, et. al. v. DER, Case Nos. 91-0223 through 0230-PC, (5/20/93), that DOA retains oversight responsibilities for projects delegated to other agencies.

Mr. Sanders argued that the portion of the proposed decision in his case which discussed the second panel scores should have resulted in finding the

Advanced 2 classification most appropriate for his position. Specifically, Mr. Sanders contends the analysis supports a conclusion that his score should have been "almost identical" to the average score. He further notes that Gerald Marx who was above the average score, ultimately was given the Advanced 2 classification by the Commission, Marx v. DER, 91-0087-PC (2/5/93), and, therefore, the Commission should give appellant the Advanced 2 classification too.

The Commission asked how the parties wished the Commission to consider these arguments since neither the facts found in the Germanson and Marx decisions, nor the corresponding records, were part of Mr. Sanders' record. The parties requested the Commission to look at the decisions in both cited cases and even to take the facts recited as true for Mr. Sanders' case. They did not agree to incorporate the record of those other cases into the record for Mr. Sanders' case.

The Germanson decision involved the classification of several engineers and architects at the Department of Administration (DOA), who were classified at the "manager" or "supervisory" levels and were seeking higher classifications within those class specifications. The Commission found that none of the appellants met the desired class specification requirements and, therefore, dismissed the appeal.

Respondent cited the Germanson decision in response to appellant's argument that the oversight provided by architects and engineers at DOA were nothing more than rubber stamping the work done by Mr. Sanders. Respondent correctly noted in oral argument that the Commission found otherwise in the Germanson decision. For example, see paragraph 2 of the Findings of Fact in the Germanson decision, which reads as shown below.

The Department of Administration has responsibility under s. 16.85(1) and (2), [Stats.], to "furnish engineering, architectural, project management and other building construction services whenever requisitions therefore are presented to [DOA] by any agency" and to "take charge of and supervise all engineering or architectural services or construction work... performed by, or for, the state... except the engineering, architectural and construction work of the department of transportation..."

The Commission reviewed the Marx decision and declines to use the same as a basis for granting Mr. Sanders' request for the Advanced 2 classification.

Mr. Marx's position was at DILHR and involved statewide (versus project-specific) impact. Furthermore, the Commission's decision that Mr. Marx should be placed at the Advanced 2 level was based upon the hearing record which showed his position met the class specifications (not the panel-score cutoff point) for civil engineers, which differ from the class specifications for architects.

6. Specific allegations of Incorrect Findings of Fact:

- a. Mr. Sanders noted that in paragraph 13 of the Findings of Fact that Mr. Quast is incorrectly referred to as Ms. Quast. The Commission acknowledges the err and has made the necessary correcting amendment in the final decision.
- b. Appellant felt paragraph 17 illustrated the examiner's lack of understanding Mr. Sanders' professional work. Specifically, he argued that for the factor "effect of actions" the examiner failed to consider that Mr. Sanders is required to sign the project plans and to live with the same responsibility for the rest of his life. His signature on plans was recognized in the proposed decision (for example, see the second paragraph under worker activity "A", in paragraph 14 of the Findings of Fact). The class specification definition is noted below.

EFFECT OF ACTIONS: This factor measures the purpose of the work and the extent to which the work products or services affect other parts of the organization, other government services, or citizens of the state. In addition, the factor measures the extent to which a given position has impact on the end results of the work.

It is true that his signing indicates he has significant impact on the end results. This aspect of his signing responsibility was considered in the proposed decision. However, it was found to be a "project-specific" impact as compared to the statewide impact of the positions held by Quast and Meredith.

- c. An argument related to item "b" above was Mr. Sanders' contention that the Commission does not consider lack of statewide impact as fatal to a claim for the Advanced 2 classification. Appellant's argument is based on the Commission's decision in Smith v. DER, Case No. 91-0162-PC (11/29/93). The Commission felt that Mr. Smith's job was too similar to

nine Advanced 2 engineering jobs at DHSS, to justify a different result. (See Commission's discussion on pp. 21-27 of the Smith, decision.) Furthermore, the issue in Smith involved a choice between the Advanced 1 and 2 levels of the Civil Engineering class specifications which differ from the class specifications for Mr. Sanders' architect position. Some of the discussion regarding other architectural positions, notably Mr. Quast's position, supports the Commission's decision in Mr. Sander's case. See, for example, page 15 of the Smith decision which states as follows:

The Architect Advanced 2 position occupied by James Quast in ... DILHR, is responsible for code development, conducting pre-hearing, hearing, and post-hearing aspects of the Chapter 227 rule-making process, managing citizen advisory code development councils and committees, and other related duties, as well as reviewing petitions for variance... This position appears to be at a somewhat higher level in terms of effect of actions because of the statewide impact of codes...

d. Appellant felt a comment made in paragraph 22 of the Findings of Fact was unfair. Specifically, the paragraph indicates Mr. Sanders was able to give only one of his projects as an example of the most complex work he performs. Appellant felt this was unfair because he had not been in the position long at the time of hearing. He contended the Commission should have accepted his one example as being "typical" of his work.

The Commission, however, cannot "create" testimony for appellant. It was appellant's burden to prove that his position meets the class specifications. One example of a complex project among many other projects does not meet the requisite standard of proof. Supporting testimony from another source was lacking (such as projects historically completed by the work unit which would be expected of Mr. Sanders, or testimony from a predecessor - if a predecessor existed).


ORDER

That the Proposed Decision be adopted as the final decision, with the amendment 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.)

missing portion prepared from a taped recording in Mr. Ostenso's attorney's possession.

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

Whether respondent's decision to reallocate appellant's position to Architect-Advanced 1 instead of Architect-Advanced 2 was correct.

FINDINGS OF FACT

1. In 1988 and 1989, the Department of Employment Relations (DER) conducted a survey for all engineers and architects employed by the State of Wisconsin. DER worked with state agencies to identify positions in the agencies which were representative of the types of work performed 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 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 classifications 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 the 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. Sanders works 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 Sander's position as an Architect-Senior.

7. Suzanne Steinmetz, a specialist from DNR's personnel office was astounded by the classification results from DER because all DNR engineers (and architects) were classified at the Journeyman and Senior levels, whereas she thought at least some engineer positions would have been classified at the Advanced 1 level. Ms. Steinmetz reviewed WQES questionnaires from other agencies which DER classified at the Advanced 1 level to determine if DNR questionnaires failed to communicate key factors. She determined that DER assigned the Advanced 1 classification to engineer positions with areas of specialization implemented on a statewide basis. The DNR positions (where appropriate) were redrafted with this distinction in mind and DER agreed to the Advanced 1 classification for those positions.

8. Mr. Sanders was not included initially in the group of positions for which Ms. Steinmetz rewrote the PDs to justify the Advanced 1 classification. She included in that group only engineers who felt their positions should be classified at the Advanced 1 level.

9. Mr. Sanders filed an informal appeal with DER requesting his position be classified at the Advanced 2 level. DER provided Mr. Sanders 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. 2) Such information was accurate as of June 17, 1990.

10. 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 (and architects) were like Mr. Sanders 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 each panel member 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. The Second Panel results raised Mr. Sanders' position to the Advanced 1 level. He filed a formal appeal with the Personnel Commission, requesting classification at the Advanced 2 level.

11. 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.

12. 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. Wedepohl and Mr. Sanders are shown below, as well as the scores for DILHR architects Ms. Quast and Mr. Meredith (who received identical scores). (Hereafter referred to as Ms. Quast's position.) The average score given for the 26 packets reviewed by the Second Panel also are shown below.

<u>Factor</u>	<u>Wedepohl</u>	<u>Sanders</u>	<u>Quast</u>	<u>Ave. Score</u>	<u>Weight</u>
Knowledge	6.56	6.11	7.33	6.64	25
Discretion	3.78	3.56	3.78	3.68	15
Effect/Acts	3.56	3.56	3.78	3.79	10
Complexity	4.11	3.89	4.33	4.18	20
Conseqc/Er	4.89	4.33	5.22	5.21	10
Phy. Effort	1.11	1.44	1.00	1.21	5
Pers Contct	4.47	3.13	4.27	3.58	10
Hazards	1.77	1.47	.74	1.88	2.5
Surroundgs	2.00	2.17	1.00	1.55	2.5
Total	(446.9)	(410.4)	(468.7)	(433.56)	
Adj Total	441.4	404.8	454.0	437.35	

13. Ms. Quast is classified at the Architect - Advanced 2 level at DILHR writing administrative code sections pertaining to minimum building requirements in various areas. The codes cover a variety of disciplines including plumbing, electrical, heating and ventilation, etc.; as well as complex standards involving architectural and engineering principles, techniques and practices. Her job duties are briefly summarized below, using the organization in s. 15 of the PD.

<u>Time %</u>	<u>Goals and Worker Activities</u>
20%	A. Development of technical, building, safety and health codes, and other related construction codes and standards of a most complex nature.
10%	B. Management of citizen advisory committees and councils for the development of technical codes and standards of a most complex nature.
10%	C. Performance of pre-hearing administrative rule-making procedures in accordance with Ch. 227, Stats., for promulgating proposed rules of a most complex nature.
5%	D. Conductance of public hearing to secure input on proposed technical rules of a most complex nature.
10%	E. Performance of post-hearing administrative rulemaking procedures in accordance with Ch. 227, Stats., for promulgating rules of a most complex nature.
10%	F. Participation in public relations efforts regarding department technical codes and standard and consultation services to architects and engineers on technical issues of a most complex nature.
20%	G. Performance of special projects.
15%	H. Evaluation of complex petitions for variance for building and other related construction, safety and health codes of a most complex nature.

14. Mr. Sanders' position in DNR is located in the Architectural Services Unit of the Engineering Section of the Bureau of Property Management which is part of the Division of Resource Management. The only other position in the Architectural Services Unit is Mr. Sanders' supervisor, Gerald Dorscheid, an engineer. Mr. Sanders is the only architect in DNR. The Department of Administration (DOA) routinely delegates to DNR projects with budgets of \$30,000 or less. Projects involving larger budgets may be delegated by DOA to either DNR or an outside contractor. Further responsibilities are summarized below using the organization shown in section 15 of his PD.

Time % GOALS AND WORKER ACTIVITIES

- 50% A. Provide architectural/engineering services for planning, design and new construction of a variety of proposed facilities, and for the maintenance, repair, alteration and remodeling of existing facilities to enhance public and Department use including: 1) Buildings (Administrative, Fish Hatchery, Maintenance/Storage, Residences, Interpretive Centers, Toilet/Shower Facilities, YCC complexes, Ranger Stations, etc.); and 2) Structures (Observation Towers, Fire Towers, Snowmobile Bridges, Pedestrian Bridges, Observation Decks, etc.)

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 architectural work and to, at times, affix his professional seal on plans. 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 architectural 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 expert; which includes an educational component.

- 10% D. Miscellaneous. Serve as Data Coordinator for the Bureau of Property Management (GIS duties). Assist the unit leader of Architectural Services with administrative duties, as required. Review plans, make recommendations, design standards/codes for others within the Bureau, for other bureaus and for administrative staff. His CAD responsibilities are included here as well. Some computer modelling is included in #4 of sections A and B of his PD, but the additional percentage associated was not established in the record.

15. Mr. Sanders provided examples of his project work. He designed the main entrance to the visitor's station at Devil's Lake and served as the project architect (\$183,000 portion of a larger \$2.4 million project). Complex property and public-relation issues also may be involved in urban locations, such as occurred with a security-improvement project for a DNR office in Milwaukee. He also was involved in the architectural design for the Tower Hill project.

16. The Second Panel rated the **knowledge** factor less for Mr. Sanders' position than for Ms. Quast, a result which arguably is not supported by the record. Mr. Sanders' persuasively testified that his position requires a deeper knowledge of architectural and engineering principles than does Ms. Quast's position, at least in relation to Ms. Quast's variance-review work. Mr. Sanders noted that not only must he know the minimum requirements of the DILHR codes, but on some projects he also must devise an alternative solution which is at least as effective as the minimum code requirements. The actual establishment of minimum code standards performed by Ms. Quast, however, appeared also to require professional problem-solving skills and knowledge of state-of-the-art professional standards. Even if Mr. Sanders were given as high a score on knowledge as Ms. Quast received, he would not have scored high enough to meet the numerical cut off for the Advanced 2 level.

17. Mr. Sanders received a lower score from the Second Panel than Ms. Quast on the **discretion** factor, a result supported by the record because the administrative rules exist as guidance for Mr. Sanders on minimum-required standards; whereas Ms. Quast is involved in setting those standards. Ms. Quast's higher score on the **effects of actions** factor also is supported by the record. Mr. Sanders impacts on a project-specific basis whereas Ms. Quast's impact in writing codes extends to all building projects in the state. The complexity involved with Ms. Quast's work with administrative codes supports her higher

score on the **complexity** factor. Not only must the initial draft content accurately reflect professional standards, but those standards are subject to review and compromise attempts from the public and various interest groups. Reassessment on a professional-judgement level therefore can be ongoing. Ms. Quast's higher scores on the factors of **personal contacts** and **consequence of errors** are supported by the wider population base involved with development of codes and impacted by the buildings subject to the code requirements.

18. The class specifications text for architects defines the Advanced 1 and 2 levels as shown below.

Advanced 1: This is advanced level architectural work performing very complex design, project management, troubleshooting, specification development and consultation involving architecture. 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 employee is general policy direction. Work is performed under general supervision.

Advanced 2: This is the most advanced level architectural work performing the most complex assignments in architecture for a statewide program. Positions at this level are involved in policy, standards and procedure development, evaluation and administration for a specialty area. Employees at this level function as the specialists or technical consultants 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.

19. The Department of Administration (DOA) has positions classified as Architects at the Advanced 2 level where the incumbents function, like Mr. Sanders, as project coordinators on construction projects which are not contracted to the private sector or delegated to a state agency. (See WQES questionnaire, R's Exh. 4). The DOA positions also have oversight responsibilities on projects delegated to professionals in other state agencies, such as the projects delegated to Mr. Sanders at DNR; as well as over projects awarded to private-sector contractors. Another difference exists between Mr. Sanders and the DOA architecture position in the amount of money associated with the project work, with DOA keeping oversight responsibilities with the

higher-money projects. These differences would impact favorably for the DOA architect on the following class specification factors: job complexity, consequence of error, effect of actions and amount of discretion.

20. Joseph Sokal is employed by DOA as an Architect at the Advanced 2 level (Management). Mr. Sokal is the Project Architect for renovation of the State Capitol Building, which is considered a state treasure and which is a National Historic Building. The Capitol renovation project is complex due to the goal of historic preservation of the architectural aspects of the building, a goal not present in most of Mr. Sanders' projects. The capitol project also is unique in the high budget cost (\$30 million) and long duration needed to complete the project (8-10 years). These unique factors would impact favorably for Mr. Sokal on the following class specification factors: knowledge required, job complexity, consequence of error and effect of actions.

21. Mr. Sanders meets most of the class specification factors for Architects at the Advanced 1 level. He performs advanced level architectural work which (depending on the project) can involve very complex design work. He performs project management, troubleshooting, specification development and consultation tasks. He does not, however, make decisions on allocating funds for projects. He performs work under general supervision and policy direction.

22. Mr. Sanders does not meet the class specification for Architects at the Advanced 2 level. His position does not typically perform the most complex architectural assignments for DNR because the larger projects are contracted out to the private sector. He only was able to cite the Devil's Lake project as one of the most complex, but citing one example does not meet the frequency contemplated in the specifications for performing complex work. Further, the specialty areas lack the scope envisioned under the Advanced 2 class specifications.

23. Mr. Sanders does function in his narrow specialty areas as chief technical consultant. His specialty areas include some CAD/GIS responsibilities and handicap accessibility requirements. He also provides advice to other engineers either in these specialty areas or on a project-specific basis.

24. While his work is performed under general policy direction, his authority to make final architectural decisions is limited to a project-by-

project basis typically without statewide impact. Further, he does not have authority to make final decisions regarding the allocation of resources. The class specifications call for both of these criteria to be met and be true for "major projects". The record did not establish that the major projects were delegated by DOA to Mr. Sanders or that a quantifiable percentage of his time was spent on major projects.

25. The class specifications for Architect - Advanced 1 best fit Mr. Sanders' position.

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 the Architect-Advanced 1 level was incorrect.
3. The appellant has not met this burden.
4. The respondent's decision to reallocate appellant's position to Architect-Advanced 1 instead of Architect -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 weighted, 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 architect might have been easier for everyone concerned if the class specifications had been used for comparison against all architectural 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.

An additional complication existed with this architectural case due to the dissimilar class specifications for architects as compared to engineers. For example, the factor of resource allocations does not exist in the engineering class specifications. This difference exists and cannot be ignored by the Commission in determining whether Mr. Sanders' position meets the class specifications.

The Master Rating Panel did review the DOA Architect WQES questionnaire which is in the record as Respondent's Exhibit 4. The stipulation dated July 31, 1992, shows the total score for this questionnaire as 456. However, a break-out by each factor rated is not in the record, making a detailed comparison with Mr. Sanders' position difficult.

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 which require innovative resolutions. A large dollar amount, however, would raise an architect's numerical WQES score 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

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JUDY M. ROGERS, Commissioner

cc: Vergeront
Thal