

STATE OF WISCONSIN

PERSONNEL COMMISSION

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ALLAN LULLOFF,

Appellant,

v.

Secretary, DEPARTMENT OF
EMPLOYMENT RELATIONS,

Respondent.

Case No. 90-0347-PC

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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 by both parties on February 2, 1994.

The Commission adopts the Proposed Decision and Order as the final decision in this matter, except as follows:

1. In the sentence preceding the chart in paragraph 13 of the FINDINGS OF FACT, replace the phrase "Lulloff's PD" to "Wedepohl's PD".
2. In section "B.2." of paragraph 18 of the FINDINGS OF FACT, change the words "supervise student interns" in number "1)", to "provide leadwork oversight to two student interns and one Management Information Specialist (MIS)".
3. In paragraph 23 of the FINDINGS OF FACT, change the words "floodplain mapping and GIS" to "adapting GIS for floodplain mapping".

DISCUSSION

At oral arguments, appellant advanced several arguments. The main arguments are discussed in the following paragraphs.

1. Problems Existed with the Second Panel Process Cured by Hearing Opportunity: Mr. Lulloff complained that some engineers (DHSS) had an unfair advantage knowing what their perceived weaknesses were prior to

preparing their submissions to the second panel. He also complained that his position was not audited by DER or DNR as part of the survey process. He further stated his belief that DNR did not review his PD until after the panel scores were known.¹ His concerns may be legitimate. The Commission's hearing process, however, provided Mr. Lulloff with a new opportunity to present all evidence he thought should be considered in this classification matter. The hearing was his opportunity to correct the information gaps he perceived existed during the survey process.

2. Individual Bias in Second Panel Scores: Mr. Lulloff prepared an exhibit (A's Exh. 26) showing the scores given to his position by 9 of the second panel raters. The exhibit indicates that one of the 9 raters gave him a score of 320.1, which was 110 points lower than the next-lowest score noted on the exhibit. He argued that this lowest score, "the outlier", should be disregarded. If disregarded, the remaining 8 scores range from 427.9 to 458.5, which he believes is so close to the score given to Mr. Wedepohl (446.9) as to warrant an Advanced 2 classification for his own position. (See Finding of Fact #12 in the Proposed Decision.)

The Commission declines to adopt Mr. Lulloff's analysis for several reasons. The Commission first notes that Mr. Lulloff was incorrect in stating at oral arguments that his argument based on A's Exh. 26 was uncontested by DER. The exhibit and related testimony are in the record subject to DER's continuing objection regarding the methodology used by Mr. Lulloff. Furthermore, the methodology used by Mr. Lulloff conflicted with the testimony given by DER's expert, Tony Milanowski.

Mr. Lulloff used as partial justification for dropping the outlier score, his observation that the standard deviation was unacceptable if the outlier were included. The standard deviation advocated by Mr. Lulloff was 95%, with his stated lowest acceptable figure of 90%; such figures being based upon the standard deviation acceptable in Mr. Lulloff's engineering projects. Mr. Milanowski, however, testified that an acceptable standard in the personnel and human resources literature is a score of about 80% (Transcript, Common

¹ The Commission believes Mr. Lulloff based this argument on an unsigned copy of his PD, a document submitted as a potential hearing exhibit but which was not made part of the hearing record.

Hearing, p. 49) and that the second panel results were within the acceptable range (Transcript, Common Hearing, p. 74), as were the first panel results (Transcript, Common Hearing, p. 46-47).

Mr. Milanowski further disagreed with Mr. Lulloff that it is valid to isolate one person's scores and to eliminate the lowest score. Mr. Milanowski said that unless there is some reason to suspect bias in the lowest rater, there is no reason to suspect that the deviation is caused by anything other than random chance. This was noted as being especially true where, as here, the overall reliability was acceptable. (Transcript, Common Hearing, p. 64, and 84-86.) Mr. Lulloff did not show a reason to suspect bias in the rater who gave him the lowest (320.1) score. In fact, that rater's name is unclear from the record.

Two additional reasons exist for not accepting Mr. Lulloff's outlier argument. First, Mr. Milanowski noted that adjustments were made for some non-DNR raters who scored people from their own agency higher than others. (Transcript, Combined Hearing, p. 74-75). The record does not reveal whether the outlier identified by Mr. Lulloff was given by one of the raters referenced by Milanowski, for whom an adjustment already has been made.

The second main additional reason for not accepting Mr. Lulloff's outlier concept is that the record does not enable a similar analysis for all engineers rated by the second panel. Perhaps this rater consistently scored every engineer lower than other raters. Dropping the outlier's score for one engineer under these circumstances would be inappropriate. It also could be that each engineer could point to an outlier score, the elimination of which would change the overall rankings and resulting clusters of positions. The Commission is unaware that a valid analysis would result from change to one engineer's outlier score when the record does not reveal whether other engineers also had outlier scores.

3. The Position from the Second Panel With Whom Mr. Lulloff's Position was Matched, Later Went to the Advanced 2 Classification: The information on which this argument is based is not part of the record in Mr. Lulloff's case. The Commission has no authority to consider information outside the record, absent a contrary agreement from the parties (which does not exist here).

4. Mr. Lulloff's Position as Compared to Mr. Burns' Position: Mr. Lulloff wished the proposed decision had included a comparison of his position to the

position held by Mr. Burns (Civil Engineer Advanced 2, at the Department of Transportation). The comparison, however, would not be helpful.

Information regarding the duties of Mr. Burns' position is in the record as Appellant's Exhibit 28. Mr. Burns' position is classified as a Civil Engineer at the Advanced 2 level. The class specifications for Mr. Burns' position is in the record as Appellant's Exhibit 5. The class specifications for Mr. Lulloff's position are not the same or even nearly the same as the class specifications for Mr. Burns' position. Comparison to Mr. Burns' job duties as evidence of what Mr. Lulloff's classification should be is not a helpful indicator of whether Mr. Lulloff meets the text of his different class specifications.

5. Mr. Lulloff's Position as Compared to Mr. Hammers' Position: Mr. Lulloff wished the proposed decision had included a comparison of his position to the position held by Mr. Hammers, an Advanced 2 Wastewater Engineer. The hearing examiner did not anticipate that Mr. Lulloff would want the comparison in the decision. While Mr. Lulloff did spend a few pages of his post-hearing brief on the comparison, he presented no testimony, exhibits or witnesses about Mr. Hammers' position. Nor did DER develop the record extensively for Mr. Hammers' position. In fact, the class specifications for Mr. Hammers' position are not the same as for Mr. Lulloff's position and are not part of the record. The requested comparison would not be useful without assurance in the record that the class specifications were sufficiently similar to have some bearing on Mr. Lulloff's position.

Even if Mr. Hammers' position were analyzed with the assumption that the class specification would be about the same as for Mr. Lulloff's position, the outcome would be the same. Mr. Hammers appears to meet all the text in the class specifications for the Advanced 1 level. For example, he has the two following areas of expertise: 1) pulp and paper mill discharges, some of which crosses program boundaries into air management and forestry; and 2) toxic effluent limitations. His position also appears to meet all of the Advanced 2 text. For example, he develops administrative codes in the uncharted areas of toxic substances and water quality and he typically provides direction to other engineers through his coordination function over all pulp and paper mill permits. Mr. Lulloff's position is unlike Mr. Hammers' position in that Mr. Lulloff's area of expertise does not cross program boundaries (with the

potential exception of the non-engineering task of data collection as noted in par. 23 of the FINDINGS OF FACT).

6. Mr. Lulloff's Leadworker Responsibilities²: One of the 10 factors listed in the class specification for his position is "supervisory responsibility" (see par. 15 of the FINDINGS OF FACT), as shown below:

SUPERVISORY RESPONSIBILITIES: This factor measures the degree to which a position a) has responsibility for carrying out leadwork/supervisory functions such as hiring, directing, evaluating performance and administering discipline; b) the number of people the position is responsible for leading/supervising; and c) the degree to which supervisory authority is shared with positions at higher levels in the organizational hierarchy.

The survey panel members did not score any leadworker position for the factor of supervisory responsibilities. (Please refer to par. 12 of the FINDINGS OF FACT.) The Commission notes that leadworker responsibilities are not included in the class specification text under the sections specifically pertinent to the Advanced 1 and Advanced 2 levels. Furthermore, the Commission lacks authority to add such language. Zhe et. al. v. DHSS & DP, 80-285, 286, 292, 296-PC (11/18/81); aff'd by Dane County Circuit Court, Zhe et. al. v. Pers. Commission, 81-CV-6492 (11/82).

Mr. Lulloff contended at oral arguments that the proposed decision failed to recognize his leadwork responsibilities. These were recognized in the proposed decision (par. 18, s. B.2) but were characterized as "supervisory" responsibilities. An amendment is shown on the first page of this decision to clarify that these were actually leadwork duties and that one MIS position was involved as well as the two student interns.

7. Specific Allegations of Incorrect Findings of Fact:

- a. DER noted that paragraph 13 of the Findings of Fact incorrectly uses Mr. Lulloff's name where Mr. Wedepohl was intended. This mistake is the subject of one of the amendments listed at the beginning of this decision.

² This section addresses the relevant portion of Mr. Lulloff's argument. He included at oral arguments information concerning whether his position should have been recognized by DER as supervisory (versus leadworker). This additional argument was not part of the defined hearing issue and was not addressed at hearing.

- b. DER thought an error existed in paragraph 22 of the Findings of Fact for saying that Mr. Lulloff had floodplains experience as an Acting Assistant Chief. Mr. Lulloff recalled that the cited information is supported by the record. The Commission agrees with Mr. Lulloff.
- c. Mr. Lulloff questioned the accuracy of paragraph 23 of the Findings of Fact for saying that he concentrates on giving advice at the bureau level or below without recognizing that he also provides advice to outside agencies, communities, etc. The wording of the paragraph is not inconsistent with Mr. Lulloff's stated concerns and, therefore, was not changed. The paragraph language includes his contacts outside of DNR, and notes that on an in-house (within-DNR) basis his expertise is focused on the bureau level or below.
- d. DER questioned the accuracy of paragraph 23 of the Findings of Fact for saying that Mr. Lulloff is a department expert in GIS. Mr. Lulloff felt the record supported the conclusion that he is the department expert in adapting GIS for floodplain mapping. Mr. Lulloff's recollection was the intended point and is supported by the record. The language has been amended to clarify the point.
- e. Mr. Lulloff felt paragraph 23 of the Findings of Fact states incorrectly that his work does not cross program boundaries. Mr. Lulloff's end work product (floodplain maps, and consultation/interpretation of the same) does have potential use in other program areas such as providing guidance to DHSS engineers on whether a proposed nursing home construction is located in a floodplain area. He felt this type of impact means that his work crosses program boundaries. The Commission disagrees. Mr. Lulloff's type of involvement with other programs does not compare favorably with the type the cross program ties which exist with Mr. Wedepohl's position. Mr. Wedepohl's impact on other programs includes policy impact associated with Mr. Wedepohl's management-level duties, as well as project-specific duties. Also unique to Mr. Wedepohl's position, as compared to Mr. Lulloff, is the necessity for Mr. Wedepohl to coordinate and consult with other program areas to perform the duties of his own job.
- f. Mr. Lulloff felt paragraph 25 of the Findings of Fact was incorrect. He believed his duties involving statutes, engineering, hydraulics,

cartography, etc., demonstrated work in multi-program areas. The Commission disagrees. The examples given may show work in multiple engineering disciplines (already recognized in par. 25), but not in multiple program areas. The distinction becomes evident when a comparison is made to the following multiple program areas impacted by the duties of Mr. Wedepohl's position (as noted in par. 13 of the FINDINGS OF FACT): Wastewater, Tech Services, Solid Waste, Air, Water Regulation, Parks, Fisheries and Wildlife.

ORDER

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

Dated April 19, 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.)

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. Lulloff works at DNR. His position was not a Benchmark Position rated by the Master Rating Panel. Rather, his position was evaluated by DNR's "whole-job" analysis. DNR sent the results to DER and DER assigned classifications to the results. DER classified Mr. Lulloff's position as Water Regulation and Zoning Engineer - Senior.

7. Suzanne Steinmetz, a specialist from DNR's personnel office was astounded by the classification results from DER because all DNR engineers 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. Lulloff 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. Mr. Lulloff was not included because he felt his position should be classified at the Advanced 2 level. Later, Mr. Lulloff and his supervisor requested inclusion with the Advanced 1 group as an interim corrective measure. He was granted the Advanced 1 level (effective June 17, 1990) based on his later inclusion in this group.

9. Mr. Lulloff filed an informal appeal with DER to pursue classification at the Advanced 2 level. DER provided Mr. Lulloff 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. 8), and such information was accurate as of June 17, 1990 (per stipulation of the parties).

10. A second panel was convened in February 1991, to consider the informal appeals and is hereafter referred to as the Second Panel. About 40 engineers were like Mr. Lulloff 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. Lulloff's position remained classified at the Advanced 1 level, so he filed a formal appeal with the Personnel Commission.

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. Lulloff and Mr. Wedepohl are shown in the chart below, as is the average score given for the 26 packets reviewed by the Second Panel.

<u>Factor</u>	<u>Lulloff</u>	<u>Wedepohl</u>	<u>Ave. Score</u>	<u>Weight</u>
Knowledge	6.0	6.56	6.64	25
Discretion	2.89	3.78	3.68	15
Effect/Acts	3.44	3.56	3.79	10
Complexity	4.11	4.11	4.18	20
Conseqc/Err	5.44	4.89	5.21	10
Phys. Effort	1.11	1.11	1.21	5
Pers Contacts	4.20	4.47	3.58	10
Hazards	2.35	1.77	1.88	2.5
Surroundgs	<u>1.67</u>	<u>2.00</u>	<u>1.55</u>	2.5
Total	(422.1)	(446.9)	(433.56)	
Adjusted Total	416.5	441.4	437.35	

13. 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 Evaluation 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 sit construction). Some further details of his position are noted below using the organization shown in section 15 of Mr. Lulloff's 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.

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

15. Both of the class specifications for Water Resource Engineers (Mr. Wedepohl) and for Water Regulation and Zoning Engineers (Mr. Lulloff) 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.

16. The class specifications for Water Resource Engineers (Mr. Wedepohl) and Water Regulation and Zoning Engineers (Mr. Lulloff) contain similar text for the Advanced 1 and 2 levels. The text pertinent to Mr. Lulloff's position are shown below.

ADVANCED 1: This is very difficult advanced water regulation and zoning engineering work. Employees in this classification will typically serve as the department expert in a broadly defined segment of the water regulation and zoning program or a districtwide expert with multi-faceted responsibilities. The area of responsibility will normally cross program boundaries, require continually high level and complex contacts with a wide variety of government entities, businesses, industry and private citizens 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 Water Regulation and Zoning 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 employee with the work being reviewed after the decisions have been made.

ADVANCED 2: This is very difficult, complex professional water regulation and zoning engineer work. Employees in this class continually perform the most complex engineering reviews for the assigned area. The work assigned is typically in uncharted areas with essentially no guidance to follow. Employees 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. Employees at this level function as the

chief technical consultant. Employees at this level are delegated authority to make the final engineering decision.

17. Mr. Lulloff's current position is in DNR's Division of Enforcement, Bureau of Water Regulation and Zoning in the Dam Safety and Flood Plain Management Section.

18. Mr. Lulloff performs floodplain engineering tasks. State law requires state-employed engineers who perform and review floodplain studies to be licensed as professional engineers, a requirement which Mr. Lulloff satisfies. His job involves complex engineering judgements and such judgements are final. The administrative codes applicable to his work provide general guidance but numerous and significant professional judgements still must be made. His floodplain engineering analyses require knowledge and expertise used in various engineering fields. For example, the dam-break modelling requires (but is not limited to): 1) knowledge of the structure of dams to determine potential weaknesses to predict how the dam might fail and how long each potential weakness may take to fail under various circumstances (such as rainfall rates), 2) knowledge of soil absorption rates, 3) knowledge of hydraulic gate operations, and 4) knowledge of lake-management engineering such as hydrology, flow characteristics, and quantity of water coming into the lake. The engineering analyses he performs involves engineering tasks related to land and lake-management issues. His work often requires on-site inspections to verify the accuracy of his analyses. Further details are given below using the organization shown in section 15 of Mr. Lulloff's PD. The floodplain-mapping and computer modelling are uncharted areas.

Time % GOALS AND WORKER ACTIVITIES

25% A. Functions as department expert on floodplain engineering issues. Responsible for providing technical training in same to DNR district staff, local units of government and other state and federal agencies. Responsible for providing technical assistance and guidance to the same entities, plus private consultants and property owners. Subjects include hydrology and hydraulic analysis, flood-loss reduction techniques and standards, flood-control projects, floodplain regulation and floodplain mapping. Establish standards for digital floodplain maps which involves working with local government units.

- 15% B1. Develop a computerized system to interphase various engineering models with an existing system called Geographical Information System (GIS) for the following purposes: a) to better predict flood-plain areas and b) to improve the accuracy of floodplain maps. GIS is a data base system with intelligent analytical capabilities, the later of which is what enables integration to engineering models. This is innovative work not done anywhere in the nation. The computerization of this function does not make the engineering tasks routine. The engineering functions are at least of the same complexity as without computerization. What is made easier/faster is the access of data and the mathematical calculations.
- 45% B.2. Section B of the PD also involves the following additional duties: 1) supervise student interns to capture and maintain engineering data and floodplain maps needed for the computerized engineering task described above, 2) serve as Chair of the Bureau's Information Management Committee formed to integrate all mapping and engineering data generated by the Bureau, 3) represent the Bureau as a member of the Department's Water Integration Committee on the Information Management Subcommittee, 4) perform major engineering floodplain studies which lack reliable underlying data, 5) review and recommend approval of hydrologic and hydraulic studies and maps prepared by federal government staff to determine appropriateness for state floodplanning use, 6) review floodplain management and dam safety studies prepared by federal government staff to ensure consistency with state standards and appropriateness for state floodplanning use, and 7) review and recommend approval of the same types of studies performed by various state government staff.
- 10% C. Interpret and develop statutes, administrative rules, manual codes, program guides and related court decisions to ensure uniform application and clarity of the floodplain management program.
- 5% D. Flood mitigation and documentation.
- 5% E. Enforcement activities of the floodplain management program.

19. The Second Panel gave Mr. Wedepohl a higher score on **knowledge** than it gave to Mr. Lulloff, a result supported by the record. While both positions involve similar engineering knowledges, Mr. Wedepohl's position crosses program lines requiring him to be more knowledgeable in the program/engineering areas of those Bureau's as well. The Second Panel gave Mr. Wedepohl a higher score on **discretion** which is supported by the record due to the program-management functions of his position.

20. The Second Panel rated Mr. Wedepohl higher than Mr. Lulloff on **effect of actions** which is supported by the record because Mr. Wedepohl is responsible for a statewide program thereby having greater impact upon the end results of the program and greater affect upon other parts of the department and citizens of the state. The Second Panel rated Mr. Wedepohl higher than Mr. Lulloff on **personal contacts** which is supported by the record due to Mr. Wedepohl's speaking for the department regarding his statewide program responsibilities to various government units, department staff, outside consultants and the legislature.

21. The Second Panel rated Mr. Wedepohl higher than Mr. Lulloff on **surroundings**, a conclusion which arguably is not supported by the record. Unlike Mr. Wedepohl (as far as can be determined from this record), Mr. Lulloff often performs onsite reviews. He potentially is exposed to various outdoor environments while Mr. Wedepohl basically works in an office atmosphere. However, Mr. Lulloff's WQES which he filled out himself did not indicate that Mr. Lulloff felt the outdoor exposure was a hardship. Even if Mr. Lulloff were given a higher surroundings rating it would be insufficient to place Mr. Lulloff at the numerical cutoff for Advanced 2.

22. Mr. Lulloff has worked for the State of Wisconsin for 20 years in various positions. He first worked for 9 months as a swimming-pool-plan-review engineer for the Department of Health and Social Services. He then worked as an engineer at DNR in the municipal wastewater program, including work in the western district as an industrial waste engineer and as the supervisor in the western district from 1978 to 1984. From 1976 to 1978, 30-60% of his duties in the western district included work as the flood-plain coordinator. He then worked in the Bureau of Water Resource Management as a planning analyst (which at that time was a similar classification to the engineering series) from 1984 to 1989, which included a period as Acting Assistant Chief of the Dam Safety/Floodplain Management Section, where his current position also is located. He started in his current position in February 1990, and has found it to be the most challenging of his career in relation to the engineering judgements required and the broad-base of knowledge required to arrive at an engineering judgement.

23. Mr. Lulloff meets most of the Advanced 1 text for Water Regulation and Zoning Engineers. He performs very difficult advanced engineering work. He is a department expert for the following subjects in the Water Regulation and Zoning program: floodplain mapping and GIS; which (when combined) involve a significant portion of his time (about 35%) and require continuing expertise as the fields progress. His areas of specialty arguably could be characterized as a broadly-defined segment of the program. His work does not cross program boundaries, except with the possibility of coordinated DNR data collection. His work does require high level and complex contacts regarding highly sensitive and complex engineering reviews which have a significant programwide policy impact. His work also meets the remaining advanced 1 text.

24. Mr. Lulloff's position does not compare favorably to Mr. Wedepohl based on the Advanced 2 class specifications for Water Regulation and Zoning Engineers. Mr. Lulloff's areas of expertise are not as broad in scope as those undertaken by Mr. Wedepohl's position. Mr. Wedepohl has expertise over an entire program (lake restoration), whereas Mr. Lulloff's specialty areas are narrowed to certain aspects of the floodplain program. The scope of expertise impacts on the class specifications because such areas form the limits to Mr. Lulloff's role as Chief Technical Consultant and his providing advice to in-house engineers. Furthermore, while both positions provide advice to the industry, outside consultants, outside engineers etc.; Mr. Lulloff's position focuses on providing consultation to DNR staff on the bureau level or below; whereas the in-house consultation provided by Mr. Wedepohl is on a broader base such as department and division levels.

25. Mr. Lulloff's engineering work involves many of the same multiple engineering disciplines as involved with Mr. Wedepohl's position, but not on a multi-program basis.

26. Mr. Lulloff performs the most complex engineering reviews but only relating to his specialty areas which are narrower in scope, as compared to Mr. Wedepohl. A similar conclusion based on the class specification regarding work in uncharted areas can be reached because such work for Mr. Lulloff is focused mainly on his specialty areas. Similarly, Mr. Lulloff's work with

policies, standards, etc; would occur mainly in his specialty areas, as compared to Mr. Wedepohl's work in those tasks which impact on a much broader basis.

27. The class specifications for Water Regulation and Zoning Engineer - Advanced 1 best fit Mr. Lulloff's 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 Water Regulation and Zoning 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 Water Regulation and Zoning Engineer - Advanced 1 rather than Water Regulation and Zoning 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 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 engineer might have been easier for everyone concerned if the class specifications were 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.

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.

The hearing examiner believed Mr. Lulloff met the Advanced 2 class specification language regarding the complexity of engineering tasks due to the similarity of multiple engineering issues shared in common with Mr. Wedepohl. However, as detailed in the findings of fact, his position did not meet other class specification language for Advanced 2 engineers.

ORDER

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
Teel D. Haas