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STEVEN L. LANDPHIER,
 Appellant,

v.

Secretary, DEPARTMENT OF
 EMPLOYMENT RELATIONS,
 Respondent.

Case No. 90-0373-PC

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FINAL
 DECISION
 AND
 ORDER

This matter is before the Commission following the promulgation of a proposed decision and order by the hearing examiner. The commission has considered the parties' objections and arguments and consulted with the examiner. The commission now enters this decision on the merits.

The thirteen numbered findings of fact in the proposed decision have not been disputed in any substantial way by the parties, and will be adopted by the commission. Appellant does object to finding #8: "[d]uring the time appellant worked with Eugene Empeur, appellant was not exposed to the full range of journeyman carpentry work." However, Mr. Empeur explicitly testified on cross-examination as follows:

Q Would someone like Mr. Landphier, who has only worked in the GEF complexes, would he be exposed to the full range of carpentry kinds of duties that a journeyman carpenter might be expected to do?

A No.

While Finding #8 obviously is amply supported by the record, to avoid possible misunderstanding, it should not be implied from this that it is necessary that a position be performing the full range of journeyman level

carpentry work as a requirement for the carpenter classification. The relevant language from the class specification is as follows:

[e]mployees in this class perform construction carpentry work at the journeyman level of skill, normally on a full time basis; however, other related duties may also be assigned as necessary.

There is nothing in this language that is inconsistent with a carpenter's classification for a position occupied by an employe who is performing one or more tasks at a journeyman level of skill on a highly repetitive basis, and to the exclusion of other tasks usually performed by a journeyman level carpenter. Such an employe is performing "construction carpentry work at the journeyman level of skill."

This conclusion is consistent with common sense. Otherwise, a carpenter who was assigned duties of a specialized nature would be ineligible for a carpenter's classification because he or she was not engaged in a full range of carpentry duties. For example, someone who was involved solely in finish carpentry could not be a carpenter because he or she was not performing the full range of journeyman carpentry duties, such as framing. Furthermore, the record reflects that Mr. Empeur was not performing a full range of journeyman duties, yet his position is classified as carpenter.¹

¹The commission's conclusion that an employe does not have to be performing the full range of journeyman carpentry activities as a prerequisite for reallocation to carpenter is not inconsistent with the training and experience requirement that the employe have completed an apprenticeship and have journeyman status (or informal training and experience equivalent), which signifies the capacity to perform the full range of journeyman carpentry work. It is to be expected that to be entitled to a carpenter classification, which gives the employe certain rights with respect to transfers, etc., the employe would need to know more than a narrow segment of carpentry. However, an employe can have this broader knowledge while working in a position that only requires use of a limited part of it.

The Commission also clarifies that it is not necessary for classification as a carpenter that a position work with wood. The class specifications for carpenter contain a number of work examples that involve working with wood, which is hardly surprising. However, there are examples that do not necessarily involve working with wood, e.g., "[i]nstalls acoustical ceilings;" "[c]uts, fits and installs moldings, baseboards, doorframes, doors, partitions . . . windows and similar finishing or trim work." Also, Mr. Empereur's testimony that ultra wall installation was indeed at the journeyman level was reinforced by the testimony of Mr. Robert Belongia,. He was employed at DER (or its predecessor agency) in the early 1970's, had been instrumental in drafting the Facilities Repair Worker class specifications, and had substantial classification expertise in the crafts area. He testified that at that time DER considered the installation of ultra wall as journeyman carpentry work.

The key issue in this case is whether, as appellant contends, it is possible for an employee's position to be reallocated to the carpenter classification when it is performing carpenter functions a majority of the time, but significantly, or at least appreciably, less than 100% of the time. The normal rule is that positions are reclassified or reallocated if more than 50% of their work is at the level required by the class specification or position standard in question, see, e. g., Bender v. DOA, 80-0210-PC (7/1/81); Tiser v. DNR, 83-0217-PC (10/10/84). However, "[c]lass specifications shall be the basic authority for the assignment of positions to a class," § ER 2.04, Wis. Adm. Code, and the commission is bound by the class specifications in effect, Zhe v. DHSS, 80-285-PC (11/19/81); affirmed, Danc Co. Cir. Ct., 81CV6492 (11/2/82). The carpenter class specification is unusual in that it requires that journeyman level carpentry work be performed more than a majority of the time.

"employees in this class perform construction carpentry work at the journeyman level of skill, normally on a full time basis; however, other related duties may also be assigned as necessary." (emphasis added) Based on this interpretation of the class specification, respondent concluded that appellant did not meet this criterion for reclassification because he did not perform carpentry work on a full time basis.² The commission agrees that the language of the class specification compels this result, notwithstanding that appellant performs carpentry work a majority of the time. Pursuant to the class specification, carpentry work normally must be performed on a full time basis, except to the extent that "related duties may also be assigned as necessary." Appellant does not normally perform carpentry work on a full time basis. Rather, at least 15% of his work is normally performed in a different craft (glazier). Therefore, his position does not fall within the definition of carpenter.

For the foregoing reasons, the commission enters the following :

ORDER

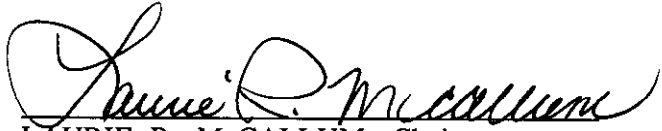
1. Findings 1-13 of the proposed decision and order, a copy of which is attached hereto, are incorporated by reference and adopted by the commission.
2. Conclusions of law 1-4 are incorporated by reference and adopted.
3. The "DISCUSSION" section beginning on page 4 and continuing through the next to the last paragraph on page 5 is incorporated by reference and adopted.

²As discussed above, respondent also based its decision on the conclusion that the carpentry work performed was not at the journeyman level.

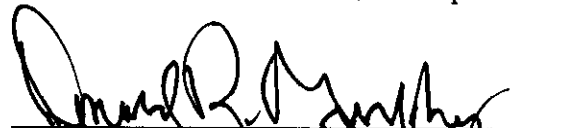
4. The "DISCUSSION" section beginning with the last paragraph on page 5 is deleted and replaced by the commission's discussion at the beginning of this decision.

5. The "ORDER" on page 6 is adopted and incorporated by reference.

Dated: August 21, 1991 STATE PERSONNEL COMMISSION


LAURIE R. McCALLUM, Chairperson

AJT/gdt/2


DONALD R. MURPHY, Commissioner


GERALD F. HODDINOTT, Commissioner

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STEVEN L. LANDPHIER,
 Appellant,

v.

Secretary, DEPARTMENT OF
 EMPLOYMENT RELATIONS,
 Respondent.

Case No. 90-0373-PC

* * * * *

PROPOSED
 DECISION
 AND
 ORDER

This is an appeal pursuant to §230.44(1)(b), Wis. Stats., of respondent's decision denying appellant's request for reclassification of his position from Facilities Repair Worker 3 (PR 03-08) to Carpenter (PR 04-10). A hearing on the merits, including closing argument, was held April 18, 1991. The following findings of fact, conclusions of law, discussion and order are based on the record made at the hearing.

FINDINGS OF FACT

1. Since 1983 appellant has been employed by the Department of Administration (DOA) as a Facilities Repair Worker 3, a position in classified civil service.
2. On October 16, 1989, appellant requested DOA to reclassify his position to Carpenter.
3. The request was denied and appellant appealed the department's decision to respondent.
4. After a re-review, respondent, by letter dated September 21, 1990, informed appellant that it concurred with the decision made by DOA.
5. On October 3, 1990, appellant filed an appeal of respondent's decision with this Commission.
6. Appellant's position, as described by DOA in a position description dated April 5, 1990, is as follows:

Objectives and Tasks

- 60% A. Assist and work with carpenter in construction and preventative maintenance of all the buildings in the Bureau of Buildings & Grounds - Central Madison.
- A1. Assist carpenter in installing steel studs, sheet rock, ultra walls, lath and panelings.
 - A2. Analyze building partition drawings and install movable 66", 84", and ceiling high partitions according to blueprints. Cut panels and trim to specified measurements.
 - A3. Assist carpenter in maintenance and installation of doors, cabinets, counter tops, shelves, etc.
 - A4. Assist carpenter in installation and removal of permanent partition and walls of steel studs and sheet rock.
 - A5. Remove and install various types of metal demountable partition systems.
- 15% B. Install and glaze glass
- B1. Construct window frame units in ultrawall.
 - B2. Size and glaze glass into window units.
 - B3. Repair other broken windows as required.
 - B4. Cut picture glass as required.
- 15% C. Perform hand and bench work on building and building components. Perform related tasks as required by supervisor.
- C1. Install suspended ceiling systems and related plenum barriers.
 - C2. Install sound soak systems and other sound acoustical wall treatments.
 - C3. Install vinyl base as required.
- 10% D. Record and timekeeping
- D1. Work from sketches and drawings and follow specifications.
 - D2. Maintain proper records of work order system and reports, etc.
 - D3. Make inventory reports and reports requesting materials.

The appellant did not sign this position description because it uses the word "assist" in describing his carpentry tasks.

7. At all times relevant, appellant worked as a team with Eugene Empeur, a carpenter craftsworker. Appellant's work orders were identical to those assigned Empeur when they worked together.

8. During the time appellant worked with Eugene Empereur, appellant was not exposed to the full range of journeyman carpentry work.

9. Eugene Empereur's position is described in a 1987 position description, in summary, as follows:

Perform carpentry and related work in all Department of Administration complexes.

Empereur performs only carpentry and related work. He is responsible for directing and instructing apprentices and helpers.

10. Appellant's position is comparable to other Facilities Repair Worker 3 positions that perform carpentry and related work the majority of the time, but also are required to perform other non-carpentry or related work.

11. The Facilities Repair Worker 3 classification specifications contains the following:

Definition:

This is responsible buildings and grounds maintenance and repair work. Employees in this class perform a variety of inspections, adjustments and repairs to buildings and grounds and make minor repairs to mechanical equipment. Positions at this level also function as a member of a concrete crew. Work is performed under the general supervision of higher level maintenance personnel.

* * *

Training and Experience:

Three years of experience in repair and maintenance of buildings and grounds facilities in positions which required ongoing, continuous use of the techniques and tools used in repairing and maintaining wooden structures and structural components. At least one year of the experience must have involved a variety of complex and difficult repair or construction work on a variety of areas in the remodeling or repair of building structures and structural components; or in such other area of specialization as may be appropriate for a specific position. An equivalent combination of training and experience may also be considered.

12. The carpenter classification specifications contain the following:

Definition:

This is journeyman construction carpentry work. Under general supervision, employees in this class perform construction carpentry work at the journeyman level of skill, normally on a full time basis; however,

other related duties may also be assigned as necessary. In addition, positions in this class may also direct and instruct apprentices, helpers and other assistants.

* * *

Training and Experience:

Graduation from high school or attainment of age 18 and completion of an apprenticeship approved by the Department of Industry, Labor and Human Relations as a Carpenter. Formal recognition of status by the appropriate international or local trade organization or some type of similar formal validation of journeyman status may also be accepted. Persons having informal training and experience equivalent to the formal apprenticeship and journeyman status may also be accepted upon submission of documented proof of such training and experience.

13. Appellant had not completed an apprenticeship for carpentry approved by the Department of Industry, Labor and Human Relations or acquired similar formal validation of carpenter journeyman status when his reclassification request was under consideration.

CONCLUSIONS OF LAW

1. This case is before the Commission pursuant to §230.44(1)(b), Wis. Stats.
2. Appellant has the burden of proof to establish by a preponderance of the evidence the facts necessary to show respondent's decision denying reclassification of his position was incorrect.
3. Appellant has failed to meet that burden of proof.
4. Respondent's decision to classify appellant's position as a Facilities Repair Worker 3 was not incorrect.

DISCUSSION

In many reclassification appeal cases, the duties and responsibilities of the subject position overlap the class specifications under consideration. In this particular instance, the description of one of the classes — Facility Repair Worker 3 (FRW 3) — includes examples of work, which are performed in various trade positions. Consequently, the language of the classification specifications in question becomes more critical.

The FRW 3 classification specifications describe FRW 3 positions as those responsible for "building and grounds maintenance and repair with . . . under general supervision of a higher level maintenance personnel." Pertinent

language in the class description of carpenter is as follows: "employees in this class perform construction carpentry work at the journeyman level of skill, normally on a full time basis;"

The evidence shows that as a practical matter, FRW 3 positions have a variety of duties including those which might be considered trades work. This is exemplified by two FRW 3 position descriptions placed in the record as comparables. One, held by Patrick Walsh, Department of Military Affairs, has 75% of its time allocated to rough carpentry work in making repairs, alterations and remodeling, including preparing wood-work for various other carpentry and trade specialities. The other position, that of Thomas Hanson, Department of Public Instruction, is responsible for performing carpentry (interior and exterior) and related tasks 45% of the time, painting (interior and exterior) 20% and masonry (interior and exterior) 10% in addition other related duties.

Recognizing that FRW 3 positions inherently involve trades work the particular issue hinges on two factors: 1) whether appellant's duties are at the carpentry journeyman level of skill; and 2) whether appellant's position is responsible for performing journeyman level carpentry work normally on a full time basis.

The record shows that since August 1988 appellant has been working with Eugene Empeur, who holds the position of carpenter. When on assignment together, appellant and Empeur are given separate work orders with the same job number and they work as a team but Empeur has leadwork responsibilities.¹ Most of the work is performed in the GEF buildings and involves installation of ultra wall, ceiling tile, window and door frames and trim.

Appellant's primary objection to his unsigned position description is that it used the work "assist." He believes he does not assist the carpenter (Empeur) but works with him as a partner. Empeur agrees. While there may be disagreement over exact percentages, appellant does perform glazing work and building and maintenance work.

The Commission believes appellant's actual duties fail to meet the requirements for the carpenter classification. The carpenter classification specification requires those positions to perform at a journeyman carpenter skill level and on normally a full time basis. While appellant may have

¹ C6 of Empeur's position description (Respondent's Exhibit 19) notes that Empeur directs and instructs apprentices and helpers.

journeyman level carpentry skills, most of his work involves emplacement of steel studdings and ultra wall in the GEF complex. Most of this work does not include the use of wood. Consequently, the evidence does not support a finding that appellant works at the journeyman carpenter level. In addition, positions at the carpenter level normally are required to perform journeyman level carpentry "on a full time basis." The normal responsibilities of appellant's position include glazing and maintenance work. This type of work is not listed in the classification specifications for carpenter. Clearly, appellant's position does not meet the requirement of normally performing as a carpenter on a full time basis.

It must be noted that in this matter there is a thin line, evidenced by the position descriptions and actual practice, between FRW 3 positions and carpenter positions. As a practical matter, the distinctions between the two classifications are ever narrowing. However, the Commission is held to the language of classification specifications in its decisions.

ORDER

Respondent's decision is affirmed and this matter is dismissed.

Dated: _____, 1991 STATE PERSONNEL COMMISSION

LAURIE R. McCALLUM, Chairperson

DRM/gdt/2

DONALD R. MURPHY, Commissioner

GERALD F. HODDINOTT, Commissioner

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