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ANTHONY G. HENDRICKS,
 Appellant,

v.

Secretary, DEPARTMENT OF
 EMPLOYMENT RELATIONS,
 Respondent.

Case No. 91-0066-PC

* * * * *

DECISION
 AND
 ORDER

NATURE OF THE CASE

This is an appeal pursuant to §230.44(1)(b), Stats., of the reallocation of appellant's position to Wastewater Engineer-Developmental rather than Wastewater Engineer-Senior as a result of the Engineer Survey.

FINDINGS OF FACT

1. Appellant began employment with the Department of Natural Resources (DNR) in June 1985, in a position in the Bureau of Wastewater Management; Municipal Wastewater Section. The initial classification level of appellant's position was Engineering Technician 3. Appellant subsequently progressed to Engineering Technician 4 and then to Environmental Engineer 1 and 2. Following the engineering survey, appellant's position was reallocated to Wastewater Engineer-Developmental with an effective date in June 1990.

2. A majority of appellant's initially assigned duties and responsibilities involved the review of plans and specifications of proposed sewer collection systems and extensions, and a minority involved the review of plans and specifications for upgrading noncomplex sewage treatment plants. Appellant had other duties and responsibilities, including the supervision of student interns.

3. Over the period of time prior to the reallocation of appellant's position to Wastewater Engineer-Development, some changes in its duties and responsibilities were experienced, but until appellant began work on the

Ft. Atkinson wastewater facility around January 1990, the majority of his duties and responsibilities involved the review of plans and specifications of proposed sewer collection systems and extensions.

4. Appellant's duties and responsibilities involving sewer systems and extensions for the most part did not involve "new technologies" as referred to in the Wastewater Engineer-Senior definition, see Respondent's Exhibit 4, although appellant did have some involvement with new technologies or non-routine sewer systems and extensions, as discussed below.

5. As a result of work he was involved in prior to his employment at DNR, appellant had developed expertise in alternate sewer designs involving grinder pumps and low pressure sewage, which involve "engineering aspects of new technologies," see Wastewater Engineer-Senior definition, Respondent's Exhibit 4, and from time to time during his employment at DNR he consulted with engineers with respect to such systems.

6. From the period beginning approximately in June 1985, when appellant began employment at DNR, until at least approximately April 1988, in addition to routine review work with respect to lift stations and sewer extensions, appellant also consulted heavily with other technicians and engineers with respect to lift station design, one of the more sophisticated and technical design reviews in the sewer extension review process. Due to appellant's experience in this area before he began employment at DNR, others sought his advice with respect to their reviews.

7. Also during the aforesaid period, due to the heavy workload, appellant assumed responsibility for and carried out the technical review of a wastewater treatment plant, a project that originally had been assigned to an advanced engineer.

8. Also during the aforesaid period, appellant collaborated with Dan Peerenboom, then an Environmental Engineer, on a research project involving a large-scale subsurface wastewater treatment plant. After Mr. Peerenboom left the DNR in April 1988, he relied on appellant to finalize the report, including an analysis and confirmation of findings. Appellant was listed as the principal contact person for this project when the report subsequently was published in a DNR publication.

9. At some time during the period April 1989 - May 1990, appellant collaborated with Eric Sande, then an intern, in the development from existing

sources of a set of specifications and instructions for use by engineers in the implementation of erosion control measures on certain kinds of projects.

10. During the period before June 1990, appellant was considered by Gary Novotny, then an Environmental Engineer 4, to be the resource person to consult with concerning policies and procedures for sewer extension review. He also asked appellant to review a proposed wetlands pipeline crossing for the Lake Kegonsa sanitary district, and appellant was the primary author of the associated report. In connection with this matter, appellant on his own initiative pursued using heavy mulch to protect the recovery of the vegetation at that pipeline crossing as an experiment. Appellant was the section's resource person concerning pipeline impacts on wetlands.

11. During the period prior to June, 1990, appellant worked with Gary Birch, the administrator of the departmental environmental assessment program, with respect to environmental assessments worksheets, which are used to determine whether environmental impact statements are needed. Mr. Birch usually worked with appellant directly, as opposed to going through one of appellant's supervisors. Appellant wrote the environmental assessment for the Lake Kegonsa wetlands pipeline crossing project. Appellant also helped develop standard conditions for approval letters for wetlands sewer pipe crossings. Mr. Birch provided the review of appellant's work on environmental assessment work sheets.

12. During the period prior to June 1990, Scott Boran, then an Environmental Engineer 4, recognized appellant as someone with expertise in the areas of sewers, including pipelines crossing wetlands, lift stations, and eligibility determinations, who was consulted with by other in this regard.

13. During the period of approximately September 1989 - February 1990, Rick Reichardt, then an Environmental Engineer 4, served as appellant's acting unit head while John Melby was on a temporary assignment in Washington, D.C. During this period, appellant helped to train and orient Mr. Reichardt in the functioning of the unit and how reviews were processed. Mr. Reichardt assigned work to appellant and then reviewed the approval letters appellant prepared.

14. During most of his period of employment at DNR, after his initial period of training, appellant functioned under relatively independent supervision. However, this usually included review of his approval letters. From

approximately February, 1990 through approximately August, 1990, while Mr. Melby continued in his temporary assignment in Washington, D.C., the acting unit head was Mr. Steindorf, who provided virtually no supervision to appellant. He eventually was removed from supervision because management perceived him as performing inadequately in this role. Appellant's design calculations were never checked over by his superiors. Appellant independently advised consulting engineers regarding the need to submit revisions in plan and specifications, and independently approved variances regarding sewer bans and code variances.

15. The classification specification for Wastewater Engineer (Respondent's Exhibit 4), which was developed as a result of the Engineer Survey, includes the following definitions for Wastewater Engineer-Developmental and Wastewater Engineer-Senior:¹

Wastewater Engineer - Developmental

This is advanced entry or developmental level wastewater engineering work. Positions at this level differ from positions at the Wastewater Engineer - Entry level in that work assignments are established on both a long-term and short-term basis; objectives are usually well-defined but are stated in general terms with the employee determining specifics and priorities; guidelines are available, but may not be specific; and the supervisor normally reviews a draft of the work after it is completed to determine completeness, accuracy and adherence to policy. Positions at this level make higher level contacts without the supervisor's direction; and makes decisions on items of narrower scope and impact, such as plan approval, issuance of minor permits, and scheduling and conducting surveys to determine compliance, under close to limited supervision.

Wastewater Engineer - Senior

This is senior level wastewater engineering work. Employees at this level differ from lower level positions in that the engineer develops and follows broadly defined work objectives and the review of the work is limited to administrative evaluation by the supervisor. Positions at this level have extensive authority in carrying out their assigned responsibilities. This involves independently implementing the wastewater management program in the assigned portion of the state, issue all permits related to a

¹ There is a Wastewater Engineer-Journey level, which is not at issue in this case, between the Developmental and Senior levels. Appellant's position was reclassified to the Journey level in November 1990.

specific type of facility, and have developed an expertise in their assigned field. The work performed at this level requires a high degree of interpretation and creativity in evaluating engineering aspects of new technologies. The engineer may be considered an expert in a segment of the program (i.e., specific type of treatment, permit, computer model), which has programwide policy impact but is not of the significance as found at higher levels.

Representative Positions: 1) As a district/area engineer with responsibility for implementing the wastewater management program in the assigned area for municipal and major industrial wastewater treatment, municipal wastewater sludge disposal, compliance with design and construction standards, appropriate operation and maintenance practices, WPDES permit requirements and compliance with application [sic] administrative codes and regulations; and responding to complaints and emergencies; 2) As a construction management engineer with responsibility for overseeing wastewater treatment plant construction projects to ensure compliance with applicable state and federal grant and local procedures, approving construction contract change orders, representing the department during litigation regarding the construction project and eligibility for related grant or loan eligibility decisions; or 3) As a central office engineer responsible for preparing WPDES discharge permits and evaluate related data and correspondence for both biological and physical-chemical treatment, reviewing engineering plans and specifications for groundwater monitoring systems and proposed industrial/municipal wastewater treatment and/or disposal facilities. Positions at this level make decisions independent of supervisory oversight, but carry out work responsibilities under the general direction of program managers.

16. As a result of the Engineer Survey, appellant's position was reallocated to Wastewater Engineer-Developmental, with an effective date in June, 1990.

17. As of the effective date of the survey reallocation in June 1990, appellant's position was better described by the Wastewater Engineer-Developmental level than by the Wastewater Engineer-Senior level, and more appropriately classified as Wastewater Engineer-Developmental.

CONCLUSIONS OF LAW

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

2. Appellant has the burden of proof to establish that respondent's decision to reallocate his position to Wastewater Engineer-Developmental rather than Wastewater Engineer-Senior was incorrect.

3. Appellant has not sustained his burden of proof and it is concluded that respondent did not err in its decision to reallocate appellant's position from Wastewater Engineer-Developmental to Wastewater Engineer-Senior.

DISCUSSION

The Wastewater Engineer series is a progression series from the Entry to the Advanced 1 levels (the intervening levels are Developmental, Journey, and Senior). This issue on this appeal is "[w]hether respondent's decision to reallocate appellant's position to Wastewater Engineer-Developmental instead of Wastewater Engineer-Senior was correct." Prehearing conference report dated June 21, 1991.

There are a number of differences between the definitions of the Developmental and the Senior levels found in the class specification. One significant difference with respect to this case is the nature of the supervision received. The Developmental definition refers to "making decisions on items of narrower scope and impact, such as plan approval, issuance of minor permits, and scheduling and conducting surveys to determine compliance, under close to limited supervision." (emphasis added) This definition also states: "the supervisor normally reviews a draft of the work after it is completed to determine completeness, accuracy and adherence to policy." On the other hand, the Senior level definition states that: "the review of the work is limited to administrative review by the supervisor . . . Positions at this level make decisions independent of supervisory oversight, but carry out work responsibilities under the general direction of program managers." (emphasis added)

The record reflects that the extent and degree of supervision appellant received varied from time to time during appellant's work history within DNR, and that in many respects he functioned substantially independently. However, it is undisputed that all of his approval letters were reviewed by his supervisors prior to their finalization (with the apparent exception of the approximate six month period beginning approximately February, 1990, when Mr. Steindorf was functioning as acting supervisor and was providing virtually no supervision at all). This level of review is consistent with the

provision in the Developmental definition that the supervisor reviews drafts, and it is inconsistent with the Senior definition's reference to review by "administrative evaluation," and to making decisions "independent of supervisory oversight but carry out work responsibilities under the general direction of program managers." Inasmuch as the record supports a finding that, with the exception of the period beginning January, 1990, when appellant was working on the Ft. Atkinson project, the majority of his duties and responsibilities related to the review of plans and specifications with respect to sewer extensions and lift stations, as will be discussed below, it cannot be said that the majority of his supervision was at the Senior level. Appellant contended that much of this review was perfunctory in nature. However, this is consistent with the notion that this work was relatively routine and appellant had a good deal of experience in this area. Even if the review was perfunctory, under these circumstances it is more extensive than that associated with the kind of "administrative evaluation" and making decisions under "general direction" and "independent of supervisory oversight" as set forth in the Senior level definition.

Another part of the Senior definition is: "have developed an expertise in their assigned field." Appellant has established that he meets this criterion. The Senior level also is differentiated from the Developmental level by this language in the Senior definition: "The engineer may be considered an expert in a segment of the program (i.e., specific type of treatment, permit, computer model) which has programwide policy impact but is not of the significance as found at higher levels." (emphasis added) Due to the use of the work "may," this factor must be considered helpful but not necessary for a senior level classification. Appellant presented evidence that established that he was considered to have expertise in certain areas (sewer extension review process, lift station, design, pipeline impacts on wetlands). However, the section chief, Mr. Burney, testified that this did not involve a segment of the program that had "programwide policy impact" because this area had been de-emphasized and was not considered a significant part of the program. It cannot be concluded on this record that appellant's expertise was "in a segment of the program. . . which has programwide policy impact."

The Senior level definition also includes this provision: "The work performed at this level requires a high degree of interpretation and creativity in

evaluating engineering aspects of new technologies." Appellant established that he met this criterion with respect to some of the projects he worked on over the years, but the record established that most of the time the majority of his duties and responsibilities involved sewer extensions and lift stations, an area which predominantly involves routine as opposed to new or advanced technology. While the parties spent a great deal of time at the hearing wrangling over duties and responsibilities what appellant actually performed, the appellant admitted that the majority of his time was involved with sewer extensions and lift stations, with the exception of his work on the Ft. Atkinson project, as shown by the following excerpt from appellant's testimony on cross-examination:

Q In looking at Respondent's Exhibits #5, is it not a fair statement that what you just testified to as to what's in your PD, that more than 50% of the time is related, is allocated to, duties and responsibilities that are related to sewer extensions and lift stations?

A That depends on the time frames. Most of the time that's accurate. As I said, when I had the major project, that was not accurate.

Q Well I'm talking about before June 1990.

A I'm talking about before June 1990.

Q Well how much before June 1990 was that — I mean when before June 1990 was that not true?

A As I said, when I had Ft. Atkinson come in, it was a major facility. I had to do the facilities planning, all the way through the plan spec review. That size job takes an enormous amount of time, review time, and that started, I'm ballparking, I could get the figures, around January of 1990.

Respondent agrees that the Ft. Atkinson project was a major project involving new technology, but contends it could not be considered with respect to the reallocation of appellant's position, effective in June 1990, because the project was still in progress at that time and it was not completed until later in the fall of 1990 (this project was considered in the subsequent reallocation of appellant's position to the journey level in November 1990). Based on the record before the Commission, it cannot be concluded that respondent acted erroneously in failing to consider this project in evaluating appellant's position for

reallocation into this progression series because of its incomplete status as of the effective date of the survey.


Appellant attempted to compare his position to a position in the Bureau of Water Supply occupied by Lee Boushon, which had been at the Environmental Engineer 4 level prior to the survey and which was reallocated to Water Supply Engineer-Advanced 1. That position has somewhat similar duties reviewing water main extensions and directing interns, and frequently joint reviews are conducted of sewer and water main extensions, which typically are submitted jointly. However, the record does not reflect what percentage of Mr. Boushon's position is involved in this area, and there is not enough information in the record about this position to support a conclusion that this type of work would correspond to senior or advanced level work in the Wastewater Engineer series. There was evidence concerning other positions which were reallocated to higher levels than appellant's position in the Wastewater Engineer series, but there also was insufficient information about these positions with respect to the criteria for advancement in this progression series to support a conclusion they were comparable to appellant's position to the extent they added meaningful support to appellant's case.

In conclusion, appellant demonstrated that there were a number of aspects of his work that can be considered to be at the Senior level, in that he functioned relatively independently in some areas, he had some involvement with new technology in some aspects of his work, and he had developed expertise in an assigned field. However, because most of his work involved routine sewer extensions and lift stations, his review letters usually were reviewed before finalization, and the Ft. Atkinson project was still in progress as of the effective date of the reallocation in question, it cannot be said that he satisfied all the criteria for the Wastewater Engineer-Senior level.

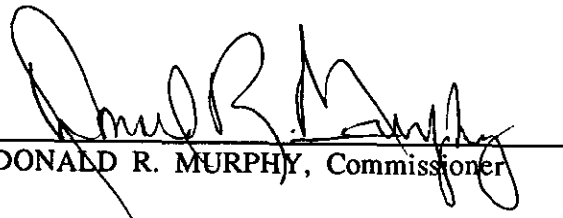
ORDER

Respondent's action reallocating appellant's position to Wastewater Engineer-Developmental instead of Wastewater Engineer-Senior is affirmed, and this appeal is dismissed.

Dated: January 8, 1992 STATE PERSONNEL COMMISSION


LAURIE R. McCALLUM, Chairperson

AJT/gdt/2


DONALD R. MURPHY, Commissioner

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