

STATE OF WISCONSIN

PERSONNEL COMMISSION

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THOMAS ROUSHAR,

Appellant,

v.

Secretary, DEPARTMENT OF
EMPLOYMENT RELATIONS,

Respondent.

Case No. 91-0069-PC

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DECISION
AND
ORDER

Nature of the Case

This is an appeal of a decision by respondent to reallocate appellant's position to the Air Management Engineer-Advanced 1 level. A hearing was held on October 7, 1991, before Laurie R. McCallum, Chairperson, and the briefing schedule was completed on November 29, 1991.

Findings of Fact

1. At all times relevant to this appeal, appellant has been employed as an Air Management Engineer in the Department of Natural Resource's Southern District. As the result of a personnel management survey conducted by respondent, appellant's position was reallocated to Air Management Engineer-Advanced 1 and appellant was notified of this action in a memo dated April 23, 1991. Appellant filed a timely appeal of this reallocation with the Commission on May 23, 1991.

2. At all times relevant to this appeal, appellant's position has been assigned the following duties and responsibilities for the Southern District:

30% A. Perform air emission inspections of facilities to determine compliance with emission requirements and make enforcement recommendations based on findings. Perform district inspections involving Volatile Compound (VOC) control, coating sampling techniques, automobile manufacturing, major malting and brewing operations, and major municipal and pathological incinerators.

20% B. Review air pollution control permit applications for new, modified, and existing air pollution sources. Take specific responsibility for reviewing permit applications for incinerators, malting and brewing facilities, and sources where control of VOC's will be subject to special requirements such as Reasonably Available Control Technology, New Source Performance Standards, and Prevention of Significant Deterioration.

10% C. Upon detection or notification that a violation of air emission requirements has occurred, develop and conduct special surveillance programs to establish violation frequency and severity; recommend type of enforcement action to be taken; prepare necessary enforcement documents, including Notices of Violations, enforcement case reports, Letters of Noncompliance, and Letters of Inquiry; and follow up on enforcement actions.

10% D. Perform technical review of compliance plans (including variance requests, internal offsets, toxic emission control plans, mobile source relocations and enforcement-related plans) submitted by facilities. Take specific responsibility for reviewing plans for automobile manufacturing facilities, major incinerators, and malting and brewing operations.

5% E. Review and monitor testing of air emissions from stacks and verify accuracy of test results.

5%. F. Investigate significant citizen complaints regarding air pollution.

5%. G. Assist the Bureau of Air Management in making revisions to the state implementation plan, NR 400, and general DNR program policy. Take a key role in those involving automobile manufacturing, incineration, VOC control, and malting and brewing operations.

3% H. Assist the Ambient Air Monitoring Section in selection and monitoring of testing sites, participate in the summer ozone alert program, and conduct investigations into the cause of national ambient air quality standard exceedances.

4% I. Professional Development.

5% J. Provide information on air quality to the regulated community, units of government, and the general public.

3% K. Assist other Department staff during times of emergency or other needs, e.g., fire control, toxic spills, etc.; and assist in the training and orientation of new Department employees.

3. As the result of his special expertise in the areas of VOC control, coating sampling techniques, automobile manufacturing, malting and brewing operations, and municipal and pathological incinerators, appellant's

position performs many of the largest and most complex inspections in the district. The record does not show that performing these largest and most complex inspections consumes a majority of appellant's position's time. Although appellant's position has some independent authority for making final engineering decisions, most of the complex engineering work assigned to this position requires final approval from a higher level of authority. This is true of the other Air Management Engineer positions in the Southern District as well.

4. Appellant's position does have responsibility for "uncharted" areas. These include VOC control testing, incinerator testing, and "test method 24" (a sampling program for paints and industrial coatings) in which he is considered the statewide expert. The record does not show that his work in these "uncharted" areas consumes a majority of appellant's position's time.

5. Two other districts have comparable pathological (medical waste) incinerators to those in the Southern District. Two other districts (Lake Michigan and Milwaukee) have Air Management Engineers who do VOC control inspections comparable to those in the Southern District. There are no Air Management Engineers classified at the Advanced 2 level. The Advanced 2 level is the highest level in the Air Management Engineer series.

6. In the Southern District, there are three Air Management Engineers. Assignments are made to these positions based on area of special expertise and, if no special expertise is needed, based on geographical area. Two of these Air Management Engineer positions are classified at the Advanced 1 level, i.e., appellant's position and that of David Sellers.

7. Mr. Seller's position is assigned the same duties and responsibilities as appellant's position except that his areas of special expertise are sulfur dioxide and nitrogen oxide pollutant control for electric generating facilities and other major sources, as well as sources involved in soil and water remediation. The assignments involving Mr. Seller's special areas of expertise are not as complex as those involving appellant's special areas of expertise. The record does not show that Mr. Seller's position devotes a majority of time to assignments involving his special areas of expertise.

8. The position standard for Air Management Engineer states as follows, in pertinent part:

Air Management Engineer - Advanced 1

Air Management Engineer - Advanced 1 - Management

This is very difficult advanced air management engineering work. Employees in this classification will typically serve as the department expert in a broadly defined segment of the air management program or a districtwide expert with multi-faceted responsibilities. The area of responsibility will normally cross program boundaries, require continually high level contacts with private consultants and engineers in major industries 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 Air Management Engineer-Senior level. Assignments are broad in scope and continually require the incumbent to use independent judgment 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.

Representative Position -

Air Management VOC Specialist - Perform engineering evaluations of volatile organic compound compliance plans for complex and interrelated sources, and compliance plans for sources of toxic air contaminants. Serve as a program's technical expert for all source categories in surface coating and printing industries. Serve as the program's statewide technical expert and administrative coordinator for volatile organic compound compliance plan review involving internal offsets. Coordinate revisions to the state implementation plan for volatile organic compound emissions. Provide technical assistance to air program staff, industry representatives and consultants to clarify department regulations and policies.

Air Management Engineer - Advanced 2

Air Management Engineer - Advanced 2 - Management

This is very difficult, complex professional air management 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.

9. The duties and responsibilities of appellant's position are better described by the specifications for the Advanced 1 classification than those for the Advanced 2 classification and appellant's position is more appropriately classified at the Advanced 1 level.

Conclusions of Law

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

2. The appellant has the burden to show that respondent's decision to reallocate his position to the Air Management Engineer-Advanced 1 level was incorrect.

3. The appellant has failed to sustain this burden.

4. Appellant's position is appropriately classified at the Air Management Engineer-Advanced 1 level.

Opinion

The appellant's burden in a proceeding such as this is to show that the classification specifications for the Advanced 2 classification provide the best fit for the duties and responsibilities to which appellant's position devotes the majority of its time.

The Advanced 2 specifications state that these positions "continually perform the most complex engineering reviews for the assigned area." The record shows that appellant's position does perform many of the most complex engineering reviews for the Southern District in the air management area. However, the record does not show that these reviews consume a majority of appellant's time. The use of the word "continually" in the specifications indicates that the engineering reviews conducted by these positions would consist primarily, if not almost exclusively, of these most complex reviews. In addition, the record shows that engineers classified at the Advanced 1 level in other districts perform reviews comparable to those performed by appellant's position in the same areas of expertise. As a result, although appellant's position may perform the most complex reviews in his areas of expertise within his district, it cannot be concluded that appellant's position performs the "most complex reviews" in his areas of expertise.

The Advanced 2 specifications also state that the "work assigned is typically in uncharted areas with essentially no guidance to follow." Although the record shows that some of appellant's position's assignments in the areas of VOC control testing, incinerator testing, and test method 24 would be considered to be in "uncharted" areas, again these assignments do not consume a majority of appellant's position's time and would not therefore be considered "typical" assignments for his position.

The Advanced 2 specifications also provide that "(e)mloyees at this level typically provide direction to other engineers assigned to the project." Although the record shows that appellant's position has on occasion provided advice to other engineers when their assignments overlap, this is not a typical assignment for his position and would not appear to constitute "direction" of the activities of these other engineers.

The Advanced 2 specifications also indicate that work at this level "involves the development of policies, standards, procedure development, evaluation and administration." The record shows that, while appellant's position has assisted in the development of administrative rules and certain policies and procedures, the only area in which he has independently developed standards and procedures is that relating to method 24. Clearly, this has not been a significant focus of his position.

The Advanced 2 specifications state that "(e)mloyees at this level function as the chief technical consultant." The chief technical consultant would be considered to be the primary statewide expert in a particular area. Once again, appellant's position functions as the primary statewide expert only in relation to method 24 and this is not a significant focus of either appellant's position or the DNR's air management program. The assignments he has in the areas of VOC control and incineration and his other areas of expertise are comparable to the assignments in these areas to Advanced 1 positions in other districts.

Finally, the Advanced 2 specifications provide that "(e)mloyees at this level are delegated authority to make the final engineering decision." Although appellant's position does make the final engineering decisions under certain circumstances, he does not have final authority for the most significant or controversial engineering decisions and his authority does not


differ to any significant extent from that of the other Advanced 1 position at the Southern District or the Advanced 1 positions in the other districts.

The duties and responsibilities of appellant's position do not satisfy the requirements for classification at the Advanced 2 level. In contrast, these duties and responsibilities are well-described by the language of the Advanced 1 specifications, i.e., appellant's position functions as a "districtwide expert with multi-faceted responsibilities;" his area of responsibility crosses program boundaries and requires continually high contacts with private consultants and engineers in major industries regarding highly sensitive and complex engineering reviews; his area of expertise represents an important aspect of the program, involves a significant portion of his time, and requires continuing expertise as the field progresses; and his assignments are broad in scope and continually require the exercise of independent judgment.

Order

The action of respondent is affirmed and this appeal is dismissed.

Dated: February 21, 1992 STATE PERSONNEL COMMISSION


LAURIE R. McCALLUM, Chairperson

LRM/lrm/gdt/2


DONALD R. MURPHY, Commissioner


GERALD F. HODDINOTT, Commissioner

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