

STATE OF WISCONSIN

PERSONNEL COMMISSION

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ALLEN J. HUBBARD,  
Appellant,  
v.  
Secretary, DEPARTMENT OF  
EMPLOYMENT RELATIONS,  
Respondent.  
Case No. 91-0082-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 as the Commission's final decision, and provides additional comments in response to oral arguments.

DISCUSSION

At oral arguments, appellant (through his representative) advanced several arguments. The main arguments are discussed in the following paragraphs.

1. Use of Entire record: Appellant faulted the proposed decision for containing background facts about the survey process and panel results. Those facts, however, were derived from testimony elicited by appellant, including a special day of hearing on January 14, 1992. The appellant did not confine this information to discovery outside of the record. Rather, appellant made it part of the record. There is nothing improper about including those facts as part of the decision for background information and clarity.

Inclusion of background information also enabled the Commission to attempt to provide Mr. Hubbard with the same methods for achieving the Advanced 2 classification as existed for some other engineers. Specifically, it appeared that other engineers could have achieved the Advanced 2 classification by panel scores on the WQES factors alone without regard to class

specification language. The Commission therefore considered whether the panel results made sense in light of all the knowledge gained at hearing about what Mr. Hubbard's position entails. The analysis indicated the panel results were correct. Therefore, the Commission did not reach the question of whether incorrect panel results would be sufficient to support an Advanced 2 classification where the class specifications were unmet.

2. Proper Analysis: Mr. Hubbard faulted the proposed decision as "pretty much" giving reliance on the second panel results without any "real" analysis of the class specifications. The Commission disagrees. The proposed decision considers every analysis possible based on the record and each analysis lead to the same result. The second-panel analysis was mentioned in the prior section. The proposed decision further includes a best-fit analysis using the class specifications and an analysis based upon comparing Mr. Hubbard's position with other Advanced 2 position in the record. The Commission is surprised that Mr. Hubbard now objects to these additional efforts undertaken by the examiner.

Mr. Hubbard should not confuse the order of the multiple analyses in the decision as a reflection of their importance. The Commission is well aware that a traditional analysis involves a review of the class specifications. The placement of various analyses in the proposed decision was based not upon degrees of importance, but upon ease of reading and comprehending the many facts involved in this complex case.

3. Appellant's Witnesses: At oral arguments, appellant noted he had six subject matter witnesses who all supported his claim. He felt their testimony was not given proper consideration because the proposed decision disagreed with his claim for the Advanced 2 classification. The examiner's general approach to the record is described first below, followed by a discussion of specific examples given by appellant.

The hearing examiner's general approach was to accept the appellant's own testimony describing his actual job duties, and only considered giving it less weight if unexplained contradictions existed between such testimony and the appellant's position description or earlier-completed WQES.

Further, the examiner gave deference to appellant's expert engineering witnesses to the extent that such testimony involved engineering opinions.

The examiner, however, properly did not automatically accept their testimony on certain conclusions about the class specifications.

Specific examples cited by appellant are noted in the following paragraphs.

- a. Don Theiler testified on behalf of the appellant. His testimony regarding appellant's job duties was taken into account by the examiner. However, Mr. Theiler is not an engineer so no deference was owed to any engineering opinions which he may have given. Further, Mr. Theiler was not uniquely qualified to apply the facts of the case to the class specifications.
- b. Kris McKinney testified that appellant's position was one of the most complex in DNR and state service because appellant's position involved issues on "the cutting edge". Appellant felt the proposed decision did not give this testimony sufficient weight. Mr. McKinney testified mainly about the lack of guidance for appellant's work with wood combustion and such testimony was credited in the proposed decision. (See, for example, par. 26 of the Findings of Fact.) He also testified about the difficulties associated with BACT and LAER analyses involving NOx, but his testimony did not persuade the Commission that the NOx work was an uncharted area. Compare, for example, Mr. McKinney's testimony about wood combustion to the effect that Mr. Hubbard is the only guide available, to Mr. McKinney's testimony about NOx work to the effect that NOx is "more unknown" than other emission types and is still evolving as an area of knowledge. Mr. McKinney indicated that all BACT and LAER reviews were complex and still evolving. He also mentioned the existence of some (albeit small) level of EPA guidance.

Mr. McKinney's testimony even when coupled with appellant's own testimony was unpersuasive. Appellant testified that all engineers who do BACT and LAER in his section deal with NOx emissions to some degree because most permits involve NOx emissions (although not to the depth of involvement claimed by appellant). He further testified that all people in his section who do BACT and LAER make similar determinations as he makes about NOx although in their own specialty areas. The evidence simply was insufficient to persuade the Commission

that Mr. Hubbard's work with NOx was an "uncharted area" contemplated under the class specifications.

- c. Dan Moran (not an engineer) provided insight on appellant's work in wood combustion. Appellant felt the proposed decision did not give sufficient weight to such testimony. Mr. Moran testified mainly about Mr. Hubbard's work in wood combustion and air emissions. He said that air emissions are generally understood, but not wood combustion. The proposed decision credited this testimony. Additional aspects of his testimony already are discussed on pp. 13-14 of the proposed decision.
- d. Tom Wollitz provided testimony which appellant felt was given insufficient weight. His testimony regarding appellant's expertise on wood combustion and boilers was credited in the proposed decision. (See par. 14 of the findings of fact.) The examiner's analysis of his opinion about the complexity of the air program already has been discussed on page 13 of the proposed decision.
- e. Marty Kamarek, a UW professor, provided testimony which appellant felt was given insufficient weight. The professor testified mainly about the complexity of wood combustion and its status as an uncharted area. This testimony was credited in the proposed decision.
- f. Dan Johnson, a union leader, provided testimony which appellant felt was given insufficient weight. Mr. Johnson mainly testified about Mr. Hubbard's areas of expertise which were credited in the decision. (See par. 14 of the Findings of Fact of the proposed decision.)

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

The lack of a DER witness expert in the field of engineering meant the hearing examiner could not give overriding effect to any engineering opinion given by non-expert witnesses. Nor was this done.

5. Specific Allegations of Incorrect Findings of Fact:

- a. Mr. Hubbard criticized paragraphs 15 - 17 of the Findings of Fact because he felt it was "not at all clear" that the proposed decision used

the factor definitions used in the WQES. The factor definitions found in the WQES were the intended measure. The Commission reviewed the cited paragraphs and found the discussion consistent with those definitions.

- b. Mr. Hubbard criticized paragraph 20 of the Findings of Fact because he felt his BACT/LAER work was more complex and should not be compared to BACT/LAER work performed by his co-workers. The Commission's reply to this argument is the same as noted above under the testimony pertaining to Mr. McKinney and Mr. Moran.
- c. Mr. Hubbard felt that paragraph 24 of the Findings of Fact was incorrect because "there was no testimony" describing his position as narrower in focus as compared to Mr. Wedepohl. The record supports the findings made in paragraph 24. Mr. Wedepohl is responsible for an entire statewide lake program. Mr. Hubbard is not responsible for the entire air program. Rather, he is responsible for a portion of the issues dealt with in the air program. This conclusion is supported by Ms. Burke's testimony, the testimony of appellant and his PD; as well as the PD of Mr. Wedepohl.
- d. Further error was claimed regarding paragraph 24. Appellant acknowledged that waste water engineering expertise is divided by industries, but he felt it unfair to expect the same broad division for air pollution claiming it cannot be divided by industry. The record contradicts his argument. As noted in paragraph 22 of the Findings of Fact, several of Mr. Hubbard's colleagues in air pollution have specialty assignments by industry. Mr. Young has expertise in large-appliance manufacturing and fabrication industries. Mr. Pyle has expertise in canneries, dry cleaning and veneer/particle board plants. Mr. Pierce has expertise in the leather coating and tanning industries, as well as in rock quarries.
- e. Appellant claims crossing program lines should not be discussed in paragraph 25 of the proposed decision because it was not addressed at hearing and is not in the class specifications. The crossing of program boundaries is part of the class specification text for Advanced 1 positions. (See par. 13 of the Findings of Fact.) Where the hearing issue presents a choice between two classification levels, the class


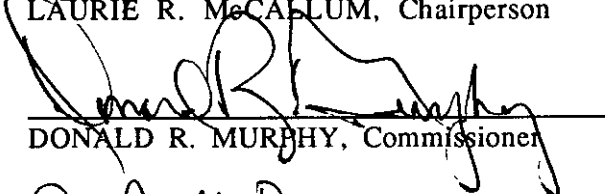

specification text for each level is relevant. Further, the record supports the findings made in paragraph 24, based upon testimony from appellant, information in his PD, and information in Mr. Wedepohl's PD (see in particular p. 5 of R's Exh. 10, fourth paragraph). Further, Ms. Burke contrasted Mr. Wedepohl's position with Mr. Hubbard's position by noting that Mr. Wedepohl's job crossed program lines, whereas Mr. Hubbard's job duties stay within the air program.

ORDER

That the Proposed Decision be adopted as the final decision.

Dated March 29, 1994.

STATE PERSONNEL COMMISSION

  
LAURIE R. McCALLUM, Chairperson  
  
DONALD R. MURPHY, Commissioner  
  
JUDY M. ROGERS, Commissioner

Parties:

Allen J. Hubbard  
c/o Attorney Richard Thal  
Cullen, Weston, Pines & Bach  
20 North Carroll Street  
Madison, WI 53703

Jon E. Litscher  
Secretary, DER  
137 East Wilson Street  
P. O. Box 7855  
Madison, WI 53707-7855

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.)

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Appellant,  
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Case No. 91-0082-PC  
\* \* \* \* \*

PROPOSED  
DECISION  
AND  
ORDER

This case at one time was consolidated with cases filed by the following individuals: Robert B. Eckdale (Case No. 91-0093-PC), Imelda R. Stamm (Case No. 91-0096-PC), Andrew M. Stewart (Case No. 91-0094-PC) and Raj Vakharia (Case No. 91-0095-PC). By Order dated November 25, 1991, the Commission dismissed the separate appeals of Eckdale, Stamm, Stewart and Vakharia as untimely; but allowed those individuals to intervene as parties in Mr. Hubbard's case.

The record in Mr. Hubbard's case includes the following: 1) Testimony taken on January 14, 1992, which was common to Mr. Hubbard's case; as well as to the following cases: a) Allan Lulloff v. DER (Case No. 90-0347-PC), b) Dominick Mangardi v. DER (Case No. 90-0335-PC), c) Donald K. Sanders v. DER (Case No. 90-0346-PC) and d) Nile Ostenso v. DER (Case No. 91-0070-PC); 2) Hubbard-specific testimony taken over three hearing dates; 3) Stipulated facts tendered on second day of the Hubbard-specific hearing, 4) Testimony of Suzanne Steinmetz given in the Lulloff hearing, and 5) Stipulated facts signed by the parties on July 31, 1992. Commissioner Gerald F. Hoddinott presided for all hearing dates.

A status conference was held on October 19, 1993, to resolve remaining procedural matters. Both parties indicated they had no objection to using the portion of Exhibit D attached to the stipulation dated July 31, 1992, even though the exhibit is incomplete. Both parties waived objections to the form of this decision being issued with detailed findings, etc., which otherwise would have been issued in summary form, pursuant to s. 277.47(2), Stats., created by 1993



Act 16, s. 3020. Both parties agreed to complete the portion of the record missing when the tape recorder was turned off, by using the transcript of the missing portion prepared from a taped recording in Mr. Hubbard's attorney's possession.

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

Whether respondent's decision to reallocate Mr. Hubbard's position to the Air Management Engineer - Advanced 1 level rather than Air Management Engineer - Advanced 2 level was correct.

#### FINDINGS OF FACT

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). This panel is referred to hereafter as the "Master Rating Panel". 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 position 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 surroundings 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 for each cluster of Benchmark Positions were determined. 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. Hubbard works at DNR. The Master Rating Panel placed his position at the Air Management Engineer - Senior level. DNR's personnel office later was persuaded that the Master Rating Panel's copy of Mr. Hubbard's PD was inaccurate. His position was placed at the Advanced 1 level, effective June 17, 1990, based on a corrected understanding of his job duties (R's Exh. 7). He filed an informal appeal with DER because he felt his position should be classified at the Advanced 2 level. DER provided Mr. Hubbard an opportunity to submit additional information about his job for consideration in the informal appeal process and he did so (R's Exh. 8). The information provided was to be accurate as of June 17, 1990, the same date used by the Master Rating panel.

7. 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. Hubbard in feeling that their positions should have been classified at the Advanced 2 level and that additional information was needed to accurately represent the duties of their jobs. 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 as well as the additional 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. Hubbard's position remained at the Advanced 1 level, so he filed a formal appeal with the Personnel Commission.

8. 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.

9. 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. Hubbard 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>Hubbard</u>	<u>Wedepohl</u>	<u>Ave. Score</u>	<u>Weight</u>
Knowledge	5.78	6.56	6.64	25
Discretion	3.00	3.78	3.68	15
Effect/Actions	3.44	3.56	3.79	10
Complexity	3.44	4.11	4.18	20
Conseqc/Error	5.00	4.89	5.21	10
Physical Effort	1.11	1.11	1.21	5
Pers Contacts	2.87	4.47	3.58	10
Hazards	2.00	2.00	1.55	2.5
Surroundings	<u>1.03</u>	<u>1.77</u>	<u>1.18</u>	2.5
Total	(384.6)	(446.9)	(433.56)	
Adjusted Total	379.1	441.4	437.35	

10. 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 Education and Special Projects Section. He is solely responsible for his assigned statewide program which involves engineering issues in uncharted areas. His job duties are summarized below. The capitalized letter at the beginning of each paragraph

under Worker Activities, refers to the letters used in section 15 of Mr. Wedepohl's PD.

<u>Time %</u>	<u>Worker Activities</u>
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.

11. The class specifications for Air Management Engineers (Mr. Hubbard) and for Water Resources Engineers (Mr. Wedepohl) contain the following classification levels listed in order of hierarchy: Entry, Developmental, Journey, Senior, Advanced 1 and Advanced 2.

12. Both of the class specifications for Air Management Engineers (Mr. Hubbard) and for Water Resources Engineers (Mr. Wedepohl) 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.

13. The class specifications for Air Management Engineers (Mr. Hubbard) and Water Resources Engineers (Mr. Wedepohl) have similar definitions for the Advanced 1 and 2 levels. The text pertinent to Mr. Hubbard's position is shown below.

**ADVANCED 1:** 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 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 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.

14. Mr. Hubbard's job duties are summarized below. Since about 1983, Mr. Hubbard has worked in the same division as Mr. Wedepohl, but in the Bureau of Air Management in the Existing Source Review Unit of the Permits Section. He is a licensed engineer with a masters degree in civil engineering and a second masters degree in mechanical engineering. His work involves difficult

engineering tasks related to his areas of specialization which include: a) boiler technology performance, b) NOx reduction technology and control strategies and c) wood combustion issues relating to regulation, emission factors and prediction of emissions. In these areas of specialization, supervisory review is limited and does not involve second-guessing his engineering judgement. The specialty area of wood combustion is an uncharted area. The capitalized letter at the beginning of each paragraph under Worker Activities, refers to the letters used in section 15 of Mr. Hubbard's PD. (See R's Exh. 6.)

<u>Time %</u>	<u>Worker Activities</u>
30%	A. Evaluation mainly of exiting-source permit applications and supporting materials for air pollution sources which, if warranted, includes duties related to public hearings on the permit applications. Occasionally does same work with new-source permit applications. Mr. Hubbard's permit work often involves Best Available Control Technology (BACT) or Lowest Achievable Emission Rate (LAER) decisions for hazardous as well as for routine air pollutant emissions. He also performs Prevention of Significant Deterioration (PSD) permits which involve complex emission "netting" scenarios. Mr. Hubbard's permit work is reviewed by unit supervisor and/or section chief for errors in arithmetic and/or engineering judgement.
20%	B. Function as the Department's technical expert for Bureau staff (which includes district-office staff) on nitrogen oxides (NOx) and sulfur dioxide (SO2) emissions from boilers and other combustion sources, including control strategies. Consultation involves predicting the nature of air emissions from a particular furnace. NOx control strategies require a thorough understanding of combustion phenomena and furnace design. Provide regulatory assistance in same areas of expertise to permit applicants, including Wisconsin utilities.
10%	C. Provide professional engineering assistance to Bureau and District staff and industry on Departmental policy regarding Good Combustion Technology for wood.
10%	D. Function as the Department's designated final reviewer for mandatory operation permits for steam generating units (boilers) and heatset web offset printing presses.

- 10% E. Develop guidelines and procedures for recommended Department approval.
- 6% F. Prepare reports on emissions and control technology with respect to various source categories.
- 5% G. Design and implementation of the Department's Prevention of Significant Deterioration (PSD) increment tracking system through, for example, development of guidelines and provision of technical expertise to Bureau staff.
- 5% H. Coordination of air program interactions with state-owned coal-burning facilities. Includes liaison activities with the Department of Administration.
- 1% I. Inspect air pollution sources to verify proper operation and maintenance of air pollution control equipment, as well as compliance with air pollution regulations.
- 1% J. Witness compliance testing of sources to document adequacy of test procedures.
- 1% K. Witness compliance testing of sources to document adequacy of test procedures.
- 1% L. Provide technical assistance to Districts and industry on departmental policies, rules, and regulations.

15. The Second Panel gave Mr. Wedepohl a higher score on **knowledge** than it gave to Mr. Hubbard. The result is supported by the record. Mr. Wedepohl's required knowledges cross program lines, such as multiple source and types of water pollution issues, impact on aquatic life and knowledges of soils and absorption rates. Mr. Hubbard's required knowledges, on the other hand, are confined to the air pollution program. The Second Panel gave Mr. Wedepohl a higher score on **discretion** which is supported by the record due to the program-management function of his position.

16. The Second Panel rated Mr. Wedepohl higher than Mr. Hubbard on **Effect of Actions**, which is a conclusion 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 also rated Mr. Wedepohl higher than Mr. Hubbard on the factor of **complexity**, which is

a conclusion supported by the record because Mr. Wedepohl's program area is both broader and uncharted with little or no guidance as compared to Mr. Hubbard where it is only in his specialty area of Good Wood Combustion which has little or no existing guidance.

17. The Second Panel rated Mr. Wedepohl higher than Mr. Hubbard on **Personal Contacts**, a conclusion supported by the record due to Mr. Wedepohl's speaking for the Department regarding his statewide program responsibilities to various government units (including the federal government), Department staff, outside consultants and the legislature. Mr. Hubbard's contacts, in comparison, are focused mainly on the section level and with district office staff, and such contacts are most often related to his areas of expertise within the air pollution program. The Second Panel rated Mr. Wedepohl higher than Mr. Hubbard on **Surroundings**, a conclusion which arguably is not supported by the record. Both positions basically involve working out of an office setting leading one to expect closer scores on this factor. However, even if Mr. Hubbard were given the same surroundings score as Mr. Wedepohl it would be insufficient to place Mr. Hubbard at the numerical cutoff for Advanced 2.

18. Mr. Hubbard contends his position is similar to the Advanced 2 position held by Michael D. Hammers. Mr. Hammers works in the same division as Mr. Wedepohl and Mr. Hubbard, but in the Industrial Wastewater Section of the Bureau of Wastewater Management. Mr. Hammers' duties involve complex engineering often in uncharted areas. An example of an uncharted area is his administrative code drafts for water quality criteria for toxic substances and water quality base limits. He makes final engineering judgements. Mr. Hammer's duties are summarized below, using the organization found in section 15 of his PD.

<u>Time %</u>	<u>Worker Activities</u>
20%	A. Coordinate reissuance of all Pulp and Paper Mill permits. Coordination occurs with affected DNR bureaus, districts, industry organizations, other agencies and the federal EPA.
6%	B. Serve as team leader for the Pulp and Paper Industry Technology Team. This multidisciplinary team is



comprised of experts in air, land, water and biological resources. The experts are DNR employees from several bureaus and districts. Includes advising the Division Administrator and Department Secretary on pulp-and-paper-industry issues. Is involved, for example, with air management issues relating to the pulp-and-paper mills.

- 25% C. Develop and coordinate toxic pollutant effluent limitations in connection with a variety of activities including the following. Review of the most complex wastewater permits. Participate in writing, promulgating, and reviewing related administrative codes. Serve as the Department expert on toxic effluent limits in the WPDES program. Represent the Bureau in any department-wide effort relating to this topic and wastewater discharge. Requires close working relationships with different Bureaus. Provide guidance to Department staff, industries and the public. Represent the Bureau and Department when working with local or federal agencies, or others dealing with toxic pollutants in wastewater discharge.
- 25% D. Prepare WPDES discharge permits and evaluate related data and correspondence.
- 10% E. Review engineering plans and specifications for proposed industrial wastewater treatment and/or disposal facilities. Draft plan approvals for section chief's signature.
- 5% F. Participate in the enforcement of WPDES discharge permits.
- 5% G. Review environmental impact reports and prepare environmental impact preliminary reports and subsequent final statements of major new industrial wastewater sources.
- 2% H. Represent Department technical positions and applicable regulations at public hearings and in courts of law regarding work goals A through F above.
- 2% I. Consult with professional engineers, other Department staff, public and industrial officials and the general public regarding work goals A through E above.

19. The class specifications for Wastewater Engineers (Mr. Hammers) contain the same hierarchy levels as exist for Air Management Engineers (Mr. Hubbard) and Water Resources Engineers (Mr. Wedepohl), which are noted in paragraph 11 above. The Wastewater Engineer class specifications are based

on the same ten factors noted in paragraph 12 above. The text for the Advanced 1 and Advanced 2 levels in the Wastewater Engineer class specifications is essentially the same as exist for Air Management Engineers, as noted in paragraph 13 above.

20. Air Management Engineers in Mr. Hubbard's section who are classified below the Advanced 1 or 2 levels, also perform Best Available Control Technology (BACT) and Lowest Achievable Admission Rate (LAER) analyses, such as Paul Yeung (Senior level classification).

21. Air Management Engineers in Mr. Hubbard's section who are classified below the Advanced 1 or 2 levels, also perform *Prevention of Significant Deterioration (PSD)* in permit work, such as Paul Yeung.

22. Air Management Engineers in Mr. Hubbard's section who are classified below the Advanced 1 or 2 levels, also have areas of technical expertise about which they provide direction/consultation to Bureau engineers and in which they perform engineering work in uncharted areas, such as Paul Yeung (Formaldehyde and medical waste expert), Daniel Young (classified at the Developmental level with expertise in large-appliance manufacturing and fabrication industries), Bradford Pyle (classified at Developmental level with expertise in canneries, dry cleaning, veneer and particle board plants), and Keith Pierce (classified at Developmental level with expertise in leather coating and tanning industries and rock quarries).

23. Mr. Hubbard meets most of the Advanced 1 requirements for Water Resource Engineers. He performs very difficult advanced engineering work in the air management program. He is a department expert for the following subjects in that program: NO<sub>x</sub>, SO<sub>2</sub>, boilers and wood combustion; all of which (when combined) involve a significant portion of his time (40%) and require continuing expertise as the fields progress. It would be stretching terms to characterize these expertise areas as a "broadly-defined segment of the program". His work is only part of the entire air program. His work does not cross program boundaries, but 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 from the class specifications.

24. Mr. Hubbard's position does not compare favorably to Mr. Wedepohl or Mr. Hammers based on the Advanced 2 class specifications for Water Resource Engineers. His areas of expertise are not as broad in scope as those noted in the positions for Mr. Wedepohl and Mr. Hammers. Mr. Wedepohl has expertise over an entire program (lake restoration) and Mr. Hammers over an entire industry (pulp and paper mill pollution), whereas Mr. Hubbard's focus is narrowed to certain aspects of air pollution. Furthermore, while all three positions provide advice to the industry, outside consultants, outside engineers, etc.; Mr. Hubbard's position focuses on providing consultation to DNR staff on the bureau level and below; whereas the in-house consultation provided by Mr. Wedepohl and Mr. Hammers includes a broader bases such as at the department or division level.

25. Mr. Hubbard's work, especially with boilers, involves multiple engineering disciplines; but does not cross program lines.

26. Mr. Hubbard performs the most complex engineering reviews but only relating to his specialty areas which are narrow in scope, as compared to Mr. Wedepohl and Mr. Hammers. His work in uncharted areas is limited to his expertise with Good Wood Combustion. He provides direction to other engineers but only in relation to his narrow specialty areas.

27. Mr. Hubbard's main work involving the development of policies, standards, etc., required in the Advanced 2 class specifications has been related to the guidelines he established for defining Good Wood Combustion, a specialized term used in DNR's administrative code pertaining to air pollution. This is a narrower scope than the standards and procedures set by Mr. Wedepohl for the statewide program he manages, and the cross-program impact Mr. Hammers' has on issues related to the pulp-and-paper-mill industries.

28. 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 is more appropriately classified at the Advanced 1 level.

#### 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 Air Management Engineer - Advanced 1 level was incorrect.
3. The appellant has failed to sustain this burden.
4. The respondent's decision to reallocate appellant's position to the Air Management Engineer - Advanced 1 level rather than Air Management Engineer - Advanced 2 level was not incorrect.

#### Discussion

The evidentiary standard for reallocation cases in a nutshell is as follows:. The employee 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.

Mr. Hubbard failed to establish that air pollution management is more complex from an engineering standpoint than the management of wastewater pollution. The testimony of state engineers currently working in air management to the effect that their work was more complex was offset in the examiner's opinion by the contrary testimony of Mr. Hammers who currently works in wastewater pollution. This is especially true here because the examiner had the definite impression that Mr. Hammers was trying to provide favorable testimony for Mr. Hubbard's case. The testimony of non-engineers was not given overriding effect (including testimony from Theiler and Kamarek). One state engineer (Thomas Wolletz) had worked both in air management and wastewater engineering. He felt air management engineering was most complex. His opinion, however, was not determinative due to Mr. Hammers' testimony and to the fact that Mr. Wolletz worked in wastewater only as an intern from 1975 to 1981, and acknowledged that there have been lots of technology changes in wastewater management since 1981.

Trying to determine the difference between an Advanced 1 and Advanced 2 engineer might have been easier for everyone concerned if the class specifications had been 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. 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 cutoff for Advanced 2 without regard to the class specifications.

Mr. Hubbard's position is unlike the positions held by Mr. Wedepohl and Mr. Hammers in the degree to which Mr. Wedepohl and Mr. Hammers cross program lines, the degree to which they make final engineering judgements and the scope of their areas of expertise. A very detailed comparison between Mr. Wedepohl and Mr. Hubbard is contained in the decision and was possible due to both positions having been rated by the Second Panel. The position comparison between Mr. Hubbard and Mr. Hammers lacked the same level of detail because Mr. Hammers' position was not rated by the Second Panel.

It is true that Mr. Hammers work which crosses program lines only comprises 6% of his position time (see s. B of his PD). However, he also testified that he reviewed the most complex wastewater discharge permits without regard to any specialty area; as compared to Mr. Hubbard's whose most complex assignments in the permits area involved the more limited boilers/steam generators area of specialty. In summary, Mr. Hammer's position includes enough factors distinguishing his position from Mr. Hubbard's to warrant a

higher rating on the factors of knowledge, job complexity, consequence of error and effect of actions. These higher ratings could justify the difference between an Advanced 1 and Advanced 2 level, but are admittedly closer than the comparison between Mr. Wedepohl's and Mr. Hubbard's positions.

Order

The action of respondent 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  
David Vergeront