



STATE OF WISCONSIN

PERSONNEL COMMISSION

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GERALD P. MARX,

Appellant,

v.

Secretary, DEPARTMENT OF
EMPLOYMENT RELATIONS,

Respondent.

Case No. 91-0087-PC

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INTERIM
DECISION
AND
ORDER

After considering arguments presented by the parties with respect to the Proposed Decision and Order, reviewing the record as necessary and consulting with the hearing examiner, the Commission adopts the Proposed Decision and Order with the exception of the last paragraph in the Discussion section which appears on page 10 and for which the following is substituted:

The evidence regarding proper classification of appellant's position stemming from the DILHR panel, the whole job study, and the informal review panel is mixed. No clear picture evolves. However, when comparing appellant's positions' duties and responsibilities with the language of the Advanced 2 specifications, it is apparent that appellant's position performs the most technically complex assignments in civil engineering for the statewide Uniform Dwelling Code program (UDC); is involved in policy, standards and procedure development, evaluation and administration for the UDC specialty area; functions as the state chief technical consultant on the UDC program; and performs this work under general policy direction with the authority to make final statewide decisions on major technical/professional matters, all within the meaning of the Advanced 2 specifications. The remaining question then is whether the duties and responsibilities of appellant's position involve the "most advanced level civil engineering work" within the meaning of these specifications.

In most instances, the answer to this question would be apparent from the end product of the survey process. However, as stated above, no clear picture evolved from this process.

Different panels reached different conclusions and respondent offered no convincing rationale for accepting some and rejecting others. In addition, the raw score for appellant's position was at one point in the process reduced by 17 points utilizing a new statistical procedure designed to compensate for rater bias but which the statistical expert acknowledged may be unreliable.

Respondent asks the Commission to compare the duties and responsibilities of appellant's position to those of the Advanced 2 Health Facility Engineer position at DHSS to determine whether the level of the civil engineering work done by appellant's position is comparable to the level of civil engineering work done by this position. This is very difficult to do considering that the DHSS position works in a different program area and for a different agency than appellant's position, and that the comparability of the level of engineering work the two positions are assigned is not apparent from the record. In addition, a review of the level of engineering work done by one position at the Advanced 2 level does not present a clear picture of the range of engineering work done by positions at this level. In other words, a showing that the level of the engineering work assigned to appellant's position is not comparable to that of this DHSS position does not necessarily lead to a conclusion that appellant's position is not properly classified at the Advanced 2 level since this DHSS position may perform civil engineering work at the high end of the Advanced 2 range and the civil engineering work assigned to appellant's position could well be comparable to that assigned to positions lower in the Advanced 2 range.

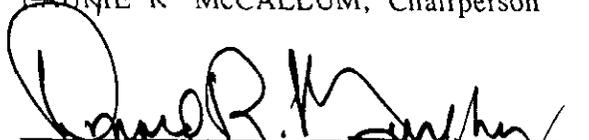
Given such circumstances, the Commission will look to the program experts in DILHR to determine whether the engineering work assigned to appellant's position is "the most advanced level civil engineering work" within the meaning of the Advanced 2 specifications. The DILHR internal rating panel rated the Code Consultant positions at 462 points, the Rockweiler position at 471 points, appellant's position at 483 points, and the Lawry position at 484 points. These positions were all DILHR positions and this DILHR internal rating panel consisted of the two supervisors of these positions, i.e., the two individuals who were most familiar with the duties and responsibilities of these positions and the level of the civil engineering work performed by these positions. Each of these positions, with the exception of appellant's position, was subsequently determined by respondent to be appropriately classified at the Advanced 2 (or equivalent Supervisor 4) level. The Commission concludes that the greater weight of the credible evidence leads to the conclusion that the level of civil engineering work performed by appellant's position is comparable to that performed by these other DILHR positions placed at the Advanced 2 level by respondent and, as a result,

appellant's position is more appropriately classified at the
Advanced 2 level

Dated: February 5, 1993 STATE PERSONNEL COMMISSION


LAURIE R. McCALLUM, Chairperson

LRM:rcr


DONALD R. MURPHY, Commissioner


GERALD F. HODDINOTT, Commissioner

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GERALD P. MARX,

Appellant,

v.

Secretary, DEPARTMENT OF
EMPLOYMENT RELATIONS,

Respondent.

Case No. 91-0087-PC

* * * * *

PROPOSED
DECISION
AND
ORDER

This matter is before the Commission on appeal, pursuant to §230.44(1)(b), Stats., of respondent's decision to reallocate appellant's position to Civil Engineer - Advanced 1 rather than Civil Engineer - Advanced 2. A hearing was held before Donald R. Murphy, Commissioner. The following is based on the evidentiary record of the hearing. To the extent any opinion constitutes a finding of fact, it is adopted as such.

FINDINGS OF FACT

1. At all times relevant to this appeal, Gerald P. Marx, appellant, has been employed by the Department of Industry, Labor and Human Relations (DILHR) in the classified civil service as a Civil Engineer.

2. The Department of Employment Relations (DER), respondent, is a state agency and is responsible for personnel and employment relations policies and programs for state government, as an employer.

3. As the result of a DER survey of all state engineering positions, appellant's position was one of many positions reallocated in the survey of civil engineer positions. Effective June 17, 1990, his position was reallocated from Civil Engineer 5 to Civil Engineer - Advanced 1.

4. Respondent provided an informal in-house appeal proceeding for those dissatisfied with the reallocation of their positions. Appellant pursued this course of action.

5. As requested, appellant's position was reviewed by DER through its informal appeal procedure. Based on the results of a Master Rating Panel, appellant's appeal was denied.

6. Appellant was notified of DER's decision denying his appeal in a letter dated May 10, 1991.

7. On June 5, 1991, appellant appealed DER's reallocation decision, regarding the classification of his position, to the Commission.

8. Appellant's position description at the time of reallocation was:

35% A. Maintain statewide uniformity of the Uniform Dwelling Code.

- A1. Makes final determination for building inspectors, designers, government officials and the public on application of code.
- A2. Evaluates new products and designs for compliance with code requirements.
- A3. Mediates conflicts between contractors and local building officials.
- A4. Testifies at code development committees, legislative hearings and inspection certification hearings on application of the code.
- A5. Reviews Petition for Modification for all Uniform Dwelling Code variances, including research to determine equivalence with national code standards.

25% B. Development of training programs for the Uniform Dwelling Code.

- B1. Recommend training programs designed to upgrade Wisconsin inspector's knowledge thru continuing education courses.
- B2. Organize slides, overheads, research reports and other visual aids for presentation at seminars on technical issues.
- B3. Research and write informational bulletins clarifying code enforcement programs.
- B4. Writes articles for newsletters.
- B5. Write exams for certification of inspectors.
- B6. Prepare and present speeches, with supervisory approval, to various groups of architects, engineers, builders, designers, inspectors and other interested groups regarding current and proposed building code requirements.

15% C. Coordinate One and Two Family Program with other Safety and Buildings programs.

- C1. Provide the Training Officer with recommendations on how to improve local inspection programs.
- C2. Recommends to Code Development Section revisions to Uniform Dwelling Code and Certification Codes.
- C3. Provides Materials Engineer with input on application of Uniform Dwelling Code on new products.

- C4. Advises clerical staff and program assistants on application of data processing equipment to Uniform Dwelling Code program.
 - C5. Develops cost estimate for cost of implementing Uniform Dwelling Code program.
- 10% D. Be the Lead Worker for the Uniform Dwelling Code Unit.
- D1. Lead and provide technical direction to the unit staff for the enforcement of the UDC, Manufactured Dwelling Program, Intermittent Ignition Device Code, and Solar Energy Systems Code.
 - D2. Review subordinates work as needed.
 - D3. Inform staff of procedure, policy and interpretations.
 - D4. Train new staff.
 - D5. Provide assistance and advice to the Chief of Section of Local Program Services on management matters.
- 7% E. Examination of Building, Heating and Ventilation plans for compliance with the Wisconsin Administrative Code.
- E1. Examines complex building plans for compliance with the Uniform Dwelling Code ILHR 20-25.
 - E2. Examines Building, Heating and Ventilation plans for compliance with the requirements of ILHR 50-64.
 - E3. Reviews Petitions for Modification for commercial building projects.
 - E4. Write letters of conditional approval, denial or withholding of approval as a result of the plan review.
 - E5. Makes additional follow-up inquiries as to status of unresolved code requirements from the plan review.
- 5% F. Monitor the work of manufacturers and inspectors to assure dwellings meet minimum standards.
- F1. Monitors Third Party Inspection Agencies for proper enforcement methods.
 - F2. Monitors in-plant manufacturers for compliance with approved compliance assurance program.
 - F3. Reviews municipality participation in program to assure uniformity.
 - F4. Reviews certified inspectors methods to insure uniform application of code.
- 3% G. Coordinate the Solar Energy System and Intermittent Inspection Device Codes with their users and with other Safety and Buildings Programs.
- G1. Make determinations for building inspectors, designers, government officials and the public on application of these codes.
 - G2. Recommends to Code Development Section revisions to the Solar Energy Systems Code and Intermittent Ignition Device Code.

- G3. Provides Materials Engineer with input on application of Solar Energy Code and Intermittent Ignition Device Code on new products.
- G4. Advises program assistant on application of data processing equipment to Solar Energy Systems and Intermittent Ignition Device Code Program.
- G5. Develops cost estimates for costs of implementing the Solar Energy Systems and Intermittent Device Programs.

9. The classification specifications for the Civil Engineer series include:

Civil Engineer - Advanced 1

Civil Engineer - Advanced 1-Management

This is advanced level civil engineering work performing very complex technical design, project management, troubleshooting, and consultation involving civil engineering projects. Positions at this level differ from lower level positions in that the range of assignments is broader, more complex, the level of decision-making is broader allowing positions to make decisions on allocating funds for projects, and the level of direction given to the employe is general policy direction. Work is performed under general supervision.

REPRESENTATIVE POSITIONS

Department of Health and Social Services

Health Facility Engineer - Located in the Bureau of Quality Compliance, Facilities Needs Analysis Section. Under the general policy direction of the Section Chief, these positions are responsible for conducting on-site surveys of hospitals, long-term care facilities, community based residential facilities and other health care facilities, and evaluations of the physical plant to ensure quality and appropriateness of buildings and compliance with state and federal statutes and regulations; providing expert professional engineering consultation to hospital boards, county agencies, nursing homes, professional architectural and engineering consultants and interagency personnel to promote the improvement of the physical plant in long-term care facilities, hospitals and other health care facilities; conducting reviews of new construction plans for approval prior to construction and conducting on-site construction inspections to assure compliance with approved plans and specifications; conducting pre-licensure inspection to assure compliance with state health codes prior to occupancy; analyzing and interpreting existing and proposed federal/state legislation and its requirements, and providing pertinent information and expert testimony in a variety of situations to legislators, legislative committees, public officials, public and private organizations and the general public.

Department of Industry, Labor and Human Relations

* * *

Uniform Dwelling Code Consultant - This is the full performance level for positions functioning as Uniform Dwelling Code Consultants. These positions independently perform all aspects involved in the administration and coordination of the State's Uniform Dwelling Code program. This position serves as the State's lead expert and Consultant regarding all Uniform Dwelling Code issues.

Civil Engineer - Advanced 2

Civil Engineer - Advanced 2-Management

This is the most advanced level civil engineering work performing the most technically complex assignments in civil engineering for a statewide program. Positions at this level are involved in policy, standards and procedure development, evaluation and administration for the specialty area. Employees at this level function as the state chief technical consultant to other architects, engineers, managers and supervisors on assigned projects. Work is performed under general policy direction with the authority to make final statewide decisions on major technical/professional matters, including allocating resources for major projects.

REPRESENTATIVE POSITIONS

Department of Administration

Civil Engineer - Located in the Division of Facilities Management. Responsibilities would include: establishing policies and administering the statewide Health, Safety and Environmental Protection Program, the All-Agency Small and Mini Projects Programs, the Underground Storage Tank Compliance Program; performance of Capital budget cost estimating and cost control duties; development and implementation of statewide policies and procedures to assure safe, code complying and cost effective facilities.

Civil Engineer - Located in the Division of Facilities Management. Responsibilities include: development and implementation of programs to computerize power plant fuel consumption, costs, budgets, operating parameters, air emission characteristics, etc., for state-owned power plants; manage Total Facilities Performance Evaluation Projects; act as project manager for assigned engineering projects; and prepare designs and specifications for assigned projects.

10. The Civil Engineer series classification specification under Section F provides instructions as follows:

This classification specification is used to classify professional positions as described under Section I.B. In most instances, positions included in this series will be clearly identified by one of the classification definitions which follow below in Section II of this classification specification. However, a position may evolve or may be created that is not specifically defined by one of the classification definitions. In classifying these positions, it would be necessary to compare them to the classification factor definitions described in Section I.E. of this specification and use the Wisconsin Quantitative Evaluation System (WOES), developed for this purpose by the Department of Employment Relations to determine the appropriate level of the job. (emphasis added)

11. The classification factors described in Section I.E. of the Civil Engineer Classification Specifications are:

1. Knowledge Required
2. Job Complexity
3. Consequence of Error
4. Effect of Actions
5. Amount of Discretion
6. Physical Effort
7. Surroundings
8. Hazards
9. Personal Contacts
10. Supervisory Responsibilities

12. Appellant's position, as chief consultant on technical and administrative issues to local governmental units, engineers, building inspectors, attorneys, contractors, legislators, other agency staff and the public in regard to application and interpretation of the Wisconsin Uniform Dwelling Code, Intermittent Ignition Device Code and Solar Energy Systems Code,¹ meets the Civil Engineer - Advanced 2 classification specification

¹ Appellant's position summary from his Position Description dated March 30, 1990, is as follows:

"This position is the state's lead consultant on the most technical and complex code and administrative issues to local government units, engineers, building inspectors, attorneys, contractors, legislators, other agency staff and the public in regard to application and interpretation of the Wisconsin Uniform Dwelling Code (UDC), Intermittent Ignition Device Code (IIDC) and the Solar Energy Systems Code (SESC). This position reviews variances, recommends policy and procedures and cost estimates for the administration and enforcement of the UDC, IIDC and SESC. This position coordinates these programs with other division programs and outside agency programs administered by professional staff."

requirement of performing the most advanced level civil engineer work and the most technically complex assignment in civil engineering for a statewide program.

13. Appellant's position is involved in policy development and administration in a specialty area, functions as the state chief consultant, and performs under general supervision with authority to make final statewide decisions, in accordance with the parameters of Civil Engineer - Advanced 2 classification specifications.

14. Appellant's position is better described by the classification specifications for Civil Engineer - Advanced 2 classification than those for the Civil Engineer - Advanced 1 classification.

15. Appellant's position is more appropriately classified at the Civil Engineer - Advanced 2 level.

CONCLUSIONS OF LAW

1. The Commission has authority to hear this matter pursuant to §230.44(1)(b), Stats.

2. Appellant has burden of proving respondent's decision reallocating his position to Civil Engineer - Advanced 1 instead of Civil Engineer - Advanced 2 was incorrect.

3. Appellant has met that burden of proof.

4. Respondent's decision not to reallocate appellant's position to the Civil Engineer - Advanced 2 level was incorrect.

DISCUSSION

In 1985 the Department of Employment Relations (DER) initiated a survey of all state engineering positions. Shortly afterwards, it was interrupted by the Comparable Worth Program and not continued until 1988. Finally, in April 1990, DER reached an agreement with the state engineer association to implement the Engineering Survey, effective June 17, 1990.

As a part of the Engineering Survey, each agency composited the majority of the types of their positions. With the assistance of DER's survey coordinator, seventy-seven benchmark positions were selected and rated by a Master Rating Panel.² Appellant's position was not a benchmark position.

² The Master Rating Panel was composed of 12 or 13 engineer managers and supervisors from all the main agencies (DILHR, DOT, DOA, DHSS, PSC, DATCP).

All other positions were rated by their own agencies, using benchmark positions and the basic rating system employed by the Master Rating Panel. Appellant's position was rated by two DILHR supervisors/managers, who had participated on the Master Rating Panel. This intra-agency panel had been informed by DER that its positions had been capped at the Advanced-1 level and that only a small number of the most complex engineering and architectural positions were representative of the Advanced 2 level.

DER did not accept DILHR's numerical rating of its positions. Subsequently, DER evaluated appellant's position, using the whole job comparison method. Based on this evaluation, appellant's position was reallocated to the Civil Engineer - Advanced 1, effective June 17, 1990. Appellant disagreed with the reallocation and availed himself of an informal appeal process instituted by DER. All appeals requesting the Advanced 2 level were submitted for review to a new panel consisting of the original Master Panel, plus 3 additional Architect/Engineer Supervisors. Halfway through these appeals, the reliability of the scores was questioned and DER decided that the panel should meet as a group. Nine of the sixteen-member panel were able to meet as a group. This newly constructed mini-member panel reviewed the appeals for Advanced 2 classification. Its ratings were acceptable to DER. Based on this panel's rating, appellant's appeal was again denied by DER.

In administering the whole job analysis of appellant's position, DER used the Civil Engineer classification specifications developed during the course of the survey and put into effect on June 17, 1990. Uniform Dwelling Code Consultant positions were determined to be representative of a Civil Engineer - Advanced 1 position, along with four Code Consultant positions in DILHR and nine Health Facility Engineer positions in DHSS.

The DHSS Facility Engineer positions went through DER's informal appeal process as a group and were reallocated to the Advanced 2 level. Appellant's position was given a rating score of 483 points by the DILHR panel. Also, two Variance Consultant positions in DILHR held by Sam Rockweiler and Edward Laury were scored by the same panel at 484 and 471 points respectively. Subsequently, DER reallocated these latter two positions to the Engineer Supervisor 4 level, which is equivalent to Civil Engineer - Advanced 2 non-supervisory positions. In justification for this action, a respondent's witness testified that panel rating scores were not used for supervisory positions and that the allocations were based upon expected future promotions.

of their Journey level staff. Clearly, this contravenes the Electrical Engineer Supervisor series classification specifications, and DER's "snapshot" concept of the reallocation process.

Depending on the job review process considered, appellant's position was rated higher, lower or comparable to positions which were subsequently determined by respondent to be at the Advanced 2 or equivalent level. Respondent's statistical analyst testified that, as any rating process has a dependency on the raters involved and the set of jobs being rated, there is no strict comparability between rating panel processes, unless such variables are held constant. Clearly, this was not the case here. The composition and number of members varied from panel to panel. Also, the rating process was not the same for all panels, and the materials submitted for position reviews were not the same for all panels. These variables make it impossible to compare the rating panels in this case. Nonetheless, positions were evaluated by using a process called the Wisconsin Quantitative Evaluation System (WQES). Factors such as knowledge, consequence of error, discretion, personal contact, and work environment were position incumbents on a composite form and submitted in a packet called a composite to the panel for job evaluation. Raw evaluation scores were given each position by the panel and submitted to DER.

In the instances of the Master Rating Panel and the informal review panel, DER converted their raw scores into whole numbers. The conversion involved straight averaging of the raters' scores times the factor weights and adjusting these scores for rater bias.³ The raw scores from the various agency panels, including DILHR, were not given a reliability analysis or a "favoritism" bias analysis by DER's statistical analyst. The raw score given appellant's positions by the DILHR panel was converted by DER into a whole number of 483. As previously mentioned, DER rejected the DILHR panel analysis and performed whole job comparisons of those positions. The informal review panel gave appellant's position a score, which converted into a whole number of 424.5. DER determined the breakpoint for Advanced 2 positions was 441.

The Commission has consistently held that classification specifications govern the assignment of a position to a particular classification and that

³ Adjusting for rater bias involves a new innovative technique. Rater bias is usually controlled on the front end. Raters probably know positions they supervise or manage better than anyone else.

proper classification of a position involves weighing or measuring the actual work performed against the language of the class specifications to determine the proper classification. Jones v. DNR & DER, Case No. 85-0127-PC. Also in that case, the Commission held that a rating system, however useful, cannot be used to supplement or override the requirements of the classification specifications.

The evidence regarding proper classification of appellant's position stemming from the DILHR panel, the whole job study, and the informal review panel is mixed. No clear picture evolves. However, when balancing appellant's work with the language in the Civil Engineer classification specifications, it is clear that appellant's duty and responsibilities compare favorably with specifications of the Civil Engineer - Advanced 2 classification. The evidence clearly shows that appellant's position performs the most technically complex assignment in civil engineering for the statewide Uniform Dwelling Code (UDC) program, is involved in policy determinations as expressed in the specifications, functions as the state's chief consultant for the UDC program, operates under general supervision, and has authority to make decisions which have statewide impact. Accordingly, we conclude appellant's position is more properly classified as the Civil Engineer - Advanced 2 level.

ORDER

The action of respondent is rejected and this matter is remanded for action with this decision.

Dated: _____, 1992 STATE PERSONNEL COMMISSION

LAURIE R. McCALLUM, Chairperson

DRM:rcr

DONALD R. MURPHY, Commissioner

GERALD F. HODDINOTT, Commissioner

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