

4. Mr. Eagon insures that all programs within his bureau have staff, resources and relationships with other agencies sufficient to function smoothly. Mr. Eagon's June 4, 1990, position description includes the following responsibilities:

A1. Direct all Bureau activities including Plan Review (Building, Mechanical and Fire Protection), one -and Two-Family, Mobile Homes, Manufactures Buildings, Preliminary Design Consultation, Electrical, Weatherization, Building Inspections, Plan Entry and Inspector Certification and Training.

A2. Analyze and formulate code interpretations where code language is vague or absent in order to operationalize and implement the Wisconsin Administrative Building Code.

A3. Direct Section Supervisors on personnel and staffing matters, including selection, promotion, hiring, training, retention of staff, maintain discipline and monitor performance of employees.

* * *

A6. Direct field inspection duties to assure that the Wisconsin Administrative Building Code requirements are satisfied with consistency.

* * *

B1. Monitor Bureau actions to insure that all performance requirements are met and arrange memoranda of agreement for nonduplication of workload.

B2. Monitor and evaluate Bureau progress on implementation of action plans designed to improve the organization, work activities, and supervision

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C3. Require field staff to maintain contact with local building inspectors

* * *

D2. Prepare Bureau's budget request and quarterly report.

D3. Analyze information on collected fees and operational expenses to see if there is a need for fee adjustments.

- D4. Review complex Petitions for Variance prepared by staff to assure an equivalent degree of safety has been provided.

5. Mr. Eagon reports to Ron Buchholz, Deputy Administrator of the Safety and Buildings Division. Mr. Buchholz serves as technical advisor to the Division Administrator, Michael Corry, and the Secretary of DILHR and the governor on architectural and engineering matters. Mr. Buchholz is an architect.

6. The Building Inspection Section, for which the appellant serves as section chief, has general responsibility for inspecting buildings during and after construction to ensure that they meet applicable building codes and any conditions of approval which may have been established during the review of the building plans. The inspectors are located in four separate geographic regions, each with a regional supervisor. During those periods of the year when the construction level is low, the inspectors review building plans. Such plan review is, however, the general responsibility of the two Plan Review Sections in the Bureau. The Building Inspection Section also conducts inspections of mobile home manufacturing facilities for compliance with federal standards and conducts "special emphasis inspection programs" of existing structures.

7. Special emphasis inspection programs are typically initiated when there has been a report of a disaster or potential for disaster involving a building component or a class of buildings. During the period of approximately 20 years in which the appellant has served in his present position, the following special emphasis programs have been initiated by him:

1. Structures using "Dox-blok," a pre-cast concrete product used in ceilings and flooring which was prone to failure;
2. Day care facilities;
3. Ceilings over swimming pools where the ceiling relied on J-hooks for support,
4. Community Based Residential Facilities;
5. "Aging schools" program, the momentum for which arose from a series of newspaper articles, for inspecting schools in the state.

Once he has initiated the special program, the appellant has the authority to assign section staff to perform the inspections necessitated by that program. An individual special emphasis program is a temporary, rather than permanent, responsibility of the section.

8. The Building Inspection Section has an annual budget of approximately \$1.6 million. The revenue to support the section's expenditures is generated entirely by the collection of user fees. Appellant tracks revenues and expenses on a monthly basis and prepares a biennial budget based upon anticipated costs. In preparing the budget, the appellant reaches his own conclusions as to which fees are to be raised and by how much (subject to a statutory limit of the rate of inflation) in order to balance the anticipated costs. Appellant's conclusions as to the fee schedule are submitted in the form of recommendations to Mr. Eagon, Mr. Buchholz and the Division Administrator. The appellant has the authority to allocate funds within the various program responsibilities of the section.

9. While the budget of the Building Inspection Section is self-contained, the budgets of the other sections in the Bureau overlap each other. Mr. Eagon has no hand in the development of the appellant's budget but he is involved with the budgets of the other sections in the Bureau.

10. The building code found in the Wisconsin Administrative Code is not established by the appellant's section. The provisions are drafted by another DILHR subunit and may be based upon recommendations of various committees.

11. While inspectors in the Building Inspection Section have the authority to inspect both existing and new construction, 90% of the inspection activity is of new construction subsequent to plan approval, while 10% is generated via special programs, by complaints and building failures.

12. The appellant's duties in June of 1990 are described in a position description dated May 10, 1991, relevant portions of which are attached to this decision and incorporated by reference.

13. The Civil Engineer Supervisor series classification specification provides, in part.

B. Inclusions

This series encompasses professionals in the field of civil engineering that are supervisors over a unit of engineers, or other comparable function in the field of engineering. The position is involved in the recruiting, testing and selection of staff and is responsible for taking disciplinary action.

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II. DEFINITIONS

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Civil Engineer Supervisor 4

This is professional supervisory work in the field of civil engineering performing advanced 2 level work or directly supervising a medium unit (6 to 10 FTE) of senior engineers OR a small unit (1 to 5 FTE) of advanced 1 engineers.

Civil Engineer Supervisor 5

This is professional supervisory work in the field of civil engineering directly supervising a large unit (11 or more FTE) of senior engineers OR a medium unit (6 to 10 FTE) of advanced 1 engineers OR subordinate level engineer supervisors.

REPRESENTATIVE POSITIONS

Department of Administration

Chief of Engineering Management - Bureau of Engineering & Energy Management, Division of Facilities Management. Responsibilities include administering and coordinating the activities of three Capital Budget appropriations totaling \$75 million; initiates, organizes and implements the various elements of the state's maintenance, total facility performance and health/safety programs; supervises major maintenance repairs and construction of mechanical systems in state buildings; project manager for major telecommunications and construction projects; supervises construction coordinators, mechanical and civil engineers at the advanced levels.

Department of Industry, Labor and Human Relations

Chief of Plan Review Section - Bureau of Buildings and Structures. This position is responsible for the management and supervision of a complex building plan examination section. This position directly supervises the work of a large group of architects/engineers involved in all phases of building plan reviews,

and performs additional administrative duties under the direction of the Bureau Director.

Supervisor, Code Application Unit - Office of Division Codes and Application. This position develops, manages, and supervises the Department's program of building code applications, including petition for variance, building material approval, and related research functions. The position directly supervises architects/engineers involved in rendering complex code application decisions.

Chief, Local Program Services Section - Bureau of Buildings and Structures. This position oversees the operation of the Department's Electrical, Weatherization, and Inspection Certification programs. This work involves the direction of Engineer Supervisors having responsibility for the administration of these programs.

14. The Architect/Engineer Manager series classification specification provide, in part.

B. Inclusions

This series encompasses professional experts in the field of architecture or engineering that are predominately executive and managerial with responsibility for program management planning, policy development and implementation; program budget planning, development and implementation and exercise line responsibility for program management as well as employe supervision.

C. Exclusions

Excluded from this series are the following types of positions:

1. Positions that do not perform predominately executive and managerial functions in the field of architecture or engineering as defined in s. 111.81 Wis. Stats.;
2. All other positions which are more appropriately identified by other classification specifications

* * *

II. DEFINITIONS

ARCHITECT/ENGINEER MANAGER 1

This is professional managerial work in the field of architecture/engineering. Positions can function as a bureau director of a small, specialized and highly complex statewide architect-

ture/engineering program OR as a chief architect/engineer for a small, complex agency architecture/engineering services program OR as a full-time deputy to an architect/engineer manager 2 OR as an assistant director to an architect/engineer manager 3 OR as a section chief/district chief in a major complex agency architecture/engineering services program OR any other comparable architect/engineer manager position.

REPRESENTATIVE POSITIONS

Department of Administration

Construction Administration Manager - Division of Facilities Management. Responsibilities include management of construction for all projects approved as part of the State Building Program Participates as a voting member of the Architect/Engineer Selection Committee. Develops and implements policies and procedures; construction administration of projects most sensitive in nature or of prime importance; develops and monitors the biennial and operating budgets and programs for the section

Department of Health and Social Services

Chief, Facilities Need Analysis Section, Division of Health, Bureau of Quality Compliance Under the general policy direction of the Bureau's Deputy Director, this position provides direction and supervision to the Department's program for State licensure and approval surveys of new and remodeled construction of general and special hospitals, nursing homes and facilities for the developmentally disabled; for Federal certification surveys for hospitals, ambulatory surgery centers, rural health clinics, outpatient rehabilitation providers, Perspective Payment Exemption for hospitals, and End Stage Renal Disease centers or units. The Section Chief provides expert engineering supervision for surveys, plan reviews and construction inspection of facilities under Title XVIII and XIX regulations and Wisconsin Administrative Codes, participates in resulting litigation as an expert witness for testimony on engineering matters; participates in the development of new state standards; provides training and expert consultation to facility administrators, staff and the general public in the area of physical plant requirements for certification and licensure; and supervises a staff of Civil Engineers at the Advanced 1 level.

Department of Industry, Labor and Human Relations

Director, Bureau of Technical and Safety Services - Division of Safety and Buildings. This position directs the

administration of several major state safety programs within the Bureau, including regulation and inspection of elevators, boilers, mines, mechanical refrigeration and anhydrous ammonia, ski lifts and amusement rides, and a variety of work place related safety issues, including OSHA.

Director, Bureau of Building Water Systems - Division of Safety and Buildings This position directs and administers a number of state plumbing and water regulatory programs including general plumbing plan review and inspection, private sewage system plan review and inspection, and plumbing and water product design review

15. Section 111.81, which is part of the State Employment Labor Relations Act that is overseen by the Wisconsin Employment Relations Commission, provides, in part:

(13) "Management" includes those personnel engaged predominately in executive and managerial functions, including such officials as division administrators, bureau directors, institutional heads and employes exercising similar functions and responsibilities as determined by the commission.

* * *

(19) "Supervisor" means any individual whose principal work is different from that of his subordinates and who has authority, in the interest of the employer, to hire, transfer, suspend, layoff, recall, promote, discharge, assign, reward or discipline employes, or to adjust their grievances, or to authoritatively recommend such action, if his exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

16. Portions of each of Goals A through E on appellant's position description fall within the definition of "executive and managerial" functions as is used in the A/E Mgr specifications.

17. The appellant is not "predominately executive and managerial" as that phrase is used in the Architect/Engineer Manager series classification specification.

18. The following positions were used as comparison positions by the parties:

a. The position of Director, Bureau of Technical and Safety Services occupied by Gordon Helmeid. This position is identified as a representative

position at the A/E Mgr. 1 level. Mr. Helmeid's immediate supervisor is Ronald Buchholz. The position summary reads:

Direct and administer several major state safety programs: elevators, escalators, dumb waiters, personnel hoists, boilers, pressure vessels, mechanical refrigeration systems, mines, trenches, tunnels, and explosives. Provide engineering services to section chiefs, field inspectors, consulting engineers, designers, and contractors by reviewing engineering data submitted in the course of administering each of the program areas.

The Bureau of Technical and Safety Services includes approximately the same number of employes as the Building Inspection Section, and performs substantially similar duties performed by the Building Inspection Section except in different program areas. However, the staff in that Bureau are assigned to one of several specific sections, with separate programmatic responsibilities. As a Bureau Director, the Helmeid position meets the first allocation at the A/E Mgr. 1 level.

b. The position occupied by Clyde Bryant, as one of two plan review section chiefs. This position is classified at the CE-Sup. 5 level and reports to John Eagon. Mr. Bryant spends 35% of his time performing plan reviews or reviewing petitions for variance to the administrative rules, 20% of his time in supervisory responsibilities, 10% in assisting Mr. Eagon on matters relating to the operation of the Bureau and Section, 10% on "other duties" and 25% on what are described in his position description as "management" responsibilities:

- A1 Assume, with other plan review section chief, primary program responsibility for the plan review process.
- A2 Schedule work assignments to meet the production goals set by the Bureau and Department.
- A3. Establish and implement, in conjunction with other plan review section chief, procedures and policies regarding the plan review functions of the Bureau.
- A4. Maintain individual production records of supervised staff, including quality and quantity.

In contrast to the Bryant position, the appellant does not share his responsibilities with another section chief.

c. The position of Chief of the Construction Administration Section in the Bureau of Architecture, Department of Administration. This position reports to the Deputy Bureau Director, an A/E Mgr. 2. The second level supervisor is the State Chief Architect, an A/E Mgr. 3. The section consists of approximately 30 employees, most of whom are classified as Construction Representatives. This position is described as a A/E Mgr 1 representative position as follows:

Construction Administration Manager - Division of Facilities Management. Responsibilities include management of construction for all projects approved as part of the State Building Program. Participates as a voting member of the Architect/Engineer Selection Committee. Develops and implements policies and procedures, construction administration of projects most sensitive in nature or of prime importance; develops and monitors the biennial and operating budgets and programs for the section

This position, like the appellant's, is at the level of section chief, with two layers of supervisors above it with technical expertise. In contrast to the appellant, the Construction Administration Manager reports to a deputy bureau director.

d. The position of Chief, Facilities Need Analysis Section, Bureau of Quality Compliance, Division of Health, Department of Health and Social Services, occupied by Stephen Schlough. This position is identified as a representative position at the A/E Mgr 1 level and reports to the deputy bureau director, who does not have architectural or engineering expertise. As a consequence of this reporting relationship, the section chief is the highest level architect/engineer position in the Division of Health. The position summary reads:

Under the supervision of the Bureau Director (sic), direct professional and clerical staff in conducting the timely, thorough, and accurate surveys, and plan reviews of construction activities for general and special hospitals, long-term care facilities and community-based residential facilities, involving consistency of application of federal regulations and Wisconsin Administrative Codes. This position has line authority delegation in the management of a variety of program activities. The scope of the survey activity of the section is extensive; the section chief is responsible for directing professional and clerical staff conducting and processing state licensure and approval surveys for the fol-

lowing providers: State approval of general and special hospitals; specific sections of the licensing surveys for all nursing homes and facilities for the developmentally disabled; and federal certification surveys for hospitals, ambulatory surgery centers (ASCs), Rural Health Clinics (RHC), Outpatient Rehabilitation Providers (OPT/SP), PT/IP, CORF), Perspective Payment Exemption for hospitals, and End Stage Renal Disease (ESRD) centers or units. The section chief also directs engineering staff in the review of new construction and major remodeling projects in hospitals and nursing homes to assure compliance with federal Life Safety Code provision.

The DHSS position supervises 9 Civil Engineers at the Advanced 2 level as well as Nursing Consultants, a Hospital Administration Consultant and clerical employees. Both Mr. Schlough and the appellant oversee the inspection of buildings in terms of determining compliance with a set of written standards, participate in development of new state standards, serve as expert witnesses and provide engineering supervision. However, the programmatic responsibilities of the Need Analysis Section which are of an engineering nature are at a higher level from a classification standpoint than those carried out by the Building Inspection Section. In addition, the supervisors of the Schlough position have no technical architectural/engineering expertise to bring to bear on the operation of the section, while the appellant's first and second level supervisors both have such technical expertise.

e. Positions at the eight DOT Division of Highway districts which report to the various District Directors. Each district director is classified at the CE Mgr 2 level which corresponds to the A/E Mgr 2 classification. The larger districts have up to eight CE Mgr 1's who report to the district director, including a deputy director, district chief traffic engineer, district chief maintenance engineer, district chief design engineer and district chief construction engineer. The smaller districts each have 3 or 4 district chiefs classified at the CE Mgr 1 level.

CONCLUSIONS OF LAW

1. This matter is properly before the Commission pursuant to §230.44(1)(b), Stats.
2. Appellant has the burden of proving by a preponderance of the evidence that respondent erred by reallocating the appellant's position to the CE Sup 4 level rather than the A/E Mgr 1 level.

3. Appellant has not sustained his burden of proof and the Commission concludes that respondent did not err in its decision.

OPINION

The question before the Commission is whether the position occupied by the appellant is more appropriately classified at the CE Sup 4 or the A/E Mgr 1 classification.

The respondent contends that the appellant's duties fall within the allocation for CE Sup 4 which refers to performing "supervisory work in the field of civil engineering performing advanced 2 level work." Nothing excludes the appellant from this allocation. However, the appellant contends that his duties are better described at the A/E Mgr 1 level.

There are 6 separate allocations listed in the definition section for the A/E Mgr 1 level:

This is professional managerial work in the field of architecture/engineering. Positions can function as a bureau director of a small, specialized and highly complex statewide architecture/engineering program OR as a chief architect/engineer for a small, complex agency architecture/engineering services program OR as a full-time deputy to an architect/engineer manager 2 OR as an assistant director to an architect/engineer manager 3 OR as a section chief/district chief in a major complex agency architecture/engineering services program OR any other comparable architect/engineer manager position.

The appellant contends that his position qualifies under either of the last two allocations, i.e either as 1) a section chief in a major complex agency engineering service program or 2) as a "comparable" A/E manager position.

The appellant serves as a section chief, but the respondent contends that the fifth allocation in the specification must be read to require that complainant's section constitute a "major or complex... program." Respondent admits that appellant's employing agency, DILHR, is a "major complex program." (Respondent's brief, page 20) The respondent's interpretation of the language of the specification ignores the word "agency" that follows, immediately, the words "major complex." The Commission has previously applied the rules of statutory construction when interpreting class specifications Klepinger v. DER, 83-0197-PC, 5/9/85, reversed on other grounds by Dane

County Circuit Court, DER v. Wis. Pers. Comm (Klepinger), 85-CV-3022, 12/27/85. In construing a statute, meaning should be given to every word, and a construction which would make part of the statute superfluous should be avoided whenever possible. Kollasch v. Adamany, 104 Wis. 2d 552, 313 N.W. 2d 47 (1981). The word "agency" is not made superfluous if the specifications are interpreted as referring to "a major complex agency's architecture/engineering services program."

As noted above, the respondent admits that DILHR is a "major complex agency." However, respondent argues that the building inspectors in appellant's section are not engaged in an "engineering services program." The appellant offered testimony from both Mr Eagon and Mr. Buchholz that the inspectors in the Building Inspection Section were engaged in an engineering program. This phrase is not defined in the specifications. While it is true that, as of June of 1990, the inspectors were classified as Building Construction Inspectors rather than as Civil Engineers, Engineering Specialists or Engineering Technicians, a classification title is not determinative as to whether they were engaged in an "engineering services program."¹ The problem with the respondent's argument is that the classification series which it proffers, CE Sup, includes the following language in its "Inclusions" statement:

This series encompasses professionals in the field of civil engineering that are supervisors over a unit of engineers, or other comparable function in the field of engineering. (emphasis added)

Because the appellant does not supervise a unit of engineers, his section must, according to the specifications, be said to perform a comparable function "in the field of engineering." Given the absence of a definition of the phrase "engineering services program," and given that the Building Inspection Section performs a function in the field of engineering, the Commission concludes that the Building Inspection Section is engaged in an engineering services program.

¹The record reflected that DILHR has, since early in 1991, taken steps to seek placement of the inspectors into the Engineering Specialist-Advanced 1 classification

The most difficult issue raised by this appeal is whether the appellant qualifies as a manager so as to fall within the A/E Mgr series. That series specifically excludes positions "that do not perform predominately executive and managerial functions. . as defined in s. 111.81, Wis. Stats."

The statutory definition of management specifies that it includes division administrators, bureau directors, institutional heads as well as those employees who exercise "similar responsibilities" as determined by the Wisconsin Employment Relations Commission. The appellant is a section, not a bureau director, so the focus here is on whether the appellant performs responsibilities which are similar to those which are typically performed by a division administrator, bureau director or institution head. The WERC has summarized what it looks for before it will identify a position within this statutory definition in §111.81.

"[M]anagerial" functions must be demonstrated by a showing that the occupant of the position in question participates in a significant manner in the formulation, determination and implementation of management policy or that the occupant of such a position has the effective authority to commit the .. employer's resources. State of Wisconsin (Professional-Legal), Dec No. 11640-C (WERC, 1/31/86). (citations omitted)

In that case, the WERC held that while various attorney positions were assigned to management teams or committees which were involved in the "determination and formulation of policy questions," the attorneys did not have the authority to compel other members of their management teams or committees to accept their recommendations and the attorneys could not "formulate and implement policy individually or without review, comment or consensus by other members of the management team/committee or their superiors." Because the primary function of the attorneys was to provide legal advice rather than to make policy decisions, the positions did not exercise "similar functions and responsibilities" to those position levels specifically identified in the statute.

In State of Wisconsin (Professional-Education), Dec. No. 15108 (WERC, 12/15/76), the WERC concluded that the position of State Extension Coordinator, employed by the Board of Vocational, Technical and Adult Education, met the definition of "management." The position, filled by Mr. Samuel Munson, was

responsible for administering the Circuit Relations Program which employed instructors who taught vocational classes throughout the 16 vocational districts in the state on an itinerant basis. Five of the administrators of the 16 districts comprised the Circuit Relations Committee, which functioned like a local school board. The Circuit Relations Program functioned through a pseudo-district, with the State Extension Coordinator serving in the functional capacity of district director. According to the decision.

The Wisconsin State Board of Vocational, Technical and Adult Education, hereinafter referred to as the State Board, has the primary responsibility for the operation of the Circuit Program. This includes responsibility and liability for contracts, including contracts of employment entered into in conjunction with the Circuit Relations Program. The Circuit Relations Committee of the Wisconsin Association of VTAE Administrators serves as the State Board's agent and representative in all matters pertaining to the Circuit Relations Program. The administrative duties of the Executive Secretary of the Circuit Relations Committee are assumed by the representative of the State Board's staff, designated as the "State Extension Coordinator"

Munson, as the State Extension Coordinator, is responsible for all of the administrative functions of the Circuit Relations Program. In this capacity, he directs some forty-two full-time instructors and three part-time instructors, working in approximately seventy cities within the Vocational-Technical districts. He is responsible for programming and assignment and reassignment of Circuit Instructors. Munson receives applications, interviews applicants, and in case of vacancies makes recommendations to the aforementioned Committee regarding placement on the salary schedule, classification and professional status of Circuit Instructors. Munson also evaluates said employees. In addition, he is responsible for the hiring of personnel, layoff of personnel and discipline.

Munson acts as Secretary of the Committee. In this capacity he conducts studies, evaluates and presents to the Committee recommendations concerning the present program, expansion and curtailment of program and circuits. Munson acts as [liaison] officer of the Committee with the District Directors, the State Director, state agencies, organizations, groups and individuals where the related training for apprentices is involved. He works directly with the various District Directors on all matters relating to the Circuit Relations Program, and as such he directs the program in an executive capacity and makes decisions according to the needs and requests of the various districts. Consistent with said responsibilities, he schedules the Circuit Instructors according to the requests of the various districts, and therefore partici-

pates in determining the quantum of service provided to each district

The appellant's duties are certainly more managerial than those assigned to the attorney positions which were the subject of WERC Dec. No. 11640-C. The obvious organizational distinction between the appellant and the Munson position described in Dec. No. 15108 is that Mr. Eagon is the appellant's supervisor while Mr. Munson reported directly, for program purposes, to the Circuit Relations Committee and served as the executive secretary to that committee. As a general matter, many of the responsibilities which are performed by Mr. Munson as the State Extension Coordinator, are similar to those duties assigned to and performed by the appellant. However, the appellant has an immediate supervisor, Mr. Eagon, and a second level supervisor, Mr. Buchholz, who have technical expertise in the area of building inspection and there is no indication that Mr. Munson had a comparable supervisory relationship in light of the fact that he reported to a committee.

In deciding whether it can be said that the appellant's duties are "predominately executive and managerial" or whether appellant's engineering or other responsibilities predominate, the Commission may properly look, not only at WERC decisions, but also at various other sources.

One such source is the "Inclusions" statement found in the A/E Mgr series:

This series encompasses professional experts in the field of architecture or engineering that are predominately executive and managerial with responsibility for program management planning, policy development and implementation; program budget planning, development and implementation and exercise line responsibility for program management as well as employe supervision.

The last clause of this definition makes it clear that the time spent by a manager performing supervisory responsibilities should be considered a managerial responsibility when calculating whether such duties predominate

A review of the appellant's position description reflects certain "executive and managerial" worker activities. For example, activities A1, A4, A9, C1, C4, C6, C8, and E1 and goal D fall within the scope of "executive and managerial" functions. But not all of the appellant's activities are in this category and other than the appellant's testimony that activity B1 represented

approximately 10% of his overall time allocation, there is no evidence which permits a precise tabulation of the time spent on each activity. There was testimony by Mr. Eagon and Mr. Buchholz, appellant's first and second level supervisors, that the appellant met the "predominately" standard.² These two witnesses also testified that the breadth of the programs that fell within Mr. Eagon's bureau required him to delegate his managerial responsibilities to his section chiefs. However, the testimony of the Mr. Eagon and Mr. Buchholz on this topic must be balanced by the references in Mr. Eagon's position description, to directing and monitoring bureau activities level of direction and formulating code interpretations. According to this testimony, the only basis for differentiating the various section chiefs under Mr. Eagon's supervision in terms of their managerial responsibilities was that the nature of the funding source for the inspection program meant that the appellant could prepare a proposed budget for his section without Mr. Eagon's involvement, while the other section chiefs used funds from interrelated sources so that Mr. Eagon had to be involved. There is no evidence suggesting that any of the other section chiefs in the Bureau of Buildings and Structures have been assigned to a "manager" classification

James Pankratz, respondent's Administrator of the Division of Classification and Compensation, testified that placement of someone below the level of bureau director into a manager series would have to be based upon an analysis of the breadth of programs being administered and on the hierarchy above the position. Mr. Pankratz testified that because bureau directors typically are responsible for multiple programs, a non-bureau director should have similar responsibilities. He also explained that it would be very uncom-

²The Commission notes that the appellant was awarded the "Manager of the Year" award from the Division Administrator in 1986. Also, the Division maintained a time reporting system for its employees which included 22 different activity/function codes, including the following: Management, Supervision & Administration, Personnel Activities, Aging School Activities, Program Support Services, Program Development, Consultation, Program Training, Inspections & Direct Program Services, Plan Review, Plan Validation and Petitions for Variance. Appellant's time log for the relevant time period shows that he spent approximately 2/3rds of his time on the "Management, Supervision & Administration" function, rather than on the various other activity/function titles. Nothing in the record suggests that the terms "manager" and "management" as used in these examples were comparable to the terms used in the specifications

mon to find a section chief in a manager series if there were several layers of supervisors who had the technical expertise to exercise oversight of the section program(s). Mr. Pankratz went on list three criteria he employed when applying the phrase "predominately executive and managerial":

1. Does the position develop original budgets for a multiplicity of programs, rather than just a caretaking or maintenance budget where there are just a few variables? Developing original budgets includes the effective authority to completely reorganize staff.
2. Does the position make statewide policy across a number of areas rather than in just a narrow technical area?
3. What is the nature of the review provided of those policies, i.e. is there a supervisor who has been designated as having policy oversight or is the supervisor someone who cannot provide technical management, thereby giving the position in question more flexibility?

The record does not suggest that the appellant's budgetary responsibilities include a "multiplicity of programs." The program of the section is building inspection, including the responsibility for mobile home manufacturing facilities. The testimony suggested that there are relatively few variables in the appellant's budget recommendations, primarily associated with adjusting the various fee levels so that they balance the anticipated expenditure levels. There was no testimony that the responsibility for initiating a complete reorganization would rest with the appellant rather than Mr. Eagon. In addition, it is clear that the appellant does not meet the third criteria identified by Mr. Pankratz because both Mr. Eagon and Mr. Buchholz have technical expertise relating to the section's programmatic responsibility. The Commission recognizes that one difficulty with Mr. Pankratz's testimony is the allocation of CE Mgr 1 positions in DOT's district offices. The record shows there are numerous manager positions in the Department of Transportation districts which are subordinates to the District Directors. The record does not include any position descriptions for these positions, nor does it contain a copy of the relevant class specifications. However, the immediate supervisor, i.e. the district directors, are all CE Mgr 2's and testimony showed that this classification corresponds to the A/E Mgr 2 classification. Clearly the district directors, as engineers, have technical expertise in their subordinates'

program areas. Also, nothing in the record indicates that the CE Mgr 1 positions have any statewide responsibilities. Even though these CE Mgr 1 positions do not meet 2 of the 3 criteria identified by Mr. Pankratz, they are still allocated to a manager series.

This is a close case, with arguments supporting either result. There are aspects of the appellant's duties which could be said to fall within the scope of management. This is especially true with respect to the special emphasis inspections. However, the appellant relies on the relatively unspecific testimony of his supervisors that his managerial functions predominate. The statutory definition of "management" indicates that it is the bureau level, rather than the section level, which has been selected as serving as the basis for defining where management responsibilities begin. The only comparable section chief position at the A/E Mgr 1 level with a position description in the record (the Schlough position) can be differentiated from the appellant's position in that it has no supervisor with technical expertise in the engineering field. In addition, Mr. Schlough is supervising engineers performing what has been recognized as Advanced 2 level work as well as employees from other disciplines. The only significant bases for differentiating the appellant's position from the other section chiefs in the Bureau of Buildings and Structures is that the appellant has greater independence in the preparation of his section's budget. The Eagon position description (set forth in finding of fact 4) makes no differentiation for the appellant's section versus the other sections in the bureau and, if viewed alone, strongly suggests that it is Mr. Eagon rather than the appellant who has the responsibility for performing the "executive and management" responsibilities for all of the sections in the bureau. Finally, the representative positions in DILHR which are listed at the CE Sup 5 level (and are set forth in finding of fact 13) include references to management that are very similar to the type of managerial responsibilities exercised by the appellant. Given this record, the Commission does not find that the appellant has sustained his burden of proof in this matter.

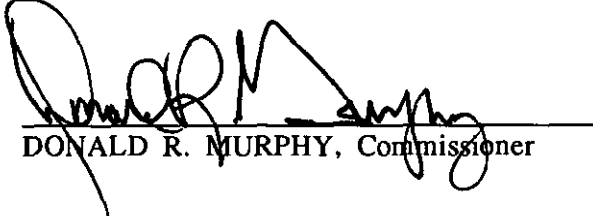
ORDER

The respondent's decision reallocating the appellant's position to the CE Sup 4 level rather than the A/E Mgr 1 level is affirmed and this matter is dismissed.

Dated: June 4, 1993 STATE PERSONNEL COMMISSION


LAURIE R. MCCALLUM, Chairperson

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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.

PART A - POSITION SUMMARY

Under general supervision of the Bureau Director, direct and develop a program of inspection, investigation, enforcement and consultation in the Bureau of Buildings and Structures. Coordinate plan review activities of inspection staff to ensure timely plan turnaround and adequate staffing in the regional offices; development, management and oversight of special emphasis inspection programs to ensure safety within the program limitations; ensure that public buildings and places of employment are inspected in an expedient manner, to protect the health safety and welfare of the public and employes by maintaining minimum standards in the design, construction, structural strength, quality of materials, adequate egress facilities, sanitary facilities, natural lighting and ventilation, energy conservation, and fire safety for all public buildings and places of employment in accordance with the requirements of the Wisconsin Administrative Rules; review complex Petitions for Variance to the code requirements, making recommendation to the Bureau Director of approval or denial, based on the intent of the code and other nationally accepted standards; conduct preliminary reviews and other engineering consultation of construction projects with owners, designers, architects, engineers and contractors to resolve code application problems, making code application decisions which are binding; communicate with architects, engineers, designers, contractors, and owners; ensure that up-to-date knowledge of current codes and design concepts is maintained by staff for new buildings and maintain an awareness of obsolete codes for reference for old building renovations or additions; speak and/or lecture to staff and outside groups on code application, enforcement and intent topics; perform field inspections of buildings and structures. (Statutory references include: 32, 46, 50, 101, 145, and 346. And Administrative Rules: ILHR 50 - 64, IND 160 - 164, IND 1000 - 2000, and ILHR 70.)

- 30% A. Development and Administration of Inspection, Investigation, Enforcement and Consultation Programs.
- A1. Establish and administer policies and procedures for uniform application and enforcement on both a general schedule and complaint response basis of all state laws and rules that apply to all public building construction, new as well as existing.
 - A2. Provide engineering expertise as staff representative for the Fire Prevention Council and other inspection related code activities such, as the aging school program.
 - A3. Direct and control activities of the on-site voluntary inspection/consultation program for residential home construction.
 - A4. Develop and implement policies and procedures to regulate and establish goals for inspection of construction for in-plant pre-manufactured residential and public buildings.

- A5. Manage and control a field monitoring program for third party inspection agencies to assure compliance with the Uniform Dwelling and Commercial Code (UDC) and statutory certification rules. Investigative activity and final decisions involve knowledge and application of engineering principles detailed in the various codes and required to determine compliance can lead to suspension or revocation of manufacturing plant and/or individual certifications.
 - A6. Monitor, oversee and provide needed engineering consultative assistance to local municipalities to ensure compliance with statutory mandates for health safety and welfare in programs such as day care, complaint investigations, and building condemnations.
 - A7. Direct In Production Inspection Agency (IPIA) Program, which evaluates the ability of mobile home manufacturing plants to follow approved quality control procedures and provide an on-going surveillance of the manufacturing process.
 - A8. Certify new manufacturing facilities in accordance with HUD regulations. These regulations require the certification by registered Professional Engineer.
 - A9. Direct State Administration Agency (SAA) Program, which investigates all consumer complaints, notifies the manufacturer of the corrective action to be taken, sets compliance dates, and prescribes legal action to be taken against a manufacturer for failure to perform.
 - A10. Provide technical and administrative back-up for the Bureau Director of the Bureau of Building and Structures during his/her absence.
 - A11. Maintain Data Dictionary and incorporate new inspection programs into the Bureau production statistics.
- 30% B. Performance of Special Duties and Engineering Consultation.
- B1. Establish engineering guidelines and tolerance limits for field supervisors and inspectors and implement and direct special inspection function activities, such as the existing assembly hall inspection program, Aging Schools, and special federally funded programs.
 - B2. Research, analyze and make recommendations on complex petitions for variances to determine equivalency with rule using engineering judgment and analysis.
 - B3. Inspect structures and determine need for additional detailed structural analysis.
 - B4. Investigate structural failures to determine the cause of failures and prepare report outlining results of investigation.
 - B5. Evaluate structural reports prepared by consulting engineers on code related problems and accept or reject their analysis.
 - B6. Consult with architects and engineers and advise them on application of and compliance with Building and Safety Code requirements.

20% C. Management of Section Administrative Functions

- C1. Evaluate all program activity on a continual basis and act on new and re-directed courses of action to fulfill goals and responsibilities.
- C2. Prepare engineering analyses and studies, surveys and compile statistical data to aid in program operations.
- C3. Direct engineering and technical investigations made as a result of public inquiries or complaints. Determine appropriateness before referral to the field staff for evaluation and thoroughness after receipt of the report.
- C4. Evaluate for accuracy, completeness and appropriateness all case referrals to the Attorney General for prosecution.
- C5. Conduct investigative inspections, act as hearing examiner for Department, in the most complex enforcement issues.
- C6. Direct interaction between state deputies, the local fire prevention deputies and local certified building inspectors to promote harmonious Uniform Building Code enforcement program.
- C7. Appear in court for cases that have resulted from inspection and enforcement of the building codes either by the state or local authorities in highly technical, complex cases. Offer expert testimony as a professional engineer registered in the State of Wisconsin.
- C8. Promote and develop a building inspection program that would recognize the state's responsibility for technical consulting, training and monitoring activities and delegate enforcement activity to the local or municipal level.
- C9. Coordinate with other states through the Building Officials of America and other state organizations who have ties to the Building Inspection Section.
- C10. Coordinate the Section's statistical gathering system with the Bureau of Systems and Data Processing, Administrative Services Division.

10% D. Supervision of Staff

- D1. Supervise assigned Bureau staff.
- D2. Research, develop and implement office policy, procedures, and engineering decisions to the field and office staff to ensure prompt, and accurate and uniform implementation.
- D3. Evaluate performance of staff.
- D4. Handle all personnel matters regarding Supervisors and participate in similar functions for field staff.
- D5. Oversee program functions, including maintenance of section record center, routine typing and filing of inspection reports and routine correspondence with various program assistants in the Division.
- D6. Oversee physical needs of the section including office space, cars, telephones, equipment.
- D7. Schedule and conduct bi-monthly inspection tours and staff meetings with each supervisor and their staff.
- D8. Approve all expenses related to travel, office equipment and overtime.

- 10% E. Provision for Public Relations and Intra Governmental Duties
 - E1. Prepare fiscal estimates and bill analyses on existing or proposed legislation.
 - E2. Prepare responses to technical inquiries received by the Secretary's Office, Governor's Office or the Legislature.
 - E3. Make technical presentations on code requirements and related issues including Bureau training.
 - E4. Recommend, evaluate and prioritize course content for courses dealing with building code issues, including annual Bureau meeting, annual inspector certification courses, etc.
 - E5. Cooperate with the media and the DILHR Public Information Office in developing articles and press releases to inform public and users of programs and services.