

STATE OF WISCONSIN

PERSONNEL COMMISSION

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JACK L. JONES,

Appellant,

v.

Secretary, DEPARTMENT OF  
EMPLOYMENT RELATIONS,

Respondent.

Case No. 91-0145-PC

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DECISION  
AND  
ORDER

This matter is before the Commission as an appeal from a reallocation decision. The parties agreed to the following statement of issue:

Whether respondent's decision to reallocate appellant's position to Civil Engineer-Transportation Supervisor 3 instead of Civil Engineer-Transportation Supervisor 4 was correct.

FINDINGS OF FACT

1. At all times relevant to this matter, the appellant has been employed in the Department of Transportation, District 2, Design Section, as the Utilities and Railroads Supervisor for that district. The appellant's supervisor is the Chief Design Engineer for District 2.

2. The appellant is a licensed professional engineer.

3. Respondent conducted a personnel management survey of certain engineering positions, including the appellant's, and implemented the survey effective June of 1990. Pursuant to the survey, the appellant's position was reallocated to the Civil Engineer-Transportation-Supervisor 3 (hereafter referred to as Sup. 3) level.

4. The appellant's position description dated May of 1990 includes the following position summary:

Supervises, directs, reviews and recommends for approval all planning, liaison procedures and right of way activities that relate to the adjustment and/or relocation of both public and pri-

vate Utilities and Railroad facilities in coordination with the district design, construction, real estate, maintenance and planning sections and other public agencies and private consulting engineering firms to accommodate the construction of highway improvement projects. Supervises the development of plans and directs the district rail safety program.

5. Appellant's unit is responsible for providing a highway right-of-way which is both physically and legally clear of all utility and railway obstructions that would interfere with highway construction. Those District 2 highway projects encompassing a utility or a railroad are processed through the unit.

6. The appellant serves as supervisor for three positions in the Engineering Specialist series. However, the appellant does not supervise any positions classified as Civil Engineers.

7. District 2 is one of 8 districts in the Department of Transportation. District 2 has the highest population, greatest volume of vehicles and most traffic problems of all of the districts. District 2 has the most complex construction projects and the greatest density of urban utilities and railroads amongst the districts. District 2 also has more staff members assigned to perform utility relocation work than any other district.

8. District 2 is one of four districts which have chosen to assign both utility and railroad responsibilities to a single employe. The other 4 districts have assigned utility responsibility to one employe and railroad responsibilities to a second employe. In District 6 (Eau Claire), William Grokowski, an Engineering Specialist, is assigned to perform both the utility and railroad responsibilities for the district. In District 5 (La Crosse), Peter Vick, who is not an engineer, is assigned utility responsibilities for the district. In District 2 (Madison), Earnest Peterson, a Civil Engineer - Transportation - Supervisor 4 (hereafter Sup. 4), is assigned utility responsibilities for the district, while Mr. Diebels, also a Sup. 4, has railroad responsibilities. Both supervise other Civil Engineers. In District 7 (Rhineland), Alan Peterson, a Supervisor 4, has both utility and railroad responsibilities for the district. Mr. Peterson supervises at least one Civil Engineer.

9. Statewide policy for the appellant and his unit is established by the State Chief Utilities and Roadsides Engineer, Ronald Nohr, of the Utilities Development Section, Central Office Design Bureau in Madison. Mr. Nohr's

position is classified at the Civil Engineer-Transportation-Manager 1 level.

10. Work completed by the appellant's work unit must be submitted to and approved by the Utilities Development Section. This is true for utilities and railroad relocation work for all of the other districts, as well.

11. The actual central office utilities review work is performed by James Bolitho. Mr. Bolitho's working title is Utilities Development Engineer and he reports to Mr. Nohr. Mr. Bolitho's position description dated April of 1990, lists the following goals and worker activities:

50% A. Examination of transportation construction projects for effective utility coordination efforts.

- A.1 Guide and assist district staff personnel in proper procedures and timing of utility coordination activities through visits, conferences, workshops, etc.
- A.2 As requested, assist district staff in the technical aspects of utility coordination arrangements, particularly regarding rare or unusual situations and circumstances.
- A.3 Examine project Utility Status Report and Certificate of Right of Way Acquisition for assurance of compliance with policy and procedures. Consult with district and utility personnel to resolve any apparent problems or questions.
- A.4 Develop reports detailing utility involvements on projects in the current construction letting schedule. Where coordination has apparently been deficient, make recommendations on course of action.
- A.5 Analyze the construction procedures on utility matters for effectiveness by attending preconstruction conferences and audit relocation performance on projects under construction as necessary or appropriate.
- A.6 Evaluate proposed changes in guidelines, procedures and statutes for acceptability, effectiveness, and problem resolution.
- A.7 Advise department staff and utility representatives on procedures, areas of concern, new regulations and practices.

- A.8 Evaluate, prior to bid lettings, contract special provisions that relate to utility matters for adequacy and definitiveness.
  - A.9 Working with district staffs and through field interviewing with contractors, determine common areas of problems and conflict, the effectiveness of utility adjustment arrangements, the compliance of all parties with pre-construction arrangements, and recommend means and methods to improve both effectiveness and compliance.
  - A.10 Prepare certification of projects to the Federal Highway Administration on arrangements and coordination of utility and railroad matters with the planned construction.
- 20% B. Direct, oversee, and review procedures for the determination of the acceptability of contract documents for utility adjustments and property rights required for transportation projects.
- B.1 Analyze utility contract documents for compliance with State Statutes and Federal procedures, safety codes, and requirements for accommodation of utility facilities on public highway rights of way; determine the financial obligation of the state, the correctness of agreement estimates for the work and the plans and plats to properly identify the utility involvement and land rights.
  - B.2 Evaluate coordination of timing and type of utility construction with proposed highway construction plans and schedules.
  - B.3 Develop correspondence including recommendations for approval of utility contract documents and forward to appropriate agencies including the Federal Highway Administration, Central Office Real Estate and the Bureau of Accounting and Auditing. Respond to inquiries as necessary to provide clarification of complex contract documents.
  - B.4 Evaluate audit reports and citations and make recommendations on administrative settlements of items cited.

- B.5 Confer with personnel from the Bureau of Accounting and Auditing and the Public Service Commission for determining the acceptability of questionable items billed by the Company.
- 20% C Preparation of correspondence, and instruments of conveyance, covering the railroad interests of the state and local government units.
  - C.1 Analyze and review highway plans and determine what interests must be acquired from railroad companies.
  - C.2 Draft stipulations and agreements covering crossings and parallel encroachments on railroad property, including location exhibits in accordance with existing state and federal procedures, rules and regulations.
  - C.3 Draft conveyances for acquisition of land interests from railroad companies, including computations for the reimbursement to be made to the railroads for the land interests at rail highway crossings in accordance with existing state and federal procedures, rules and regulations.
  - C.4 Draft proposal letters and letters of negotiation to railroad companies.
  - C.5 Draft letters transmitting conveyances to railroad companies.
  - C.6 Draft letters to the Federal Highway Administration transmitting copies of parallel encroachment agreements for federal approval.
  - C.7 Represent the department before the Office of the Commissioner of Transportation on highway-railroad crossing projects.
- 10% D Draft manual and form revisions, develop procedures, and carry out special assignments as requested by the Chief Utilities Engineer.

12. William Lautz holds the position of Railroad Development Engineer in the central office. Mr. Lautz assists the Chief Utilities Engineer, Mr. Nohr, in all railroad related matters associated with highway improvement projects. Among other responsibilities, Mr. Lautz reviews plans and contract

arrangements for construction or reconstruction of railroad structures and crossings and the modification or installation of warning devices.

13. The position standard for the Civil Engineer-Transportation-Supervisor series provides, in pertinent part, as follows:

#### CIVIL ENGINEER - TRANSPORTATION SUPERVISOR 3

Positions at this level perform professional supervisory work in the field of civil engineering transportation. Positions allocated to this class directly supervise a medium to large unit (more than 6 FTE) of professional journey level civil engineers in transportation OR the positions supervise staff as described in level 1 or 2 and perform advanced 1 civil engineering work in transportation.

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#### CIVIL ENGINEER - TRANSPORTATION SUPERVISOR 4

Positions at this level perform professional supervisory work in the field of civil engineering in transportation. Positions allocated to this class directly supervise: (1) a small to medium unit (1 to 10 FTE) of senior or advanced civil engineers in transportation OR (2) perform advanced 2 civil engineering work and supervise a staff as described in level 1, 2 or 3.

#### EXAMPLES OF WORK;

Typically positions assigned to this level supervise a large number of subunits, such as design squads or construction projects with the majority of these projects being the more complex projects. Duties include the supervision and direction of senior or advanced level civil engineers who also direct the work of others. Positions at this level may supervise staff in the development of policies and procedures for the design, construction, maintenance or operation of transportation facilities. Positions with this focus, however, directly supervise civil engineers who are at the advanced 1 level.

14. The position standard for the Civil Engineer-Transportation series, provides, the following language relative to the Advanced 1 and Advanced 2 levels:

#### CIVIL ENGINEER - TRANSPORTATION - ADVANCED 1

This is advanced level 1 civil engineering work in such areas as planning, design, construction, maintenance, traffic, materials and/or operation of highways, structures, and other transporta-

tion facilities for which the department may be responsible. Positions at this level differ from lower level positions in that the engineer develops and follows his/her own broadly defined work objectives and the review of the work is limited to broad administrative evaluation by the supervisor. Positions at this level have extensive authority to deal with local officials, Federal Highway Administration officials, and agency top officials, especially in highly sensitive and complex issues and areas. The work performed by these engineers requires a high level of interpretation and creativity and has major impact on the planning, design, construction, maintenance and operation of transportation facilities. The engineer may be considered the in-depth expert in a specialty area. The work is performed under general supervision.

#### EXAMPLES OF DUTIES;

#### DISTRICT - DIVISION OF HIGHWAYS AND TRANSPORTATION SERVICES

##### Construction

##### Construction Project Engineer

Positions at this level and in this area, coordinate all project activities required in the accomplishment of complex roadway construction projects. Projects at this level are generally multi-stages involving many contractors. These projects are usually urban; involve different types of pavement; include retaining walls and bridges; are politically sensitive; have large volumes of traffic; involve complex engineering principles; involve substantial traffic control; may have serious environmental concerns; and may be a road construction project for a freeway. Staff assigned to the project engineer include an assistant project engineer; 1 - 2 full-time survey crews with possibly one lead survey crew; 1 full-time materials specialist; several, 10 or more, inspectors with a lead inspector.

##### Design

##### Design Project Engineer - Squad Leader

Positions at this level and in this area, are leaders of a design squad for a complex highway project. The complex highway project involves the design and development of multiple plans for a given highway project. These plans [may] involve exceptions to standards and require judgments and justifications by the project engineer, to the Federal Highway Administration or Division management. These projects are typically of high cost with over 200 contract items; involve environmental and right-of-way issues; are politically sensitive; include utility and traffic control issues; may involve archaeological issues and have con-

siderable public involvement or controversy. The review and coordination of consultant-prepared plans of the same size and complexity is considered to be equivalent work; however, the employe may be assigned more than one such project.

#### CIVIL ENGINEER - TRANSPORTATION - ADVANCED 2

This is advanced level 2 civil engineering work in such areas as planning, design, construction, maintenance, traffic, materials and/or operation of highways, structures, and other transportation facilities for which the department may be responsible. Positions allocated to this class perform the most technically complex project management engineering assignments involving policy, standards, and procedure development, evaluation, budget and administration.

Employes at this level function as the chief technical consultant to lower level engineers, engineer supervisors, and engineer managers. Work is performed under the general policy direction of an engineer manager with authority to make statewide decisions on major technical/professional matters.

15. The following were among the positions offered for comparison purposes:

a. Jerry Sieling, C.E. - Transportation- Advanced 2, Airport Development Engineer in the Bureau of Aeronautics. Mr. Sieling has statewide rather than district responsibilities. The position summary reads:

Administrative program management work of a highly professional nature involving judgement and decision-making on major and complex issues in program planning and implementation of airport development and related transportation facilities. Management of entire scope of airport development projects, including financing, planning, design, and construction. Receives general guidance from the Chief Airport Development Engineer.

b. Harold E. Amundson, C.E. - Transportation- Advanced 2, Project Development Engineer in the central office with responsibilities for highway projects in District 1. The position summary reads:

Coordinates the administration of project development activities for assigned District One. Operates independently and reports to Chief Road Design Engineer. Directs work of assistant project development engineer. Work involves all phases of project development in Central Office and Districts with minimal supervision. Approves Concept Definition Reports, pavement reports, design solutions and details, and



Design Study Repots as delegated. Fully accountable for all actions and decisions. Conceives and advises in the development of Departmental policies, procedures and standards. Communicates with other State and Federal agencies and departments, general public, public officials, in regard to highway and transportation facility improvements. The responsibilities of this position typically involve professional or technical judgements and discretion....

c. Donald F. Struckmeier, C.E. - Transportation- Advanced 2, Project Development Engineer in the central office with responsibilities identical to Mr. Amundson except for District 2.

16. After the initial implementation of the engineering classification survey, the respondent convened a rating panel to review the classification levels of approximately 40 employees who contended they were performing Advanced 2 level work. The rating panel analyzed the responsibilities of each of the positions in terms of 9 rating factors (knowledge required, job complexity, consequence of error, effect of actions, amount of discretion, physical effort, surroundings, hazards, personal contacts and supervisory responsibilities), tabulated and weighted the factor scores and then performed a cluster analysis of the resulting total scores. Those positions with scores at or above a certain level (441) were moved to the higher classification level. Approximately 30 of the 40 positions were allocated to the Advanced 2 level. The appellant's position was not reviewed as part of this process. However, the Bolitho and Lautz positions were maintained at the Civil Engineer - Transportation- Advanced 1 level, and the Struckmeier and Amundson positions, were among the central office project management positions which were allocated to the Advanced 2 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 respondents erred by reallocating the appellant's position to the the Civil Engineer-Transportation Supervisor 3 level rather than the Civil Engineer-Transportation Supervisor 4 level.

3. Appellant has not sustained his burden of proof and the Commission concludes that respondents did not err in allocating the appellant's position to the Civil Engineer-Transportation Supervisor 4 level.

#### OPINION

The Sup. 4 class specifications identify two allocations. The first requires that the position supervise between 1 and 10 "senior or advanced civil engineers in transportation." Because the appellant's position supervises three Engineering Specialist positions but no Civil Engineers, he does not qualify under this allocation. It is important to note, however, that it is this first allocation which is the basis for classifying many of the Sup. 4 positions referenced in the record in this matter. A personnel specialist testifying for the respondent stated that all of those district positions which are assigned either utilities or railroad responsibilities similar to the appellant and which are classified at the Sup. 4 level, are in that classification because they supervise other Civil Engineers.

The second Sup. 4 allocation is for positions which "perform advanced 2 civil engineering work and supervise a staff described in level 1, 2, or 3." There is no dispute that the staff supervised by the appellant is described at level 1 or 2. Therefore, the focus in this case is on whether the appellant is, himself, performing Advanced 1 or Advanced 2 engineering work.

The Advanced 2 level definition refers to performing the "most technically complex project management engineering assignments involving policy, standards, and procedure development, evaluation, budget and administration," functioning "as the chief technical consultant to lower level engineers, engineer supervisors, and engineer managers," and working "under the general policy direction of an engineer manager with authority to make statewide decisions on major technical/professional matters." The Advanced 1 level definition refers to work which "requires a high level of interpretation and creativity and has a major impact on the planning, design, construction, maintenance and cooperation of transportation facilities," by engineers who are "considered the in-depth expert in a specialty area" and who have "extensive authority to deal with local officials, Federal Highway Administration officials, and agency top officials, especially in highly sensitive and complex issues and areas" There is no question the appellant's posi-

tion falls within the language at the Advanced 1 level. The bulk of the evidence related to 1) the question of whether the appellant's duties fell within the Advanced 2 definition and 2) how the appellant's duties compared to a variety of other DOT positions.

As in many classification cases, there are aspects of the record in this matter which support either result. On balance, however, the Commission concludes that the appellant has failed to sustain his burden of showing that the decision to classify his position at the Advanced 1 level was incorrect.

There are several reasons for this conclusion. The first is that the appellant is working at the district level and, therefore, cannot be said to have statewide responsibilities. While the Advanced 2 definition does not explicitly exclude district positions,<sup>1</sup> the reference to performing assignments which involve "policy, standards, and procedure development" encompasses far more central office than district positions. The record reflects that there simply are no district positions which have been classified at the Sup. 4 level based upon performing Advanced 2 responsibilities. All Sup. 4 positions in the districts meet the first allocation by supervising other Civil Engineers. Clearly, serving in a central office, with attendant statewide authority is, for purposes of comparison, entitled to some weight when determining whether a position is at the Advanced 2 level. The appellant's is a district but not statewide specialty. The utilities and railroad responsibilities being performed in the districts are subjected to central office review. The primary reviewers, Mr. Bolitho and Mr.

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<sup>1</sup>The Commission cannot accept the respondent's interpretation of the last sentence of the Advanced 2 definition, which reads: "Work is performed under the general policy direction of an engineer manager with authority to make statewide decisions on major technical/professional matters." Respondent contends that the phrase "with authority to make statewide decisions..." relates to the Advanced 2 position rather than to the engineer manager who is providing policy direction to the Advanced 2 position. The only way to read the definition in the manner suggested by the respondent is to add a comma after the word manager, or to otherwise rewrite the sentence. Class specifications must be interpreted in the same way that statutes and rules must be interpreted in order to apply them to particular fact situations. 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. The definitional language is not clear as written but the better interpretation is that the authority referenced is held by the manager rather than by the employe. [The Commission has modified this footnote so that it accurately reflects its interpretation of the specification.]

Lautz, are classified at the Civil Engineer - Transportation - Advanced 1 level, a level which reflects the relative complexity of these responsibilities. It would be illogical to conclude that the appellant's position belongs at the Advanced 2 level when the positions held by Mr. Bolitho and Mr. Lautz, which perform central office review of the various districts' utilities and railroad work, are at the Advanced 1 level. The appellant's responsibilities for "policy, standards, and procedure development" are no different than the responsibilities given to representatives from each of the other 7 highway districts in the state. While there was testimony that DOT subscribes to the "group development concept" so that new policies are typically developed with input from the user population, that does not mean that the responsibility for developing new policies rests someplace other than in the central office. The Commission finds that the appellant does not have responsibility for developing policies, standards and procedures as contemplated in the Advanced 2 definition.

The Commission places some weight on the fact that there are certain district positions which are not in the Civil Engineer - Transportation series, but have certain responsibilities similar to those of the appellant, even though it may be less than 50% of their time. As noted in finding of fact #8, Mr. Grokowski in District 6 has both utility and railroad responsibilities and is classified as an Engineering Specialist. Mr. Vick in District 5 has utility responsibilities for the district and is not an engineer.<sup>2</sup> Neither the Grokowski nor the Vick position description was part of the record in this matter.

The Commission also notes that the Deputy Director of District 2 testified that the appellant's responsibilities did not represent the *most* technically complex project engineering assignments, but he did testify that it was one of them. In addition, appellant's immediate supervisor, the Chief Design Engineer for District 2, testified that appellant's responsibilities were "equal or perhaps even more complex in many areas" than the responsibilities of the other supervisors in the design section. Given the unwillingness of these two witnesses to indicate that the appellant's work was truly in the category of the most complex in the district, the evidence falls short of supporting classifica-

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<sup>2</sup>The appellant testified that someone performing the appellant's job in District 2 would have to have a lot of engineering training and background, but a non-engineer would not be precluded from serving in the position.

tion at the Advanced 2 level, given the fact that none of the other district positions are classified at the Advanced 2 level.

The Commission recognizes that a comparison with the Struckmeier position tends to support a different result. Mr. Struckmeier, along with the four other project development positions in central office design, is assigned to coordinate administration of project development activities for one or more districts. Mr. Amundson handles District 1, Mr. Struckmeier takes District 2, and the six remaining districts are divided between three other project development engineers in central office. All five of these engineers are classified at the Advanced 2 level, despite the fact that the central office project development engineer positions are specifically identified at the Advanced 1 level as representative positions. The District 2 Deputy Administrator, Ralph Beiermeister, testified that he felt the appellant's position was similar to the Struckmeier position in terms of complexity. The District 2 Chief Freeways Engineer, Ronald Sonntag, testified that he felt the appellant's position belonged at the Advanced 2 level because it was equivalent or greater than the Struckmeier position in terms of the levels of responsibility and accountability. Both Mr. Beiermeister and Mr. Sonntag work with the appellant and with Mr. Struckmeier, so their opinions are entitled to some weight. Given the allocation of responsibilities amongst the five central office project development engineer positions, it is difficult to agree with the respondent's contention that Mr. Struckmeier had statewide responsibility because there is too much work for just one person and the five project development engineers in central office are interchangeable. There are distinctions between the appellant's position and the Struckmeier position that make a comparison difficult. Mr. Struckmeier reviews District 2 projects to insure that procedures and design standards are being met. The scope of his review is much broader than the subject matter of the appellant's responsibilities. However, the appellant has a greater depth of expertise in his subject matter area because he must remain closer to the details.

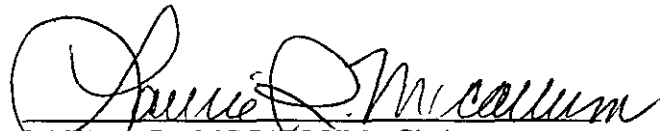
Despite this concern with the comparison between the appellant's position and the position occupied by Mr. Struckmeier, the balance of the evidence in this matter indicates that the appellant has failed to satisfy his burden of proof.

Finally, there is the question of the proper role to be played by the second rating panel and the results generated by that panel. The net effect of the process used by the panel was to move a number of positions, some of which had been listed as representative positions at the Advanced 1 level, to the Advanced 2 level, based on a numerical rating system which included the weighting of the various factors by which the individual positions were evaluated. The positions which ended up with a score of 441 or more moved up to the Advanced 2 level. The class definition makes no reference to a scoring system. There is no basis on this record for the Commission to replicate the scoring system with respect to the appellant's position, nor to draw further comparisons beyond those already set forth above.


ORDER

The respondent's reallocation decision is affirmed and this appeal is dismissed.

Dated: November 13, 1992      STATE PERSONNEL COMMISSION

  
LAURIE R. MCCALLUM, Chairperson

KMS:kms  
k:d:Merits-reall (Jones)

  
DONALD R. MURPHY, Commissioner

  
GERALD F. HODDINOTT, Commissioner

Parties:

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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.