

STATE OF WISCONSIN

PERSONNEL COMMISSION

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RONALD E. FELSNER,  
 ROGER SIKORSKI,  
 EUGENE SOMERS,  
 DAVID MOLITOR,  
 RONALD CECH,  
 MICHAEL GONIA,

Appellants,

v.

Secretary, DEPARTMENT OF  
 EMPLOYMENT RELATIONS,

Respondent.

Case Nos. 91-0197, 0198, 0199,  
 0200, 0201, 0203-PC

\* \* \* \* \*

FINAL  
 DECISION  
 AND  
 ORDER

NATURE OF THE CASE

These are consolidated appeals of the reallocation of appellants' positions to Civil Engineer-Transportation-Supervisor 4 rather than Civil Engineer-Transportation Supervisor 5 as a result of the engineering survey. The parties agreed to submit these matters for a preliminary decision on briefs on the question of whether non-state employes can properly be considered under the class specification for Civil Engineer-Transportation Supervisor 5 as FTE's (full time equivalents), with the understanding that if the question is answered "no," the appeals would be dismissed, and if answered "yes," further proceedings would be scheduled. The parties have submitted written briefs and exhibits. The findings of fact are based on materials submitted, and appear to be undisputed.

FINDINGS OF FACT

1. The engineering survey resulted in a class specification for the Civil Engineer-Transportation Supervisor series which includes the following:

I. Introduction

\* \* \*

B. Inclusions

This series encompasses supervisory positions, located primarily within the Department of Transportation's Division of Highways and Transportation Services and the Division of Transportation Assistance, which perform supervisory engineering work of a professional nature in the planning, design, construction, operation and maintenance of transportation facilities. These facilities include, but are not limited to: state highways, bridges, rest areas, and airports. Additionally, positions within this classification series may perform supervisory civil engineering work of a professional nature emphasizing traffic engineering, structural engineering, materials, research, or other specialty areas.

C. Exclusions

\* \* \*

3. Positions that are not supervisory as defined in s. 111.81 Wis Stats.

\* \* \*

E. Classification Factors

Individual position allocations are based upon the general classification factors from the Wisconsin Quantitative Evaluation System (WQES) described below:

\* \* \*

10. SUPERVISORY RESPONSIBILITIES: This factor measures the degree to which a position a) has responsibility for carrying out leadwork/supervisory functions such as hiring, directing, evaluating performance and administering discipline; b) the number of people the position is responsible for leading/supervising and c) the degree to which supervisory authority is shared with positions at higher levels in the organizational hierarchy.

\* \* \*

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.

CIVIL ENGINEER - TRANSPORTATION SUPERVISOR 5

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 large unit (11 or more FTE) of senior civil engineers in transportation, OR (2) subordinate level civil engineer-transportation supervisors.

There are no current allocations for this level.

2. Appellants' position descriptions, submitted as Appellants' Exhibits C-1 — C-6, are found for the purpose of this decision to be accurate representations of the duties and responsibilities of their positions. By way of example, Mr. Somers' PD contains the following position summary and goals and activities relevant to this issue:

POSITION SUMMARY

Advise and assist the District Chief Design Engineer in carrying out the design operations, investigations, and plan preparation activities of the District through the direct supervision of engineers and technicians and by providing direction, guidance and coordination for assigned consultant contracts

\* \* \*

10% C. Supervise and direct engineers and technicians in carrying out the activities of project development for an assigned portion of the district's highway improvement program.

\* \* \*

10% D. Retention and supervision of consultant services for a portion of the STH program.

- D1. Advise and assist District Chief Design Engineer in the consultant selection, negotiation, and contract development activities.
- D2. Supervise and coordinate consultant efforts in accordance with items described in Item C above.
- D3. Recommend payments to consultants in accordance with portions of contract work satisfactorily performed.

3. Appellants' Exhibit G is a representative evaluation of a consultant firm performed by appellants. This is an evaluation of a firm's work on a project on the basis of such factors as quality of work, timeliness, etc.

#### CONCLUSIONS OF LAW

1. These appeals are properly before the Commission pursuant to §230.44(1)(b), Stats
2. Non-state employes can not properly be considered under the class specification for Civil Engineer-Transportation Supervisor 5 as FTE's (full time equivalents).

#### DISCUSSION

As relevant to this case, the only distinction between the definitions of Civil Engineer-Transportation Supervisor 4 and Civil Engineer-Transportation Supervisor 5, as set forth in the class specifications for this series, is that the four level uses the language: "directly supervise: (1) a small to medium unit (1 to 10 FTE) of senior or advanced civil engineers," while the five level uses the language: "directly supervise: (1) a large unit (11 or more FTE) of senior civil engineers." The question presented by these appeals is whether non-state employes can properly be considered as FTE's in these definitions.

The Commission must start from the premise that while it can interpret class specifications in the context of hearing appeals of specific classification transactions such as these, it lacks the authority to revise or amend the class specifications Pursuant to §230.09(1)(am), Stats., respondent has the authority to: "establish, modify or abolish classifications as the needs of the service require." Pursuant to §230.09(2)(a), Stats., respondent has the authority to "reclassify or reallocate positions." Since the Commission's authority under

§230.44(1)(b), Stats., to hear appeals of decisions of respondent extends only to decisions made under §230.09(2)(a), Stats, it follows that the Commission has no authority to change or amend class specifications, but must decide classification appeals on the basis of the existing class specifications, see, e.g., Zhe v. DHSS & DP, 80-0285-PC (11/19/81); affirmed, Zhe v. Personnel Commn., Dane Co. Circuit Court, 81CV6492 (11/2/82)

A reading of the entire class specification leads to the conclusion that the reference in the Civil Engineer-Transportation Supervisor 5 definition to "11 or more FTE" is a reference to state employes, and non-state employes cannot be considered for classification purposes under this language. This conclusion is based on several factors

The class specification specifically excludes "[p]ositions that are not supervisory as defined in s.111.81, Wis. stats." §I.C.3., Respondent's Exhibit A. Section 111.81(19), Stats., defines "supervisor" as "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..." (emphasis supplied) The term "employes" as used in §111.81(19), is defined, as relevant, as "[a]ny state employe in the classified service of the state," §111.81(7)(a), Stats. Therefore, to the extent that appellants are engaged in the purported "supervision" of non-state employes, their positions are not "supervisory" as set forth in §§111.81(19) and (7)(a), Stats, and therefore this part of their duties would be excluded from consideration as part of the direct supervision of 11 or more FTE's needed for classification at the Civil Engineer-Transportation Supervisor 5 level

Another factor to be considered is that the definition of Civil Engineer-Transportation Supervisor 4 refers to the supervision of "senior or advanced civil engineers" or "a staff as described in level 1, 2 or 3," while the Civil Engineer-Transportation Supervisor 5 definition refers to the supervision of "senior civil engineers in transportation" or "subordinate level civil engineer-transportation supervisors." The terms "senior" and "advanced" civil engineers involve recognized classifications in the Civil Engineer-Transportation series class specification, see Respondent's Exhibit B. This

reference to the state classifications of the subordinate employes supervised is inconsistent with the inclusion of non-state employes among the FTE's referred to by the Civil Engineer-Transportation Supervisor 5 definition.

The Commission also notes that it is apparent from the materials submitted by appellants that while they are engaged in activities which include directing and evaluating the work performed by the outside consulting firms, that these activities do not include the kinds of supervisory functions set forth in §111.81(19), Stats., with respect to the personnel employed by those firms. That is, laying to one side the fact that these personnel are not state employes, appellants are not directly involved in hiring, disciplining, promoting, etc., these employes. Therefore, these non-state employes could not be considered as FTE's under the Civil Engineer-Transportation Supervisor 5 definition in any event because appellants don't have this authority.

A related factor which reinforces the conclusion that non-state employes cannot be considered within the FTE supervisory requirement for Civil Engineer-Transportation Supervisor 5 is the fact that the class specification includes "supervisory responsibilities" as a classification factor which is described as follows.

10. SUPERVISORY RESPONSIBILITIES: This factor measures the degree to which a position a) has responsibility for carrying out leadwork/supervisory functions such as hiring, directing, evaluating performance and administering discipline; b) the number of people the position is responsible for leading/supervising and c) the degree to which supervisory authority is shared with positions at higher levels in the organizational hierarchy.

Directing the activities of an outside consulting firm, which employs non-state employes, does not involve supervisory responsibilities of the nature described here with respect to the personnel employed by those firms.<sup>1</sup>

Therefore, there is a conflict between the use of "supervisory responsibilities" as a classification factor and the concept that non-state employes can be con-

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<sup>1</sup> It is apparent from the documentation appellants submitted that their activities in directing and evaluating the work performed by these firms flows from their contractual relationship with the state, and is not the kind of direction and performance evaluation associated with a supervisory relationship between a supervisor and a subordinate employe.

sidered as FTE's for classification at the Civil Engineer-Transportation Supervisor 5 level.

Appellants make the point in their brief that DOT is increasingly making use of outside consultant firms in lieu increasing the size of the state work force. They contend that this increases their work load and the scope of their responsibility without classification recognition at the Civil Engineer-Transportation Supervisor 5 level so long as the class specification is interpreted as not permitting the categorization of this work under the heading of "directly supervise ... a large unit (11 or more FTE) of senior civil engineers " However, this language clearly was meant to mean the actual direct supervision, including all that entails in the way of staffing, discipline, grievance processing, etc., of state employees. The Commission is limited in its authority to interpreting class specifications, and does not have the power to rewrite them. If the Commission were to rule in favor of appellants on the issue presented in this proceeding on the basis of these policy considerations,<sup>2</sup> it in effect would be rewriting the class specification. It appears that appellants' concerns can be addressed only either by finding a different classification series that recognizes the work with the outside consulting firms, or by the creation or amendment of class specifications by DER, if that agency decides it is warranted.

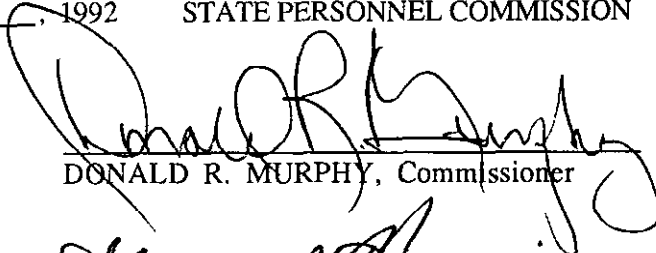
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<sup>2</sup> The Commission notes, however, without attempting to decide the issue raised by appellants, that it is not readily apparent that policy considerations compel the result that the direction of non-state employees in consultant firms should be equated with the direct supervision of state employees. Even assuming, arguendo, that the engineering aspects of the two activities are comparable, the supervision of state employees involves many issues of personnel administration (transactions involving civil service laws, contract provisions, etc.) not present with respect to the direction of outside consulting firms

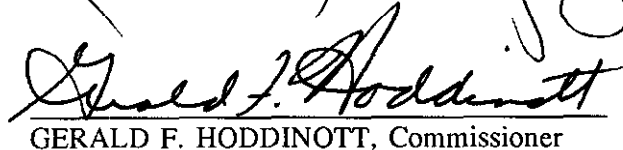
ORDER

Respondent's actions reallocating these positions to Civil Engineer-Transportation Supervisor 4 instead of Civil Engineer-Transportation Supervisor 5 are affirmed and these appeals are dismissed.

Dated: July 8, 1992 STATE PERSONNEL COMMISSION

  
DONALD R. MURPHY, Commissioner

AJT/gdt/2

  
GERALD F. HODDINOTT, Commissioner

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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.