STATE OF WISCONSIN PERSONNEL COMMISSION

ROGER M. PECK,

Appellant,

v.

Secretary, DEPARTMENT OF EMPLOYMENT RELATIONS,

Respondent.

Case No. 92-0130-PC

DECISION AND ORDER

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

> Whether respondent's decision on June 17, 1990 to reallocate appellant's position to Engineering Technician-Transportation 3 instead of Engineering Specialist-Transportation-Developmental was correct.

FINDINGS OF FACT

1. Appellant, who has been a State employe since 1970, has worked since approximately 1988 as Research Technician in the Applied Research Section, of the Department of Transportation's Central Office. His immediate supervisor is Robert Schmiedlin, P.E.

2. Appellant's duties during the relevant time frame are accurately described in his position description dated April of 1990, which provides:

> 40% A. Development of Specialized Instrumentation and Equipment for Applied Research, Materials Science and Soils Sections.
>
> A.1 Evaluate the objectives of the particular research project or procedure to clarify and define the purpose of the instrumentation or equipment.
>
> A.2 Design the instrumentation or equipment to meet the needs and objectives of the research project or procedure.

A.3 Prepare shop drawings, detailing the dimensions and material requirements of the specialized instrumentation or equipment, to facilitate fabrication.

A.4 Assemble the instrumentation or equipment using appropriate methods, including cutting, bolting, soldering, and welding (mild steel, stainless steel, aluminum), and materials (metals, plastics, rubber, wood, etc.).

A.5 Test the instrumentation and equipment developed to ascertain its effectiveness and make modification as necessary.

A.6 Train others in the Department to properly operate and maintain instrumentation or equipment.

40 B. Monitoring of Research Field and Laboratory Projects

B.1 Monitor research projects to ensure the timely and accurate collection of reliable research data.

B.2 Contact appropriate DOT personnel to coordinate and organize data collection efforts.

B.3 Obtain research project data (measured or observed) specified by the project workplan using suitable methods to assure the success of the project.

B.4 Operate and maintain a core rig as crew leader to obtain pavement cores for evaluation.

B.5 Train other DOT personnel who are unfamiliar with specific data collection procedures and/or equipment.

B.6 Develop forms to facilitate the efficient and accurate collection and analysis of research data.

B.7 Install data monitoring equipment used to collect research project data.

20 C. Maintenance of Applied Research Equipment

C.1 Inspect, clean, adjust and repair test equipment and other equipment in the section to assure smooth and accurate operation.

C.2 Arrange for the regular maintenance of all vehicles in the section to assure their continued operation.

C.3 Maintain accurate records of all related activities to ensure that regular and required maintenance is performed.

C.4 Insure the research laboratory is maintained in a neat and orderly manner.

C.5 Manage the check-out procedure and storage room for all Applied Research equipment.

Activities B1 and B3 represent approximately 1/2 of the 40% time allocated to goal B, or 20%.

3. The appellant's position description also states that he is given "limited" supervision, which is the middle category, between "close" and "general."

4. The appellant's position is one of three in the Applied Research Section with a position description which includes a goal of "Monitoring of Research Field and Laboratory Projects." The position descriptions of the other two incumbents, both of whom are listed as performing similar duties on appellant's position description, also include a separate goal entitled "Analysis of Research Project Data."

5. The classification specification for the Engineering-Technician-Transportation series includes the following:

B. Inclusions

This series encompasses positions performing sub-technical to technical work in the field of architecture/engineering, located primarily with the Department of Transportation.

* * *

II. Definitions

* * *

ENGINEERING TECHNICIAN 3

This is a developmental level and a journey level classification within a technical engineering function. At this level, the position performs technical work in planning, design, construction, testing materials, inspection, traffic marking or signing work. This level requires more technical knowledge for successful performance of the tasks assigned to the position and the employe performs the tasks with greater independence than the previous level. Crew chief and other lead positions have considerable independence and lead lower level technicians and aids.

Examples of typical duties of positions at the Engineering Technician 3 level are listed below....

* * *

Pavement Marking Crew Chief

This position places and maintains centerline, edgeline and special pavement markings within an ongoing program of district pavement marking; directs lower level aids and technicians in completing taks [sic] related to pavement marking; operates and maintains pavement marking vehicle and equipment; maintains records and completes reports on work, crew, vehicles and equipment.

Sign Crew Chief

This position oversees the installation and maintenance of all signs and sign supports; schedules signing activities; directs the operation or operates the necessary equipment and tools to erect and install the signs; keeps records on damaged signs, sign placements, and equipment and truck repairs and maintenance. Sign placement locations include all highways under traffic, maintenance and construction projects special signing, temporary signing, and detour signing.

* * *

Equipment Technician

This position constructs and repairs marking and signing equipment as required by the Districts; assists in the design of equipment and layout of components on new and rebuilt pavement markers; assists in the design of special equipment; constructs equipment, including assembling and installing; maintains, reconstructs and repairs equipment such as furnaces, compressors; paint pump, air motors and other marker equipment.

No Passing Zone Crew Chief

This position determines the location of no passing zones on the State Trunk Highway system throughout the state. Specific duties include spotting no passing zones and maintaining a log of the zones spotted; determining layout of zone; assisting in the construction and rebuilding of pavement marking machines; rebuild and repair paint guns, pumps, bead dispensers, air motors and other miscellaneous equipment; assist in preparing new vehicles; layout gore [sic] markings and edgelines at interchanges when requested by district.

6. The Engineering Specialist-Transportation series is a progression series.

7. The classification specification for the Engineering Specialist-Transportation series includes the following:

A. Purpose of This Classification Specification

....Postions [sic] allocated to this series must meet the current definitions of professional in s. 111.81, Wis. Stats., and the Fair Labor Standards Act....

B. Inclusions

This series encompasses positions performing professional work in the field of architecture/engineering, located primarily within the Department of Transportation.

* * *

II. Definitions

ENGINEERING SPECIALIST-ENTRY

This is entry level professional work in the field of architecture or engineering. Positions at this level perform entry level routine engineering specialist duties to learn standard procedures and practices. Work is performed under the close supervision of a higher level engineering specialist, architect/engineer....

ENGINEERING SPECIALIST-DEVELOPMENTAL

This is developmental professional level work in the field of architecture/engineering. Positions allocated to this class perform developmental level engineering specialist duties under the close to limited supervision of a higher level engineering specialist, architect/engineer....

Examples of duties are listed under the JOURNEY, SENIOR, or ADVANCED levels.

ENGINEERING SPECIALIST-JOURNEY

Positions allocated to this class perform a wide variety of difficult journey level engineering specialist assignments under the limited to general supervision of a higher level engineering specialist, architect/engineer....

Examples of typical duties of Engineering Specialists at the Journey level are listed below:

* * *

Right-of-Way Plat Coordinator

This position coordinates and prepares highway right-of-way plats; makes computations and updates old plats when parcels of excess lands are sold; reviews consultant prepared right-of-way plats for accuracy and conformance to standards; coordinates the final drafting of the plat with the CADDS unit. Position may direct lower level engineering specialists or technicians.

* * *

Planning specialist

Positions at this level and in this area develop long-range transportation planning and preliminary design studies; collect and analyze data for improvement project need identification and concept definition; assemble and summarize data for graphic presentations; monitor land use changes; direct other engineering specialists or engineering technicians in traffic counting activities; conduct the preliminary review, monitoring and completion of the District traffic counting program; develop District traffic forecasts and analysis; review subdivision plats and industrial-commercial site development plans, coordinate access management activities.

* * *

Material Laboratory Specialist

This position directs the district laboratory activities in materials sampling, testing and inspection procedures; reports results of tests, inspections and calibrations to project personnel; maintains inventory control of field and laboratory testing equipment; trains district personnel in material testing procedures; coordinates and observes the inspection of commercial ready-mix concrete plants; ensures that annual ready-mix plant

> calibrations and certifications are completed prior to beginning of construction. State Material Manual guidelines establish the type, number and the extent of the testing procedure.

8. The term "professional employe" is defined in §111.81(15), Stats., as follows:

> (a) Any employe in the classified service who is engaged in work:
>
> 1. Predominantly intellectual and varied in character as opposed to routine mental, manual, mechanical or physical work;
>
> 2. Involving the consistent exercise of discretion and judgment in its performance;
>
> 3. Of such a character that the output produced or the result accomplished cannot be standardized in relation to a given period of time;
>
> 4. Requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study in an institution of higher learning or a hospital, as distinguished from a general academic education or from an apprenticeship or from training in the performance of routine mental, manual or physical processes;

9. The appellant has not obtained any formal education beyond high school.

10. The appellant's duties may be compared to the duties assigned to the following positions:

a. The Engineering Specialist - Senior position in DOT's Pavement Marking Shop occupied by Timothy Stoikes. This leadworker position directs the work of three other employes "in activities related to the design, construction, refurbishing and servicing of complex pavement marking equipment used by District Traffic crews." Prior to his current position, the appellant was employed in the position now occupied by Mr. Stoikes. However, at that time, the position did not have formal leadwork responsibilities for other employes. In contrast to the appellant, the Stoikes position performs, at most, limited hands-on fabrication of equipment. However, both positions develop designs, prepare drawings, test equipment, and train others in the use of equipment. The time percentages and goals for the Stoikes position are as follows:

55% A. Directs the Construction and Repair of Equipment in the Pavement Marking Shop.

20% B. Develop and Implemnts [sic] the Design and Fabrication of New Pavement Marker Construction

20% C. Performs Liaison and Related Field Activities to Coordinate Pavement Marking Maintenance and Service Activites [sic]

5% D. Performance of Assigned Tasks Required by the Shop Coordinator

b. The two positions at the Engineering Technician 3 level referenced in finding 4, above, filled by Nancy Busche and Raymond Sorenson. These positions spend 40% of their time on monitoring research projects in the field and laboratory, and 20% on the "analysis of research project data." The analysis includes preparation of graphs, tables and charts and arranging the data as well as reducing the data by "using mathematical relationships and computer equipment" into a more appropriate form. The remaining 40% of the Sorenson position is spent indexing, cataloguing, distributing and filing technical reports in DOT's research reference library and then searching the library materials for reports on topics relating to proposed research. The remaining 40% of the Busche position is spent conducting information searches in both DOT's research reference library and, via computer, in other data bases, managing research projects, and distributing technical and research reports.

c. The Engineering Specialist - Journey position in DOT's District 8, held by Thomas Kerr, which is :

> Responsible for directing the District Laboratory activities in materials and soils sampling, testing and inspection procedures. Maintains and reports the results of all test, inspections and calibrations to project personnel through the District Office.

The Kerr position also coordinates and observes the inspection of commercial ready-mix concrete plants in the district. This position is identified as a work example (Material Laboratory Specialist) at the Specialist-Journey 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 Engineering Technician 3 level, rather than the Engineering Specialist - Developmental 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 Engineering Technician 3 level.

OPINION

The primary distinction identified in the Engineering Technician and Engineering Specialist classifications is that the Specialist encompasses positions performing "professional" work, while the Technician series identifies positions performing "sub-technical to technical" work. The statutory definition of the term "professional employe" is set forth in finding 8. The key aspects of that definition are that the work be a) predominantly intellectual and varied, b) involving the consistent exercise of discretion and c) requiring knowledge customarily acquired by a prolonged course of specialized intellectual instruction and study in an institution of higher learning. Much of the appellant's work clearly does not meet this definition. For example, all of goal C (20%), the preparation of drawings and the fabrication portions of goal A, and most of goal B all are more accurately categorized as technical work than professional work.

At the same time, the Commission rejects the respondent's view that the appellant's work of designing specialized instrumentation and equipment for the Applied Research, Materials Science and Soils Sections is not properly classified in the Specialist series. The appellant established that he performs this responsibility independently, that he is given free rein to come up with solutions when a problem arises or whenever he thinks of a way to improve existing equipment. The appellant offered testimony describing his role in developing and modifying utility trailers, modifying transverse profilographs, tipping buckets, fault gauges and Q's equipment. Especially due

to the Specialist classification assigned to Mr. Stoikes for performing similar work in the area of pavement markers, the Commission does not perceive a basis for excluding the appellant's designing and testing responsibilities from the same classification series. In addition, the appellant's design responsibilities are clearly distinguishable from the duties listed in the Equipment Technician work example at the Technician 3 level. The Equipment Technician merely "assists" in the design of equipment.

However, there are two problems with the appellant's case.

One is that he does not establish that the majority of his duties belong in the Specialist series. The appellant's design and testing responsibilities are only one portion of Goal A, which, in its entirety, represents 40% of appellant's time. The actual fabrication, maintenance and repair work carried out by the appellant is comparable to the Equipment Technician work example at the Technician 3 level. Many of the appellant's other duties, as reflected in Goals B and C, are comparable to the Pavement Marking Crew Chief and Sign Crew Chief work examples which are also identified at the Technician 3 level. One area which is somewhat less clear is the 20% of his time which the appellant spends monitoring research projects and obtaining research project data, identified as activities B.1 and B.3. There were no examples provided by either party which explained what these activities entailed. The key in terms of whether these activities are more accurately considered technical work or professional Specialist work is whether they include a responsibility to analyze the data which is collected, or whether the activities merely entail travelling to the site and collecting the data. As noted above, these two activities are also performed by Ms. Busche and Mr. Sorenson, both of whom are classified at the Engineering Technician 3 level. However, in contrast to the appellant's position description, the Busche and Sorenson PDs also include separate goals which specifically reference the "analysis" of the collected data. The only reference in the record to the effect that the appellant also analyzes data is in Appellant's Exhibit 5 and that reference is not specific to activities B.1 and B.3. Given the record before it, the Commission cannot conclude that the appellant is assigned the responsibility to analyze the data which he collects from research projects.

The second problem with the appellant's case is that the record doesn't support the conclusion that the appellant is performing in a developmental

capacity. The appellant testified that the level of supervision he receives has been relatively constant during the approximately 2 year period he has filled the position. This level is identified on the position description as "limited" rather than either "close" or "general." This is the same level of supervision noted on both the Busche and Sorenson PDs, which also indicate that those two incumbents have been performing their duties since 1986 and 1985, respectively. The Specialist series is a progression series, and the Developmental level is, by definition, not an objective level. However, the record clearly indicates that, as to goal A, the appellant is already performing at a full performance or objective level. While the record is somewhat less clear as to whether the appellant is also performing goal B at the objective level, the similarity of his PD with those of Ms. Busche and Mr. Sorenson indicates that he is.

The appellant clearly is both talented and innovative in terms of his work in developing specialized instruments and equipment. It may be that an increase in his time allocation for goal A or additional analytical responsibilities under goal B would justify a higher classification level. However, in light of the appellant's other duties, it cannot be said that he has sustained his burden of establishing that his position is better described at the Specialist-Developmental level.

ORDER

Respondent's decision is affirmed and this appeal is dismissed.

Dated: November 18, 1993 STATE PERSONNEL COMMISSION

LAURIE R. MCCALLUM, Chairperson

KMS:kms

DONALD R. MURPHY, Commissioner

JUDY M. ROGERS, 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.

Pursuant to 1993 Wis. Act 16, effective August 12, 1993, there are certain additional procedures which apply if the Commission's decision is rendered in an appeal of a classification-related decision made by the Secretary of the Department of Employment Relations (DER) or delegated by DER to another agency. The additional procedures for such decisions are as follows:

1. If the Commission's decision was issued after a contested case hearing, the Commission has 90 days after receipt of notice that a petition for judicial review has been filed in which to issue written findings of fact and conclusions of law. (§3020, 1993 Wis. Act 16, creating §227.47(2), Wis. Stats.)

2. The record of the hearing or arbitration before the Commission is transcribed at the expense of the party petitioning for judicial review. (§3012, 1993 Wis. Act 16, amending §227.44(8), Wis. Stats.