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 RICHARD O. POPE,  
                   Appellant,  
 v.  
 Secretary, DEPARTMENT OF  
 EMPLOYMENT RELATIONS,  
                   Respondent.  
 Case No.      92-0131-PC  
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DECISION  
AND  
ORDER

Nature of the Case

This is an appeal pursuant to §230.44(1)(b), Stats., of respondent's decision to reallocate appellant's position to Traffic Signal Mechanic-Journey (TSM-Journey) rather than Engineering Specialist -Transportation-Journey (ES-Journey).

Findings of Fact

- 1. Appellant is employed in the classified civil service in a position in DOT, Division of Highways and Transportation Services, District 6 (Eau Claire), in a position which was reallocated to TSM-Journey as the result of a survey.
- 2. Appellant's PD (position description) (Joint Exhibit 4) includes the following:

POSITION SUMMARY

Under the general supervision of an electrician assist in layout, installation and maintenance of traffic operation equipment. Operate and maintain trucks, equipment and power tools. Independently be dispatched to problem maintenance inspection duties. Keep accurate records. Make emergency repairs to electrical equipment.

TIME %           GOALS AND WORKER ACTIVITIES

- 70%            A. Assist in assembly, installation and maintenance of electrical equipment in the district under the general direction of an Electrician.
- 15%            B. Assist in maintenance, layout and installation of detector loops, conduits and other facilities related to actuated traffic control signals.
- B1. Act as group leader on minor and routine installation and maintenance work.
- \*                \*                \*                \*
- 10%            C. Performance of various duties related to electrical unit operations.
- \*                \*                \*                \*
- 5%              D. Complete other assignments as directed.

3. The TSM position standard (Joint Exhibit 1) states that positions "allocated to this series are primarily responsible for providing specialized traffic signal maintenance and repair under the direction of a journeyman electrician." This position standard includes the following definitions:

#### TRAFFIC SIGNAL MECHANIC-ENTRY

Under close, progressing to limited supervision by a journeyman electrician, installs, maintains and repairs traffic signals. Positions also operate and maintain larger size mechanical equipment utilized by the electrical unit, including trucks, trailers and hoists. Other types of work may include the following: assist in the installation and maintenance of traffic signing on state and federal highways, assist the electrician with major wiring projects, conduct vehicle traffic counts and salvage damaged signal equipment.

#### TRAFFIC SIGNAL MECHANIC-JOURNEY

Under the general supervision of a journeyman electrician performs all the work of a Traffic Signal Mechanic-Entry position, and in addition, is able to independently prepare a job site for the electrician. Traffic Signal Mechanic-Journey positions could be dispatched to any job that arises and know what to do and how to handle the situation. This type of independence is generally gained through one to two years of experience as a Traffic Signal Mechanic or other comparable experience in traffic signal maintenance.

The TSM-Entry "examples of work performed" includes: "make installations safe from electrical hazards in emergency situations."

4. The ES classification specification (Joint Exhibit 2) introduction section (Paragraph I.A.) includes the following:

Positions allocated to this series perform professional work in the field of architecture/engineering. Positions allocated to this series must meet the current definitions of professional in s. 111.81, Wis. Stats., and the Fair Labor Standards Act. (Positions classified at Journey level and above are exempt. Positions at Entry and Developmental levels will be evaluated on a position by position basis to determine their status.)

5. Appellant's position is non-exempt under the FLSA, i.e., he is eligible for premium compensation for overtime work. Appellant also does not meet the definition of professional employee found in §111.81(15), Stats. Rather, his work is of the nature associated with a journey level craft (electrician).

6. The ES classification also contains the following "exclusion" and definition of the ES-Journey level:

C. Exclusions

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4. Technical program support assistants, more appropriately identified by other class series such as Communication Technician, Electronic Technician, Mechanician, Instrument Maker, Maintenance Mechanic or Craftsworker, etc., whose work involves complex and specialized electronic, electrical, mechanical, communication or craft functions involving the design, installation, systems analysis, repair, calibration, testing, modification, construction, maintenance or operation of equipment, machines, control systems, instruments or other comparable devices. These positions do not provide direct technical assistance to professional architectural or engineering employes, activities and programs.

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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, engineering specialist supervisor, or architect/engineer supervisor.

7. Appellant does not perform professional level work in engineering/architecture. His position is better described by the TSM-Journey class specification than by the ES-Journey class specification, and is more appropriately classified in the former series.

#### Conclusions of Law

1. This matter is properly before the Commission pursuant to §230.44(1)(b), Stats.

2. Appellant has the burden of proof to establish by a preponderance of the evidence that respondent's decision to reallocate his position to TSM-Journey rather than ES-Journey was incorrect.

3. Appellant has failed to sustain his burden of proof, and it is concluded that respondent's decision to reallocate appellant's position to TSM-Journey rather than ES-Journey was correct.

#### Opinion

Appellant's position is clearly described by the TSM-Journey definition with the exception of his work as a group leader (item B 1. on his position description). His position does not fit within the ES series because there is nothing in the record to establish that it is performing professional level engineering work. Appellant admitted at the hearing that he does not perform the work examples identified at the ES-Journey level. Also, he is supervised by an electrician rather than a "higher level engineering specialist, architect/engineer, engineering specialist supervisor, or architect/engineer supervisor" as required by the ES definitions. Finally, it is undisputed that his position is not exempt from the overtime requirements of the FLSA, which is another requirement for an ES Journey classification.

Based on appellant's testimony and arguments in this matter, it is apparent that much of his case concerns issues that are outside the scope of the Commission's jurisdiction. Appellant contends that his work has the same relationship to the engineering field as do other positions classified in the ET and ES series. These contentions really run to the decisions that were made in the survey process to create these series, as defined in the position standards, and to assign the various class levels to pay ranges. However, the Commission only has the authority to hear appeals pursuant to §230.44(1)(b), Stats., of

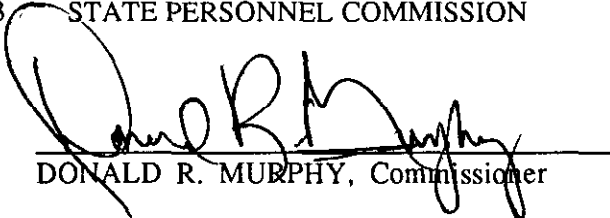
DER's decisions pursuant to §230.09(2)(a), Stats., to reallocate positions, and does not have any authority to hear appeals of DER's decisions made under §230.09(2)(am), Stats., to conduct surveys and to establish, modify, and abolish classifications, or its decisions under §230.09(2)(b), Stats., to assign and reassign classifications to pay ranges. The Commission, on an appeal of this nature, is limited to a determination of whether DER's decision that a position is better described by a particular classification in the position standards, as opposed to another classification (or classifications), was correct. See, e.g., Kaminski v. DER, 84-0124-PC (12/6/84); Zhe v. DHSS, 80-285-PC (11/19/81), aff'd Dane Co. Cir. Ct., Zhe v. PC, 81CV6492 (11/2/82). Since appellant's position is relatively clearly described by the TSM-Journey classification, and clearly does not fit into the ES-Journey classification, DER's decision must be affirmed. Similarly, appellant's arguments concerning upward mobility, pay equity, etc., are not material to the issue of the proper classification of appellant's position based on the existing position standards.

Order

Respondent's action reallocating appellant's position to TSM-Journey is affirmed and this appeal is dismissed.

Dated: August 23, 1993 STATE PERSONNEL COMMISSION

AJT:irm

  
DONALD R. MURPHY, Commissioner

  
JUDY M. ROGERS, Commissioner

Parties:

Richard O. Pope  
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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.