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LAWRENCE M. WACKER,

Appellant,

v.

Secretary, DEPARTMENT OF
TRANSPORTATION, and
Secretary, DEPARTMENT OF
EMPLOYMENT RELATIONS,

Respondents.

Case No. 92-0251-PC

* * * * *

DECISION
AND
ORDER

This matter is before the Commission as a dispute arising from a classification decision. The parties agreed to the following issue for hearing:

Whether respondent's decision reallocating appellant's position from Civil Engineer Transportation Supervisor 3 to Civil Engineer Transportation Supervisor 4 rather than reclassifying it to Civil Engineer Transportation Supervisor 4 was correct.

The parties filed post-hearing briefs.

FINDINGS OF FACT

1. At all times relevant to these proceedings, the appellant has been employed in the District 3 Planning Section of the Department of Transportation.

2. In approximately April of 1990, the respondent Department of Employment Relations carried out a classification survey of positions performing engineering functions.

3. As part of that survey, the DER classified the appellant's position at the Civil Engineer-Transportation Supervisor 3 level based upon a position description signed by the appellant on April 26, 1990, which included the following goals:

25% A. Development of District's six-year and long-range State Trunk Highway Improvement Programs; Major Highway, Existing Highway, Bridge and Interstate Programs.

20% B. Establishment and maintenance of effective working relationships with local units of government, central office, district staff and the public. the media.

15% C. Supervision of unit staff.

15% D. Development of District's Federal and/or State Aid Local Improvement Programs; Federal Aid Urban System (FAU), Federal Aid Secondary (FAS), Hazard Elimination (HES), Local Bridge Replacement.

10% E. Supervision of District Traffic Count Program.

5% Supervision of the Annual Roadway Inventory and certification Program.

5% G. Implementation of District's approved State and Local Improvement Program.

5% H. Management of District's financial operations.

The attached supervisory analysis form showed that the appellant's position was assigned supervisory responsibility with respect to the following positions: one Program and Planning Analyst 2, two Engineering Technician 5s, one Engineering Technician 4, two Engineering Technician 2s and one Limited Term Employee.

4. A new position description was prepared for the appellant's position in October of 1990 which was substantially similar to the April, 1990 position description except that it listed an additional activity (20%) for "Development and application use of district's geographical information system (GIS)." The time percentages allocated to other activities were reduced accordingly.

5. In a January 8, 1991 memo to the director of District 3, the appellant's supervisor, J. R. Hollister, District Chief Planning Engineer estimated staff time necessary to complete highway corridor studies and related environmental impact statements (EIS) for upcoming projects in District 3. Prior to that time, corridor study and EIS work for the district had been performed by Richard Huxford, a Civil Engineer-Transportation Advanced 1 who reported to Gerry Wesolowski, the other Planning Supervisor in the District 3 Planning Section. In his memo, Mr. Hollister concluded that Mr. Huxford would not have

sufficient time to complete the additional corridor studies and went on to make certain recommendations, including the following:

a. That another full-time Civil Engineer position be added to the Planning Section.

b. That this position be dedicated to performing corridor studies and EIS work.

c. That the additional position be placed under the supervision of the appellant in order "to more equally divide the work load between the planning section supervisors."

6. The district formally decided to follow Mr. Hollister's recommendations on January 23, 1991

7. Effective April 8, 1991, Burt Babcock, who had previously worked in District 3 as a Civil Engineer-Transportation Senior in a pool position with responsibilities in the Construction Section in the summer and in the Design Section in the winter, was reassigned the corridor study responsibilities and placed under the supervision of the appellant.

8. As of April 8, 1991, the appellant had supervisory responsibilities for one Civil Engineer-Transportation Senior, one Engineering Specialist-Senior, one Engineering Specialist-Developmental, two Engineering Technician 3's, one Management Information Technician 1, and one Program and Planning Analyst 2.

9. 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.

* * *

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. (emphasis added)

10. As of April 8, 1991, the appellant met the class specifications for the Sup. 4 classification because he supervised a Civil Engineer-Senior position.

11. Early in December of 1991, a request was filed to reclassify the appellant's position from Sup. 3 to Sup. 4. Attached to the request was a position description for the appellant's position dated December of 1991. The new position description was substantially similar to the October, 1990 position description except that it listed an additional activity as follows:

- 15% A. Supervises the development of highway corridor studies and the development of the related environmental impact statements and reports. Supervises and coordinates the public meetings and hearings for the corridor studies.
 - A1. Supervises the entire major project development process from project legislative approval to the start of the design process.
 - A2. Oversees planning staff in all data analysis, environmental documentation and public meeting preparations.

The time percentages allocated to other activities were reduced accordingly.

CONCLUSIONS OF LAW

1. This Commission has jurisdiction over this matter pursuant to §230.44(1)(b), Stats

2. The appellant has the burden of proof to show that the decision to reallocate rather than reclassify his position from Sup. 3 to 4 was incorrect.

3. The appellant has failed to sustain his burden.

4. The respondents' decision was not incorrect.

OPINION

The respondent DER has, in §ER 3.01, Wis. Adm. Code, issued administrative rules which define the terms "reallocation" and "reclassification":

(2) Reallocation. "Reallocation" means the assignment of a position to a different class by the secretary as provided in s. 230.09(2), Stats., based upon:

(a) A change in concept of the class or series;

(b) The creation of new classes;

(c) The abolishment of existing classes;

(d) A change in the pay range of the class;

(e) The correction of an error in the previous assignment of a position;

(f) A *logical* change in the duties and responsibilities of a position; or

(g) A permanent change in the level of accountability of a position such as that resulting from a reorganization when the change in level of accountability is the determinant factor for the change in classification.

(3) Reclassification. "Reclassification" means the assignment of a filed position to a different class by the secretary as provided in s. 230.09(2), Stats., based upon a *logical and gradual* change to the duties or responsibilities of a position or the attainment of specified education or experience by the incumbent. (emphasis added)

The question here is whether the appellant has shown that his position has undergone a "logical *and gradual*" change so as to require reclassification rather than reallocation to the Sup. 4 level. If the change has been logical but not gradual, the proper classification action is a reallocation, pursuant to §ER 3.01(2)(f).

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" while the second requires the position to perform Advanced 2 engineering work and supervise journey level engineers, engineering specialists, engineering technicians or other related classifications. The Sup. 3 specifications identify positions which 1) supervise at least seven journey level civil engineers or 2) perform Advanced 1 engineering work and supervise engineering specialists, engineering technicians or other related classifications. The evidence is clear that prior to April 8 of 1991, the appellant met the second allocation for the Sup. 3 level. The appellant has offered no argument and the record would not support a conclusion that he has, at any time, performed Advanced 2 level work. Therefore, the focus is on how the appellant acquired the supervisory responsibilities over "senior or advanced civil engineers" which qualified him for the Sup. 4 level.

On April 7, 1991, the appellant was performing no responsibilities which qualified him for classification at the Sup. 4 level. The following day, when Mr. Babcock was assigned to him for supervision, the appellant suddenly met the Sup. 4 requirement of supervising a senior civil engineer. This change, although logical from a staffing point of view, was not gradual in terms of meeting the Sup. 4 requirement of supervising at least one senior or advanced civil engineer.¹

The appellant points to certain language in ch. 332 of the Wisconsin Personnel Manual which provides the following guidance in determining whether changes were gradual:

- b. Generally, changes are not gradual if they:
 - 1) constitute a significant portion of the position (more than 25%) and occur abruptly (over a period of less than six months);
 - 2) result from a reorganization, changes in the equipment used to perform the work, or a reassignment of duties from a vacant or abolished position;

¹The instant facts may be distinguished from the assignment of an eleventh engineer to a supervisor who had, over an extended period, come to supervise ten other engineers and where the class specifications established the supervision of 11 engineers as the minimum for classification at the higher class level.

3) result from the removal of a supervisory level.

The appellant suggests that because the change to his position did not meet the precise language of any of the situations cited in the Personnel Manual, the change must have been gradual. However, the quoted language from the Personnel Manual only attempts to provide some examples where duties have not been acquired gradually. There is no indication that these examples were intended to be all inclusive.

The appellant also contends that the change to his position was gradual because it took him many months to acquire expertise in the subject matter area of corridor studies. This argument fails to recognize that it was the assignment of Mr. Babcock to the appellant's supervision rather than the assignment of corridor study engineering responsibility to the appellant which qualified his position to be classified at the Sup. 4 level. Nothing in the record indicates that the appellant's responsibilities would meet the Sup. 4 standards if he were not supervising Mr. Babcock.

Management's decision to reassign Mr. Babcock, a Civil Engineer-Transportation Senior, to the appellant for supervision resulted in a logical, but not gradual, change in the appellant's duties where the Sup 3 and Sup 4 class specifications differentiate on the basis of whether the employe supervises any senior or advanced civil engineers.

ORDER

The respondents' decision is affirmed and this appeal is dismissed.

Dated: December 17, 1992 STATE PERSONNEL COMMISSION


LAURIE R. MCCALLUM, Chairperson

KMS:kms
K:D:Merits-recl/reall (Wacker)


DONALD R. MURPHY, Commissioner


GERALD F. HODDINOTT, Commissioner

Parties:

Lawrence M. Wacker
104 West Mission Road
Green Bay, WI 54301

Charles Thompson
Secretary, DOT
P.O. Box 7910
Madison, WI 53707

Jon E. Litscher
Secretary, DER
P.O. Box 7855
Madison, WI 53707

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.