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GERARD M. SWIM and KEITH A.
WILKINSON,

Appellants,

v.

Secretary, DEPARTMENT OF
EMPLOYMENT RELATIONS,

Respondent.

Case Nos. 92-0576-PC
92-0613-PC

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RULING
ON
MOTIONS FOR
SUMMARY JUDGMENT

These cases were consolidated for hearing purposes. Respondent filed motions for summary judgment, and appellants did not respond. The following facts appear to be undisputed.

1. Appellants' positions within the Department of Industry, Labor and Human Relations (DILHR) were reallocated from Environmental Engineer - Senior to Plumbing Plan Reviewer 2, and they seek through these appeals their previous classification.

2. The position description (PD) for Mr. Wilkinson's position includes the following summary:

On an independent basis, and under the general direction of Environment Engineer 5 Supervisor of the Plan/Plat Review Unit in the Onsite Section of the Office of Division Codes and
Application: examine and evaluate large onsite sewage systems in the northeast regional office; examine onsite sewage system designs, plans and specifications for code conformance; review petitions for variances to code requirements; consult with the owners, contractors, architects, engineers, government agencies and the public on onsite sewage systems; speak and make presentations at annual county meetings in the counties served by the regional office; and utilize environmental engineering knowledge, theories and practices in the performance of the duties.

3. The PD for Mr. Swim's position includes the following summary:

On an independent basis in the Madison office, and under the general direction of the Environmental Engineer Supervisor 4 of the Plan Review Unit in the Onsite Sewage Section of the Bureau of Building Water Systems: examine and evaluate large onsite sewage systems; examine onsite sewage system designs, plans and

specifications for code conformance; review petitions for variances to code requirements; review plans for experimental systems; consult with owners, contractors, architects, engineers, government agencies and the public on onsite sewage systems; research and develop code changes and interpretations relating to onsite sewage systems; speak and make presentations at meetings in the counties served by the office; and utilize environmental engineering knowledge, theories and practices in the performance of the duties.

4. The Plumbing Plan Reviewer position standard includes the following definition of Plumbing Plan Reviewer 2:

This is objective level plan and specification review and approval work for general plumbing or private sewage system to ensure compliance with Federal and State laws and regulations. Employees in this class independently review plumbing plans, sanitary sewer specifications, drain, waste and vent design and sizing for code compliance; consult with general public architects, plumbers, designers, engineers, inspectors, attorneys and legislators regarding plan review procedures and applicable statutes and codes. Work is performed under general direction of the Plumbing Supervisor.

5. The Environmental Engineer class specification includes the following definition of Environmental Engineer - Senior:

This is Senior level environmental engineering work involving difficult technical assignments which include consideration of complex variables and issues, unusual conditions, or unique circumstances not typically dealt with at lower levels. Positions at this level differ from lower level positions in that most objectives are broadly defined in relation to the position's total assignments. Examples of work performed include complex plan examinations, product examinations and inspections; reviews of precedence - setting petitions for variance and plans for experimental systems; and complex code interpretations and code - change draft preparation. Positions at this level independently deal with contractors, consultants, and other agency staff. Work is performed under general supervision.

6. The Environmental Engineer class specification includes in the statement of "inclusions" the following: "This series encompasses professional engineering positions. These positions devote the majority of their time and are primarily responsible for providing engineering expertise in their assigned program area."

7. Appellants' PD's are comparable from a classification standpoint to certain other Plumbing Plan Reviewer 2 positions (those of Peter Pagel and Harold Stanlick).

8. Appellants compare their positions (in answers to interrogatories) to Environmental Engineer positions occupied by Michael Beckwith, Glen Schlieter, and Dan Jensen. There are some resemblances with those positions. However, unlike appellants, those positions are involved primarily in the review and approval of plumbing-related products. This activity is included in the Environmental Engineer class specification list of "inclusions," and in the Environmental Engineer - Senior definition. A position similar to Mr. Beckwith's is a representative Environmental Engineer - Advanced level.

While appellants, proceeding pro se, have not responded to the motion for summary judgment, the Commission has examined the papers respondent submitted in support of the motion to ascertain whether a grant of summary judgment would be appropriate. See Grams v. Boss, 97 Wis. 2d 332, 338-39, 294 N.W. 2d 473 (1980). These documents include copies of appellants' answer to respondent's interrogatories. In their answers, appellants do not concede that their position descriptions are accurate, but set forth some additional duties not reflected explicitly on the PD.

With respect to respondent's comparison of their position to Mr. Pagel's position, appellants do not dispute that their PD's are essentially similar. They do not admit that their positions are comparable, however.

Appellants compare their positions to several Environmental Engineer positions. Respondent contends, and it appears to be uncontested, that these positions, unlike appellants, are oriented primarily to the review and approval of plumbing-related products, and that this is a function reflected explicitly at both the Environmental Engineer - Senior and Developmental levels. However, what this aspect of the case comes down to is a comparison of the PD's in question in the context of some relatively general class concepts embodied in the class specifications. While the focus of the comparison positions on plumbing-related products is a point of differentiation, the Commission is not prepared to say on the basis of the PD's that there are not aspects of appellants' position which could offset this point. As the Commission noted in Miller et. al v. DER, 92-0122-PC, etc. (5/5/94),¹ a case respondent cites, the determination of whether the positions in question were more appropriately classified in the Plumbing Plan Reviewer or the Environmental Engineer classification

¹ Mr. Pagel, on whose PD respondent relies, was a party to that case.

involved the rather thorny question of whether the work involved fit within the concept of professional engineering. The PD's in this case do not resolve that question. See Grams v. Boss, 97 Wis. 2d 332, 338-39, 294 N.W. 2d 473 (1980) (citations omitted):

On summary judgment the moving party has the burden to establish the absence of a genuine, that is, disputed, issue as to any material fact. On summary judgment the court does not decide the issue of fact. A summary judgment should not be granted unless the moving party demonstrates a right to a judgment with such clarity as leave no room for controversy; some courts have said that summary judgment must be denied unless the moving party demonstrates his entitlement to it beyond a reasonable doubt. Doubts as the existence of a genuine issue of material fact should be resolved against the party moving for summary judgment.

The papers filed by the moving party are carefully scrutinized. The inferences to be drawn from the underlying facts contained in the moving party's material should be viewed in the light most favorable to the party opposing the motion. If the movant's papers before the court fail to establish clearly that there is no genuine issue as to any material fact, the motion will be denied. If the material presented on the motion is subject to conflicting interpretations or reasonable people might differ as to its significance, it would be improper to grant summary judgment.

For these reasons, reinforced by the special caution that must be exercised in summary judgment procedure in an administrative proceeding, see Balele v. UW-Madison, 91-0002-PC-ER (6/11/92) ("particular care must be taken in evaluating each party's showing on the motion to ensure that complainant's right to be heard is not unfairly eroded by engrafting a summary judgment process designed for judicial proceedings"), respondent's motions for summary judgment must be denied.

ORDER

Respondent's motions for summary judgment are denied. This matter is to be scheduled for a status conference.

Dated: May 15, 1995

STATE PERSONNEL COMMISSION


LAURIE R. McCALLUM, Chairperson

AJT/jan


DONALD R. MURPHY, Commissioner


JUDY M. ROGERS, Commissioner

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