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JON OBENBERGER,

Appellant,

v.

Secretary, DEPARTMENT OF
EMPLOYMENT RELATIONS, and

Secretary, DEPARTMENT OF
TRANSPORTATION,

Respondents.

Case No. 93-0114-PC

* * * * *

DECISION
AND
ORDER

This is an appeal of a decision by respondents to reallocate appellant's position to Civil Engineer Transportation-Senior rather than Civil Engineer Transportation-Advanced. A hearing was held on March 6, 1995, before Laurie R. McCallum, Chairperson.

The Department of Transportation (DOT) appointed appellant to a Civil Engineer 4 (CE 4) position effective January 2, 1990. This position functioned as a design squad leader for DOT construction projects in District 1. Three other design squad leader CE 4 positions were filled in District 1 at this same time. The individuals appointed to these three other positions had substantially more relevant experience than appellant at the time of these appointments. As a result of his relative inexperience, the more complex projects assigned to appellant were at less active stages than those assigned to these other three engineers, appellant functioned less independently in carrying out his assignments than these other three engineers, and the range of CE 4 level duties assigned to appellant was narrower than that assigned to these other three engineers between January and June of 1990. During this period of time, appellant was assigned responsibility for the following projects:

- 1. the Madison beltline project--this was a complex project viewed in its entirety but was in its early stages at this time requiring little, if any, design

work; the design work completed by appellant on this project after June of 1990 served as one of the bases for his reclassification to the Advanced 1 level in 1992.

2. the I90/94 project in Sauk and Columbia Counties--this, too, was in its early stages at this time and, as a result, required little, if any, design work;

3. the I90 project in Rock County--overall, this was not a complex project although it presented certain complex traffic control and grade issues;

4. the USH 53 project in the City of Janesville--overall, this was not a complex project although certain of its components, particularly those relating to environmental and historical issues, could be considered complex.

Effective June 17, 1990, appellant's position was reallocated by appellant to the Civil Engineer Transportation-Senior classification, and the other three positions were reallocated to the Civil Engineer Transportation-Advanced 1 classification.¹

The classification specifications for the Civil Engineer Transportation series state as follows, in pertinent part:

CIVIL ENGINEER - TRANSPORTATION - SENIOR

This is senior level civil engineering work in such areas as planning, design, construction, maintenance, traffic, materials and/or operation of highways, structures, and other transportation facilities for which the department may be responsible. For those positions which may progress to the Senior level or above, the differentiating characteristics of the Senior level include long-term and broadly defined objectives; major work products are completed with little or no specific direction or review; and the supervisor reviews the work after it is completed for informational or evaluation purposes. Positions at these levels assume a nearly independent role in working with local officials; work assignments may cross intra-departmental functional areas. The engineer may lead working groups on issue development, provide solutions, and direct negotiations on complex issues. Positions at this level make more decisions independently on more sensitive and political matters and function under general supervision.

¹ It appears from the record that one of these positions was originally reallocated to the Senior level and subsequently, as the result of a re-review, was reallocated to the Advanced 1 level retroactive to June 17, 1990.

DISTRICT - DIVISION OF HIGHWAYS AND TRANSPORTATION
SERVICES

Design

Design Project Engineer or Assistant Design Project Engineer -
Squad Leader

Positions at this level and in this area, are leaders of one or more design squads for large to reasonably complex highway projects. The more complex project would have a high cost with over 200 contract items; may be an existing roadway or new roadway; involve environmental issues; have substantial public involvement and be politically sensitive. Additionally, the more complex project would involve right-of-way issues. An engineer at this level may be assigned multiple large projects. The review and coordination of consultant-prepared plans of the same size is considered to be equivalent work.

CIVIL ENGINEER - TRANSPORTATION - ADVANCED 1

This is advanced level 1 civil engineering work in such areas as planning, design, construction, maintenance, traffic, materials and/or operation of highways, structures, and other transportation facilities for which the department may be responsible. Positions at this level differ from lower level positions in that the engineer develops and follows his/her own broadly defined work objectives and the review of the work is limited to broad administrative evaluation by the supervisor. Positions at this level have extensive authority to deal with local officials, Federal Highway Administrations officials, and agency top officials, especially in highly sensitive and complex issues and areas. The work performed by these engineers requires a high level of interpretation and creativity and has major impact on the planning, design, construction, maintenance and operation of transportation facilities. The engineer may be considered the in-depth expert in a specialty area. The work is performed under general supervision.

DISTRICT - DIVISION OF HIGHWAYS AND TRANSPORTATION
SERVICES

Design

Design Project Engineer - Squad Leader

Positions at this level and in this area, are leaders of a design squad for a complex highway project. The complex highway project involves the design and development of multiple plans for a given highway project. These plans may involve exceptions

to standards and require judgments and justifications by the project engineer, to the Federal Highway Administration or Division management. These projects are typically of high cost with over 200 contract items; involve environmental and right-of-way issues; are politically sensitive; include utility and traffic control issues; may involve archaeological issues and have considerable public involvement or controversy. The review and coordinations of consultant-prepared plans of the same size and complexity is considered to be equivalent work; however, the employee may be assigned more than one such project.

Viewing the record as a whole, it is apparent that appellant was brought into state service at a classification level in the old Civil Engineer progression series justified neither by his level of previous experience nor by his early assignments at DOT. The CE 4 level was the objective level for the DOT district design squad leader positions at that time and the record shows that appellant was not assigned the full range of CE 4 level duties between January and June of 1990. This is in contrast to both the experience and the assignments of the other three individuals appointed to DOT District 1 CE 4 design squad leader positions in January of 1990. The record shows that, although appellant and the other three individuals were appointed to positions at the same classification level, the design work appellant performed between January and June of 1990 was not as complex due to the types of projects assigned as well as the relative stages of these projects, and was not performed as independently as the design work performed by these other CE 4s.

The distinctions between district design squad leader positions at the Senior and Advanced 1 levels primarily focus on the degree of independence and the type of project assigned. In view of his relative lack of experience, the record shows that appellant was not functioning at the time of the reallocation with a degree of independence equivalent to that of the other three District 1 design squad leader positions discussed above or with the degree of independence contemplated by the Advanced 1 classification specifications. In addition, the record shows that only the Madison beltline project would qualify as a "more complex" project within the meaning of the Senior specifications or as a "complex" project within the meaning of the Advanced 1 specifications, and that appellant was not performing complex design tasks for a significant percentage of his time in relation to this project during the first six months of 1990 due to the stage of this project at that time.


As a result, this record shows that, between January and June of 1990, the range of complexity of the projects assigned to appellant's positions, the type of design work required by the stages of these assigned projects, and the independence with which appellant carried out this design work is well-described by the language of the Senior specifications, and does not satisfy the language of the Advanced 1 specifications or compare favorably to that of the other District 1 Advanced 1 design squad leader positions offered for comparison purposes.

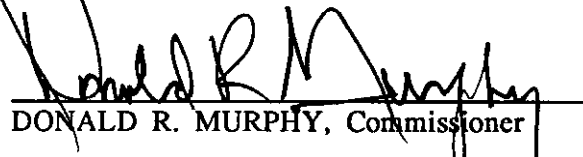
There was also testimony in the record by appellant's witnesses comparing the duties and responsibilities of district design squad leader positions to Advanced 1 assistant project development engineers in the central office. This testimony, however, was very general and did not focus on how the specific duties and responsibilities of appellant's position during the relevant time period compare to the specific duties and responsibilities of these positions. As a result, comparison was very difficult and the evidence insufficient to support a conclusion that appellants position was comparable for classification purposes to these positions.

Order

The action of respondent is affirmed and this appeal is dismissed.

Dated: June 9, 1995 STATE PERSONNEL COMMISSION


LAURIE R. McCALLUM, Chairperson


DONALD R. MURPHY, Commissioner

LRM:lrn


JUDY M. ROGERS, Commissioner

Parties:

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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 (except an order arising from an arbitration conducted pursuant to §230.44(4)(bm), Wis. Stats.) 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. 2/3/95