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HAROLD T. STANLICK,

Appellant,

v.

Secretary, DEPARTMENT OF
EMPLOYMENT RELATIONS,

Respondent.

Case No. 94-0157-PC

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DECISION
AND
ORDER

This appeal is before the Commission following a class survey, which resulted in appellant's position being reallocated from Plumbing Plan Reviewer 2 to Private Sewage Plan Reviewer 2. Appellant, Harold Stanlick, asserts the more appropriate classification for his position is Wastewater Engineer Senior.

At the time of the survey Stanlick was employed at the Department of Industry, Labor and Human Relations, Division of Safety and Buildings, Bureau of Building Water Systems. He had been an engineer since 1960 and a registered professional engineer since 1972.

The goal and worker activities of Stanlick's position at survey were:

- A. Examine reports on the hydrogeology, soil evaluations, engineering analysis, and design specifications for private sewage systems receiving more than 8,000 gallons per day. Cooperate and coordinate with field staff and with the engineering staff from the Department of Natural Resources as required [by] the Memorandum of Understanding between DILHR and DNR. This review and coordination requires a level of competency of a certified soil tester and environmental engineer, (25%).
- B. Examine and review experimental wastewater treatment systems. Compare and evaluate private sewage system designs that do not meet current administrative codes (30%).
- C. Review private sewage system plans and engineering specifications submitted by engineers, architects, plumbing designers or master plumbers for compliance to Ch. 145, Wis. Stats., and provisions of Ch. 1 LHR 83, Wisconsin Administrative Code (10%).

- D. Consultation with the general public, owner of projects, general contractors, licensed plumbers, developers, land surveyor, system designers, engineers, architects, inspectors, other state agencies, attorneys and legislators and their staffs concerning the requirements of Wisconsin Administrative Codes as they pertain to private sewage systems (15%).
- E. Preparation and presentation of training materials for licensed plumbers, certified plumber inspectors, designers, engineers, architects, soil tester, other state agencies and the general public pertaining to the requirements of DILHR administrative codes and Wisconsin statutes dealing with private sewage systems (15%).
- F. Provide quality services to both our external and internal customers (5%).

The survey and current classification specifications for Private Sewage Plan Reviewer 2 positions provide:

Positions in this classification perform all the duties of a Private Sewage Plan Reviewer 1. In addition, positions in this classification perform at least three of the following four goals. (1) Present technical training material to plumbers, plumbing system designers, engineers, architects, soil testers, and inspectors to explain the provisions of the Wisconsin Uniform Plumbing Code and Statutes dealing with private sewage systems. (2) Prepare training materials for the continuing education program or other presentations. (3) Assist in the preparation of plumbing and soil testing licensing examinations. (4) Develop code drafts, code interpretations, policies or procedures. Three of the above four goals must account for at least 15% of a position's continuing overall duties and responsibilities. Work is performed under general supervision.

Some positions spend the majority of their time evaluating plans, specifications and design calculations for alternative private sewage systems and plats of subdivisions not served by public sewers for compliance with the provisions of the appropriate administrative code.

Classification specifications for Wastewater Engineer - Senior positions provide the following:

This is senior level wastewater engineering work. Employees at this level differ from lower level positions in that the engineer develops and follows broadly defined work objectives and the review of the work is limited to administrative evaluation by the supervisor. Positions at this level have extensive authority in carrying out their assigned responsibilities. This involves independently implementing the wastewater management program in the assigned portion of the state,

issue all permits related to a specific type of facility, and have developed an expertise in their assigned field. The work performed at this level requires a high degree of interpretation and creativity in evaluating engineering aspects of new technologies. The engineer may be considered an expert in a segment of the program (i.e., specific type of treatment, permit, computer model), which has program wide policy impact but is not of the significance as found at higher levels.

Representative Positions: 1) As a district/area engineer with responsibility for implementing the wastewater management program in the assigned area for municipal and major industrial wastewater treatment, municipal wastewater sludge disposal, compliance with design and construction standards, appropriate operation and maintenance practices, WPDES permit requirements and compliance schedules, operation certification, enforcement activities, and compliance with application administrative codes and regulations; and responding to complaints and emergencies; 2) As a construction management engineer with responsibility for overseeing wastewater treatment plant construction projects to ensure compliance with applicable state and federal grant and local procedures, approving construction contract change orders, representing the department during litigation regarding the construction project and eligibility for related grant or loan eligibility decisions; or 3) As a central office engineer responsible for preparing WPDES discharge permits and evaluate related data and correspondence for both biological and physical-chemical treatment, reviewing engineering plans and specifications for groundwater monitoring systems and proposed industrial/municipal wastewater treatment and/or disposal facilities. Positions at this level make decisions independent of supervisory oversight, but carry out work responsibilities under the general direction of program managers.

The three allocation patterns for Wastewater Engineer - Senior positions require the incumbent to be responsible for implementing wastewater management programs for complex industrial or municipal wastewater treatment facilities. Also, this classification specification¹ requires these positions to be "located primarily within the Department of Natural Resources at the central, district and area offices." DNR Classification Specialist Susanne Steinmetz, author of the Wastewater Engineer classification specifications, testified that wastewater engineering positions are currently exclusive to DNR.

Appellant makes four arguments in support of his appeal. In brief, they are: that since the classification specification for Wastewater Engineer positions do not require these positions to be exclusive to DNR, it is possible that other positions in agencies besides DNR are performing duties described in this specification; that private sewage systems are designed on

¹Wastewater Engineer, Inclusions

the same principles as municipal systems; that the classification specification for Wastewater Engineer does not "specifically identify every eventuality or combination of duties and responsibilities of positions that currently exists" and his position was not reviewed by respondent to determine if it was "engineering"; and that all appellant's exhibits show he spends the majority of his time on engineering work, much of it with DNR engineers at higher levels.

The core of appellant's arguments is that he spends the majority of his time employing the same engineering principles and technology in his work as used by Wastewater Engineers in DNR in their work, therefore he should have the same classification.

In a reallocation case, the appellant has the burden of proof. Here, in the instant case, the argument and evidence presented by appellant falls short. First, the Wastewater Engineer classification specification states that Wastewater Engineer positions are "primarily" located in DNR. Appellant's position is in DILHR. The evidence established that, in fact, no Wastewater Engineer position exists in any agency outside DNR.

Second, the positions of David Russell, Keith Wilkinson, Gerard Swim, Peter Pagel, James Quinlan and Kenneth Stiemke, located in the same bureau as appellant, perform similar work. None of these positions is classified as a Wastewater Engineer. In a prior decision, the Commission determined that positions held by Pagel, Quinlan and Stiemke best fit the Plumbing Plan Reviewer 2 classification. Currently this classification is known as Private Sewage Plan Reviewer 2.

Third, appellant conceded in testimony that over 75% of his duties are described in the PSPR 2 specification. Appellant's duties stem from DILHR's authority provided in Ch. 145, Wis. Stats. to regulate plumbing and private sewage systems. In contrast, Wastewater Engineer duties relate to municipal and industrial sewage systems under Ch. 144, Wis. Stats. Thus his position fails to fit any of the three allocation patterns for Wastewater Engineer - Senior classification.

Appellant's position fits perfectly within the Private Sewage Plan Review classification specification. It specifically includes positions, which "are primarily responsible for providing skilled private sewage system plan review work" and are "located within the Division of Safety and Buildings with the Department of Industry, Labor and Human Relations."

Also, however provocative appellant's central argument, the Wastewater Engineer Senior classification specification does not address it and the Commission has no authority to rewrite the specifications. See Zhe et al v. DHSS & DP, 80-285-PC; 11/19/81, affirmed, Dane Cty. Cir. Ct. Zhe et al. v. PC, 81-CV-6492, 11/2/82.

ORDER


Respondent's decision reallocating appellant's position to Private Sewage Plan Reviewer 2 is affirmed and appellants' appeal is dismissed.

Dated: October 16, 1995 STATE PERSONNEL COMMISSION


LAURIE R. McCALLUM, Chairperson

DRM:bjn


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 (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