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WAYNE HARTLING,
 Appellant,

v.

Secretary, DEPARTMENT OF
 EMPLOYMENT RELATIONS,
 Respondent.

Case No. 94-0275-PC

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DECISION
 AND
 ORDER

The issue for hearing in this case is: "Whether respondent's decision to reallocate appellant's position to Surveyor Advanced 2 rather than Engineering Specialist - Transportation - Advanced 2 [ES - Trans - Adv 2] was correct." (Conference report dated December 9, 1994).

There is no significant dispute concerning the duties and responsibilities associated with appellant's position. The most recent PD (position description) for his position is dated December 22, 1994 (Respondent's Exhibit 8). It contains the following, essentially accurate, "position summary":

This position is Technical Unit Coordinator in the largest transportation district with more than one-third of the Statewide jobs for trans projects. Oversees design engineering data collection and computation activities for the district. Is responsible for scheduling work assignments, instructing, assisting and reviewing the work of four engineering data gathering crews. Computes, adjusts and assembles all engineering data for use by design/right of way project leaders. Supplies control survey data to C.O. Technical Services Section for production of topographic mapping and aerial cross-sections.

In addition, this position is involved on statewide policy and procedure setting committees and is active in interpretation of those policies for both local government agencies and other highway districts.

The essential function of this job are [sic] to lead the engineering data collection for use in design highway improvement projects. This routinely requires on a regular recurring basis, reading and math comprehension skills; computer operation skills; technical writing skills; and the ability to operate data collection devices.

This PD was prepared after the reallocation (effective June 16, 1994) of appellant's position from ES - Adv 2 (his classification under the previous class

specification which, as part of the survey process, had been abolished and replaced by a new class specification (Respondent's Exhibit 2) which retained the same class title) to Surveyor Advanced 2. This PD differed primarily from appellant's earlier June 14, 1994, PD, in that the phrase "engineering data collection" was substituted for the term "survey." However, it is undisputed that there was no substantive difference in the activities described by these terms -- i.e., the change in the PD's reflected only a change in nomenclature.

In connection with the survey, respondent created a new classification of Surveyor. Respondent's intent was to take positions involved in this activity out of the ES series, a more generalized classification, and to place them in their own, more specific classification -- i.e., Surveyor. Within the Surveyor category, respondent essentially determined that appellant's position was unique, and created a specific classification to encompass his position -- Surveyor Advanced 2. What amounts to a representative Surveyor Advanced 2 position is the only definition for this classification, as follows:

Department of Transportation - Survey Coordinator, District 2: Perform the duties identified at the Surveyor Advanced 1 level. In addition, compute all highway alignments for proposed projects. Develop and interpret policy and procedures for District 2, other districts, and local government agencies. Determine the district's need for aerial photography, mapping, and cross sections, and Global Positioning System services with the Central Office. Research information for proposed improvement projects. Develop budgets and order specialized survey equipment and supplies.

When appellant's PD is compared to the Surveyor Advanced 1 and 2 definitions (as Respondent did in Respondent's Exhibit 3), it is clear that appellant's position is described almost precisely by the Surveyor Advanced 2 class definition. There was no other evidence in this record which would disturb this conclusion. Also, neither appellant nor any of his witnesses identified any ES - Transportation - Adv 2 allocation in that class specification (Respondent's Exhibit 2) which aptly describes appellant's position.

Appellant's only real material argument that his position should have been reallocated to ES - Transportation - Adv 2 rather than Surveyor Advanced 2 is related to his contention that his work involves the collection of engineering data rather than surveying per se. While it cannot be gainsaid that he is involved in the collection of engineering data, this does not take his duties outside of either the Surveyor Advanced 2 classification specification,

which specifically describes his position, or even the general concept of a surveyor. The "Dictionary of Occupational Titles" contains the following with respect to this area:

018 SURVEYING/CARTOGRAPHIC OCCUPATIONS

This group includes occupations concerned with determining, delineating, planning, and positioning tracts of land, natural and constructed features, coastlines, and land areas. Typical specialized surveys include property, cartography, construction, geodesy, hydrography, mining, photogrammetry, topography, land development, and mapping.

* * *

018.167-018 LAND SURVEYOR (profess. & kin.)

Plans organizes, and directs work of one or more survey parties engaged in surveying earth's surface to determine precise location and measurements of points, elevations, lines, areas, and contours for construction, mapmaking, land division, titles, mining or other purposes. Researches previous survey evidence, maps, deeds, physical evidence, and other records to obtain data needed for surveys. Develops new data from photogrammetric records. Determines methods and procedures for establishing or reestablishing survey control. Keeps accurate notes, records, and sketches to describe and certify work performed. Coordinates findings with work of engineering and architectural personnel, clients, and others concerned with project. Assumes legal responsibility for work and is licensed by state. (Respondent's Exhibit 13)

While perhaps the classic notion of surveying involves the determination of property boundaries for such purposes as land sub-division and the resolution of boundary disputes, the foregoing description includes other activities which fall within the concept of the collection of engineering data in connection with construction and related endeavors.

To the extent that this appeal is motivated by appellant's dissatisfaction with the new class specifications that arose from the survey,¹ this is outside the Commission's subject matter jurisdiction. The Commission has no authority to review DER's decisions with respect to the creation of class specifications. Section 230.09(1)(am), Stats., provides that DER "shall establish, modify or abolish classifications as the needs of the service require." The Commission

¹ The reallocation of appellant's position did not result in the placement of his position in a lower salary range, but he claims that the new classification is a hindrance with respect to such things as transferability.

has no statutory authority to review the actions that DER takes under §230.09(1)(am). Rather the Commission's material review authority, §230.44(1)(b) is limited to DER's actions under §230.09(2)(a), to allocate, reclassify or reallocate positions. The Commission has no authority to reject or modify class specifications, but must review reallocation decisions on the basis of the class specifications as written. See, e.g., Zhe et al. v. DHSS & DP, 80-285-PC, etc., 11/18/81; affirmed by Dane Co. Circuit Court, Zhe et al. v. Pers. Comm., 81-CV-6492, 11/2/82.

ORDER

Respondent's action reallocating appellant's position to Surveyor Advanced 2 is affirmed and this appeal is dismissed.

Dated: July 24, 1995

STATE PERSONNEL COMMISSION


LAURIE R. McCALLUM, Chairperson

AJT:rcr


DONALD R. MURPHY, Commissioner


JUDY M. ROGERS, Commissioner

Parties:

Wayne Hartling
2401 S. Brookland Road
New Berlin, WI 53151

Jon 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 (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.)

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