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GERALD R. MUELLER,

Appellant,

v.

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

Respondents.

Case No. 94-0567-PC

\* \* \* \* \*

FINAL  
DECISION  
AND  
ORDER

A Proposed Decision and Order was issued on September 6, 1995. After consulting with the hearing examiner, the Commission adopted the proposed decision and order as its final decision, with changes explained in the alphabetical footnotes.

A hearing was held in the above-noted case on August 24, 1995, with the parties providing oral argument at the close of hearing in lieu of written argument. The hearing issue was agreed to by the parties at a prehearing conference held on March 14, 1995. The issue is whether respondents were correct in denying Mr. Mueller's request to reclassify his position from Engineering Specialist Transportation Advanced 1 (EST-Adv. 1), to Civil Engineering Transportation Advanced 1 (CET-Adv. 1). The parties agree that the effective date of the reclassification request was March 7, 1993.

FINDINGS OF FACT

1. On January 25, 1993, Mr. Mueller submitted a handwritten request to his supervisor, Tom Kochanski, requesting reclassification of his position to CET-Adv. 1. By memo to Mr. Mueller dated February 15, 1993, Mr. Kochanski replied saying he did not support the reclassification request. (Exhs. A-2 and A-3)
2. Mr. Mueller pursued the matter by submitting his reclassification request to the second step. Specifically, he sent his request to DOT's personnel office and the personnel office received his request on March 1, 1993. (Exh. A-9, p. 11)

3. Mr. Mueller's reclassification request was denied by a written memorandum dated September 16, 1994, which also provided the rationale for the denial. (Exh. A-9, p. 1-10) Testimony at hearing established that DER concurred in this denial decision.
4. The official position description (PD) for Mr. Mueller's position as of February 24, 1992, is in the record (Exh. R-3 and Exh. A-9, pp. 12-15). His PD was not rewritten for the reclassification request. Accordingly, the PD does not reflect the work which Mr. Mueller advanced as justification for his reclassification request. The job duties according to the official PD are summarized below using the PD format.

Position Summary: Project Manager in the Construction and Design pool. Manages large/complex transportation projects. Performs other assignments pertaining to highway construction and design. Reports to area construction and design supervisors. Assignments received are normal and afford opportunity for making decisions. Directs technicians and other employees in lower classifications.

<u>Time %</u>	<u>Worker goals and activities</u>
80%	A. Administration of large/complex construction projects.
20%	B. Administration of design projects.

5. The work performed by Mr. Mueller which he felt justified the reclassification of his position was his work on the Greenfield Ave. Project. This work was conducted in three stages. The first stage involved resurfacing Greenfield Avenue from 91st to 84th streets, which commenced in April 1992, and was completed by June 17, 1992. During the same time period, some preliminary work was being done for stages 2 and 3, such as measuring and marking, as well as removal of sidewalk curbs. The second stage involved resurfacing Greenfield Avenue from 70th to 55th and National, which commenced in early June 1992 and was completed by August 12, 1992. The third stage involved resurfacing Greenfield Avenue from 84th to 70th Streets, which commenced on August 17, 1992, and was completed in July of 1993. He worked on no other projects while he was involved with the Greenfield Avenue project.

6. Mr. Mueller is classified as an Engineering Specialist - Transportation (EST) at the Advanced 1 level. The classification specification (Class Spec) provides multiple classification levels: entry, developmental, journey, senior, advanced 1 and advanced 2. Pertinent text from the EST Class Spec is shown below. (Exh. R-1)

**Inclusions:** This series encompasses positions performing professional work in the field of . . . engineering, located primarily within the [DOT]. These positions perform professional work in the field of . . . engineering in the planning, design, construction, operation and maintenance of transportation facilities. These facilities include, but are not limited to: state highways, bridges, rest areas, and airports.

**Exclusions:** Excluded from this series are the following types of positions:

1. Positions that perform simple routine or non-professional technical work in the field of architecture/engineering.
2. Positions which do not meet the current definitions of professional in s. 111.81, Wis. Stats., . . .
3. Professional program support positions, more appropriately identified by other class series such as Program and Planning Analyst, Research Analyst, etc., whose work does not require, on a continuing basis, a professional or equivalent engineering background.
4. Technical program support assistants, more appropriately identified by other class series such as Communication Technician . . .
5. Supervisory or management and confidential positions . . .
6. All other positions which are more appropriately identified by other [Class Specs].

\* \* \*

**Engineering Specialist - Advanced 1:** Positions allocated to this class perform very complex assignments under the general supervision of an architect/engineer, engineering specialist supervisor, or architect/engineer supervisor.

Examples of typical duties of Engineering Specialists at the Advanced level are listed below:

**District. Design/Construction Pool Project Specialist:**

This is the advanced level of design/construction project specialists. These positions are located in the construction and design sections or construction/design pool working the majority of the time in construction and the remainder in design. At this level, the position manages large to complex highway construction projects. The projects at times will involve more than one contract, or the employe may manage two or more highway construction projects simultaneously. The projects

involve numerous bid items, large dollar values, complex layout, utility conflicts, numerous subcontractors, granular subbase, base course, erosion control, asphaltic and P.C.C. surfacing, curb and gutter, storm sewer and difficult traffic handling operations. In design, this position, at this level, typically functions as a design squad leader on large to complex highway design plans and specifications. The design squad leader will oversee the complete development of plans and specifications of these highway improvement projects; see that the intent of design investigation is followed and that the design standards are met. Occasionally, the position will be the design squad leader of several large projects simultaneously or be assigned to special studies or research subjects.

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**Qualifications:** The qualifications required for these positions will be made at the time of recruitment. Such determinations will be made based on an analysis of the goals and worker activities performed and by an identification of the education, training, work or other life experience which would provide reasonable assurance that the knowledge and skills required upon appointment have been acquired.

7. Mr. Mueller wants his position to be classified as a Civil Engineer - Transportation (CET) at the advanced 1 level. The Class Spec<sup>1</sup> provides the same classification levels as the EST Class Specs (entry, developmental, journey, senior, advanced 1 and advanced 2). Pertinent text from the CET Class Spec is shown below. (Exh. R-2)

**Inclusions:** This series encompasses professional positions, located primarily within the [DOT's] Division of Highways and Transportation Services and the Division of Transportation Assistance, which perform professional engineering work in the planning, design, construction, operation and maintenance of transportation facilities. These facilities include, but are not limited to: state highways, bridges, rest areas, and airports. Additionally, positions within this classification series may perform professional civil engineering work emphasizing traffic engineering, structural engineering, materials, research, or other specialty areas.

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<sup>1</sup> The Civil Engineer Transportation (CET) Class Spec was re-written with an effective date in June 1994. At issue in this case is the CET Class Spec in effect prior to June 1994.

**Exclusions:**

1. Positions that perform engineering-related duties that are made appropriately classified as Engineering Specialists, or Engineering Technicians, or are not exempt from the Fair Labor Standards act.
2. Positions that do not perform professional civil engineering duties, require a Bachelor of Science in Civil Engineering or registration as an Engineer-In-Training (E. I. T.) or the equivalent.
3. Engineering positions involved in building construction...
4. Positions that are supervisory, management (except at the Advanced 1 and Advanced 2 levels), and confidential . . .
5. All other positions which are more appropriately identified by other [Class Specs].

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**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 Administration 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.

Examples of duties: District - Div. of Highways and Transportation Services.

**Construction Project Engineer:** Positions at this level and in this area, coordinate all project activities required in the accomplishment of complex roadway construction projects. Projects are usually urban; involved different types of pavement; include retaining walls and bridges; are politically sensitive; have large volumes of traffic; involve complex engineering principles; involve substantial traffic control; may have serious environmental concerns; and may be a road construction project for a freeway. Staff assigned to the project engineer include an assistant project engineer; 1-2 full-time survey crews with possibly one lead survey crew; 1 full-time materials specialist; several, 10 or more, inspectors with a lead inspector.

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**Qualifications:** The general qualifications for all positions included in this Engineering series are graduation from an accredited college or university with a Bachelor's degree in engineering; or possession of an engineer-in-training certificate;<sup>A</sup> or registration as a professional engineer by the Wisconsin Examining Board of Architects, Professional Engineers, Designers and Land Surveyors or eligibility therefore, or equivalent work experience. (Eligibility therefore is defined as registration in another jurisdiction in which the requirements for licensure are of a standard not lower than those in Wisconsin.)

Specific qualifications for a position will be determined at the time of recruitment. Such determination will be based on an analysis of the goals and worker activities performed and by an identification of the education, training, work or other life experience which provide reasonable assurance that the knowledge and skills required upon appointment have been acquired. Registration as a professional engineer may be required, on a case-by-case basis, for all positions classified at the Senior, advanced 1 or Advanced 2 levels.

8. The CET Class Spec requires the position's incumbent to be a recognized professional engineer as evidenced either by: 1) attainment of a Bachelor's degree in engineering, or 2) possession of a professional certificate from the Department of Regulation and Licensing (DR-L) such as an "engineer-in-training" (EIT) certificate, or 3) recognition as a professional engineer by other professional organizations such as by the Wisconsin Examining Board of Architects, Professional Engineers, Designers and Land Surveyors, or 4) equivalent work experience. Mr. Mueller has no college degree or other professional certification. However, he may meet the Class Spec requirement by "equivalent work experience" due to his 30 years working at DOT. (Judith Burke, a DER classification expert testified that the CET Class Spec recognizes equivalent work experience only if such determination is made by the Department of Regulation and Licensing; or the Wisconsin Examining Board of Architects, Professional Engineers, Designers and Land

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<sup>A</sup> The semi-colon was added to correct the punctuation to match the original text.

Surveyors. Her testimony, however, seems contrary to the language of the Class Spec which appears to recognize equivalent work experience without having this determination made by a professional organization.)<sup>B</sup>

9. The chart below indicates how Mr. Mueller's work on the Greenfield Avenue compares to the CET Class Spec at the Advanced 1 level.

<u>Class Spec Requirement</u>	<u>Met by Greenfield Ave. Project?</u>
<u>A. Projects are:</u>	
A1. usually urban;	Yes.
A2. involved different types of pavement;	Yes.
A3. include retaining walls and bridges;	No.
A4. are politically sensitive;	No. There was no community controversy regarding this project. Each stage had to be completed by a date certain to enable community events to go forward (such as Christmas parade), but this is a pressure deadline which does not change the political nature of the project itself. It was suspected that the project might involve disturbance of Indian burial grounds, which could have caused a politically-sensitive issue. The concern, however, was investigated by outside sources who found no burial grounds. As a result, neither the project nor Mr. Mueller's work on the project were affected.
A5. have large volumes of traffic;	Yes.
A6. involve complex engineering principles;	No.
A7. involve substantial traffic control;	No. While the volume of traffic was large this already is credited in "A5". The traffic speed was slow and, except for a few days, did not require re-routing.
A8. may have serious environmental concerns;	No. An old gas station presented an environmental concern due to removal and disposal of gas tanks. Mr.

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<sup>B</sup> The wording in the parenthetical clause was changed to clarify the Commission's meaning.

Mueller's project, however,  
was not involved in this.

A9. may be a road construc. proj. for a freeway. No.

B. Staff assigned to the project engineer include:

B1. an assistant project engineer; Yes, Andrea Lobacz served as the assistant. This was disputed by respondents, but resolved in favor of appellant due to Ms. Lobacz' testimony that she sought clarification of her status from her supervisor, Mr. Kochanski, who confirmed her role as assistant project engineer and, on a 2nd occasion confirmed this as her status in the presence of others. Mr. Kochanski's attempt at hearing to minimize the importance of his prior statements was unpersuasive.

B2. 1-2 FT survey crews with possibly one lead survey crew; Only for phase 3.

B3. 1 full-time materials specialist; No.

B4. several (10 or more) inspectors with lead inspector. No.

10. No position could meet all the factors listed in the CET Class Spec because material specialists changed from project-specific field assignments to a centralized arrangement, leaving it impossible to meet item "B3" above.
11. The duties of a position must meet a majority of factors listed in the prior paragraph in order for a position to be classified at the Advanced 1 level under the CET Class Spec. Mr. Mueller's position meets 4 or 5 of the 13 factors, which is less than a majority. Accordingly, he has failed to show entitlement to the CET-Adv. 1 classification.
12. Abdulaziz Aleiow works for DOT in the same district as Mr. Mueller, but Mr. Aleiow's position is classified as a CET-Adv. 1. Mr. Aleiow was the manager for the North-South Freeway project in Kenosha County. (See Exh. A-11) The freeway project met 9 of the 13 (a majority) requirements listed in the CET Class Spec. Specifically, the project:
  - 1) involved some urban areas, 2) involved different types of pavement,
  - 3) included retaining walls and bridges, 4) had large traffic volumes, 5) involved complex engineering principles, 6) was a road construction



project for a freeway, 7) utilized an assistant project engineer (on a consultant basis), 8) utilized a full time survey crew and 9) had 10 inspectors with a lead inspector, at times.

13. John Bolka works for DOT in the same district as Mr. Mueller, but Mr. Bolka's position is classified as a CET-Adv. 1. Mr. Bolka was the manager for the Zoo Freeway project. (See Exh. A-12) The zoo project met 10 of the 13 (a majority) requirements listed in the CET Class Spec. Specifically, the project: 1) involved an urban area, 2) involved different types of pavement, 3) included retaining walls and bridges, 4) was at the most politically sensitive level recognized by DOT, 5) involved large volumes of traffic, 6) involved complex engineering principles, 7) involved substantial traffic control (including high-speed traffic), 8) involved serious environmental concerns related to creek pollution and to lead paint removal, collection and disposal, 9) involved road construction for a freeway, and 10) required an assistant project manager, Mr. Aleiow.
14. Fred Moeller works for DOT in the same district as Mr. Mueller, but Mr. Moeller's position is classified as a CET-Adv. 1. Mr. Moeller was the manager for the Bluemound Road project. The Bluemound project met 7 of the 13 (a majority) requirements listed in the CET Class Spec. Specifically, the project: 1) involved an urban area, 2) involved different types of pavement, 3) was politically sensitive due to the large number of business entrances off Bluemound Road, 4) involved large volumes of traffic, 5) involved the environmental concern of potential pollution to a nearby stream, 6) required an assistant project manager, Leon Lichterman, who was under contract with a private-sector firm and 7) required one full-time survey crew.

#### CONCLUSIONS OF LAW

1. Mr. Mueller has the burden of proof to show by a preponderance of the evidence that his position is best described by the CET-Adv. 1 Class Spec.
2. Mr. Mueller did not meet this burden of proof.
3. Mr. Mueller's position is best described by the EST-Adv. 1 Class Spec.

DISCUSSION

The Greenfield Avenue project did not meet the majority of requirements listed in the CET-Adv. 1 Class Spec. Accordingly, Mr. Mueller's work on that project does not justify reclassification of his position to the CET-Adv. 1 level.

Mr. Mueller's belief that the Greenfield Avenue project met the CET-Adv. 1 Class Spec requirements was based, at least in part, on a one-page document (Exh. A-1) entitled: "CE SPECIFICATIONS - Definition of Types of Projects". The origin of this document is unclear and its summary of Class Spec requirements is incorrect. For example, the document lists factors for the Adv. 1 level which are not in the CET Class Specs such as: "200+ contract items", "substantial public involvement", and "multi-stage" projects. The result of his appeal may have been different according to the document marked as Exh. A-1; however, the Commission's review must utilize the Class Specs rather than any summary document of unknown origin.

ORDER

Respondents' decision to deny Mr. Mueller's request for reclassification of his position from EST-Adv. 1 to CET-Adv. 1, is affirmed and this appeal is dismissed.

Dated November 14, 1995.

STATE PERSONNEL COMMISSION

  
LAURIE R. McCALLUM, Chairperson

JMR

  
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