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RAYMOND W. RATTY,

Appellant,

v.

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

Respondents.

Case No. 95-0106-PC

\* \* \* \* \*

DECISION  
AND  
ORDER

A hearing was held in the above-noted appeal on March 11, 1996, at the close of which oral arguments were made. The hearing issue was identified at a prehearing conference, as noted in the conference report dated July 6, 1995, as shown below:

Whether respondent's decision (in 1994) denying appellant's request for reclassification of his position from Engineering Specialist Senior to Engineering Specialist Advanced 1 was correct.

The same conference report notes that Mr. Ratty felt an additional hearing issue should be whether his position was correctly reallocated to the senior level during the 1990 survey process. The Commission rejected this additional hearing issue by ruling dated September 28, 1995.

FINDINGS OF FACT

1. The Department of Transportation's (DOT) central personnel office (in Madison) received Mr. Ratty's reclassification request on June 15, 1994, resulting in an undisputed (potential) effective date of June 26, 1994. (Exh. R-1)
2. Mr. Ratty's position is located in DOT's Division of Highways, District 7 (Rhineland office). His position has the working title of "District Construction Services Coordinator" and is classified as an Engineering Specialist - Transportation (EST) at the Senior level. The duties of his

position at the time of his reclass request are accurately described in his position description (PD) dated June 13, 1994, and are summarized below using the PD format. (Exh. R-3)

<u>Time (%)</u>	<u>Goals and Worker Activities</u>
65%	<p>A. <u>Administrative processing of all construction contract documents.</u></p> <p>A1. Receive and check estimates returned by Project Managers.</p> <p>A2. Coordinate the contract change order process in the district.</p> <p>A3. Assure that all necessary project correspondence occurs between DOT, BAA, FHWA, Office of Construction, Office of Disadvantaged Business, DBE firms, consultants, contractors, sub-contractors, labor unions, insurance and bonding companies, officials of local municipalities, property owners, and other interested parties.</p> <p>A4. Coordinate and maintain records of construction project status information.</p> <p>A5. Analyze weekly progress reports and working day assessments for accuracy, DBE participation, controlling contract item, and the contractor firms on the project.</p> <p>A6. Evaluate and process railroad protective liability insurance policy submittals.</p> <p>A7. Correspond with and provide information to bonding companies relative to construction contractors and project progress.</p> <p>A8. Approve contractor requests for sub-letting project items.</p> <p>A9. Develop and implement procedures to improve the administration of all district construction policies, procedures, and programs.</p> <p>A10. Utilize electronic mail to communicate within the DOT.</p>
15%	<p>B. <u>Records and Office Management.</u></p> <p>B1. Respond to telephone calls and other inquiries about construction projects from project managers, contractors, FHWA, Office of Construction, BAA, DNR, DILHR, legislators, property owners, insurance and bonding companies, and labor unions.</p> <p>B2. Organize and manage an effective day-to-day active construction project office records system.</p> <p>B3. Provide liaison and insight between the Construction/Materials section and the district records management coordinator in the areas</p>

- of As-Build plans, file system, file retention, and other related contract document needs.
- B4. Maintain Construction/Materials section miscellaneous supplies and forms inventories, and manage their distribution.
- B5. Coordinate requests for information from contractors' bonding companies regarding project progress and status, provide up-to-date information on value of work completed, outstanding bills, and satisfactory progress - all of which affects contractors' costs and eligibility for future bonding.
- B6. Analyze Project Manager records upon completion of project work and complete necessary work for project finals.
- 15% C. Ensure implementation of and compliance with the AA/EEO/Labor Compliance Program in accordance with applicable state laws and federal regulations.
- C1. Interpret and explain Wisconsin state law and the requirements of the FHWA Labor Compliance Manual and related laws and acts as they pertain to the AA/EEO/Labor Compliance program.
- C2. Analyze construction contract documents and determine applicable regulations and allocate the appropriate hourly goals for the On-The-Job Training Program (OJT).
- C3. Review construction contracts and contractors to determine which firms and individual workers to interview to ascertain whether we are getting compliance in the area of AA/EEO goals and labor compliance.
- C4. Evaluate and record all project payrolls received for compliance with contract provisions and applicable state and federal laws.
- C5. Prepare and submit reports to the Office of Construction that are relevant to the district AA/EEO/Labor Compliance Program.
- C6. Provide interpretation and guidance to construction project staff regarding their enforcement responsibilities in the areas of Labor Compliance.
- C7. Explain AA/EEO/Labor Compliance requirements to all attendees at the preconstruction conference.
- C8. Evaluate all borrow and aggregate sites submitted by contractors for the designation of commercial status to determine whether they satisfy the criteria, which then affects the wage rates paid to workers at those sites.

- 5%            D. Implement the Wisconsin DOT Minority Business Enterprise Program at the district level in accordance with federal and state regulations, policies, and directives to ensure the program meets all federal mandates and advocates involvement of minority and women-owned business in WisDOT contracts.
- D1. Interpret and explain the federal and state regulations related to the WisDOT DBE program as contained in 49 CFR Part 23.
- D2. Analyze the items contained in construction projects to decide whether they should contain special provisions requiring DBE participation and set the DBE percentage goals for the contract.
- D3. Evaluate applications and field investigate firms seeking DBE certification.
- D4. Conduct project reviews of DBE firms to determine compliance with project and program standards.
- D5. Provide interpretation and guidance to the construction project staff(s) and contractors on the objectives and goals of the WisDOT DBE program.
- D6. Explain DBE requirements at the preconstruction conference.
- D7. Attend hearings and present testimony relating to DBE certification for applicant or existing DBE firms.

3. The PD which existed for Mr. Ratty's position prior to his 1994 reclassification request, is in the record as Exh. R-3 and is dated April 17, 1990. Both Mr. Ratty and his supervisor, Kenneth L. Page, confirmed that the duties reflected in the 1990 and the 1994 PDs are the same; with the only change occurring in the time percentage spent on tasks, as shown in the chart below.

<u>PD Goal</u>	<u>1990 PD Time (%)</u>	<u>1994 PD Time (%)</u>
A	70%	65%
B	20%	15%
C	5%	15%
D	<u>5%</u>	<u>5%</u>
	100%	100%

4. The classification specification (Class Spec) for Engineering Specialist - Transportation series (EST) in effect at the time Mr. Ratty made his reclassification request is dated June 17, 1990<sup>1</sup>. (Exh. R-5) The Class Spec provides for the following classification levels: Entry, Developmental, Journey, Senior, Advanced 1 and Advanced 2. The general definitions for the Senior and Advanced 1 levels are shown below.

SENIOR - Positions allocated to this class perform complex engineering specialist assignments under the general supervision of a higher level engineering specialist, architect/engineer, engineering specialist supervisor, or architect/engineer supervisor. (p. 12, Exh. R-5)

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. (p. 16, Exh. R-5)

5. Each classification level in the Class Spec has a general definition (shown above) followed by examples of typical duties performed. The typical duties are grouped by position characteristics, such as whether the position is found in the district or central office and what main program function is served. Mr. Ratty's position is found in the construction program of a district office. The pertinent examples of typical duties at the Senior and Advanced 1 levels are shown below, from p. 12 and pp. 16-17 of the Class Spec. (Exh. R-5)

SENIOR LEVEL

Construction Services Specialist: This position processes all construction contract documents; gathers data, reviews, recommends and processes construction project pay estimates and change orders; keeps records on all active construction projects; monitors billings from railroads and consultants; assists in preparing section budget; provides contract information to contractors, project engineers and supervisors in absence of section chief; is liaison to railroads and utilities; implements the district's AA/EEO/DBE labor compliance programs; gathers data, conducts field reviews and recommends the proper action for

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<sup>1</sup> The EST Class Specs were rewritten effective June 26, 1994. (Exh. R-6) The older 1990 Class Specs pertain to Mr. Ratty's appeal.

firms not in compliance with the appropriate program;  
recommends certification of new or existing DBE firms; monitors  
and records the program information for all affected projects.

ADVANCED 1 LEVEL

District Construction 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, and various types of construction such as grading, drainage, structures, 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 . . .

5. The EST Class Spec has an "Inclusions" section (Exh. R-5, p. 1) which requires performance of "professional work" in the field of engineering. The question of whether Mr. Ratty performs professional engineering duties for a majority of his position's time was beyond the scope of his hearing.<sup>2</sup>
6. The duties of Mr. Ratty's position relate to construction contract work, including in the specialty area of minority contracts. His counterpart position in the Green Bay district (Exh. R-15) does not have duties in minority contracts and is classified as a Program Assistant 3. The counterpart position in the Superior

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<sup>2</sup> Recently, the Commission had an opportunity to look at a position similar to Mr. Ratty's which was located in a different program area -- maintenance. Sanford v. DER, 94-0548-PC (11/17/95). The hearing issue in Sanford was whether Ms. Sanford's position was best described by the EST Class Spec or by the Class Spec for Program Assistants. One distinction between the classification choices presented in Sanford, was whether the majority of the position's time required the performance of professional work in engineering. The Commission held that it did not and, accordingly, affirmed DER's decision to place Ms. Sanford's position in the Program Assistant series. In contrast, the hearing issue in Mr. Ratty's case presents only classification choices within the EST Class Spec.

district (Exh. R-14) does limited work related to minority contracts and is classified as an EST at the Journey level. A counterpart position in the Eau Claire district (Exh. R-13) performs general and minority contract work and is classified as an EST at the Senior level. Counterpart positions in other districts are classified as ESTs, with no position higher than the EST-Senior level.

7. Mr. Ratty believes his position should be classified as an EST at the Advanced 1 level due to his responsibilities in the area of minority contracts, which he performs in addition to general construction contract work.
8. The EST Class Spec recognizes the specialty area of minority construction contract work at the Journey level. Such work is recognized at the (higher) Senior level only when performed in addition to general construction contract work. The types of (presumed<sup>3</sup>) professional engineering tasks performed by Mr. Ratty are not as complex and do not require the level of knowledge reflected by the Class Spec work examples at the Advanced 1 level.

#### CONCLUSIONS OF LAW

1. Mr. Ratty has the burden to prove by a preponderance of the evidence that the EST-Advanced 1 classification is the best fit for his position.
2. Mr. Ratty did not meet his burden of proof.
3. Mr. Ratty's position is best described by the EST-Senior classification.

#### DISCUSSION

Mr. Ratty feels his position should be classified higher than the district counterpart positions which have little or no responsibilities for the specialized area of minority construction contracts. One significant problem with his opinion is that the EST Class Spec identifies his specialty area at the Journey level (which is lower than his current Senior classification level), with potential for Senior level only when performed in conjunction with general construction contract duties. Seldom in the Commission's experience (if ever) does performance of lower level duties result in entitlement to a higher classification level. In any event, the EST Class Spec does not provide

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<sup>3</sup> Ibid.

that performance of both minority contract work and general construction contract work warrant classification at the Advanced 1 level.

The Class Spec recognizes the combination of duties performed by Mr. Ratty's position at the Senior level. It is true that inclusion of work examples at one classification level does not automatically foreclose consideration of a higher level. The professional engineering work described in the EST Class Spec at the Advanced 1 level, however, is significantly more difficult or complex than performed by Mr. Ratty's position. For example, the Advanced 1 level refers to managing "large to complex highway construction projects". Common sense leads to the conclusion that a greater scope and depth of professional engineering work would be required to manage a large construction project than would be required to perform the related contract work -- even if such contract work involved the specialty area of minority construction contracts.

ORDER


Respondents' decision to deny appellant's reclassification request is affirmed and this appeal is dismissed.

Dated May 14, 1996.

STATE PERSONNEL COMMISSION

  
LAURIE R. McCALLUM, Chairperson

  
DONALD R. MURPHY, Commissioner

  
JUDY M. ROGERS, Commissioner

JMR

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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