

STATE OF WISCONSIN

PERSONNEL COMMISSION

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MARK HARDER,

Appellant,

v.

Secretary, DEPARTMENT OF NATURAL RESOURCES and Secretary, DEPARTMENT OF EMPLOYMENT RELATIONS,

Respondents.

Case No. 95-0181-PC

* * * * *

DECISION AND ORDER

A proposed decision and order (PDO) was mailed to the parties on June 3, 1996, and the parties were given opportunity to file objections. Mr. Harder filed objections, to which respondents did not file a reply.

The Commission considered Mr. Harder's written objections and consulted with the hearing examiner. The following changes are made to the PDO, for the reasons stated below.

Paragraph 5 of the Findings of Fact (FF) in the PDO is amended to delete the footnote. The examiner found that her hearing notes were incorrect in that she recorded Mr. Ziege as testifying that he had responsibility for study and rule development for bleaching operations, whereas a review of the hearing tape indicated Mr. Ziege testified that this was Mr. Harder's responsibility. Accordingly, the footnote is deleted as containing incorrect information.

Paragraph 12 of the FF in the PDO is amended to correct the goal references to the stated PD. Specifically, the first sentence is amended as shown below:

The task of reviewing work performed by other engineers (goal E E of Mr. Harder's Old PD and goal F E of his Reclass PD) was shown by hearing testimony to be of less significance for reclassification purposes than the PD language suggests.

Paragraph 13 of the FF in the PDO is amended to correct the goal reference to the Reclass PD. Specifically, the first sentence is amended as shown below:

Mr. Harder established through his testimony that the scope of duties contained in goal E D of his Reclass PD (Areas of Expertise) has changed over time, especially as detailed below.

Paragraph 13 of the FF in the PDO is further amended to correct the reference in "c" to comport with Mr. Ziege's testimony. Specifically, the second to the final sentence is amended as shown below:

Mr. Harder's supervisor, Mr. Johnston, was assigned a different subject area for code and guideline development, as was ~~Mr. Hammers~~ Mr. Hubbard.

Paragraph 15 of the FF in the PDO is amended to delete the final sentence. The deleted material reflects a portion of Ms. Steinmetz' testimony which was not adopted in total by the Commission (or by the examiner). These circumstances apparently caused unnecessary confusion which the deletion should alleviate.

Page 15 of the PDO: To correct a typographical error, change paragraph number "201", to paragraph number "21".

Pars. 22, 23, & 24 of the FF in the PDO are deleted. The information in these paragraphs are apparent from the source decision cited therein and are unnecessary to repeat as a Finding of Fact.

The following paragraphs address the remaining objections raised by Mr. Harder.

Regarding paragraph 5 of the Findings of Fact, Mr. Harder contends worker activity A13 of the Reclass PD should be in bold type because such hearing is not the same as a public hearing mentioned in A11 of his Old PD. While it is true that these are two different types of hearings, A13 should not be in bold type because the activity was included in the Old PD as item D4: "Participate as the Department's technical expert at any hearings." Accordingly, the Commission did not make the requested change.

Some concerns raised by Mr. Harder appear to be based on a misunderstanding of the hearing record. The hearing record includes not only witness testimony, but the exhibits accepted into the record. Accordingly, it is standard and expected practice to rely, for example, upon language found in PDs which are in the hearing record. Similarly, Mr. Harder appears to misunderstand the analytical role which comparisons to other

positions fulfil. Use of comparable positions as a classification tool is a well established practice in classification cases and can be useful to demonstrate how respondent has interpreted or applied the criteria listed in the Class Specs.¹ Jacobson v. DER, 94-0147-PC (4/20/95).

Mr. Harder felt a conflict existed between information found in pars. 9 and 13 of the Findings of Fact. The information in paragraph 9, delineates the new areas of expertise. The information in paragraph 13, describes changes in the scope of some pre-existing expertise areas. No conflict exists between the paragraphs.

Mr. Harder objects to paragraph 12 of the Findings of Fact. The information recited therein is correct. All engineers in the unit review each other's work to ensure the application of uniform standards. This is a peer-review task characterized as a team-work approach in the findings of fact (¶ 12). The record does not indicate that any engineer reviewing another engineer's work product had the assigned authority to require the other engineer to change the work product to conform with the reviewing engineer's opinions -- a distinction which could be relevant to the Adv. 2 Class Spec requirement of "providing direction to other engineers assigned to the project". Without such authority, the peer review followed by all engineers could be characterized as consultation among peers, but not as providing direction to other engineers as required in the Class Spec. See, Roushar v. DER, 91-0069-PC (2/21/92).

Mr. Harder objected to paragraphs 2 through 5 of the Discussion section in the PDO (pp. 19-20). The second paragraph notes that Mr. Harder's supervisors supported his reclassification request, but not based upon a comparison of his duties to the Class Specs. Mr. Harder mistakenly concluded

¹ Mr. Harder wished the Commission to note that in comparing his position to the positions held by Vakharia and Stamm, that both Vakharia and Stamm had requested reclassification to the Advanced 2 level but were granted only the Advanced 1 level. Such information is part of the record. He further wished the Commission to note that Vakharia appealed the denial of the Advanced 2 level and such appeal is pending at the Commission and that Stamm did not file an appeal because she changed jobs. The examiner's hearing notes do not indicate that this appeal information is part of the record. In fact, the Stamm and Vakharia PDs were accepted as part of the record without any objection from Mr. Harder. (Exhs. R5 and R8.) The Commission's own office records do indicate that Vakharia has a case pending at the Commission (95-0178-PC).

that the Commission expects supervisors to be both subject-area experts and classification experts. The cited sentence merely points out that the supervisors' opinions on Mr. Harder's reclass request cannot be automatically adopted as the Commission's conclusion because the supervisors' opinions are not based upon the Class Spec requirements, which is the basis upon which the Commission must make its decision.

Mr. Harder also misunderstood the references in paragraphs 2-5 of the Discussion section to "unique" job duties. The references are to credibility impressions -- not to legal standards adopted by the Commission. The stated credibility impression is that the examiner felt misled by the supervisors' testimony in that the supervisors attempted to characterize Mr. Harder's position as unique in certain aspects in which it was not. This observation is valid whether the Class Specs require "uniqueness" or not. The Commission's comment upon uniqueness as a legal standard is included on p. 21 of the PDO, where the Commission indicates it is arguable whether uniqueness to the degree of being the only person performing the most complex work is a requirement at the Advanced 2 level. Such statement, however, does not imply that uniqueness is an improper inquiry for all classification issues. For example, it is appropriate to inquire whether positions classified below the Advanced 2 level, have areas of expertise within the air program and whether such expertise is contemplated under the Class Spec below the Advanced 2 level. Such information is relevant to the past interpretation and application of the Class Spec standards.

Paragraph 9 of the Discussion section in the PDO mentions that a "basic ruling" was expressed in Hubbard and that the facts of Roushar were consistent. Contrary to Mr. Harder's assertion, the PDO does not say that the "basic ruling" also was expressed in Roushar.

Mr. Harder also faulted paragraph 9, for referring to the Hubbard decision which is pending appeal due to his recollection that the examiner commented at hearing that she was "uncomfortable relying too heavily" on decisions pending appeal. While such statement may have been made by the examiner, the Hubbard decision was marked as an exhibit by both parties and Mr. Hubbard's subsequent position reclassification to the Advanced 2 level, was specifically included in the record. (Exhs. A-3 and A-15.) Furthermore, the Commission attempts to achieve consistency by following the same legal

rationale. At times, the prior decisions are pending appeal but it is still appropriate for the Commission to follow the same rationale in subsequent cases unless and until a reviewing court overturns the decision rationale. In this regard, the Commission notes that the Hubbard decision remains under review by the circuit court ²

Mr. Harder's objections included the following statement (with emphasis as it appears in the original document):

As stated previously the Appellant's goal was to point out that DNR reclassification procedures were flawed. The Commission did point out some errors made by DNR Personnel, but the procedures used by the Commission are suspect. It appears that the parties and the Commission are talking past each other. DNR Personnel and the Commission are focused on the decision, whereas the Appellant's objections are focused on the process. If the reclassification decisions were made through an acceptable process, it is likely that the Commission would have fewer requests for hearings. Note that an acceptable process does not necessarily mean more positions would be classified to a higher level, but it does mean that clear and logical reasoning should be given to justify whatever decision is made.

The Commission does not fully understand the criticism. Ms. Steinmetz, DNR's classification expert, met with Mr. Harder to review the duties of his position in consideration of his reclass request. He was provided with a written explanation as to why the request was denied. Other than his disagreement with the conclusions drawn by Ms. Steinmetz, he does not point to any specific defect in the review process. Furthermore, the Commission's jurisdiction is statutorily limited to a comparison of the duties of his job to the pertinent Class Spec. The Commission has no authority to impose upon respondents a specific process to follow in reviewing reclassification requests.

Mr. Harder contended the PDO failed to meet the requirements of s. 277.47, Stats., for failing to include conclusions of law. He is incorrect. Neither findings of fact nor conclusions of law are required to be made unless

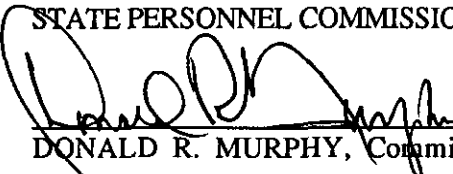
² The Hubbard case is still pending in circuit court. The Commission's decisions in two companion cases were upheld at the circuit court level and are pending review by the Court of Appeals. Lulloff v. Wis. Pers. Cmsn., 94-CV-1633 (Dane Co. Cir. Ct., 6/11/96) and Ostenso v. Wis. Pers. Cmsn., 94-CV-1571 (Dane Co. Cir. Ct., 3/18/96). The Commission has not yet received notice of the case numbers assigned by the Court of Appeals.

the case is appealed to court. s. 227.47 (2), Stats. The examiner included findings of fact as a courtesy to the parties because she felt the decision rationale would be clearer.


ORDER

That the proposed decision and order as amended and supplemented herein, be adopted as the Commission final decision and order.

Dated August 5, 1996.

STATE PERSONNEL COMMISSION

DONALD R. MURPHY, Commissioner

JMR


JUDY M. ROGERS, Commissioner

Parties:

Mark Harder
DNR-Bur. Air Mgmt.
Rm. AM/7
101 S. Webster St.
P.O. Box 7921
Madison, WI 53707-7921

George E. Meyer
Secretary, DNR
5th Floor
101 S. Webster St.
P.O. Box 7921
Madison, WI 53707-7921

Jon E. Litscher
Secretary, DER
137 E. Wilson St.
P.O. Box 7855
Madison, WI 53707-7855

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

STATE OF WISCONSIN

PERSONNEL COMMISSION

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MARK HARDER,

Appellant,

v.

Secretary, DEPARTMENT OF NATURAL
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Respondents.

Case No. 95-0181-PC

* * * * *

PROPOSED
DECISION
AND
ORDER

A hearing was held in the above-noted case on February 1, 1996, at which time the record was held open to provide Mr. Harder an opportunity to locate a memo referenced in respondents' rebuttal exhibit (Exh. R-12). A status conference was held on February 15, 1996, at which time Mr. Harder's request was granted to add a memo¹ as an attachment to Exh. R-12, and the hearing record was closed after both parties indicated they had no further testimony or evidence to present. The parties' request to submit post-hearing briefs was granted, with the final brief received by the Commission on May 3, 1996.

The hearing issue was agreed to by the parties, as shown below.

Whether the respondents' decision to deny the appellant's request to reclassify his position from Air Management Engineer - Advanced 1, to Air Management Engineer - Advanced 2, was correct.

The parties further agreed that the effective date for the reclassification request was June 13, 1993. (See Conference Report dated November 8, 1995.)

FINDINGS OF FACT

Classification Specification

1. The classification specification (Class Spec) at issue is entitled "Air Management Engineer" and was developed pursuant to a survey of

¹ The memo added to Exh. R-12, is dated December 7, 1991, written to Mark Harder by Allen Hubbard. The subject line reads: "Response to Technical Concerns Raised by Milwaukee County Power Plant".

engineering positions conducted by the Department of Employment Relations (DER), the results of which were effective on June 17, 1990. Since Mr. Harder's reclassification request (reclass request) has an effective date of June 13, 1993, this decision has the potential to directly impact the classification of his position from that date and up to June 24, 1994 - when the Class Spec was abolished. (Exh. R-1)

2. The Class Spec contains the following six classification levels: Entry, Developmental, Journey, Senior, Advanced 1 and Advanced 2. The Class Spec definitions for the three highest levels are shown below.

Air Management Engineer - Senior: This is senior level air management 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 air management program in the assigned portion of the state, issuing 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 facility, computer model), which has programwide policy impact but is not of the significance as found at higher levels. **Representative Positions:** Positions function in one of the following capacities: 1) As a district/area engineer . . . 2) as a central office engineer responsible for evaluating and issuing new source permits to new and modified direct air pollution sources; issuing mandatory permits to existing air pollution sources; reviewing compliance plans; preparing reports on air pollution emissions and control technology for various source categories; and providing technical assistance. Positions at this level make decisions independent of supervisory oversight, but carry out work responsibilities under the general direction of program managers.

Air Management Engineer - Advanced 1: This is very difficult advanced air management engineering work. Employees in this classification will typically serve as the department expert in a broadly defined segment of the air management program or a districtwide expert with multi-faceted responsibilities. The area of responsibility will normally cross program boundaries, require continually high level contacts with private consultants and engineers in major industries regarding highly sensitive and complex engineering reviews and have significant

programwide policy impact. The area of expertise will represent an important aspect of the program, involve a significant portion of the position's time and require continuing expertise as the field progresses. The knowledge required at this level include a broader combination than that found at the Air Management Engineer-Senior level. Assignments are broad in scope and continually require the incumbent to use independent judgement in making professional engineering decisions. Positions at this level make independent decisions and perform work in response to program needs as interpreted by the employe with the work being reviewed after the decisions have been made.

* * *

Air Management Engineer - Advanced 2 - This is very difficult, complex professional air management engineer work. Employes in this class continually perform the most complex engineering reviews for the assigned area. The work assigned is typically in uncharted areas with essentially no guidance to follow. Employes at this level typically provide direction to other engineers assigned to the project. Work involves the development of policies, standards, procedure development, evaluation and administration. Employes at this level function as the chief technical consultant. Employes at this level are delegated authority to make the final engineering decision.

Mr. Harder's Position

3. Mr. Harder's position is in the Department of Natural Resource (DNR), in the Bureau of Air Management, in the Permit Section. The Permit Section has two units: a) the Existing Source Review Unit and b) the New Source Review Unit where Mr. Harder works. Dale Ziege, Chief of the Permits Section, is Mr. Harder's second-line supervisor. Daniel Johnston, Supervisor of the New Source Review Unit, is Mr. Harder's first-line supervisor.
4. Mr. Harder's position was included in the 1990 engineering survey which resulted in classification of his position at the Senior level. Effective April 19, 1992, he was reclassified to the Advanced 1 level, based on his PD dated April 9, 1992 (Old PD) (Exh. A-9).² His request for

² The Commission's records do not show that Mr. Harder appealed respondents' decision in 1992, to reclassify his position to the Advanced 1 level. In other words, he did not appeal in 1992, saying his position was best described at the Advanced 2 level.

further reclassification to the Advanced 2 level is based on a re-written PD dated June 8, 1993 (Reclass PD) (Exh. R-3).

5. Mr. Harder's Reclass PD is summarized below. The bold type denotes tasks which he did not perform under the Old PD.

Position Summary: Evaluates **complex** permit applications to construct and/or operate new and existing direct sources. Oversees the development, adoption, and update of Federal New Source Performance Standards program into the Wisconsin Administrative Code. Develops guidance on how to review air pollution control permits. **Writes rules, develops policy and provides technical assistance to staff and industry on emission reduction credit issues.**

Time Goals and Worker Activities

45% (Was 55% in Old PD)

- A. Independently evaluates air permit applications for complex, Prevention of Significant Deterioration (PSD) sources and nonattainment area major sources and minor air pollution sources.
- A1. Conducts pre-application meetings and corresponds with potential permit applicants to discuss state and federal air pollution control requirements.
 - A2. Screens applications to identify information deficiencies and requests needed materials from applicant.
 - A3. Estimates air pollution emissions from sources to be permitted, determines effectiveness of control equipment or methods, predicts impact on air quality due to the emissions or provides necessary data to program planning section for more accurate predictions, evaluates compliance with air pollution control regulations, and prepares a report for public inspection which summarizes the results of the application evaluation.
 - A4. Determine Best Available Control Technology (BACT) and Lowest Achievable Emission Rate (LAER) on a case-by-case basis for major attainment, and nonattainment area sources, and for significant sources of hazardous air pollutants.
 - A5. BACT and LAER determinations involve complex engineering analyses of various control technologies. BACT analyses also involve an economic analysis of the control technique.
 - A6. Act as chief technical consultant for BACT/LAER decisions for the following source categories: miscellaneous metal parts and products coating, pulp and paper mill bleach plants, wastewater treatment plants, wood drying, oriented strand board and particle board manufacturing.

- A7. Negotiates with the company, environmentalists, and other citizens regarding permit conditions and the approval of the permit application.
 - A8. Provides assistance in the preparation of the environmental assessment.
 - A9. Notifies public of the opportunity to submit comments on the application and the Department's evaluation by preparing and having published a notice for public comment.
 - A10. Responds to public comments as received.
 - A11. Arranges and notifies public of a hearing on the permit application, if warranted, and gives hearing presentation which explains the Department's evaluation.
 - A12. Prepares and issues or denies air pollution control permits based on application evaluation and public comments received. Permits must contain conditions to ensure short and long-term compliance with air pollution control requirements. Estimates air permit fees.
 - A13. Act as a technical expert for the Department in contested case hearings and referrals, if warranted.
- 4% B. Preparation of reports on air pollution emissions and control technology for various source categories.
- B1. Researches trade journals, government publications, and other relevant publications.
 - B2. Validates the data and information to ensure it is current and accurate.
 - B3. Interprets the data and information to determine the implications for the entire air pollution control program.
 - B4. Prepares summary reports for use by agency staff and makes presentations as necessary.
- 10% (Was 15%) C. Develops, adopts, and updates the Federal New Source Performance Standards into the Wisconsin Administrative Code.
- C1. Literature searches of the Federal Register to maintain the Wisconsin Administrative Code, Chapter NR 440.
 - C2. Prepares rule package of the changes.
 - C3. Obtains approvals.
 - C4. Provides technical assistance and answers questions to industry and staff.
- 34% (Was 15%) D. Provides technical assistance develops guidelines, policies, rules, and regulations for industry, district staff, and the Department.
- D1. Functions as chief technical consultant in the following areas: Emission Reduction Credits (offsets,

netting, and trading), **Nonattainment Area Major Source Permit Issues, Wood Products Industry - Drying Operations³, Pulp and paper Industry - Bleaching Operations, and Pollution Prevention.**

- D2. Define areas where policies or guidelines are needed.
- D3. Research the federal, state, and local rules which impact the policy or guideline. Attend seminars, conferences and contact other states to stay current.⁴
- D4. Develop a comprehensive policy or guideline which meet the need and are acceptable to the Department.
- D5. Responsible for seeing that the policy is implemented through appropriate training.
- D6. **Responsible for providing technical consultation to establish pollution credit trading market in the state nonattainment areas. Meet and negotiate with state and local economic development organizations, industry and environmental groups. Develop rules to implement a trading system.**

5 % (Was 4%.)

E. Review the work of other engineers and staff.

- E1. Act as a designated final reviewer for mandatory operation permits for the following source categories: metal furniture manufacturing and coating, miscellaneous metal parts manufacturing.
- E2. Act as a contact person for new engineers.

2% F. Perform inspections of existing sources.

- F1. Write and submit inspection reports for approval by the appropriate district.

100% (95% from Old PD⁵)

6. Tasks A4, A5 and A6 did not appear in the Old PD. However, Mr. Harder agreed at hearing that he has been doing routine BACT/LAER determinations since his position was classified at the Senior level. The following changes occurred after his 1992 reclass in regard to his work

³ Mr. Ziege testified that he had responsibility for study and rule development for bleaching operations under the Clean Air Act, not Mr. Harder. Mr. Harder testified that he worked on this rule in 1992.

⁴ The final sentence shown in task D3, did not appear in Mr. Harder's Old PD. However, it is most likely that he attended seminars, etc., even under his Old PD.

⁵ The time percentages for the Old PD include the 95% recited in par. 5 of this decision, as well as an additional 4% for compliance plan reviews (which at least part of the tasks appear to be included in items A3 and A13 of the Reclass PD). The Old PD time percentages totaled 99%, rather than 100%.

with BACT/LAER determinations: a) Mr. Harder has performed only complex BACT/LAER determinations as Mr. Johnston only assigns the complex BACT/LAER work to his most experienced engineers which include Mr. Harder, Rajen Vakharia (classified at the Advanced 1 level) and Imelda Stamm (classified at the Advanced 1 level), leaving the routine BACT/LAER reviews for less experienced engineers in the unit; and b) Mr. Harder has been assigned specialty areas within the BACT/LAER determinations, the vast majority of which are noted in A6 and A10 of his Reclass PD. Mr. Vakharia also is assigned specialty areas within BACT/LAER determinations as noted in item A10 of his PD (Exh. R-8) and such areas of specialty appear to be broader than those assigned to Mr. Harder as Mr. Vakharia's areas include many different industries, rather than specific issues within an industry which represents the majority of specialty areas assigned to Mr. Harder. As noted in paragraph 2 above, Mr. Vakharia's broader specialty area being on a facility-wide basis is expected at the Senior level in the Class Spec.

7. Mr. Harder performs the most complex reviews (including the most complex BACT/LAER determinations) for half of the 45% time allocated to section A in his Reclass PD, which accounts for 22.5% of his position's time.
8. Mr. Harder has assigned responsibilities related to New Source Performance Standards (goal D of his PD). His responsibilities in this area, however, are subordinate to the responsibilities assigned to Ms. Stamm. Specifically, Ms. Stamm is the Department's consultant and technical expert for New Source Performance Standards, as noted in goal C of her PD (Exh. R-5).
9. Mr. Harder's position even under his Old PD functioned as "chief technical consultant" for the Air Management Program in the areas of emission reduction credits, drying operations in the wood products industry, and bleaching operations in the pulp and paper industry. The new specialty area in his Reclass PD is Pollution Prevention. No change occurred by the additional language in item "D6" of his reclass PD, as established by testimony from the Section Chief, Mr. Ziege, this item is

merely new wording for the previously-existing specialty area of emission reduction credits.

10. Assigned duties as chief technical consultant in a specialty area for the program, or on the program level is not unique to Mr. Harder's position, nor unique to positions classified at the Advanced 2 level. In fact, such level of consultation is expected at the Senior level, as shown by par. 2 above.
11. The consultation levels assigned to Mr. Vakharia and Ms. Stamm exceed the program level. While Mr. Vakharia's position functions as the "program's chief technical consultant" for woodworking and wood finishing facilities (goal B of his PD, for 25% of the position's time) he also functions as the "department's chief technical consultant" on control strategies for sulfur dioxide emissions from new or modified combustion sources and for emissions from incinerators (goal C of his PD for 10% of the position's time). Ms. Stamm's position functions as the "Department's chief technical consultant" on the printing industry (goal B of her PD for 20% of the position's time) and as the "Department's consultant and technical expert" on the New Source Performance Standards program (goal C of her PD for 10% of the position's time).
12. The task of reviewing work performed by other engineers (goal E of Mr. Harder's Old PD and goal F of his Reclass PD) was shown by hearing testimony to be of less significance for reclassification purposes than the PD language suggests. The form used for such review is in the record as Exh. A-12. This form is completed by all engineers in Mr. Harder's unit to review work of all other engineers in the unit. In essence the review indicates a team-work approach to ensure the application of uniform standards, as opposed to any assigned responsibility as a lead worker.
13. Mr. Harder established through his testimony that the scope of duties contained in goal E of his Reclass PD (Areas of Expertise) has changed over time, especially as detailed below.
 - a. From April through November 1992, Mr. Harder began work on a study of the bleaching process used by the Paper and Pulp Industry. Historically, the industry used hypochloride in its

bleaching process which generated considerable amounts of chlorophorm and dioxin. DNR wanted to look at bleaching strategies to determine how the levels of hypochloride and dioxins could be reduced, which were concerns of DNR's Air Management Program and DNR's Wastewater Program. As part of the study, Mr. Harder lead a team of individuals which included the participation of Michael D. Hammers, an Advanced 2 Wastewater Engineer in the Industrial Wastewater Section of DNR's Bureau of Wastewater Management. Mr. Hammers was included in Mr. Harder's work group because Mr. Hammers leads DNR's permanent work group for pulp and paper mill issues (called the "Pulp and Paper Industry Technology Team"). The end product of Mr. Harder's group was the development of acceptable levels of chlorophorm for purposes of DNR's Air Management Program and DNR's Wastewater Program. Mr. Harder's participation in this group involved duties which crossed program boundaries. Mr. Harder's duties as leader of this team were credited for purposes of his 1992 reclassification to the Advanced 1 level.

- b. Mr. Harder's group ceased to exist in November 1992. Thereafter, he took the standards developed by the group and used them to develop administrative rules for the Air Management Program. Some other person (most likely Mr. Hammers) took the same information for use in the Wastewater program.
- c. The federal Clean Air Act was enacted on November 15, 1990, which caused sweeping changes to pollution programs -- including to DNR's Air Management program. Nine subjects in the area of air pollution were covered by the federal legislation, six of which had to be met by states within two years. The section supervisor, Mr. Ziege, made assignments to section staff on developing state administrative rules to meet the six mandated areas and coordinated the efforts in all six subject areas. Mr. Ziege assigned one area of responsibility to Mr. Harder in January of 1992, which work accounted for about 25% of Mr. Harder's time until July 1993. Specifically, Mr. Harder was

assigned responsibility for drafting the "non-attainment" portion of the code project and for developing related guidelines, which was a complex task because the federal government failed to provide guidelines and because the subject area impacted all industries in the southeast corner of the state (where about 40% of the state's industries are located). Mr. Harder's supervisor, Mr. Johnston, was assigned a different subject area for code and guideline development, as was Mr. Hammers. Mr. Johnston could not say that one assignment was more complex than another, just that the nature of complexities varied.

14. The development of rules and guidelines is not unique to Mr. Harder's position in the Bureau of Air Management. Other engineers in his unit have similar responsibilities, especially as it pertains to their areas of expertise. Ms. Stamm's assigned duties (Exh. R-5) include such responsibilities, for example, in tasks C2, D2 and G. Mr. Vakharia's assigned duties (Exh. R-8) also are similar as shown by tasks B1 and D1.
15. Ms. Steinmetz is a classification expert employed by DNR. She helped write the Air Management Engineer Class Specs during the 1990 survey. She explained that the classification levels build upon one another so that, for example, a position would be ineligible for the Advanced 2 level, without also meeting the requirements of the Advanced 1 level.

Mr. Harder's Position in Relation to Class Spec

16. The duties of Mr. Harder's position do not meet all the requirements of the Advanced 1 level, as summarized in the chart below.

| <u>Advanced 1 Requirement</u> | <u>Met by Mr. Harder's Position?</u> |
|---|--|
| 1. This is very difficult advanced air management engineering work. | 1. Yes |
| 2. Employees in this class typically serve as the department expert in a broadly defined segment of the air management program. | 2. No. His expertise is on the program level, not department level. Further, he has small segments of the program as expertise areas, not broadly defined areas. |
| 3. The area of responsibility will: a. normally cross program | 3a. No. While it is true that he lead a multi-program work |

boundaries,

group in the study of bleaching processes used by the pulp/paper industry, this was a temporary assignment ending about 7 months prior to his reclass request. His later work on the topic was limited to the air management program. The Commission cannot agree that his area of responsibility "normally" crosses program boundaries based on the temporary assignment.⁶

- | | |
|--|---|
| b. require continually high level contacts w/private consultants & engineers in major industries | 3b. Yes |
| c. regarding highly sensitive & complex engineering reviews, | 3c. Yes |
| d. and have significant program-wide policy impact. | 3d. Yes |
| 4. The area of expertise will: | |
| a. represent an important aspect of the program, | 4a. Yes |
| b. involve a significant portion of the position's time & | 4b. Yes (34% - PD Goal D) |
| c. require continuing expertise as the field progresses. | 4c. Yes |
| 5. The knowledge required at this level include a broader combination than found at the Senior level. | 5. Yes. Based on shared assignment of the most complex BACT/LAER reviews which accounts for 22.5% of the position's time (half of Reclass PD's Goal A). |
| 6. Assignments are: | |
| a. broad in scope & | 6a. Yes |
| b. continually require the incumbent to use independent judgement in making professional engineering decisions. | 6b. Yes |
| 7. Positions at this level: | |
| a. make independent decisions & | 7a. Yes |
| b. perform work in response to program needs as interpreted by the employe with the work being reviewed after the decisions have | 7b. Yes |

⁶ Mr. Harder also claimed he met this requirement in his work with non-attainment. However, he further conceded that this work crossed issues within the air management program which, as the Commission already noted) is expected at the Senior level. More is required for the Advanced 1 and Advanced 2 levels.

been made.

17. The duties of Mr. Harder's position do not meet all requirements at the Advanced 2 level, as summarized in the chart below.

| <u>Advanced 2 Requirement</u> | <u>Met by Mr. Harder's Position?</u> |
|--|--|
| 1. This is very difficult, complex professional air management engineering work. | 1. Yes. Based on sharing the most complex BACT/LAER assignments. |
| 2. Employees in this class continually perform the most complex engineering reviews for the assigned area. | 2. No. He does <u>some</u> of the most complex BACT/LAER for half of time noted in PD under Goal A (22.5%). Also includes an unknown portion of his specialty area. ^{7,8} |
| 3. The work assigned is typically in uncharted areas with essentially no guidance to follow. | 3. True for some projects, especially work on the non-attainment code project assigned in Jan. 1992, work commencing in July 1992, consuming up to 25% of the position's time until July 1993. |
| 4. Employees at this level typically | 4. No |

⁷ Mr. Harder claimed all work in Goal D as meeting the most complex requirement. The examiner did not credit this testimony for several reasons. One reason is that he claimed specialty areas over which other employees had assigned lead responsibility (such as Ms. Stamm's responsibility for New Source Performance Standards). Another reason is Mr. Harder failed to show that all work would be complex merely because it fell within a specialty area. It is more likely that a range of complexity exists within each specialty area, similar to the fact that not all BACT/LAER reviews are complex. Since his testimony on this point was not credible, he failed to meet his burden to establish an accurate time percentage.

⁸ The Commission defined the term "continually perform" as shown on p. 5 of the decision issued in Roushar v. DER, 91-0069-PC (2/21/92), as follows:

The Advanced 2 specifications state that these positions "continually perform the most complex engineering reviews for the assigned area." The record shows that appellant's position does perform many of the most complex engineering reviews for the Southern District in the air management area. However, the record does not show that these reviews consume a majority of appellant's time. The use of the word "continually" in the specifications indicates that the engineering reviews conducted by these positions would consist primarily, if not almost exclusively, of these most complex reviews."

- provide direction to other engineers assigned to the project.
- | | |
|--|--|
| 5. Work involves the development of policies, standards, procedure development, evaluation and administration. | 5. Yes - for his specialty areas. |
| 6. Employees at this level function as the chief technical consultant. | 6. For his specialty areas, but only at the program level. |
| 7. Employees at this level are delegated authority to make final engineering decisions. | 7. Yes |

Position held by Hubbard

18. All parties marked as an exhibit the Commission's decision in Hubbard v. DER, 91-0082-PC (3/29/94), appeal pending Hubbard v. Personnel Commission, Case No. 94-CV-1408 (Dane County Cir. Ct.). (Marked as Exhs. A-11 and R-11) Mr. Hubbard's position was ranked during the 1990 survey by a master rating panel of engineering experts at the Air Management Engineer - Senior level. His position later was placed at the Advanced 1 level, based on a corrected understanding of his job duties as reflected in a PD dated March 1990 (Exh. A-15) (hereafter, referred to as his "Old PD"). Mr. Hubbard's claimed entitlement to the Advanced 2 level under his Old PD was rejected by a second panel of engineering experts, and by the Commission.
19. Mr. Hubbard's job changed over the 4-year period following the 1990 survey. He requested reclassification of his position to the Advanced 2 level effective June 26, 1994; and such request was granted based upon a rewritten PD (Exh. A-3) (hereafter, referred to as his "Reclass PD"). This change in classification has potential significance in Mr. Harder's case because the two gentlemen are co-workers.⁹
20. The Commission's understanding of Mr. Hubbard's duties under the Old PD (which the Commission ranked at the Advanced 1 level), is repeated below from par. 14 of the Proposed Decision and Order in Hubbard.

⁹ Other of Mr. Harder's co-workers were permitted as intervenors in the Hubbard decision. These included: Robert Eckdale, Imelda Stamm, Andrew Steward and Raj Vakharia. Commission files do not have a recorded appeal by Mr. Harder of the survey results which placed his position at the Senior level.

[Mr. Hubbard] is a licensed engineer with a masters degree in civil engineering and a second masters degree in mechanical engineering. His work involves difficult engineering tasks related to his areas of specialization which include: a) boiler technology performance, b) NOx reduction technology and control strategies and c) wood combustion issues relating to regulation, emission factors and prediction of emissions. In these areas of specialization, supervisory review is limited and does not involve second-guessing his engineering judgement. The specialty area of wood combustion is an uncharted area. [His duties are summarized below using the PD format.]

Time % Worker Activities

- 30% A. Evaluation mainly of existing-source permit applications and supporting materials for air pollution sources which, if warranted, includes duties related to public hearings on the permit applications. Occasionally does same work with new-source permit applications. Mr. Hubbard's permit work often involves Best Available Control Technology (BACT) or Lowest Achievable Emission Rate (LAER) decisions for hazardous as well as for routine air pollutant emissions. he also performs Prevention of Significant Deterioration (PSD) permits which involve complex emission "netting" scenarios. Mr. Hubbard's permit work is reviewed by unit supervisor and/or section chief for errors in arithmetic and/or engineering judgement.
- 20% B. Function as the Department's technical expert for Bureau staff (which includes district-office staff) on nitrogen oxides (NOx) and sulfur dioxide (SO2) emissions from boilers and other combustion sources, including control strategies. Consultation involves predicting the nature of air emissions from a particular furnace. NOx control strategies require a thorough understanding of combustion phenomena and furnace design. Provide regulatory assistance in same areas of expertise to permit applicants, including Wisconsin utilities.
- 10% C. Provide professional engineering assistance to Bureau and District staff and industry on Departmental policy regarding Good Combustion Technology for wood.
- 10% D. Function as the Department's designated final reviewer for mandatory operation permits for steam generating units (boilers) and heatset web offset printing presses.

- 10% E. Develop guidelines and procedures for recommended Department approval.
- 6% F. Prepare reports on emissions and control technology with respect to various source categories.
- 5% G. Design and implementation of the Department's Prevention of Significant Deterioration (PSD) increment tracking system through, for example, development of guidelines and provision of technical expertise to Bureau staff.
- 5% H. Coordination of air program interactions with state-owned coal-burning facilities. Includes liaison activities with the Department of Administration.
- 1% I. Inspect air pollution sources to verify proper operation and maintenance of air pollution control equipment, as well as compliance with air pollution regulations.
- 1% J. Witness compliance testing of sources to document adequacy of test procedures.
- 1% K. Witness compliance testing of sources to document adequacy of test procedures.
- 1% L. Provide technical assistance to Districts and industry on departmental policies, rules, and regulations.

201. The changes which occurred in Mr. Hubbard's job between his Old and Reclass PDs, were summarized and analyzed by DNR, as shown below.
(Exh. A-3, pp. 3-4)

This position functions as the lead technical expert and providing engineering consulting services to Bureau and District staff and industry and private engineering consultants and the general public related to: combustion processes, wood combustion, fossil fuel combustion, nitrogen oxides reduction strategies and technologies, and tire-derived fuel combustion. Additionally the position functions as the department's chief technical expert on "good combustion technology" for wood, develops guidelines and procedures in the areas of expertise, evaluates permit applications for revisions and new sources, and performs related air management engineering duties. Specific activities, changes and their relationship to the Advanced 2 level follow.

1. The position has assumed responsibility for tire-derived fuel combustion which includes working with the Bureau of Solid Waste Management on handling the disposal of waste tires through burning at a utility plant. Evaluating the environmental affects, required this position to conduct research (which was scant) and determine the emissions limits. This work was in an uncharted area with no guidance to follow and is now being used in granting permits to other utilities, etc. in their burning of tires. This position continues to provide consultation to other engineers in this area.
2. This position has assumed increased responsibility and an associated increase in time devoted (from 10% to 30%) in work related to providing consultation and serving as the department's chief technical expert on "good combustion technology" for wood. Increased activities include updating policy as technology develops and interpreting policies statewide, for not only Department staff but for the general public and industry and private engineering firms. This position no longer issues/evaluates all wood combustion related permits but rather serves as the "expert" for other engineering staff.
3. The position has assumed increased responsibility in the development of guidelines and procedures to include open burning of wood waste, implementing federal rules related to boilers and industrial furnaces, and implementation of the Federal EPA Par 70 per permit program.

* * *

As cited above, the responsibilities within this position reflect difficult, complex professional air management engineering work with the employe continually performing the most complex engineering review in uncharted areas and providing engineering expertise on the areas of combustion processes, wood combustion, fossil fuel combustion, nitrogen oxides and tire-derived fuel combustion.

Based on the analysis as summarized above and identified through the (Reclass PD), the work which we have determined qualifies at the Advanced 2 level is now performed for the majority of the position's time. Therefore, it is our determination that this position is now best identified at the Air Management Engineer-Advanced 2 level.

Positions held by Wedepohl and Hammers

22. Ms. Steinmetz testified at Mr. Harder's hearing that only two DNR engineering positions were classified at the Advanced 2 level after the engineering survey. These were the positions held by Richard Wedepohl and Michael Hammers.

23. The Commission's understanding of Mr. Wedepohl's position is repeated here from par. 10 of the Proposed Decision and Order in the Hubbard case. Mr. Wedepohl's position was classified after the survey, as a Water Resource Engineer at the Advanced 2 level. His position is located in DNR's Division of Environmental Quality, Bureau of Water Resources Management in the Education and Special Projects Section. He is solely responsible for his assigned statewide program which involves engineering issues in uncharted areas. His job duties are summarized below using the PD format.

| <u>Time %</u> | <u>Worker Activities</u> |
|---------------|---|
| 35% | A. Direct the development of the technical aspects of a comprehensive, statewide, lake management program and provide guidance on the same to federal agencies. Includes a broad range of duties related to lake restoration and protection projects on a statewide basis. |
| 15% | B. Obtain, manage and direct the use of state and federal grants for lake protection and improvement projects. Includes supervision of state and federally funded lake projects to ensure use of sound engineering principles and practices. |
| 25% | C. Provide engineering direction and consultative services to lake organizations and their engineering consultants, other department and state agency program staff, and federal agencies for lake studies and implementation projects. Consultation covers all aspects of lake management strategy including study design, monitoring and development of necessary engineering documents for project implementation. Responsible for assisting and guiding other DNR Bureau programs in developing comprehensive and coordinated solutions to lake related problems. |
| 25% | D. Serve as the primary state expert and spokesman on complex lake water quality and comprehensive management issues. Such expertise is provided to lake associations, districts, government units, legislature and consultant to lake communities. |

24. The Commission's understanding of Mr. Hammers' position is repeated below from par. 18 of the Proposed Decision and Order in the Hubbard case.

Mr. Hammers works in the same division as Mr. Wedepohl and Mr. Hubbard, but in the Industrial Wastewater Section of the Bureau of Wastewater Management. Mr. Hammers' duties involve complex engineering often in uncharted areas. An example of an uncharted area is his administrative code drafts for water quality criteria for toxic substances and water quality base limits. He makes final engineering judgements. Mr. Hammer's duties are summarized below, using the . . . PD [format].

| <u>Time %</u> | <u>Worker Activities</u> |
|---------------|--|
| 20% | A. Coordinate reissuance of all Pulp and Paper Mill permits. Coordination occurs with affected DNR bureaus, districts, industry organizations, other agencies and the federal EPA. |
| 6% | B. Serve as team leader for the Pulp and Paper Industry Technology Team. This multidisciplinary team is comprised of experts in air, land, water and biological resources. The experts are DNR employees from several bureaus and districts. Includes advising the Division Administrator and Department Secretary on pulp-and-paper-industry issues. Is involved, for example, with air management issues relating to the pulp-and-paper mills. |
| 25% | C. Develop and coordinate toxic pollutant effluent limitations in connection with a variety of activities including the following. Review of the most complex wastewater permits. Participate in writing, promulgating, and reviewing related administrative codes. Serve as the Department expert on toxic effluent limits in the WPDES program. Represent the Bureau in any department-wide effort relating to this topic and wastewater discharge. Requires close working relationships with different Bureaus. Provide guidance to Department staff, industries and the public. Represent the Bureau and Department when working with local or federal agencies, or other dealing with toxic pollutants in wastewater discharge. |
| 25% | D. Prepare WPDES discharge permits and evaluate related data and correspondence. |
| 10% | E. Review engineering plans and specifications for proposed industrial wastewater treatment and/or disposal facilities. Draft plan approvals for section chief's signature. |

- 5% F. Participate in the enforcement of WPDES discharge permits.
- 5% G. Review environmental impact reports and prepare environmental impact preliminary reports and subsequent final statements of major new industrial wastewater sources.
- 2% H. Represent Department technical positions and applicable regulations at public hearings and in courts of law regarding work goals A through F above.
- 2% I. Consult with professional engineers, other Department staff, public and industrial officials and the general public regarding work goals A through E above.

DISCUSSION

The appellant in a reclassification case has the burden of proof and must establish by a preponderance of the evidence the facts necessary to show that respondent's decision that appellant's position should remain in a particular classification was in error. Cox v. DER, 92-0806-PC (11/3/94) Mr. Harder did not meet his burden of proof and, to a great extent, such conclusion is based upon credibility concerns.

It was clear that Mr. Harder's supervisors supported his request for reclassification to the Advanced 2 level but such support was based upon their appreciation of his work (including his ability to take on a variety of projects due to his engineering experience and knowledge) rather than upon a fair comparison of his job duties to the Class Spec requirements. The examiner felt misled by some of the supervisors' testimony which initially pictured certain activities as unique to Mr. Harder's position, but which later were found to be the same or similar as tasks performed by co-workers classified at the Advanced 1 level (and in some instances at even lower classification levels). Two examples are discussed in the following paragraphs.

Mr. Johnston testified that Mr. Harder's BACT/LAER reviews have statewide and nation-wide impact because Mr. Harder's reviews are included in the nation-wide BACT/LAER Clearinghouse. Only upon questioning by the examiner did Mr. Johnston reveal that all BACT/LAER reviews performed by all engineers are filed automatically with the BACT/LAER Clearinghouse.

The Class Spec definition for the Advanced 2 level requires the employee to "typically provide direction to other engineers assigned to the project". Mr. Johnston signed Mr. Harder's Reclass PD as being accurate, including goal E which says Mr. Harder "[r]eview[s] the work of other engineers and staff". In cross examination Mr. Johnston revealed that all engineers in his unit provide the same level of co-worker review as part of the unit's team process. Mr. Ziege also was questioned about duties performed by Mr. Harder under goal E of the Reclass PD. Mr. Ziege acknowledged he had been present during Mr. Johnston's testimony, but still attempted to distinguish Mr. Harder's duties from co-worker reviews performed by other engineers in the unit by saying Mr. Harder would have higher review responsibility in the areas of his expertise. Only upon further questioning did Mr. Ziege acknowledge that the same would be true for the other engineers regarding their areas of expertise.

The examiner determined that certain areas of Mr. Harder's Reclass PD were worded in an attempt to meet the language of the Class Spec and some of these attempts were intended to mislead the reader. Goal E of Mr. Harder's PD is one example already mentioned in the prior paragraph. Another example relates to the lack of specificity as compared to co-workers' PD. In particular, the scope of duties relating to the function as chief technical consultant are specifically noted in Mr. Vakharia's PD, for example, as being on the department level for goal C, and at the program level for goal B. Similarly, the scope of Ms. Stamm's functions as chief technical consultant are specifically noted in her PD, for example, as being on the department level for goals B and C of her PD. In comparison, Mr. Harder's Reclass PD fails to define the scope of his function of chief technical consultant (see items A6, D1 and D6) which created the potential for the reader to incorrectly believe the assigned responsibility fell at the Advanced 2 level.

The legal analysis in this case was complex due in some part to perceived flaws in classifying positions near the time of survey. This was explained in Mangardi v. DER, 90-0335-PC (3/29/94), as shown below:

Trying to determine the difference between an Advanced 1 and Advanced 2 engineer might have been easier for everyone concerned if the class specifications were used for comparison against all engineering positions. Instead, the class specifications were derived from perceived common threads from the Master Rating Panel scores without a later attempt to

determine if the score for each individual position was consistent with the class specifications developed. The Second Panel also used the numerical scoring system and, again, there was no attempt to determine if the results were consistent with the class specifications. Thus two potential routes to the Advanced 2 level appeared to exist: those positions which merited a sufficiently high numerical score to warrant the cutoff without strict regard to the class specifications, and those positions which met the class specifications.

Mangardi, p. 12 Proposed Decision and Order

The legal analysis was further complicated because it appears DNR is using interpretations of the Advanced 2 Class Spec language which conflict with the Commission's prior decisions. As noted in Ostense (Decision and Order, p. 3-4), there are nine engineering positions at DHSS, all performing similar work, which DER classified at the Advanced 2 level. Accordingly, it is arguable whether the Commission would agree with Ms. Steinmetz' interpretation of the Advanced 2 level as requiring a position to be so unique as to be the only position in the unit doing the most complex work.¹⁰

The Advanced 2 definition in the Class Spec contains the requirements that the position's assigned work is "typically in uncharted areas with essentially no guidance to follow" and that the position "typically provide direction to other engineers assigned to the project". (Emphasis added.) Ms. Steinmetz interpreted this language to mean that you would expect these conditions to exist at the Advanced 2 level, but they would not be required as a prerequisite to classification at the Advanced 2 level. The Commission has looked at the noted language in the same Class Specs in two cases: Roushar v. DER, 91-0069-PC (2/21/92) and Hubbard v. DER, 91-0082-PC (3/29/94) appeal pending Hubbard v. Pers. Comm., 94-CV-1408 (Dane County Cir. Ct.). There is no language in those decisions to support Ms. Steinmetz' interpretation.

Furthermore, respondents did not give effect to the basic ruling in Hubbard (also met by the facts presented in Roushar). As stated on p. 14 of the proposed decision and order in Hubbard:

¹⁰ The Air Management Engineer Class Spec requires a position at the Advanced 2 level to "continually perform the most complex engineering reviews for the assigned area", which Ms. Steinmetz interpreted as meaning only one position in the work unit would be assigned all the complex work.

The record supports a conclusion that multiple engineering disciplines and multiple program areas appeared as common factors with most Advanced 2 positions. Furthermore, these distinctions made sense in terms of the classification factors common to all engineering positions, as well as in regard to the language used in the Advanced 1 and 2 class specifications. The exceptions to this rule appeared to involve positions which met DER's cutoff (under WQES numerical ranking) for Advanced 2, without regard to the class specifications.

Mr. Harder feels certain tasks were acknowledged at the Advanced 2 level in Mr. Hubbard's Reclash PD, and asserts entitlement to the same treatment. In reply, the Commission first notes that it has never had an opportunity to review Mr. Hubbard's Reclash PD for classification at the Advanced 2 level. The Commission further notes that part of the difference in classification is due to apparently misleading information in Mr. Hubbard's Reclash PD, such as the statement that he reviews work of other engineers (Reclash PD, Goal H, Exh. A-3). The testimony at hearing indicated that Mr. Hubbard's review of other engineers' work is no greater than the degree of team participation performed by Mr. Harder. The supervisors signed off on these PDs and bear some responsibility for any resulting classification errors from misleading statements in the PDs. Furthermore, DNR applied some mistaken interpretations of the Class Spec when reviewing Mr. Harder's position. If Mr. Hubbard's Advanced 2 level reclass was based upon some of those same mistaken interpretations, the Commission will not compound the error by repeating the mistake in regard to the present appeal. Augustine & Brown v. DATCP & DER, 84-0036, 0037-PC (9/12/84).

CONCLUSION

Based on the foregoing, the Commission concludes that the Advanced 1 definition in the Air Management Engineer Class Spec is the best fit for Mr. Harder's position.

ORDER

That respondents' action denying Mr. Harder's reclassification request is affirmed and this appeal is dismissed.

Dated _____, 1996.

STATE PERSONNEL COMMISSION

LAURIE R. McCALLUM, Chairperson

DONALD R. MURPHY, Commissioner

JMR

JUDY M. ROGERS, Commissioner

Parties:

Mark Harder
DNR-Bur. Air Mgmt.
Rm. AM/7
101 S. Webster St.
P.O. Box 7921
Madison, WI 53707-7921

George E. Meyer
Secretary, DNR
5th Floor
101 S. Webster St.
P.O. Box 7921
Madison, WI 53707-7921

Jon E. Litscher
Secretary, DER
137 E. Wilson St.
P.O. Box 7855
Madison, WI 53707-7855