

ROBERTO GUTIERREZ,
Appellant,

v.

**Secretary, DEPARTMENT OF
TRANSPORTATION, and
Secretary, DEPARTMENT OF
EMPLOYMENT RELATIONS,**
Respondents.

DECISION
AND
ORDER

Case No. 96-0096-PC

This appeal relates to whether the appellant's position should be reclassified. Appellant seeks to revise or amend the previously agreed upon issue for hearing to reflect the issue of effective date.

A prehearing conference was held on September 18, 1996, during which the parties agreed to the following statement of issue for hearing:

Whether respondent's decision denying the request to reclassify appellant's position from Civil Engineer Transportation-Senior to Civil Engineer Transportation-Advanced, was correct.

Immediately prior to the commencement of the hearing on November 21, 1996, the hearing examiner asked the parties whether they had a dispute as to the effective date of the proposed reclassification. During the ensuing off-the-record discussion, it became apparent that the effective date was a material aspect of the appellant's allegations. This is also reflected in the statement in his letter of appeal in this matter, which included the following language:

Under the Wisconsin Administrative code I am formally appealing a denial of my request to be reclassified to Civil Engineer Advanced. As stated in my letter to the Department of Transportation I am asking for retroactivity [to] March 15, 1993 in accordance with the Departments Equal Employment Opportunity Policy.

During the discussions immediately prior to the commencement of the hearing, appellant proposed the following subissue:

If not, whether the effective date is more appropriately March 15, 1993, or March 19, 1995.

In accordance with §PC 4.02, Wis. Adm. Code, the parties exchanged exhibits in advance of the hearing. Respondent submitted a variety of documents that related directly to the question of the appropriate effective date for appellant's reclassification request. These documents included DER's effective date policy, appellant's reclass request and relevant portions of DOT's Employee Handbook. Respondents clearly anticipated that effective date would be an issue at hearing, although respondents stated they did not foresee the specific arguments that appellant would make on that issue.¹

It is not inappropriate to read the transaction's effective date into the topic of proper classification, as long as both parties were ready to present evidence at hearing on the effective date question. It is certainly the better practice to clearly specify the question of effective date in the statement of issue agreed upon at the prehearing stage. However, there was no prejudice shown to respondent here. It is frequently the case that a party in a proceeding before the Commission will not know, in advance, all of the arguments the opposing party will make at hearing. The fact that respondent was unaware of certain specific arguments to be offered by appellant at hearing is not a sufficient reason for denying appellant's request to amend the issue. The effective date issue was also clearly identified by the appellant in his letter of appeal. Appellant appears *pro se* in this matter. Under all of the circumstances presented here, the Commission will consider the effective date issue.

Appellant contends he should be reclassified based upon duties he performed during the period from March 15, 1993, until June 1, 1994. On March 15, 1993, ap-

¹ Respondents cite *Darland v. UW & DER*, 89-160-PC, 7/12/90, in support of their position. In *Darland*, the Commission declined to expand the scope of hearing to include another classification option beyond those two levels specified in the agreed upon issue for hearing. In contrast to the present case, the respondents in *Darland* had prepared for hearing only on the basis of the two specified levels.

pellant began performing as an assistant to various construction supervisors in District 2. Respondents contend this was a temporary or rotational assignment, and the evidence supports this contention.² Appellant was one of three individuals who was performing similar work at this time. The other two were Dick Nelson, who was classified at the Engineering Specialist Advanced 2 level, and Robert Hubing, a Civil Engineer-Transportation-Advanced 1. Work performed on a temporary basis does not qualify a position for reclassification unless the work has been performed for a number of years and the timing of future changes cannot be predicted with any degree of certainty. *Miller v. DHSS & DER*, 91-0129-PC, 5/1/92. Because appellant's work during this 14½ month period as an assistant to the construction supervisors was temporary, rather than permanent, the Commission does not consider it when determining the proper classification of the appellant's position.

Effective June 26, 1994, the class specification for the "Civil Engineer - Transportation" series (App. Exh. 22) was abolished and replaced by a new classification specification with the same title. (Resp. Exh. 2)

Beginning in June of 1994, appellant ceased working as an assistant to construction supervisors and served as the project manager for the State Trunk Highway 60 construction project. The project was not completed until approximately one year later. The person who assumed appellant's duties as assistant to the construction supervisors was classified at the Civil Engineer-Transportation-Senior level.

In the Fall of 1994, appellant spoke with his supervisor and others in management about reclassification of his position. He did not submit a written reclassification request until March of 1995, when he sent a letter (App. Exh. 15) to respondent DOT's Bureau of Human Resources. Pursuant to the written policy of DER (Resp. Exh. 1), the effective date of a reclassification request is "the beginning of the first pay period following effective receipt of the request." "Effective receipt" occurs when "any of-

² Even though the appellant's position description during this period did not reflect the temporary or rotational nature of the assignment, respondent's witnesses verified that the assignment was not permanent and the position description of another employe who performed similar duties, specifically described it as a "one year rotational assignment." App. Ex. 19

office within the operating agency that has been delegated, in writing, effective receipt authority by the appointing authority” receives the reclassification request. It is undisputed that DOT’s Bureau of Human Resources held the necessary “effective receipt authority.” DER’s policy provides that a reclassification request may be initiated in any of three ways “through the submission of appropriate documentation.” The first method is by recommendation of supervisor, the second is by request of the position incumbent and the third is by attainment of specified levels of education or experience that are established in the applicable class specifications. The current case falls within the scope of the second alternative:

2. If a position incumbent requests his/her supervisor to review the level of the position and the supervisor takes no action or declines to initiate further action, the required documentation from the incumbent is a written request which includes a statement of the events (including the dates when the events took place) which have occurred in regard to the request for a classification review.

In March of 1995, the applicable Civil Engineer - Transportation class specifications were those which became effective in June of 1994. These are the specifications which must be applied in this case.

Appellant argues that the general policy language in §230.01, Stats.,³ requires his position to be classified at the same level as the position occupied by Mr. Hubing during the period they both worked as assistants to the construction supervisors.⁴ This

³ Appellant cites the following language in §230.01(2), Stats:

It is the policy of this state to provide for equal employment opportunity by ensuring that all personnel actions including hire, tenure or term, and condition or privilege of employment be based on the ability to perform the duties and responsibilities assigned to the particular position without regard to age, race, creed or religion, color, handicap, sex, national origin, ancestry, sexual orientation or political affiliation.

⁴ In its post-hearing brief, respondent argues that the examiner’s evidentiary ruling which allowed appellant to present evidence relating to the policy statements contained in §230.01(2), Stats., should be reversed. Respondents cited *Ruff v. Investment Board*, 78-30-PC, 1/3/79, in support of their arguments. It is unnecessary to address respondents’ arguments on this point in

argument fails to consider that Mr. Hubing was one of three individuals who had similar (temporary) responsibilities during that period. Appellant has offered no basis for suggesting that Mr. Hubing's classification more appropriately describes the temporary duties than does either Mr. Nelson's classification or the appellant's own class level. Appellant's argument also fails to consider the very specific language of DER's effective date policy. The very general policy statement in §230.01(2), Stats., does not supersede the specific procedural language set forth in DER's written effective date policy. In *Grinnell v. DP*, 81-101-PC, 4/29/82, the Commission concluded that "administrative convenience and uniformity" were rational bases for DER's⁵ effective date policy and that the resulting effect on pay adjustments⁶ did not violate the declaration of state policy found in §230.01(2), Stats. In *Popp v. DER*, 88-0002-PC, 3/8/89, the Commission again upheld the effective date policy, even though that policy places the onus on the employe to come forward with a reclassification request.

The Commission notes that this case was not filed under the Fair Employment Act. It is an appeal of a classification decision and the proper analysis is whether the respondents' decision was correct, rather than whether the respondents discriminated against the appellant by employing three individuals performing comparable work on a rotational basis, where the three positions were classified differently.

When appellant submitted his reclass request in March of 1995, he was no longer serving as an assistant to the construction supervisors. Reclassification decisions are to be based upon the duties assigned to the position as of the effective date of the request. Therefore, the Commission must analyze the appellant's position in terms of the duties assigned to him in March of 1995, i.e. the responsibilities of project manager for the Highway 60 project.

light of the Commission's conclusion that §230.01(2), Stats., is not determinative in this matter and that the proper effective date in this case is March of 1995 rather than 1993.

⁵ The Division of Personnel, identified as the sole respondent in the *Grinnell* case, was the predecessor agency to the Department of Employment Relations.

⁶ In *Grinnell*, the appellant contended that respondent had "arbitrarily deprived her of at least one month's increased pay by its policy of setting effective reclassification dates at the beginning of the second pay period after receipt of a reclassification request."

Appellant did not sustain his burden of establishing that his position was assigned Advanced level work as of March of 1995. The relevant 1994 class specifications for Civil Engineer - Transportation describe the Senior and Advanced levels for allocating district office construction project managers as follows:

Senior level - Act as Construction Project Manager of complex projects which include: [S1] several assistant staff including inspectors and dedicated staking personnel; [S2] construction and traffic control occurs in several stages; [S3] several types and phases of work occur simultaneously each day requiring constant attention; [S4] project manager is relied upon by contractor personnel for staking, measurements, and plan interpretation due to the complexity and quantity of work occurring; [S5] project record keeping and plan interpretation due to the complexity and quantity of work occurring; [S6] project record keeping is a continuous process; [S7] may be responsible for news media contacts; [S8a] the types of projects include reconditioning of roadway and bridges with substantial grading and moving or removing parts; [S8b] environmental issues, [S8c] erosion control, and [S8d] include over 150 separate bid items per contract, [S8e] the project is between 3 to 5 million dollars, and [S8e] the project cannot be completed in a single construction season.

Advanced level - Act as Construction Project Manger of major complex projects which include; [A1] larger project staff with additional inspection personnel; [A2] daily changes occurring to construction; [A3a] daily changes occurring to traffic control staging with [A3b] complex traffic control, [A3c] high speed traffic, and [A3d] staging or detours thru urban areas; [A4] constant judgement and interpretation of plan details is required to avoid interference and conflicts between types of work; [A5] exercise of independent judgement in applying and communicating management policies to the contractors, media, and the public; [A6a] there are many subcontractors, [A6b] many property owners with access problems, [A6c] several different local units of government, and [A6d] extensive utility issues involving many utilities; [A7a] corrections to plan errors are corrected immediately due to the intensity of daily construction activities and contract time restraints, [A7b] and the consequence of error is high; [A8a] the project involves serious environmental issues, [A8b] serious hazardous material issues, [A8c] serious erosion issues, [A8d] substantial public involvement with right of way issues, and [A8e] is politically sensitive; [A9a] the types of projects are typically urban, include [A9b] unique construction methods, [A9c] multi-span structures,

[A9d] major interchange work, [A9e] new roadway, [A9f] different types of pavement, [A9g] retaining walls and bridges, [A9h] freeway construction, [A9i] complex existing road changes, and [A9j] night construction work; [A10] more than 200 separate bid items per contract; [A11] the project is over 5 million dollars; and [A12] the project may take up to two or more construction seasons to complete. (Numbering system has been added).

Appellant was supervised by Alan Rommel during this period. Mr. Rommel's supervisor was Richard Rutzen. Both Mr. Rommel and Mr. Rutzen were familiar with the Highway 60 project and were also familiar with the projects assigned to the other project managers in District 2. Both offered testimony that the Highway 60 project was not as complex as the projects in the Advanced level. Appellant attempted to attack these conclusions by showing that the project did include, for example, some hazardous materials concerns and some staging.

The evidence relating to the various criteria set forth in various portions of the Senior [S] and Advanced [A] class specifications is summarized below.

1. *[S1] several assistant staff including inspectors and dedicated staking personnel;*
vs.

[A1] larger project staff with additional inspection personnel.

Respondents (Resp. Exh. 7) contend appellant had the following staff on the project:

[T]ypically 3-4 [staff], includes a specialist that handles the bridge construction, 2 inspectors LTE or permanent staff as available. One survey crew 75% time. For about a month we had a developmental engineer assisting to gain some experience. Material testing was handled by a subconsultant who reported to [appellant]. This is normal staffing for this type of project.

Appellant provided a list of staff (App. Exh. 25), but did not indicate their role or whether they were full time:

Project engineer (Roberto Gutierrez), Assistant engineer (Chris Zacharias), ES Advanced 1(Bob Braun, ES John Martin); Technicians

(Earnest Ellis, Tony Zipper, Kenvi Peiffer), LTE (Briget Hubbing, Keith Martin, Ron Pritzlaf), Survey Crews (Andy Ferk, Bill Ficher, Dave Winterstein); EMCS consultation, [District 2] sign shop, and electrical department; Materials lab, STS consultant QA.

The standards are pretty vague. Staking personnel (i.e. the survey crew) was not full time. If all those persons listed by appellant worked at the same time and worked full time throughout the project, the staffing level would be above the Senior level standard. However, without this more specific information, appellant has not met the Advanced level on this point.

2. *[S2] construction and traffic control occurs in several stages.*

The bulk of the STH 60 project was *not* carried out in stages. The only exception was one intersection (CTH I) among the 16 intersections included in the project. For that one intersection, a temporary roadway was added along one side of the existing surface in order to maintain separate lanes of traffic while the other side of the existing roadway was reconstructed and expanded. After construction work was completed on the first side, traffic was switched over to that side so that the second side could be reconstructed and expanded.

The Senior level specifically provides for construction and traffic control “in several stages.” The fact that most of the project was carried out without staged construction tends to support a conclusion that the project was not above the Senior level.

3. *[S3] several types and phases of work occur simultaneously each day requiring constant attention;*

[S4] project manager is relied upon by contractor personnel for staking, measurements, and plan interpretation due to the complexity and quantity of work occurring;

[S5] project record keeping and plan interpretation due to the complexity and quantity of work occurring; and

[S6] project record keeping is a continuous process.

There was no specific evidence regarding these factors. However, there is nothing to suggest that the STH 60 project did not meet these standards.

4. *[S7] may be responsible for news media contacts.*

Nothing in the record suggests there were any news media contacts regarding the STH 60 project.

5. *[S8a] the types of projects include reconditioning of roadway and bridges with substantial grading and moving or removing parts;*

vs.

[A9e] new roadway; and

[A9i] complex existing road changes.

The record established that approximately 80% of the project involved reconditioning the existing roadway, while the remaining portion was reconstruction. Appellant did not establish that the project was for either new roadway or for complex existing road changes. There is sufficient room in the language at the Senior level (“projects include reconditioning. . . and moving or removing parts”) to include the STH 60 project.

6. *[S8b] environmental issues; and*

[S8c] erosion control;

vs.

[A8a] the project involves serious environmental issues;

[A8b] serious hazardous material issues; and

[A8c] serious erosion issues.

Appellant’s STH 60 project clearly did *not* include “serious hazardous material issues.” Hazardous materials, in the form of a leaking underground petroleum storage tank, were present near one intersection. However, appellant’s only responsibility was

to make sure that the project avoided the contaminated area. He was not responsible for investigating the scope of the spill or with remediating it.

Appellant's STH 60 project manager role did encompass erosion and water quality concerns. DOT had to obtain a permit for the project pursuant to the Clean Water Act because the project called for filling 0.20 acres of wetland. Wisconsin's Department of Natural Resources commented on the project and established various conditions for construction (App. Exh. 28). These comments/conditions included the following:

1. Silt screen should be placed at the outlet to all stream crossing structures, and silt fence should be placed along the fill slopes in fill sections within wetlands.
2. Fill slopes should be 2.5:1 or 3:1 in wetlands to minimize fill placement.
3. A sound erosion control plan should be included in the final plans.
4. An item should be included in the special provisions to prohibit debris from bridge removal from entering the river. . . .
6. There is a sugar maple forest alongside the Cedar Creek. He requests that tree cutting and removal should be kept to a minimum.
7. Bridge construction should not take place between March 15 and April 30 so as not to interfere with fish migration. . . .
10. To minimize the impact of the new structure on fish habitat in the Cedar Creek, 3' boulder retards of field stone or quarry stone should be placed just upstream and downstream of the [bridge].

A DNR representative participated in the pre-construction conference.

Respondents contended that the project did not include environmental or erosion issues comparable to Advanced level projects, such as remediation or relocating a trout stream. The project traversed 9 separate wetlands (App. Exh. 28) and photographs of the project (App. Exh. 30) show that a very small waterway was diverted to a new channel lined with plastic sheeting as well as extensive use of silt screens. Installation of the replacement bridge required construction of a coffer dam. These procedures clearly meet the standard of "environmental issues" and "erosion control" at the Senior level and, when coupled with the conditions/comments from DNR, satisfy the "serious" environmental and erosion issues standard of the Advanced level.

7. *[S8d] include over 150 separate bid items per contract;*

vs.

[A10] more than 200 separate bid items per contract.

Appellant's materials variously suggest that the project included 202 bid items (App. Exh. 25) or 215 bid items (App. Exh. 24). The construction estimate (App. Exh. 27) appears to list 217 bid items. Appellant's supervisor suggested the project had only 173 bid items because some of the items in the bridge contract duplicated items in the roadway contract. The Commission was unable to find any support in the construction estimate for respondents' view and finds that there were more than 200 separate bid items.

8. *[S8e] the project is between 3 to 5 million dollars;*

vs.

[A11] the project is over 5 million dollars.

Appellant's supervisor did not dispute appellant's statement that the final cost of the project was \$4.7 million, up from the initial estimate of \$4.1 million. This total supports classification at the Senior level.

9. *[S8e] the project cannot be completed in a single construction season;*

vs.

[A12] the project may take up to two or more construction seasons to complete.

Appellant's supervisor, Mr. Rommel, testified the project was initially scheduled for one construction season but that it extended into a second because bids were let late. This is consistent with both the Senior and Advanced criteria.

10. *[A2] daily changes occurring to construction.*

Appellant did not offer specific evidence tending to undercut Mr. Rommel's view that the frequency of changes were consistent with a Senior level project.

11. *[A3a] daily changes occurring to traffic control staging;*
[A3b] complex traffic control;
[A3c] high speed traffic; and
[A3d] staging or detours thru urban areas.

Through traffic on STH 60 was rerouted through Grafton during the project. Traffic on STH 60 was limited to “local traffic.” Appellant did not counter Mr. Rommel’s testimony that the route of the detour was somewhere between “rural” and “urban.” Other than the CTH I intersection, there was no staged construction. Therefore, traffic control was not “complex.” The only example of “high speed traffic” provided by appellant was when cars were ignoring the “Road Closed” barricade at the beginning of the construction area. The barricades were modified and the high speed traffic stopped. Respondents also provided evidence that the normal traffic count of 11,000 vehicles on STH 60 was well below that of three Advanced level projects, which averaged at least 35,000 vehicles. All of these facts indicate that traffic control and the detour for the STH 60 project did not reach the Advanced level.

12. *[A4] constant judgement and interpretation of plan details is required to avoid interference and conflicts between types of work.*

Appellant did not offer specific evidence tending to call into question Mr. Rommel’s statement that STH 60 was not at the Advanced level as to this factor.

13. *[A5] exercise of independent judgement in applying and communicating management policies to the contractors, media, and the public.*

No specific evidence was offered on this point.

14. *[A6a] there are many subcontractors.*

There were at least 10 subcontractors on the STH 60 project. Respondents acknowledged this met the Advanced level standard of “many,” but suggested that Jour-

ney level and Senior level projects typically include a similar number of subcontractors. Whether or not that is the case, the appellant has met this criterion for classification at the Advanced level.

15. *[A6b] many property owners with access problems.*

This project was rural rather than urban, so access problems more limited than might otherwise have been the case. However, the physical length of the project was such that there were 170 property owners affected by it (App. Exh. 25) and Mr. Rommel answered “Yes” to this criterion. (Resp. Exh. 7)

16. *[A6c] several different local units of government.*

The project included the town of Jackson, the town of Grafton and Cedarburg and crossed the line between Ozaukee and Washington counties. Respondents suggested this was not out of the ordinary, but again, appellant meets this criterion for classification at the Advanced level.

17. *[A6d] extensive utility issues involving many utilities.*

There is no evidence to suggest that the STH 60 project satisfied this factor.

18. *[A7a] corrections to plan errors are corrected immediately due to the intensity of daily construction activities and contract time restraints.*

The relatively low level of traffic on the project provided a greater opportunity to handle problems than is contemplated at the Advanced level.

19. *[A7b] and the consequence of error is high.*

Respondents contend that because through traffic was detoured, there was no unusual consequence of error associated with the project. Photographs (App. Exh. 30) support appellant’s testimony that dynamite was used on the project to remove portions of the bridge over Cedar Creek. However, the photographs also indicate there were no

residences near the bridge. The consequence of error associated with the STH 60 project was not particularly high.

20. *[A8d] substantial public involvement with right of way issues*

The project affected 170 adjacent property owners and it was begun without having acquired some of the necessary right-of-way. (App. Exh. 25) Respondent acknowledged (Resp. Exh. 7) that several real estate issues were resolved by DOT's real estate agents after the project had been let but suggested appellant's role was consistent with that of a Senior engineer rather than an engineer at the Advanced level. Appellant's evidence did not draw into question this conclusion.

21. *[A8e] is politically sensitive.*

Appellant established that he had contact with two legislators (App. Exh. 25) but this project was not politically sensitive when compared to other projects which included weekly on-site meetings with municipalities and affected businesses.

22. *[A9a] the types of projects are typically urban.*

The construction estimate (App. Exh. 27) breaks the project down into four components and identifies each component as "rural." The project was rural rather than urban.

23. *[A9b] unique construction methods.*

The replacement bridge construction included use of a coffer dam. This may be an unusual construction method in terms of highway construction, generally. However, there is no evidence of any "unique" construction methods.

24. *[A9c] multi-span structures.*

The replacement bridge over Cedar Creek was supported by a central pier. Therefore, it qualifies as a multi-span structure. The Commission does not read the specifications as requiring more than one multi-span structure.

25. *[A9d] major interchange work;*
[A9h] freeway construction; and
[A9j] night construction work.

The STH 60 project does not meet these criteria.

26. *[A9f] different types of pavement.*

Both asphalt and concrete were used in the project, even though the concrete was limited to the approach slabs for the bridge. The project met this criterion.

27. *[A9g] retaining walls and bridges.*

The project included two small retaining walls⁷ of interlocking block construction, and one small bridge. The project met this criterion.

In summary, the above analysis shows that the STH 60 project meets essentially all of the criteria for classification at the Senior level, but does *not* meet 22 of the 32 criteria at the Advanced level. Appellant's position is better described by the Senior level specifications than the Advanced level. Appellant has not sustained his burden of proof in this matter and the "best fit" is at the Senior level.

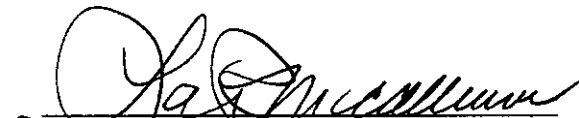
⁷ The walls only required a total of 690 square feet of block. App. Exh. 27, p. 10.

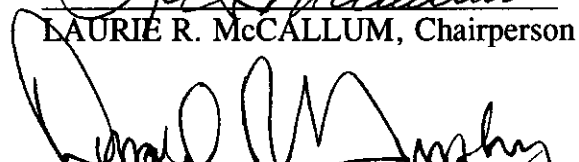
ORDER

Respondents' decision denying the appellant's request to reclassify his position from Civil Engineer-Transportation-Senior to Advanced is affirmed and this appeal is dismissed.

Dated: April 11, 1997 STATE PERSONNEL COMMISSION

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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