

HELEN URBAIN,
Appellant,

v.

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

Respondents.

Case No. 96-0156-PC

**FINAL DECISION
AND ORDER**

A hearing was held on the above-noted case on August 5, 1997. At appellant's request, the parties were granted an opportunity to file written arguments with the final brief due on November 6, 1997 (as measured by postmark).¹

The parties agreed to the following issue for hearing (see Conference Report dated January 17, 1997):

Whether the respondents' decision to deny the appellant's request to reclassify her position from Surveyor-Senior to Surveyor-Advanced 1, was correct. (The parties agree that the effective date for this transaction would be April 30, 1995, if appellant prevails in her appeal.)

Appellant requested reclassification of her position when she worked for respondent as a surveyor for district #1. Her official position description (PD) prior to filing the reclassification request is in the record as Exh. R-9. She re-wrote her PD for the reclassification request (hereafter, "Reclass PD") to accurately describe her duties as of May 1994. The Reclass PD is in the record as Exh. R-7.

The Surveyor classification specification (hereafter, "Class Spec") is in the record as Exh. R-1, and contains the following six classification levels (listed from lowest to highest): Developmental, Objective, Journey, Senior, Advanced 1 and Advanced 2. The Class Spec contains a definition of Advanced 1 positions and notes (in pertinent part) that Senior level positions will "perform less than the full range of Surveyor Advanced 1 level duties." The Advanced 1 definition is shown below in a reorganized format to facilitate discussion in this decision.

¹ Appellant did not file the final brief.

Department of Transportation - Survey Coordinator for District Office:

1. This is the objective level for District Survey Coordinator positions responsible for overseeing all survey and computation activities for the District Office.
2. Specific duties include:
 - a) Determining the type and amount of equipment needed by the survey unit.
 - b) Review survey requests and work plans received from design engineers.
 - c) Determine the best means of gathering information and conducting each survey.
 - d) Assign appropriate work to survey Crew Chiefs.
 - e) Field review survey projects with survey supervisor.
 - f) Prepare drafts of news releases, public information letters and letters to public officials for the supervisor.
 - g) Make public relations calls on property owners and have a diary of these public contacts made to incorporate into the survey note book or other project records.
 - h) Check on survey progress.
 - i) Correlate and check field notes, sketches, and vertical control data.
 - j) Compute, analyze and make proper adjustments of minor field errors using the National Oceanic Survey Least Squares computer program, Polsast computer program, ICES Cogo computer program, or comparable programs.
 - k) Compute or oversee the computation of raw field data and the transfer of final tabulated data to the computer for use by others.
 - l) Assist the Survey Supervisor in conducting performance appraisals.
 - m) Maintain a reference file of known vertical and horizontal control points.
 - n) Coordinate the panel placing operations and ground control surveys with photogrammetric surveys.
 - o) Check project area and available records for evidence of section corners or reference ties.
 - p) Solicit cost quotations for services to reset land survey monuments where needed from County Surveyors or private registered land surveyors.
 - q) Prepare surveying contract documents for signature.
 - r) Cooperate with the U.S. Coast and Geodetic Survey and U.S. Geological Survey in the preservation or reestablishment of their reference monuments that may be disturbed by highway construction activity.
 - s) Arrange to have section corners and other land survey monuments that may be disturbed by our construction activity, referenced so that they can be reestablished at a later time.
 - t) Coordinate the installation of permanent right of way monuments where needed.
 - u) Review consultant survey time and cost estimates with design engineers.

- v) Monitor design survey consultant's survey field effort.
- w) Review survey notes for completeness, accuracy and neatness.
- x) Resolve technical disagreements with consultant survey staff.
- y) Recommend changes to the survey specifications.
- z) Act as a Survey Crew Chief if needed.
- aa) Serve as District Global Positioning System Coordinator.

Appellant's position did not meet all the Advanced 1 level criteria listed under numbers 1 and 2 above. As to number 1, she does not oversee "all survey and computation activities for the District Office." She oversaw all computation activities but not all survey activities. The survey activities were overseen by a different position held by Steven Marty. As to number 2, she performed all tasks except items e, l, and aa. The work she performed under numbers 1 and 2, accounted for more than half of her position's time.

Respondents denied appellant's reclassification request by letter dated October 28, 1996 (Exh. R-11). The letter indicated that the Class Spec requires the Advanced 1 level oversee all survey and computation activities and that appellant did not meet this requirement. The letter further acknowledged the disparity which existed with Mr. Marty's position as he had oversight responsibilities for all survey activities, but not for computation activities and yet his position was classified at the Advanced 1 level. As to this disparity the letter stated (emphasis shown is same as in the original document):

[T]he classification specification for the Surveyor Advanced 1 allow for only one Survey Coordinator position (as per discussions with DER) and the District Survey Coordinator positions must be responsible for overseeing ALL survey and computation activities for the District Office. Mr. Marty's position has been designated the District Survey Coordinator as of the 6/26/94 reallocation to the Surveyor series. Ms. Urbain's position is fully responsible for the computation activities, where it appears that Mr. Marty's position is responsible for overseeing the survey activities for the District. If this is true, neither of the Urbain or Marty positions meet the classification specification for Surveyor Advanced 1. By having the required activities divided into two positions, it lessens the complexity and scope of both positions and weakens the levels of both positions. If the current assigned duties remain unchanged for both positions, an amended and correct classification will need to placed (sic) on both positions.

Consideration was given to the fact that the District is organized differently than the other Districts and District 1 has combined all survey activities into one section. However, it was decided in discussions with DER that the classification specifications are the basic authority for the assignment of positions to a class (as per Chapter ER2 of the Wisc Adm

Code) and that the current specifications do not allow for two Survey Coordinators, nor do they allow for dividing the work among two Surveyor Advanced 1 positions.

The District needs to make a decision as to which position is functioning as the Survey Coordinator for the District. If the District believes that Ms. Urbain's position is the Survey Coordinator, Ms. Urbain will have to compete for the position. If the District believes that Mr. Marty's position is the Survey Coordinator position, necessary changes will need to be made to Mr. Marty's PD to include overseeing the computation activities for the District and necessary changes will need to be made to Ms. Urbain's PD to reflect what duties she is assigned.

Ms. Urbain left her employment with the district to accept a position in respondent's central office. Thereafter, Mr. Marty's PD was changed (Exh. R-20) to indicate his position's responsibility to oversee all survey and computation activities for the district.

The Commission understands why appellant requested reclassification when her position met the Advanced 1 requirements as much as did the duties of Mr. Marty's position. This is the disparity noted in the denial letter cited above. The Commission, however, must interpret the Class Spec as written (*Zhe et al. v. DHSS & DP*, 80-285, 286, 292, 296-PC, 11/18/81; *aff'd* by Dane County Circuit Court, *Zhe et al. v. Pers. Comm.*, 81-CV-6492 (11/82) and will not compound a classification error by ignoring the Class Spec requirements (*McCord v. DER*, 85-0147-PC, 3/13/86; *Danielski et al. v. DER*, 85-0196-PC, 9/17/86; *Augustine & Brown v. DATCP & DER*, 84-0036, 0037-PC, 9/12/84; and *Lulling & Arneson v. DER*, 88-0136, 0137-PC, 9/13/89).

The Commission further notes that appellant stated in her initial brief (dated 9/26/97) that "not one survey coordinator statewide" performs "all of the duties listed in the Class Spec", which appears to be an allegation that none of the positions classified at the Advanced 1 level perform all survey and computation activities for a district. This statement does not reflect the evidence in the record and, accordingly, was not given weight in reaching this decision.

The appellant's position is best described at the Senior level because she did not have oversight responsibility for all survey and computation activities for district 1, as required by the Class Spec for classification at the Advanced 1 level. Based on this conclusion there is no need for the Commission to determine the remaining issues raised by the parties, such as whether appellant would have been required to compete for the position if it had been approved at the Advanced 1 level.


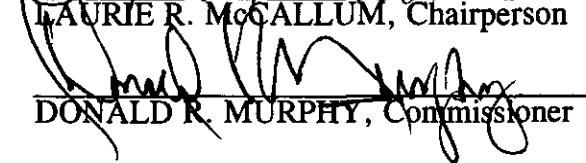
ORDER

Respondents' decision is affirmed and this appeal is dismissed.

Dated: January 28, 1998.

STATE PERSONNEL COMMISSION

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LAURIE R. McCALLUM, Chairperson

DONALD R. MURPHY, Commissioner

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NOTICE

OF RIGHT OF PARTIES TO PETITION FOR REHEARING AND JUDICIAL REVIEW
OF AN ADVERSE DECISION BY THE PERSONNEL COMMISSION

Petition for Rehearing. Any person aggrieved by a final order (except an order arising from an arbitration conducted pursuant to §230.44(4)(bm), Wis. Stats.) may, within 20 days after service of the order, file a written petition with the Commission for rehearing. Unless the Commission's order was served personally, service occurred on the date of mailing as set forth in the attached affidavit of mailing. The petition for rehearing must specify the grounds for the relief sought and supporting authorities. Copies shall be served on all parties of record. See §227.49, Wis. Stats., for procedural details regarding petitions for rehearing.

Petition for Judicial Review. Any person aggrieved by a decision is entitled to judicial review thereof. The petition for judicial review must be filed in the appropriate circuit court as provided in §227.53(1)(a)3, Wis. Stats., and a copy of the petition must be served on the Commission pursuant to §227.53(1)(a)1, Wis. Stats. The petition must identify the Wisconsin Personnel Commission as respondent. The petition for judicial review must be served and filed within 30 days after the service of the commission's decision except that if a rehearing is requested, any party desiring judicial review must serve and file a petition for review within 30 days after the service of the Commission's order finally disposing of the application for rehearing, or within 30 days after the final disposition by operation of law of any such application for rehearing. Unless the Commission's decision was served personally, service of the decision occurred on the date of mailing as set forth in the attached affidavit of mailing. Not later than 30 days after the petition has been filed in circuit court, the petitioner must also serve a copy of the petition on all parties who appeared in the proceeding before the Commission (who are identified immediately above as "parties") or upon the party's attorney of record. See §227.53, Wis. Stats., for procedural details regarding petitions for judicial review.

It is the responsibility of the petitioning party to arrange for the preparation of the necessary legal documents because neither the commission nor its staff may assist in such preparation.

Pursuant to 1993 Wis. Act 16, effective August 12, 1993, there are certain additional procedures which apply if the Commission's decision is rendered in an appeal of a classification-related decision made by the Secretary of the Department of Employment Relations (DER) or delegated by DER to another agency. The additional procedures for such decisions are as follows:

1. If the Commission's decision was issued after a contested case hearing, the Commission has 90 days after receipt of notice that a petition for judicial review has been filed in which to issue written findings of fact and conclusions of law. (§3020, 1993 Wis. Act 16, creating §227.47(2), Wis. Stats.)

2. The record of the hearing or arbitration before the Commission is transcribed at the expense of the party petitioning for judicial review. (§3012, 1993 Wis. Act 16, amending §227.44(8), Wis. Stats.)

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