STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

TONIA RICE, Appellant,

v.

Director, OFFICE OF STATE EMPLOYMENT RELATIONS, Respondent.

Case # 629
No. 63104
PA (der) -86
(Formerly Case No. 01-0089-PC)

Decision No. 31093

Appearances:

Tonia Rice, 1725 Prospect Street, La Crosse, WI 54603, appearing on her own behalf.

David J. Vergeront, Legal Counsel, OSER, P.O. Box 7855, Madison, WI 53707-7855, appearing on behalf of the Department of Employment Relations, now Office of State Employment Relations.

FINAL DECISION AND ORDER

Pursuant to s. 230.44(1)(b), Appellant Tonia Rice filed a timely appeal of a denial of a reclassification from Program Assistant (PA) 3 to Engineering Technician-Transportation Journey on December 7, 2001, with the Wisconsin Personnel Commission. A member of the Personnel Commission was designated as the hearing examiner and presided over the contested case hearing on October 3 and 4, 2002.

The Personnel Commission was abolished, effective July 26, 2003, pursuant to 2003 Wis. Act 33, and the authority over this matter was transferred to the Wisconsin Employment Relations Commission (WERC). The same legislation reorganized and renamed the Department of Employment Relations that is now known as the Office of State Employment Relations in the Department of Administration. Because a proposed decision was not issued before the Personnel Commission was abolished, those Commissioners of the WERC who are signing this decision have listened to the entire tape recording of the hearing and have reviewed the exhibits introduced at hearing.

The issue to be decided is:

> Whether respondent correctly [re]classified Appellant from PA [Program Assistant] 3 to PA4 rather than to Engineering Technician – Trans Journey or to Engineering Specialist – Trans.

The Commission concludes that the position is best described at the PA4 classification level.

Appellant, Tonia Rice, has been employed by the State of Wisconsin, Department of Transportation (DOT), District 5, as a Program Assistant in the Technical Services Business Area of the Real Estate Section since January of 1994. She reports to James Farmer, Real Estate Supervisor. Since her initial hire as a Program Assistant 1, one component of her job duties has been preparing legal descriptions and checking legal descriptions prepared by others. Over the years, the amount of time she has spent with legal description preparation and right of way plat review has increased so that it now encompasses more than 60% of her job duties. Rice's position was reclassified to the Program Assistant 2 level effective November 1995, and to the Program Assistant 3 level effective August 1998. In 2001, she again updated her position description and submitted it, with the approval and assistance of her supervisor, to be reclassified. Although Rice believed the position to be best classified at the Engineering Technician-Transportation Journey (ET-Transportation Journey) level, the position was reclassified to the Program Assistant 4 level.

Appellant's position description accurately describes her responsibilities as follows:

> POSITION SUMMARY: This paraprofessional position in the Real Estate Section of the District's Technical Services Business Area performs work of moderate to complex difficulty in a variety of situations. It is primarily responsible for providing highly technical program support to professional engineering staff in the district right of way plat unit and professional real estate specialist staff in the district real estate acquisition unit. Program activities assigned to this position require the exercise of sound judgment, independent decision making abilities and a thorough background in both functional areas. Decisions made at this level have significant impact on both internal and external customers. The consequence of error is very high. This position functions under general supervision.
>
> | **Time** | **Goals . . .** |
> |---|---|
> | 60% | **A.** Coordination of legal description preparation and right of way plat review. |
> | 20% | **B.** Performance of Right of way Research |
> | 10% | **C.** Contract and Purchasing Administration under Provisions Defined by Purchasing Unit of Bureau of Management Services |
> | 7% | **D.** Coordination and processing of Relocation Orders |
> | 3% | **E.** Miscellaneous Responsibilities |

The majority of Rice's duties involve working with legal descriptions. She drafts legal descriptions by taking information off plats created by other persons in the office. In this process, she records the information that appears on the face of the plat in a manner such that it can be recorded with the Register of Deeds in the appropriate county. Sometimes she will also have to use title search information to complete the legal description. Rice makes certain that the legal descriptions provided with plats prepared by outside consultants are correct and in accordance with the policies and procedures used by District 5. She does this by comparing the detail sheets submitted by consultants with the legal descriptions.

In pertinent part, the position standard for the Program Assistant series provides as follows:

> B. Inclusions
>
> This series encompasses both generalized and specialized staff assistance in a wide range and combination of activities. Positions in this classification series are characterized by their involvement in and accountability for carrying out significant and recognizable segments of program functions or organizational activities. Positions are assigned related staff functions and complete phases of whole activities where discretion and decision-making can not [sic] be standardized. Positions typically function in the capacity of a coordinator for an event or activity to the program involved. Positions normally assist a program head, supervisor or other official who is ultimately responsible for the entire program area involved.
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> C. Exclusions
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> Positions that are not identified by the concepts of Program Assistant class series are:
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> 1. Positions performing confidential duties. . .
> 2. Positions that function as professionals in other classification series.
> 3. Positions that perform unrelated or partial functions without significant impact or consideration given to the overall result or success of the program function or organizational activities.
>
> . . .

The class description for the Program Assistant 4 reads:

> This is paraprofessional staff support work of considerable difficulty as an assistant to the head of a major program function or organization activity. Positions allocated to this class are coordinative and administrative in nature. Positions typically exercise a significant degree of independence and latitude for decision-making and may also function as leadworkers. Positions at this level are differentiated from lower-level Program Assistants on the basis of the size and scope of the program involved, the independence of action, degree of involvement and impact of decisions and judgment required by the position. Work is performed under direction.

This description is consistent with the Appellant's responsibilities and level of supervision. She performs technical work that is a significant and recognizable segment of the work of the real estate and plat review section in the DOT District office: she coordinates the preparation of legal descriptions and the review of right of way plats. She develops legal descriptions and reviews those prepared by consultants. She checks right of way plats to ensure accuracy. She does not, however, develop the plats. In addition to writing and checking legal descriptions, her position is responsible for performing significant administrative and coordinative work.

Appellant contends that her position is not correctly classified as a Program Assistant 4 because no other PA4s write legal descriptions. It is true that none of the comparison position descriptions submitted at hearing include major responsibility for writing legal descriptions. However, it is not the specific type of work performed, but the nature of the work and its importance in the overall scheme of work performed in an agency that must be reviewed to determine whether a position may fall within the scope of the PA series.

The Krugman PA4 position, for example, is responsible for providing administrative support/assistance to the District Real Estate management and professional staff. She, like Appellant, performs work of complex difficulty and works under general supervision. Krugman also performs work of a technical nature. She prepares contracts and monitors them to completion. She is responsible for the review of all Jurisdictional Offers, Lis Pendens and Awards of Damages. She administers the District's Local Public Agency (LPA) right of way acquisition program and provides functional and technical guidance in the right of way acquisition process to local units of government, their representatives and LPA management consultants. In addition, she prepares and signs leases for excess lands after determining the amount of rent. She provides training on READS (Real Estate Automated Data System) to new real estate staff and provides technical expertise in real estate program administration.

The Knuteson PA4 position similarly provides administrative support/assistance to Real Estate Management and professional real estate staff. Among other duties, Ms. Knuteson researches and analyzes project funding for acquisition projects; maintains and supervises the READS program and is responsible for preparing and reviewing of all Jurisdictional Offers, Lis Pendens and Awards of Damages for accuracy; has responsibility for correcting any errors that could cause problems in litigation cases.

The Anton and Pierce positions, while classified at the PA 3 level, are also examples of employees who provide administrative services and develop documentation in support of real estate matters. Ms. Anton spends 50% of her time assisting the Real Estate Supervisor to prepare and submit documentation to create and establish legal relocation orders for highway improvement. This requires the ability to review current plats and previous relocation orders. Ms. Pierce, in fact, spends 9% of her time writing legal descriptions, preparing Conveyance of Rights documents, and recording documents with the Register of Deeds. She also spends 4%

of her time assisting in the review of highway project plans and right of way plats to ensure accuracy of the utility data display. The legal descriptions that Pierce creates are not as complex as the ones created by Appellant. The Sinkula PA 4 position coordinates relocation orders for highway improvement projects. Many of Sinkula's duties are similar to Anton's.

Appellant contends that her position is a better fit in either the Engineering Specialist-Transportation (ES-Transportation) or ET-Transportation Journey classifications because PAs (other than Pierce) do not draft legal descriptions while employees in the ES and ET series do. Appellant has the burden of proof and must establish by a preponderance of the evidence that the decision of the Respondent to not reclassify her to either of the desired levels was incorrect. MAYER ET AL. V. DHSS & DER, 95-0002-PC, 12/7/95.

Appellant initially sought reclassification from PA3 to ET-Transportation Journey. We begin by looking at the ET-Transportation specifications that, in pertinent part, provide:

> B. Inclusions
> This series encompasses positions located at the Department of Transportation which perform sub-technical to technical work in the field of architecture/engineering in the planning, design, construction, operation, and maintenance of transportation facilities. These facilities include, but are not limited to state highways, bridges, and airports.
>
> C. Exclusions
> Excluded from this series are the following types of positions:
> 1. Positions which perform professional work in the field of architecture/engineering and meet the statutory definition of professional employee . . .
> 2. Office and administrative positions in which the technical aspects of the job are well formulated, detailed, and easily conveyed to and applied by a new employee with no previous sub-professional engineering training or experience.
>
> . . .

The ET-Transportation Journey classification is defined as follows:

> This is an entry, developmental or objective level classification within a technical engineering function. This is the developmental level for positions that perform technical work in design, construction, planning, gather data for analyzing traffic and/or land use patterns and problems, testing of materials under various controlled conditions, quality assurance and marking crews. This level requires more technical knowledge for successful performance of the tasks assigned to the position and the employee performs the tasks with greater independence than the previous level. Work is performed with limited to general supervision.

The class specification specifically excludes work in which the technical aspects of the job are well formulated, detailed, and easily conveyed to and applied by a new employee with no previous sub-professional engineering training or experience. (Exclusion C.2.) The record is clear that Appellant was drafting legal descriptions when she first began her employment with District 5. Although the legal descriptions she drafted at that time were less complex than some of those she is now capable of drafting, and does draft, the record shows that she was able to perform this type of work from the beginning of her employment. The major difference between her position at the time of hearing and when she began at District 5 is the amount of time she spends drafting and reviewing legal descriptions. The nature of the work continues to be well formulated, detailed and easily conveyed to a new employee without prior experience. Appellant's position is therefore excluded from the ET-Transportation series.

Even if Ms. Rice's duties did not fall within the specific language of Exclusion C.2., she has failed to satisfy her burden of showing that her position is better described by the ET-Transportation Journey classification than by the PA4 classification.

As the ET-Transportation classification specification makes clear in the definition of ET-Trans-Journey, positions must engage in "technical work in design, construction, planning, gather data for analyzing traffic and/or land use patterns and problems, testing of materials under various controlled conditions, quality assurance and marking crews." Appellant's work, while technical, does not fit into any of these categories.

Abraham Kaalele, District Transportation Chief noted that the language included under the heading of "How to Use This Classification Specification," identifies the potential that positions will emerge that do not fit within the specific language of a classification definition:

> In most instances, positions included in this series will be identified clearly by one of the classification definitions which follow in Section II. However, a position may evolve or be created which is not specifically defined by one of the classification definitions.

Kaalele went on to state that Appellant's position had evolved from providing administrative and sub-technical support for the District Real Estate Unit to performing technical and sub-technical work within the Right of Way Plat Development Unit. He specifically acknowledged that Appellant's position does not develop plats but he proposed that the following language be added to the ET-Transportation class specifications to account for Appellant's duties and responsibilities:

> **Right of way Plat Technician:** These positions provide technical support to the district right of way plat unit coordinator and may perform any combination of the following: review preliminary and final project right of way plats for correctness and adherence to established standards; calculate acquisition areas from right of way plat data; prepare and process original and revised project

> relocation orders; write and/or check legal descriptions for right of way parcels to be bought or sold; research and interpret historic project right of way plats and recorded highway related documents to determine types and extent of property interest held by DOT; maintain records of current and historic right of way plats. This level for these positions is considered to be entry. Work is performed under limited supervision. Projects and assignments are less complex in nature than found at higher levels.

While the ET-Transportation specifications may accommodate incremental changes based on changed circumstances, Appellant proposes a wholesale addition to the series. According to Appellant's proposal, an employee who spends the majority of time "maintaining records" of plats would be classified at this level, yet there is no indication that such work is of a technical nature. The Commission has the authority to interpret the language found in classification specifications, but it lacks the authority to rewrite those specifications. DEPARTMENT OF EMPLOYMENT RELATIONS (ALLEN), Dec. No. 30772, 01/04. The Commission also notes that the ET-Transportation specifications became effective in May of 2000, only approximately 18 months before Ms. Rice's reclassification request and a short time for a position to evolve into a new allocation.

Appellant initially contends that she be placed at the entry level as a Right of Way Plat Technician. However, Appellant is already performing at the objective level, as shown in her position description that indicates she works under general supervision. It is not reasonable to suggest that her position be placed at the entry level in the Engineering Technician Transportation series at this time.

Further, Appellant has failed to supply position descriptions for any comparable positions that are classified in the ET-Transportation series. All of the positions she has identified as comparables are classified in the Engineering Specialist - Transportation series. Because Appellant's position does not fit squarely within the ET-Transportation Journey classification, her duties actually differ significantly from those described in the specifications, and there are no comparable positions that have been identified at the desired level, we conclude that Appellant has not met her burden to establish that her position is best described by the ET-Transportation Journey classification.

There are some individuals in other DOT District offices who prepare legal descriptions and whose positions are classified in the Engineering Specialist (ES)-Transportation series. This series includes 5 distinct class levels: ES-Transportation (ES-Tr), ES-Transportation Journey, Senior, Advanced 1 and Advanced 2. The statement of issue for hearing asks whether Appellant's position should be classified as ES-Tr.

The class specifications provide, in pertinent part:

B. Inclusions
This series encompasses specialized positions at the Department of Transportation which devote the majority of their time and are responsible for duties related to the engineering support functions to the multi-modal transportation systems. . . .

D. Exclusions
Excluded from this classification series are the following types of positions:
…

3. Positions that do not spend the majority of their time in the multi-modal transportation systems in such areas as design, construction, maintenance, materials, planning, traffic and related programs identified herein. . . . .

The definition statement for the ES-Tr class level states:

> Positions in this class work under close progressing to limited supervision. The emphasis is in developing skills in working with and/or understanding the mechanics of the program and related policies and procedures. Positions at this level receive work assignments with specific guidelines and instructions and have clearly defined priorities and objectives. Initial work assignments are well defined and of short term duration. Over time, the work assignments will increase in scope and difficulty and the employe is expected to exercise judgment in determining specifics and priorities. The level of involvement in any work assignment is based on an assessment of the employes work by the immediate supervisor. The supervisor reviews the work to determine completeness, accuracy and adherence to policy.

The classification of ES-Transportation Journey, which is one class level above that sought by the Appellant, is the objective level for positions titled District Right of Way Plat Specialist.

Appellant is correct that many DOT district positions that spend some time preparing legal descriptions are classified at a level in the ES series. As the following comparison chart demonstrates, however, in each circumstance the incumbent spends a substantially greater proportion of time developing and preparing plats than developing or reviewing legal descriptions:

Name	Class	Long Description	Time spent in Right of way Plat Development/ Legal Description Work
J. Rox	Eng. Spec – Trans	This position is assigned to the Right of way Plat unit for the purpose of developing right of way plats for highway improvement projects. This is an entry level position performing routine duties having clearly defined objectives. …Under close supervision of the District Right of way Plat Coordinator, and real estate supervisor, and in accordance with district policies and the FDM, this position prepares right of way plats for unit projects and reviews plats and plat revisions prepared by others. Provides routine technical support to others relating to right of way issues. Reviews plat production needs with project development staff, real estate staff and R/W plat unit to determine delivery schedules.	75% Right of way plat development; 0% in developing legal descriptions
J. Bohrtz	Eng. Spec. – Trans.	Under the supervision of the Technical Services Supervisor, the responsibility of this position is the development of right of way plats and the writing of legal descriptions under the direction of the District Right of Way Plat Coordinator.	65% in right of way development, 35% on legal descriptions.
S. Schmidt	Eng. Spec. Trans-Journey	This position is assigned to the team which specializes in the development of right of way plats for highway improvements. Works under limited-general supervision performing work of a highly technical nature, including preparing and reviewing legal descriptions and right of way plats.	45% in right of way development; 30% in legal description development; 20% reviewing plats and legals developed by consultants.
P. Munia	Eng. Spec. Trans-Journey	This position is assigned to the team which specializes in the development of right of way plats for highway improvements. Works under limited-general supervision performing work of a highly technical nature, including preparing and reviewing legal descriptions and right of way plats.	40% in right of way development; 25% in legal description development; 15% reviewing plats and legals developed by consultants.
G. Belanger	Eng. Spec. Trans-Journey	Under the supervision of the Technical Services Supervisor, the responsibility of this position is the development of right of way plats and the writing of legal descriptions under the direction of the District Right of Way Plat Coordinator.	65% in right of way development; 25% in legal description development; 10% reviewing plats and legals developed by consultants
G. Trzebiatowski	Eng. Spec. Trans-Senior	Under general supervision to Real Estate Supervisor and in accordance with district policies and the FDM, this individual prepares real estate plats unit projects and reviews plats, plat revisions and legal descriptions prepared by others. Provides the Real Estate Section with the plat information and legal descriptions necessary to complete the property management process. Provides services to others relating to real estate plat matters and assists in monitoring the status of District 4 plans currently in production status, utilizing the project management system.	80% preparation of right of way plats and legal descriptions.
J. Zielinski	Eng. Spec, Trans-Senior	This is the objective level for positions which produce right of way plats, coordinate, and review right of way plats and project plan information prepared by design consultants for current standards and that plats are properly tied to public land survey systems; develop right of way plats to be filed with County Clerk or Register of Deeds; interpret title searches to plot property lines; compute new right of way, existing right of way, and easement areas utilizing automation tools; write legal descriptions for conveyance to be recorded with Register of Deeds; and review and research highway right of way to locate and plot existing right of way lines.	75% preparation of right of way plats and legal descriptions.

J. Herbel	Eng. Spec. Trans-Senior	This is a professional position in transportation engineering. This position will perform progressively more difficult engineering specialist duties in the Technical Services Unit under general supervision. The complexity of work performed carries with it a high level of responsibility and accountability requiring sound judgment in problem solving and decision-making. Work is performed under the direction of the District Right of way Plat Coordinator (Engineering Specialist Advanced 2), under the general supervision of the Real Estate Supervisor and in accordance with the FDM and District 3 policies. The position is responsible as an assistant project manager, for coordinating the development, review of right of way plats and the writing of legal descriptions.	55% developing right of way plats; 40% developing legal descriptions; 5% review of plats and legals prepared by consultants.
K. Callaway	Eng. Spec – Trans Senior	Under general supervision, and as part of the Right of Way Plat Self Directed Work Team, in accordance with district policies and the FDM, this individual prepares real estate plats for unit projects and review plats, plat revisions and legal descriptions prepared by others. Provides the Real Estate Section with the plat information and legal descriptions necessary to complete the property management process. Provide services to others relating to real estate plat matters and assists in monitoring the status of District 1 plats currently in production status, utilizing the highway project management system.	50% preparation of plats and descriptions 10% review plats and descriptions by others 8% plat production coordination
M. Flynn	Eng Spec – Trans Adv 2	The responsibility of the Right of way Plat Coordinator is the development of Right of way Plats for highway projects. Responsibilities include developing and implementing automated methods utilizing CAICE, CEAL, and CADDS for the development of right of way plats. The position shall direct the work of others in the layout, plat, and description checks, and final plat development of all right of way plats. This position is under the general supervision of the Technical Services Supervisor.	95% right of way coordination in development of plats, checking, automating
R. Pozorski	Eng. Spec. Trans Adv	This is an advanced level Engineering Specialist leadworker position. Position oversees all design activities involved in preparation and maintenance of right of way plats for the District. Position is responsible for the design, direction, coordination, delegation of work assignments, research, training, and reviewing right of way activities of staff engineers, consultants under contract, engineering specialists, engineering technicians, and the real estate unit for the development of right of way plats; coordinate and review very complex projects; develop work assignments and prioritize plat schedules in the six-year program; responsible for researching, assembling, interpreting legal descriptions, and computing project survey coordinates; act as liaison and coordinate right of way activities between programmatic sections; and act as District contact person and right of way plat liaison in contacts with all sections of the District, the general public, local officials, private land surveyors, and consultant engineers.	95% deals with right of way plat coordination

Each of these positions is responsible for preparing and reviewing right of way plats. Most of them spend some time developing and reviewing legal descriptions. Each incumbent must also utilize automation software, generally CAICE and/or CADDS, to perform the work in question.

Ms. Rice does not utilize this software. While Appellant's position is responsible for important, sub-technical to technical work, those responsibilities are not comparable to the duties of any of the above positions in the ES-Transportation series. The distinctive difference

is the creation of right of way plats, a task that requires knowledge and skills that Appellant does not utilize in her position. Appellant's position is readily distinguishable from positions in the ES-Transportation series that both create right of way plats and create the corresponding legal descriptions. Ms. Rice only drafts and reviews the legal descriptions from right of way plats prepared by others.

It is important to note, as well, that Appellant performs her work under "general supervision" whereas an ES-Tr is specifically defined as an entry level position that works under "close progressing to limited" supervision. Higher levels in the series, of course, perform work under general supervision. Appellant has not asserted that she is at one of these higher levels, and it is Appellant who has the burden of proof to establish that her position is better classified at a classification level other than PA4.

Appellant's position has been assigned to various levels in the Program Assistant series since she was first hired. From the beginning, a portion of the work she performed included writing legal descriptions and reviewing legal descriptions drafted by consultants. Over more than ten years in the position, Appellant has become more proficient at performing the work and has accepted a greater level of responsibility. Although the percentage of time spent doing this work has increased, as well as its complexity, it continues to be work correctly classified in the Program Assistant series. The increased complexity and responsibility now borne by Appellant is reflected in the fact that her position is now at the Program Assistant 4 level. In contrast, Appellant's position is not at the entry level as described by the ES-Tr class level definition. It also does not satisfy the ET-Transportation Journey classification. Therefore, Appellant has failed to sustain her burden of proof that her position is better described at one of these other class levels rather than by the Program Assistant 4 specification.

ORDER

Respondent's decision is affirmed and the appeal is dismissed.

Dated at Madison, Wisconsin this 1st day of October, 2004.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Paul Gordon /s/
Paul Gordon, Commissioner

Susan J. M. Bauman /s/
Susan J. M. Bauman, Commissioner

Chairperson Judith Neumann did not participate.

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