

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

DOUGLAS R. POLLARD, Appellant,

vs.

**Secretary, DEPARTMENT OF ADMINISTRATION, and
Director, OFFICE OF STATE EMPLOYMENT RELATIONS**, Respondents.

Case 775
No. 66492
PA(der)-206

Decision No. 32261-A

Appearances:

Douglas R. Pollard, on his own behalf.

David R. Vergeront, Chief Legal Counsel, Office of State Employment Relations, 101 East Wilson Street, 4th Floor, P.O. Box 7855, Madison, Wisconsin 53707-7855, for Respondent.

FINAL DECISION AND ORDER

This matter is before the Wisconsin Employment Relations Commission on Appellant Douglas R. Pollard's appeal of the Respondent's decision to reclassify his position from Financial Specialist 2 to Fleet Operations Specialist, effective December 11, 2005, but not to regrade the Appellant. A timely appeal was filed, Stuart D. Levitan was designated as hearing examiner, and hearing in the matter was held in Madison, Wisconsin on June 7, 2007. The parties waived their right to file written arguments. The hearing examiner issued a proposed decision on November 6, 2007.

The Appellant, Douglas R. Pollard, worked for the State of Wisconsin, Department of Administration, Division of State Agency Services from June 21, 1999 to March 23, 2007.

The Appellant was hired into a position that had a working title of Vehicle Repair Coordinator and was classified as a Financial Specialist 2, a classification included in the Administrative Support Staff bargaining unit represented by the Wisconsin State Employees Union, with the following Position Description:

POSITION SUMMARY

Under the general supervision of the unit supervisor, this position is primarily responsible for preparation and processing of payments, authorization of vehicle repairs, and performing audit functions and analysis of accounts payable, especially related to fleet vehicle repairs.

No. 32261-A

TIME

GOALS AND WORKER ACTIVITIES

55% A.

PROCESS ALL INVOICES PROMPTLY

- A1. Verify invoices belong to DOA Fleet.
- A2. Audit invoices for payment assuring accuracy of amount, coding accuracy, correct authorization for the type and level of expenditure, encumbrance information, and compliance with agency guidelines, correct vehicle ID.
- A3. Delete taxes and all inapplicable charges. Ensure that DOA receives all allowable discounts.
- A4. Process all invoices in time to meet prompt payment law.
- A5. Determine correct charge or purchase order to pay invoices, liquidate the encumbrance on the voucher when appropriate.
- A6. Match invoice to system generated voucher jacket and attach the day of approval.
- A7. Compare invoices and purchase orders to ensure conditions and terms are as specified.
- A8. Stamp and enter necessary accounting codes and other pertinent data and approve for payment.
- A9. Verify that vendors are on the WISMART vendor file before payment and repair authorization is processed.
- A10. Make copies of all invoices and file.
- A11. Send approved payment and audited invoices to DOAS for processing and payment.
- A12. Resolve invoice discrepancies with vendors to achieve satisfactory results. Perform required research of prior payments to resolve discrepancies.
- A13. Respond to inquiries from vendors and departmental staff relative to status of payment of invoices.
- A14. Fill out Wisconsin resale certificate for sales tax exemption and mail back to vendor in a timely manner.
- A15. Determine when to send an invoice back to the vendor when payment has been denied with a Good Faith Dispute form.
- A16. Send Federal Tax Identification Number request (W-9) form to new vendors. Submit completed request to the Agency Coordinator for WISMART entry.

35% B

MANAGE VEHICLE REPAIR AUTHORIZATION PROGRAM

- B1. Analyze vehicle repair estimates and authorize repairs using the most cost effective and efficient methods and standards as defined by ASE and/or actual mechanic experience.

2. Verify that repairs to vehicles had received prior authorization and take appropriate action if the correct procedures were not followed.
3. Direct drivers to the proper repair facilities to be used for contracted purchases and repairs.
4. Assist the Fleet manager and Section Chief in preparing bid solicitations for contract repair work, and make recommendations about good or bad vendor practices.
5. Coordinate assistance to drivers with on-the-road breakdowns.
6. Maintain communications with vendors to assure timely payments are being made and to resolve any billing problems or questions.
7. Coordinate billing processes with vendors and determine if purchase orders are required for repairs.

8% C. AUDIT FUEL BILLS AND WRIGHT EXPRESS BILLS

Fuel Bills:

1. Make sure all cards correspond with statement totals
2. Determine Federal excise tax
3. Separate fuel and repair invoices. Analyze invoices and statements for discrepancies
4. Enter individual cards into computer

Wright Express Bills:

5. Reformat billing data from internet or diskettes into Excel spreadsheet for analysis, create pivot tables for non fuel, gas, gasohol, and diesel fuel purchases

All Fuel Bills:

6. Fill out fuel worksheet, subtract sales tax, FET, and/or any other allowable discounts
7. Maintain a log of all gallons purchased from fuel companies and inter-dept vouchers (billings)
8. If a repair amount is over \$100, pull invoice and make copy of it to verify any sales tax
9. Total the gallons on invoices if vendor has not already done so
10. Generate two tapes totaling cards, except Wright Express
11. Fill out exemption certificate for federal excise tax
12. Separate gasohol from unleaded fuel
13. Track yearly consumption of gas, gasohol, and repairs on excel spreadsheet
14. Create annual fuel consumption graphs and reports for review by management

2% D. MISCELLANEOUS SUPPORT DUTIES

1. Fill in for the reservations desk/receptionist for breaks, lunch, vacations, sick leave, etc.
2. Backup and assist reservations desk/receptionist when the workload is heavy
3. Maintain files pertaining to pool car program
4. Fill all processed invoices
5. Independently approve and prepare all purchase orders as needed for vehicle repairs and accidents
6. Notify credit card company of cancellation of credit cards if lost or stolen

On November 10 and 15, 2005, respectively, Appellant and Section Chief Jeffrey Knight signed a position description seeking a reclassification of the Financial Specialist 2 position to Fleet Operations Specialist. The position description had not been updated between 1999 and 2005, and no analysis of the proper classification of the position had been conducted. The position description, which evidenced that more than half of the Appellant's duties had changed, included duties the Appellant had when he started with the state in 1999, as well as duties assigned to him due to the elimination of the position of Central Fleet Manager in 2002, the 2002-03 elimination of a Program Assistant Supervisor 2, and a vacancy in the position of Program Assistant (Advanced), and duties he assumed due to the state's decision to contract for vehicle repair services with a private firm, ARI, in late 2000 or early 2001.¹ It read as follows:

GOALS AND WORKERS ACTIVITIES

Position Summary:

Function as a liaison for Risk Management and DOA Central Fleet; Oversee and manage accident program; Maintain records and documents and perform related duties; Manage and coordinate fleet management maintenance program; Assist in providing safe and effective vehicle for all fleet customers; ensure the implementation of vehicle us(e) policies and procedures; Oversee maintenance and safety programs; provide guidance in development of bid specifications and documentation for all ordered vehicles; Evaluate bids and make purchase recommendations; Coordinate departments annual request for vehicles; Evaluate equipment needs and make recommendations; Serve as back up to fleet manager; represent the department at internal and external meetings; Monitor current market trends and make recommendations; Assist in budgeting, policies and procedure evaluation.

¹ There is no evidence in the record that the state intended to fill the vacancies, which were noted as such on a November, 2005 organizational chart.

60% Fleet Management: Oversee, direct and support the administration, implementation and integration of fleet management. Provide leadership, guidance and management for all aspects of the fleet program and operations in the agency.

- A1. Direct and oversee the fleet management maintenance program (ARI). Guide and educate drivers and staff on all benefits and procedures. (Assumed late 2000, early 2001) ²
- A2. Direct, manage and re-engineer preventive maintenance program for larger trucks and specialty equipment. Make recommendations. Continually review all preventive maintenance programs comparing current standards to current trends.
- A3. Determine best practices, policies and procedures related to the use of the maintenance and repair contracts. Make recommendations to Fleet Manager.
- A4. Manage, investigate, review and coordinate all accidents/incidents claims to ensure repairs are cost effective and result in a safe and reliable vehicle for our customers. (Original duty)
- A5. Act as liaison between individuals involved in accidents and Risk Management. Work with Risk Management to recognize, evaluate, eliminate and/or control losses. Work with drivers to make sure all documentation is obtained in a timely manner. (Original duty)

20% Asset Management: Formulate, determine and implement fleet policies under the direction of the fleet manager concerning acquisition, replacement and disposal of DOA owned vehicles.

- B1. Work with all leasing agency coordinators to provide guidance and direction in maximizing state resources and ensuring vehicle needs are met. (Original duty)
- B2. Work directly with all leasing agencies to make sure State procurement guidelines to identify vehicles to be replaced, prepared (sic) detailed bid specifications.
- B3. Identify auction and surplus vehicles, coordinate prep services.
- B4. Direct and coordinate vehicle trades, interagency sales ensuring maximum use of state resources.
- B5. Review all vehicle replacement requests for compliance with DOA policies. Work directly with 44 agencies to figure out vehicle and equipment needs.

²Commission annotations in parantheses.

B6. Prepare bid specifications. Evaluate bids and make purchase recommendations. Inspect new vehicles to make sure they meet the specific specifications. (Late 2003, early 2004, assigned due to staff reductions)

20% Administrative Duties: Perform administrative support duties as needed using expertise and experience. Assist Fleet Manager in all facets of fleet management.

C1. Conduct a regular inspection and review of fleet program elements identifying the need for new or updated policies and procedures and/or fleet safety training to eliminate or control hazards. (2003-04, due to staff reductions)

C2. Develop reports and statistics as needed. Review and analysis (sic) data. Make recommendations to fleet manager on results. Conduct analysis on vehicle usages and problems, make recommendations as needed. (original duty)

C3. Assist, direct and help develop reengineering and monitoring of of (sic) the statewide policies, procedures, operations, standards and practices for a large Decentralized fleet. (2003, due to staff reductions)

C4. Represent Central fleet in Advisory committees, task forces and panels regarding fleet operations. (Original duty)

C5. Provide continued support and guidance to all Central Fleet staff in all areas of fleet management and operations. (Original duty)

C6. Serve as assistant fleet manager regarding repair and maintenance issues when the fleet manager is not available. (2003, due to staff reductions)

C7. Manage and monitor on site fueling stations. (2003, due to staff reductions)

C8. Lead DOA and Central Fleet in consolidation efforts. (2000)

C9. Monitor market conditions, trends and make comparative analysis to assure effective utilization of the state fleet and make recommendations to fleet manager. (2003)

C10. Work collaboratively with DOA Enterprise Fleet and other agency fleets within the state for an enterprise solution, integration and best practices for all areas of fleet programs. (Original duty)

- C11. Serve as a back up and regularly assist in the Minimum driving standards review process. Assist in processing, approving/disapproving driver ability to drive State owned vehicles. Review abstracts; distribute reports to 34 agencies regarding status of drivers. (2004, due to legislative directive)
- C12. Serve as a back up for the Van Pool Manager when not available.
- C13. Assist office staff backing up reservations desk and phones. (Original duty).

On October 6, 2006, Leean White, Director of the Bureau of Agency Services, Office of State Employment Relations, wrote to John Marx, Director, Bureau of Enterprise Fleet, Division of Enterprise Operations, Department of Administration, concerning OSER's review of DOA's request to reclassify the Appellant's position from Financial Specialist 2 to Fleet Operations Specialist and to regrade the Appellant, as follows:

. . .

We have concluded that the duties assigned to this position do support the Fleet Operations Specialist classification and the position should be so classified. Unfortunately, we are unable to agree that the incumbent should be regraded. In fact, the changes that have occurred to the duties assigned to this position are significant, cannot be considered logical and gradual as required for reclassification and result in the creation of a new position. Consequently, we are obligated to require that competition be held to fill the position.

. . .

Please take the steps necessary to fill this new position through a competitive process.

The reclassification of the position was made effective December 15, 2005. The newly created Fleet Operations Specialist position is included in the Professional, Fiscal and Staff Services bargaining unit, represented by the Wisconsin Professional Employees Council, AFT, AFL-CIO.

As of December 11, 2005, Central Fleet Financial Specialist 2 Susan Seibel was reclassified to Financial Specialist 3, with the following summary and goals:

POSITION SUMMARY

Under the general supervision of the Section Chief, this position is primarily responsible for the preparation and processing of a large number of complex and varied financial transactions such as purchase orders, multi-agency invoices,

vendor invoices and payment disputes. Additionally, this position must be able to perform account audits and reconciliation as well as provide a wide variety of customary service functions in Accounts Payable. This person must be able to work independently to resolve problems and/or complaints from commercial vendors as well as state agencies. The programs used for this position include FleetAnywhere software, Access, Microsoft Office along with using the internet for various applications. In addition, this individual needs to be comfortable in a challenging office atmosphere where frequent interruptions are the norm and there is a substantial volume of incoming work.

<u>Time</u>	<u>Goals and Worker Activities</u>
80%	RESPONSIBLE FOR INDEPENDENTLY MANAGING VENDOR AND INTER-DEPARTMENTAL ACCOUNT PAYABLE PROCESS.
10%	PROVIDE PROFESSIONAL CUSTOMER RELATIONS TO VENDORS
10%	PROVIDE ADMINISTRATIVE SUPPORT FOR OTHER STAFF

As of July 24, 2005, Bobbi S. Holgers held the position of Central Fleet Office Operations Associate, with the following goals:

POSITION SUMMARY

Under the general supervision of the Section Chief, this position is primarily responsible for tracking usage of Fleet vehicles into the FleetAnywhere Database. Keeping information up to date and accurate. Complying with the Governor's directive for accountability of state agencies. Person must have the ability to work with limited supervision, exercising independent judgments. Must have the ability to relate well to people inside and outside state government. In addition, extensive computer application skills have the ability to perform accurate, arithmetic tabulations and operations on selected financial and statistical data. Must possess knowledge of overall goals and purposes of the Bureau.

<u>TIME</u>	<u>GOALS AND WORKER ACTIVITIES</u>
40%	A. MONITOR AND MAINTAIN BUREAU'S DATABASE AND AUTOMATED REPORTING SYSTEM FOR MANAGING VEHICLE USAGE.
25%	B. PROVIDE EXCELLENT CUSTOMER SERVICE
20%	C. PROVIDE PROGRAM SUPPORT TO MONITOR AND COORDINATE SALE OF VEHICLE RECONCILE AND UPDATE THE STATUS IN THE FLEETANYWHERE DATABASE AND MANAGE THE VEHICLES PHYSICAL FILES

- 10% D. PROVIDE DIRECTION AND COORDINATION FOR GENERAL OFFICE SERVICES, POLICIES AND PROCEDURES
- 5% E. PROVIDE FISCAL AND ADMINISTRATIVE SUPPORT

As of July 24, 2005, Pamela K. Garlock held the position of Central Fleet Office Operations Associate, with the following position summary and goals:

POSITION SUMMARY

Under the direct supervision of the Section Chief, this position is responsible for managing the assist (sic) of all DOA owned vehicles. Keeping information and complying with the Governor's directive for accountability of state agencies. The person in this position must have the ability to work with limited supervision, exercising independent judgments. Their knowledge of the Central Fleet system will allow them to independently answer all inquiries from both inside and outside of state government. Must possess knowledge of overall goals and purposes of the Bureau.

<u>TIME</u>	<u>GOALS AND WORKER ACTIVITIES</u>
45%	A. PERFORM ADMINISTRATION MANAGEMENT SUPPORT DUTIES BY MANAGING VEHICLE USAGE.
25%	B. PROVIDE EXCELLENT CUSTOMER SERVICE.
20%	C. PROCESS FISCAL INFORMATION AND DOCUMENTS
10%	D. PROVIDE DIRECTION AND COORDINATION FOR OTHER SECTION PROGRAMS

Effective July 24, 2005, the Central Fleet Program Assistant 2 position occupied by Mary Albrecht was reallocated to Office Operations Associate, with the following position summary and goals:

Position Summary

Under the general supervision of the Central Fleet Section Chief, this position is responsible for providing customer service, management of Minimum Driving Standards Project, performing administrative support functions and acting as back up to other staff.

<u>Time</u>	<u>GOALS AND WORKER ACTIVITIES</u>
40%	A. PROVIDE CUSTOMER SERVICE
30%	B. MINIMUM DRIVING STANDARDS (MDS)/DOT REPORTS

25% C. MANAGEMENT OF FORMS/FILES

5% D. ADMINISTRATIVE SUPPORT FUNCTIONS

Duties which were assigned to the Appellant in 2003 and 2004 due to staff reductions or legislative changes could reasonably have been assigned to other personnel within the Central Fleet Section, including another Financial Specialist and various Office Operations Associates.

The Commission hereby makes and issues the following

ORDER³

The Commission affirms the Respondents' decision not to regrade the Appellant when it reclassified the position of Financial Specialist 2 to Fleet Operations Specialist.

Given under our hands and seal at the City of Madison, Wisconsin, this 24th day of January, 2008.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Judith Neumann /s/

Judith Neumann, Chair

Paul Gordon /s/

Paul Gordon, Commissioner

Susan J. M. Bauman /s/

Susan J. M. Bauman, Commissioner

³ Upon issuance of this Order, the accompanying letter of transmittal will contain the names and addresses of the parties to this proceeding and notices to the parties concerning their rehearing and judicial review rights. The contents of that letter are hereby incorporated by reference as a part of this Order.

DOA-Office of State Employment Relations

MEMORANDUM ACCOMPANYING FINAL DECISION AND ORDER

The question before the Commission is whether the Respondent acted properly in determining not to regrade the Appellant when it reclassified the position he held from Financial Specialist 2 to Fleet Operations Specialist. The appellant has the burden of proof and must establish by a preponderance of the credible evidence that the Respondents' decision was incorrect. *MAYER ET AL. V. DHSS & DER, CASE NO. 95-0002-PC (PERS. COMM. 12/7/95)*.

"Regrade" is defined in Sec. ER 3.01(4), Wis. Admin. Code, as the determination under Sec. 230.09(2), Stats., that "the incumbent of a filled position which has been reallocated or reclassified should remain in the position without opening the position to other candidates." The administrative code, at Sec. ER 3.015, further provides as follows:

ER 3.015 Regrading provisions. (1) Regrading of incumbents shall be done on a non-discriminatory basis.

(2) Incumbents of filled positions which will be reallocated or reclassified may not be regraded if:

...

(c) The director determines that the position should be filled by competitive examination under Sec. 230.15(1), Stats.

To aid in its implementation of its various administrative responsibilities, the Respondent Office of State Employment Relations, Division of Merit Recruitment and Selection, has published the Wisconsin Human Resources Handbook, which includes a chapter on Classification Policies and Procedures for the Analysis of Reclassification and Reallocation Requests, Chapter 370. Section 370.060, Analyzing a Reclassification or Reallocation Request, provides the following directive for how to proceed following approval of a reclassification or reallocation:

5. Determine whether the incumbent should be regraded or the position opened to competition.

In order to make this determination, apply the following guidelines and rule provisions.

a. Where no changes have occurred in the duties and responsibilities, and the position will be reallocated under ER 3.01(2)(a) through (e), Wis. Admin. Code, regrade the incumbent if the appointing authority determines that his/her performance is satisfactory.

- b. Where changes in a position support reallocation under ER 3.01 (2)(f) or (g), Wis. Admin. Code, or reclassification, regrade the incumbent unless:
 - . . .
 - 5) The administrator has determined that the position should be filled by competitive examination, even though changes in the position may have been logical and qualify for a reallocation under ER 3.01(2)(f) or (g), Wis. Admin. Code, or logical and gradual and qualify as a reclassification.
- c. Competition is appropriate under conditions such as the following:
 - 1) A position was selected to be assigned duties and responsibilities which warrant a different classification title at a higher, lower, or the same classification level where such assignments could reasonably have been assigned to other positions. Holding competition allows other employees the opportunity to be considered for the position.
 - 2) A position was assigned the duties of a previously vacant position for which competition was held and subsequently cancelled.

Section 370.060 was made effective October, 2006. But for formatting changes, it is identical to Section 332.040, adopted by OSER's predecessor agency in March, 1983.

We have previously noted that "the language of Sec. 230.15(1), Stats., as well as of Sec. 332.040 of the Wisconsin Personnel Manual, reflect strong policy considerations in favor of using the competitive examination process when there has been an assignment of duties which amount to a wholesale change in a position." *SANNES v. DNR*, Case No. 92-0085-PC (PERS. COMM. 9/23/90). That policy is to prevent a supervisor from improperly assigning higher-level duties to a favored subordinate, and thus ensure that positions are filled through a competitive process that provides equal employment opportunities for other employees who may have also been logically assigned the higher level duties.

Here, as Respondents rightly note, there has been a substantial change in the Appellant's duties, such that the position of Fleet Operations Specialist is a newly created position. The appellant's position when he was hired in 1999 focused primarily on processing invoices, with 16 separate invoice-related tasks, all related to a goal that constituted 55% of the position's time. The position was also to devote just more than a third of its time to managing the vehicle repair authorization program, with the final ten percent of its time engaged in auditing and other administrative tasks. In contrast, the position as reclassified in 2005 calls for 60% of its time to be spent overseeing, directing and supporting the administration, implementation and integration of fleet management, 20% dealing with the acquisition, replacement and disposal of state-owned vehicles, and 20% on various administrative duties.

It is also critically important that many of the position's new duties were due to staff reductions and/or vacancies and legislative directives (including the assignment of the vehicle repair function to an outside private contractor, ARI). And as the Respondent rightly noted, there were other positions which could have assumed these duties. Since the higher-level duties could reasonably have been assigned either to the Bureau's other Financial Specialist (also a level 2, reclassified to level 3 the same day as the reclassification of the Appellant's position) or the several Office Operations Assistants, it is necessary to hold a competition to choose the candidate to perform the higher-level duties.

Moreover, the fact that the two classifications are included in different bargaining units represented by entirely different unions – the Financial Specialist 2 is in the Administrative Support Staff unit represented by the WSEU, the Fleet Operations Specialist is in the Professional, Fiscal and Staff Services unit represented by the Wisconsin Professional Employees Council, American Federation of Teachers – is another strong indication that the positions are so significantly distinct that competition is appropriate.

In a regrade dispute such as this, the question is not whether the incumbent was qualified for the new position, but rather was competition required. We agree with Respondents that it was, and thus have affirmed the Respondents' action.

Dated at Madison, Wisconsin, this 24th day of January, 2008.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Judith Neumann /s/

Judith Neumann, Chair

Paul Gordon /s/

Paul Gordon, Commissioner

Susan J. M. Bauman /s/

Susan J. M. Bauman, Commissioner