

STATE OF WISCONSIN  
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

---

**DIANE PETERSEN**, Appellant,  
**JOHN HANEVOLD**, Appellant,

vs.

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

Case 4  
No. 68341  
PA(der)-229

and

Case 5  
No. 68342  
PA(der)-230

**Decision No. 32814-A**  
**Decision No. 32815-A**

---

**Appearances:**

**Diane Petersen**, appearing on her own behalf.

**John Hanevold**, appearing on his own behalf.

**Elizabeth Dieterich**, Assistant Legal Counsel, Wisconsin Department of Administration, 101 East Wilson Street, 10<sup>th</sup> Floor, Madison, Wisconsin 53707-7864, appearing on behalf of the Respondents.

**DECISION AND ORDER**

This matter is before the Wisconsin Employment Relations Commission on Diane Petersen's and John Hanevold's timely appeals of the Respondents' decision to deny their requests to reclassify their positions from Custodian Lead to Facilities Repair Worker. Their appeals were filed October 17, 2008 with the Wisconsin Employment Relations Commission.

No. 32814-A  
No. 32815-A

The cases were combined and heard together by Commission Examiner Michael R. O'Callaghan on February 24, 2009. Also present for the hearing was Kurt M. Stege, another attorney with the Commission. Post-hearing briefs were submitted by May 11, 2009. Kurt M. Stege was formally designated as hearing examiner on July 30, 2009. The examiner issued a proposed decision on July 30, 2009. No objections were filed by the due date of August 30, 2009.

For the reasons set forth below, the decision of the Respondents is affirmed.

John Hanevold and Diane Petersen are both employed by the Wisconsin Department of Administration, Division of State Facilities (DSF). They work at the State Capitol and each holds a position that had been classified as Custodian-Lead. Hanevold has held that position since August 1998 and Petersen since 1994.

On January 4, 2006, a Custodian-Supervisor retired and was not replaced. Two Custodian Lead positions have also been eliminated in recent years. Since that time, the Appellants have taken on more responsibility to direct lesser experienced employees and perform more repair work on the equipment they use in their jobs.

Appellants' supervisor is Cheryl Sieler, whose position is classified as Custodial Manager, and their second-level supervisor is Dick Silvers, Director of Buildings and Grounds for the State Capitol and the Risser Justice Building.

Beginning on January 11, 2006, Seiler engaged in repeated efforts to increase the Appellants' rate of pay. Her efforts included requesting reclassification of their positions.

During the relevant time period, Appellants' duties were accurately described by identical position descriptions that included the following:

- 55% A. Under general supervision perform maintenance and repair of equipment, furniture, and appliances of a semi-skilled nature.
  - A1. Inspect, repair, and maintain all equipment such as:
    - a. Remove, repair, fill, clean and attach soap dispensers
    - b. Repair towel and tissue dispensers
    - c. Repair vacuum cleaners
      - Replace belts
      - Replace brushes
      - Fix electrical cords
      - Remove clogs
    - d. Maintain auto scrubbing equipment
      - Maintain water levels in batteries
      - Fix, replace squeegees
      - Remove clogs from hoses
      - Clean and replace brushes

- e. Maintain carpet extractors
  - Repair electrical cords
  - Replace brushes
  - Clean spray jets
  - Fix, and unclog hoses
- f. Maintain supplies
  - Perform inventory of supplies and equipment
  - Unload supplies
  - Stock all shelves, and rotate stock
  - Report low supplies to supervisor
- A2. Perform general carpentry and electrical work such as:
  - a. Repair office furniture
    - Replace loose strips on sides of desks
    - Replace knobs on drawers
  - b. Repair Doors
    - Replace door knobs
    - Replace door holders
    - Repair door closures
    - Tighten hinges
  - c. Remove keys stuck in lock fixtures
  - d. Replace light bulbs
  - e. Remove prongs stuck in electrical outlets
  - f. Reset breakers inside and outside
- A3. Perform general plumbing work such as:
  - a. Unplug clogged drains and toilets etc.
  - b. Assist in stopping leaks
    - Turn off faucets that leak
    - Repair or turn off continuous running toilets
    - Respond and direct all major leak clean ups
  - c. Turn off sprinkler systems
- A4. Perform groundskeeping duties such as:
  - a. Remove fallen branches from walkways
  - b. Remove wounded or dead animals from porches
  - c. Power wash outside porches and cement floors
  - d. Clean outside windows on request
  - e. Snow removal as necessary
  - f. Remove trash from outside containers
- A5. Security
  - a. Ensure building is secure.
    - Doors are all locked
    - Windows are locked
    - Lights are turned off
    -

- Be sure there are not any unauthorized persons inside
  - b. Knowledge and use of vesda alarm system
  - c. Work with Capitol Police, notify of any problems
  - d. Ensure all access cards and building keys are locked in at end of work shift
- A6. Miscellaneous
- a. Maintain laundry equipment
    - Replace filters
    - Fix drain hoses
  - b. Raise and lower flags as requested
  - c. Maintain trash containers
    - Remove and attach compactor dumpsters
    - Take out all full dumpsters
    - Keep a record of how many are filled
  - d. Knowledge and use of Genie lift
  - e. Set up and move furniture
  - f. Operate forklifts as necessary
  - g. Operate tuggers as necessary
- 30% B. Lead a crew of custodians, and limited term employees
- B1. Assign, direct, and inspect employees job performance
- a. Assign daily work, keep records of work progress
  - b. Inspect all areas and solve any problems
  - c. Answer questions from employees regarding their work
  - d. Respond to calls from crew needing assistance
- B2. Train employees in all areas of custodial work
- a. Requires knowledge of all cleaning/maintenance techniques
  - b. Requires knowledge and use of all chemicals
  - c. Requires knowledge of all phases of custodial work and maintenance of equipment
- B3. Perform special projects with/without crew members
- a. Soap scrub marble halls
  - b. Strip, seal, wax, and burnish tile halls
  - c. Extract all carpets
  - d. Fill in for absences [as] necessary
  - e. Perform and have knowledge to clean up hazardous material such as bodily fluids.
- 10% C. Fill in when supervisor is absent
- C1. Determine who is absent, assign daily work to staff
  - C2. Exercise decision making skills – resolve staff problems

- C3. Report all necessary information to supervisor
- C4. Meet with various contractors

5% D. All other duties as assigned to meet operational needs

Appellants spend approximately the same proportion of their work time for each subsection of tasks contained in Goal A.

The Custodian classification specification describes both the Custodian and Custodian Lead classes and includes the following language:

C. Exclusions

Excluded from these classifications are the following types of positions:

1. Positions that spend a majority of time (more than 50%) performing building and grounds maintenance and repair work and are more appropriately classified as Facilities Repair Worker.

...

II. DEFINITIONS

CUSTODIAN

This is manual semi-skilled work associated directly with the performance of a variety of custodial tasks as identified in the examples of work performed below. This work will take place in a variety of state facilities including, but not limited to, office buildings, classrooms, healthcare facilities, student center buildings, correctional facilities, residence halls, dining facilities, and athletic facilities. Work is performed under general supervision.

Examples of Work Performed:

- Dust and clean desks, shelves, radiators, moldings, and windowsills.
- Spot mop spills and wipe spots off walls
- Clean/wash ashtrays, chalk trays, and blackboards.
- Empty waste baskets and/or recycling bins.
- Dust mop and/or sweep floors, stairs, etc.
- Count, record, and change linens.
- Wet mop floors, halls, stairs, etc.

- Manually, or by machine, strip floor finish and apply new floor finish.
- Clean and disinfect bathroom sinks, toilets, fixtures, floors, showers, bathtubs, and walls.
- Operate a wide variety of cleaning equipment including vacuum cleaners, manual/riding scrubbers, and carpet shampoo equipment, such as rotary scrubbers and floor burnishers.
- Wash walls, windows, and ceilings.
- Move and set up furniture and equipment for office moves and/or special events.
- Perform limited ground maintenance functions such as trash pickup, snow removal, and salt application.
- Climb ladders and/or use lifts to replace light bulbs and clean light fixtures.
- Stock shelves and/or cleaning carts with needed supplies.
- Maintain swimming pools in addition to cleaning walls and floor surfaces of pool. Duties may include cleaning filters, monitoring and adding chemicals to maintain water quality, and operating underwater cleaning devices.
- Lock and unlock doors/buildings. May verify that lights and other appliances are off.
- Test fire alarms and report fire hazards and other emergencies to the appropriate staff, conduct visual inspection of safety equipment such as fire extinguishers.
- Prepare equipment and cleaning solutions for work.
- Operate building equipment such as bleachers, dividers, nets, etc. to support building activities.
- Clean and sanitize isolation rooms and/or cells.
- Perform other assigned work that may include tasks not specifically enumerated above of a similar kind and level.

#### CUSTODIAN LEAD

This is lead-level custodial work. In addition to performing those custodial duties identified under the Custodian Classification, a Custodian Lead is responsible for guiding a crew of Custodians cleaning an assigned area of a state operated building on a given shift. Work is performed under general supervision.

Examples of work performed:

- Plan and assign tasks and assist a cleaning crew performing such duties as mopping and scrubbing floors, waxing and polishing floors and furniture, sweeping and cleaning walks and drives, operating elevators, dusting desks, cleaning ash trays, wiping spots off walls, and mopping spills.
- Make frequent rounds of the area checking the progress and quality of housekeeping services being performed.
- Make regular inspections of utilities, such as plumbing and heating and ventilating equipment. Report the need for repairs and replacements to the supervisor
- Arrange furniture and equipment for conferences, dinners, and meetings held in the assigned area.
- Requisition and distribute custodial supplies and maintain control on the use of supplies. Instruct employees on the proper use of equipment and appropriate cleaning techniques.
- Collect employee's time records.
- Assist supervisor in developing, updating, and modifying training programs and materials.
- Perform other assigned work that may include tasks not specifically enumerated above of a similar kind and level.
- Fills in for custodial vacancies.
- Perform limited ground maintenance functions such as trash pickup, snow removal, and salt application.

The Appellants seek reclassification of their positions to Facilities Repair Worker. That classification specification includes the following language:

C. Exclusions

. . .

4. Positions that are responsible for manual custodial tasks within a variety of state facilities for a majority of the time and are more appropriately classified as Custodian.

. . .

## II. Definitions

### FACILITIES REPAIR WORKER

This is general maintenance and repair work to facilities, grounds and equipment of a semi-skilled nature. The tasks are routine and non-complex. Positions in this class spend the majority of their time on the following activities: 1) inspect, maintain and repair floors, roofs, walls and ceilings including maintaining doors, windows and screens. Employees in this class may also inspect, maintain and, repair grounds, including parking lots and sidewalks; or 2) function as helpers to craftsmen or assistants to Locksmiths or Facilities Maintenance Specialists. Work is typically performed under the direction of higher level maintenance personnel such as Facilities Maintenance Specialist, Facilities Maintenance Specialist — Advanced, Building and Grounds Supervisors, etc.

Examples of work performed for a majority of the time, but are not limited to the following duties:

- Assemble, install, and/or maintain outdoor furniture (i.e. benches, picnic tables, park and outdoor recreation equipment).
- Assemble office furniture.
- Assist in installation of wall and floor coverings (i.e., wall and floor tiles, carpet, wall base, wall protection).
- Assist in remodeling or improvement projects such as painting, staining, carpentry, cement or masonry work.
- Inspect, maintain and repair parking lots and/or ramps.
- Make and maintain signs.
- Repair to windows, screens, walls or furniture.
- Replace light bulbs.

In addition to structural/architectural maintenance and repair work, positions may also perform similar duties to those below, but not for a majority of time:

- Assist in moving various building furnishings (i.e., office furniture, equipment and appliances).
- Assist in preventative maintenance on mechanical systems (i.e., air handling systems, chillers, air compressors and pumps).
- Clean surfaces such as floors, walls, bathroom facilities, windows and furniture using proper cleaning/polishing solutions, brushes, cloths, squeegees and power equipment.
- Perform minor maintenance and repair to small equipment and appliances.
- Perform grounds maintenance such as lawn mowing, landscaping, snow removal, and tree and shrub trimming.



A position description for Randy Hinton, an employee of the Department of Administration, Division of State Facilities, and classified as a Facilities Repair Worker, includes the following goals and activities:

- 35% A. Remove and install systems furniture.
  - A1. Works with office designer sketches and drawings to independently install systems furniture and other demountable partitions.
  - A2. Repair drawer units, shelving units, work surfaces and other parts to make complete unit.
  - A3. Move office furniture and equipment.
  - A4. Independently organize and maintain inventories and storage of system furniture and partitions main partitions components.
  - A5. Install computer key board trays.
  - A6. Raise and lower work surfaces to accommodate tenant needs.
  
- 25% B. Perform general building and grounds maintenance as needed.
  - B1. Snow plow, sweeps, sand and salt sidewalks, driveways and parking lots.
  - B2. Install or remove truck or tractor blades, brushes, repair yard equipment.
  - B3. Inspect buildings and mechanical equipment rooms and inform lead worker or supervisor of problems.
  - B4. Maintain shops, mechanical rooms and dock areas.
  - B5. Operate dock equipment fork lifts, pallet jacks and hand jacks.
  - B6. Replace lights as needed.
  - B7. Assist Maintenance Mechanics on preventive maintenance of air handling equipment.
  
- 15% C. Perform hand and bench work on building components of assigned buildings.
  - C1. Repair shelving, doors, door hardware, door closers, etc.
  - C2. Repair motors, pumps, and related building mechanical equipment.
  - C3. Repair fans, chairs, and tables as requested.
  
- 10% D. Assist carpenter in maintenance, repair, and minor alterations of buildings managed by Bureau of Building Management-Central Madison.

- D1. Assist carpenter in installing steel studs, sheet rock, ultra walls, lath, and paneling.
  - D2. Assist carpenter in installation and removal of permanent walls and partitions.
  - D3. Assist carpenter in installation and repair of doors, cabinets, shelving, etc.
  - D4. Assist carpenter in installation of soundproofing wall material, air plenum blocks, etc.
  - D5. Independently remove and install ceiling tile.
  - D6. Organize and gather needed material for projects and deliver to job site.
- 5% . E. Assist tile and terrazzo person on repair and maintenance of masonry components of assigned buildings.
- E1. Assist in repair and installation of concrete bricks, tile pavers, etc.
  - E2. Assist in repair and replacement of masonry joints, caulking, and graffiti repair.
  - E3. Assist in removal and installation of floor tile and carpet tile.
  - E4. Organize and gather needed material for projects and deliver to job site.
- 5% F. Keep records.
- F1. Maintain proper records on work orders and time reports.
  - F2. Make inventory reports and order materials.
  - F3. Perform tasks not specifically listed above of similar nature.

Appellants' positions, which focus on custodial responsibilities, are distinct for classification purposes from the Hinton position which is focused on structural and architectural maintenance and repair work.

The Appellants' responsibilities are not comparable, from a classification standpoint, to the duties performed by the FRW position occupied by Jimmie Lowe which is described in the relevant position summary as follows:

Independently [m]aintains GEF 3 dock operation for deliveries of 5 agencies at GEF 2 and 3. Assist and help carpenter, mason, in preventative maintenance of DOA buildings: assists install and maintain modular furniture, assist craft workers; install and maintain carpet and floor tile; maintain buildings and grounds equipment; and records and timekeeping.

Appellants do not spend a majority of their work time performing tasks that are consistent with the Facilities Repair Worker Classification Specification.

**ORDER**<sup>1</sup>

The decisions of the Respondents to deny the reclassification requests relating to the Appellants' positions are affirmed and these appeals are dismissed.

Given under our hands and seal at the City of Madison, this 16<sup>th</sup> day of September, 2009.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Paul Gordon /s/

---

Paul Gordon, Commissioner

Susan J. M. Bauman /s/

---

Susan J. M. Bauman, Commissioner

Judith Neumann, Chair, did not participate in the consideration of these matters.

---

<sup>1</sup> Upon the 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.

**Department of Administration &  
Office of State Employment Relations (Petersen/Hanevold)**

**MEMORANDUM ACCOMPANYING DECISION AND ORDER**

The issue in this appeal is whether the positions occupied by Appellants should be reclassified from Custodian Lead to Facility Repair Worker. Except as otherwise stated in this decision, the Appellants have identical duties and all arguments and conclusions apply equally to both of them.

Appellants argue that the set of duties they perform, as reflected in their January 2009 revised position description, is consistent with the classification they seek. There is no dispute that the Appellants have taken on added job duties following a reduction in the full time custodial workforce at the State Capitol. Respondents contend, however, that the positions remain appropriately classified as Custodian Lead.

As provided in Sec. ER 3.01(3), Wis. Adm. Code, a reclassification is:

the assignment of a filled position to a different class by the administrator as provided in Sec. 230.09(2) Stats., based upon a logical and gradual change to the duties or responsibilities of a position . . . . ER-Pers 3.01 (3), Wis. Adm. Code.

Appellants have the burden of proof to demonstrate that their duties “best fit” the Facilities Repair Worker classification, rather than the Custodian Lead classification.<sup>2</sup> JACKSON V. STATE PERSONNEL BOARD, DANE COUNTY CIRCUIT COURT, 164-086, 2/26/79. It is Appellants’ burden to show that their positions are correctly classified at the requested level, rather than merely showing that the decision to classify at the lower level was incorrect. SVENSSON V. DER, CASE NO. 86-0136-PC (PERS. COMM. 7/22/87). The “best fit” is determined by the classification specification that reflects the job duties on which the employee routinely spends a majority of her time. BROOKE V. UW SYSTEM & DER, CASE NO. 99-0034-PC (PERS. COMM. 2/28/02).

**Duties performed**

The parties agreed that the effective date of the decision in question was the beginning of the first pay period following July 1, 2008, when the reclassification request was filed with Respondent Department of Administration. The record includes several position descriptions

---

<sup>2</sup> In their initial post-hearing brief, the Appellants incorrectly suggested that the Respondents had the burden of proof.

for the Appellants' positions including one version that was submitted at the time of the request, and a second version prepared in January 2009. The primary difference between these two versions is that the 2008 document reflected 55% of the Appellants time on Goal A and 30% on Goal B, while the 2009 document reflected more recent assignments that took the percentages to 70% and 15%, respectively.

Because it is undisputed by the Appellants that the 2008 position descriptions were accurate as of the effective date for the transactions being reviewed and the 2009 document did not become accurate until several months after the effective date, the Commission must apply the earlier document.

### Class specifications

The primary argument offered by the Appellants in these matters is that their duties are substantially similar to those assigned to Randy Hinton, who fills a position classified as a Facilities Repair Worker (FRW). While this argument is certainly relevant to the Commission's analysis of these appeals, our initial focus is more properly directed to the two classification specifications that are in dispute.

The relevant language from the Custodian classification series and the FRW series has already been set forth at some length and will not be repeated here. Both specifications include an extensive list of work examples. The lists cannot be considered to describe all of the specific duties and responsibilities that are appropriately included within either one of the series, or at either classification level within the series. The examples are only representative of a larger group of work assignments appropriately assigned to the series and level.<sup>3</sup> FORIS v. DHSS & DER, CASE NO. 90-0065-PC (PERS. COMM. 1/24/92) (The listing of "Examples of Work Performed" is not intended to be all inclusive of every position identified at a particular class level.)

Classification specifications often include mandatory language as well as more general statements or descriptions. Segmenting a specification and attempting to find specific words or phrases which can be matched to the duties and responsibilities assigned to a position is not apt to be dispositive when determining the position's appropriate classification. The duties and responsibilities of the position and the classification specification must be reviewed in their entirety to determine the best fit. FORIS, ID.

---

<sup>3</sup> The final entry on the list of examples of Custodian work is: "[O]ther assigned work . . . not specifically enumerated [but] of a similar kind and level."

The FRW specifications include a list of eight work examples, followed by another group of duties that *must not* be performed for a majority of time. The first group of examples is described as “*structural/architectural maintenance and repair work*” which is a good summary of the overall focus of the Facilities Repair Worker classification series.<sup>4</sup> The second group describes duties that, if performed for the majority of time, will be properly classified in some series other than FRW. For example, “[cleaning] surfaces such as floors, walls, bathroom facilities, windows and furniture using proper cleaning/polishing solutions, brushes, cloths, squeegees and power equipment” are Custodian duties if performed the majority of time.<sup>5</sup> “Grounds maintenance such as lawn mowing, landscaping, snow removal, and tree and shrub trimming” are obviously Groundskeeper class duties,<sup>6</sup> and are only properly assigned to a Facilities Repair Worker position if they represent less than the majority of the position’s work time.

#### Application of the classification specifications to the Appellants’ position descriptions

We understand Appellants to be assuming that because goal A of the 2008 Position Descriptions is 55% of their total responsibilities, all they need to show is that the dominant class for that goal is Facilities Repair Worker. However if merely the majority (28%) of the total time (55%) allocated to goal A duties is spent on FRW work, Appellants will not prevail in their appeals unless they are able to identify more than 22% from within goals B, C and D that can also be described as FRW duties. As noted below, the record shows that many of the activities in Goal A are properly described as Custodian Lead work, so the fact that Goal A represents 55% of their total work does not satisfy the Appellants’ burden of proof.

We also note that the relevant position descriptions only break down time allocations in terms of the four identified goals, rather than the various activities that are listed within each goal. In the absence of evidence to the contrary, it is assumed that each activity within a goal is performed the same percentage of time. The Appellants have the burden of proof relative to their appeals, so if percentages are not assigned to individual activities, it is their responsibility to show that their time was not equally distributed between each activity identified as part of a particular goal. DOJ & OSER (KNUTSON), DEC. NO. 31155-A (WERC, 6/06); citing ACKLEY v. DNR & DER, CASE NO. 00-0135-PC (PERS. COMM. 8/1/01). Because six activities are listed under the 55% of Appellants’ time spent performing goal A, each activity represents approximately 9% of the Appellants’ total work time.

---

<sup>4</sup> This observation is reinforced by the description of duties listed under the heading of Facilities Repair Worker – Advanced.

<sup>5</sup> See exclusion 4 in the FRW series specifications.

<sup>6</sup> Exclusion 6 in the FRW series specifications.

Some of the work described in Goal A<sup>7</sup> appears to fit within the scope of duties performed by a Facilities Repair Worker, but much of it is better described by the Custodian specifications.

For example, the Appellants are required to “remove, repair, fill, clean and attach soap dispensers as activity A1.a. Cleaning and refilling soap dispensers are better described as Custodian work rather than FRW work, and we assume it is necessary to both remove and attach the dispensers in order to clean and refill them. The Appellants have not made clear what they do to “repair” a soap dispenser and even if they had shown that repairing requires them to replace parts within the dispenser, they have failed to show that they spend more time repairing the dispensers than cleaning and refilling them.

Another example is activity A1.f., which shows that Appellants are assigned to “maintain supplies.” Every indication is that the supplies being referenced are predominantly items used to perform custodial work. One of the Custodian Lead work examples listed in the specifications is to “requisition and distribute custodial supplies and maintain control on the use of supplies.” We conclude that the Appellant’s time spent maintaining supplies is best described by the Custodian Lead specification.

Activities A4 and A5 are both properly described by the Custodian specifications. Keeping exterior walkways and porches clear of debris, washing exterior floors, porches and windows are better characterized as Custodian duties than as “structural/architectural maintenance and repair.” Removing snow fits within either class, but trash removal is better described by the Custodian series.<sup>8</sup> Activity A5 is described as “security” work, but it means making sure that keys are returned at the end of the shift and that doors and windows are locked and lights turned off, being familiar with the alarm system, and reporting “problems.” Rather than “structural/architectural maintenance and repair”, these duties are better described by the Custodian work examples that encompass locking and unlocking doors and buildings, verifying that lights and equipment are turned off, and reporting emergencies to appropriate staff.

---

<sup>7</sup> Use of phrases such as “perform general carpentry and electrical work” and “perform general plumbing work” in Appellants’ position descriptions should not be interpreted to mean that the Appellants are working as journeymen carpenters, electricians and plumbers. The terms must be interpreted in light of the other evidence relating to the duties actually performed by the Appellants. For example, the responsibility to “turn off faucets that leak” merely indicates that the Appellants will sometimes turn off a supply valve rather than let a faucet leak until another person arrives to repair it.

<sup>8</sup> “Empty waste baskets and/or recycling bins.”

Numerous and large portions of Goal A of the Appellants' 2008 position descriptions are either better described by the Custodian series than the FRW series, or are described just as well by the Custodian series. Those activities, along with Goals B, C<sup>9</sup> and D, mean that the majority of Appellants time is better described by the Custodian Lead class than by the FRW class.

### Comparison positions

In the event the language in the class specifications is not clearly determinative, similar and contrasting positions assigned to the two classifications in dispute will often clarify relatively nebulous distinctions. Based on the classification of the most similar comparables, a particular classification is usually suggested. LANGTEAU V. UW & DER, CASE NO. 83-0246-PC (PERS. COMM. 2/13/85). Comparison positions are often useful for demonstrating how the respondents have interpreted or applied the criteria listed in the classification specifications. HARDER V. DNR & DER, CASE No. 95-0181-PC (PERS. COMM. 8/5/96).

We have already noted that the Appellants assert their positions perform work that is substantially similar, for classification purposes, to the work assigned to Randy Hinton's FRW position. The individual goals and activities listed in Hinton's position description have already been set forth at length. Those responsibilities are, at least for the most part, accurately summarized in the following position summary:

Specializes in and independently installs and dismantles modular furniture and accessories from designer sketches and drawing. Assist and help carpenter, mason, in preventative maintenance of DOA building; assist craftworkers; install and maintain carpet and floor tile; maintain buildings and grounds equipment; and records and timekeeping [sic]. Assist maintenance mechanics in maintain[ing] mechanical equipment throughout the GEF complex.

Assembling office furniture is one of the work examples listed in the FRW specification. All of the work listed in the summary except "records and timekeeping" is specifically described by the FRW classification.

Appellants may be able to point to certain limited terms or phrases in the Hinton work activities as being similar to language found in their own position description, but Hinton's work is clearly within the "structural/architectural maintenance and repair work" focus of the

---

<sup>9</sup> Unless the relevant classification specifications provide otherwise, those duties that an appellant performs only in the absence of his/her supervisor may not serve as the basis for a classification decision. See, LEITERMAN V. DER, CASE No. 92-0557-PC (PERS. COMM. 9/9/94).



FRW specifications while the Appellants' work is not. The Hinton comparison undermines, rather than supports, the Appellants' case. Appellants' responsibilities are also clearly distinct from those assigned to the FRW position occupied by Jimmie Lowe.

#### Other arguments raised by Appellants

Appellants contend that the decision issued in *BOROWSKI v. DP & DOA*, CASE NO. 79-78-PC (PERS. COMM. 3/2/1981) has various applications to their case. Mr. Borowski had appealed a decision, apparently made sometime in February of 1980, not to reclassify his position from Facility Repair Worker 1 to Facility Repair Worker 2. The Personnel Commission decision includes a finding of fact that described Mr. Borowski's duties at the time of his reclass denial. The finding in the *BOROWSKI* appeal, which was based on the Facility Repair Worker 1 and 2 classifications *as they existed in 1980*, has no application to the current cases which apply a completely different set of class specifications than the FRW specifications in existence in 1980. Respondents had no reason or responsibility to compare the Appellants' duties to those of Barowski.

Throughout their appeal, in exhibits and testimony at hearing as well as post-hearing briefs, Appellants have consistently stressed that whether or not their arguments satisfy legal standards for reclassification, a favorable decision on their appeal is in the interests of equitable justice.<sup>10</sup> As stated in *LULLING & ARNESON v. DER*, CASE NOS. 88-0136, 0137-PC (PERS. COMM. 9/13/89):

The Commission, in deciding the instant case, follows that line of cases, which establish that classification specifications should prevail over equitable considerations or instances of improper application of the specifications. (*ZHE ET AL. v. DHSS & DP*, CASE NO. 80-285-PC (PERS. COMM. 11/19/81), AFFIRMED BY DANE COUNTY CIRCUIT COURT, *ZHE ET AL v. PC*, 81-CV-6492 (11/2/82); *KENNEDY ET AL v. DP*, CASE NOS. 81-180, ETC-PC (PERS. COMM. 1/20/83); *MCCORD v. DER*, CASE NO. 85-0147-PC (PERS. COMM. 3/13/86).

The record suggests that the overriding justification for seeking reclassification of the Appellants' positions was the conclusion by their supervisors that Appellants deserved a higher rate of pay. While we understand that pay inequities often serve as the motivation for a reclass request, the Commission may only overturn Respondents' decision if Appellants are able to show that the majority of their duties are better described at the requested class level.

---

<sup>10</sup> Among these equitable arguments are the insufficient difference between Appellants' pay and the Custodian positions they direct, the alleged mishandling of their previous requests for relief, the allegation by Appellants' supervisor that raising Appellants' pay instead of hiring an additional Custodian Supervisor would save the State money, and the Governor's recent decision to try to secure the rescission of a scheduled pay increase.

Finally, in their post-hearing reply brief, the Appellants suggest that the failure of the Respondents, in their response brief, to address one of the arguments that Appellants raised in their initial brief, is an admission to that argument. Appellants have not cited any authority for their contention and we reject it.<sup>11</sup>

Appellants have not satisfied their burden to show that a majority of their work hours are spent performing tasks consistent with the Facilities Repair Worker classification specification. For all of the forgoing reasons, we have affirmed the Respondents' decisions to deny the reclassification requests.

Dated at Madison, Wisconsin, this 16<sup>th</sup> day of September, 2009.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Paul Gordon /s/

---

Paul Gordon, Commissioner

Susan J. M. Bauman /s/

---

Susan J. M. Bauman, Commissioner

Judith Neumann, Chair, did not participate in the consideration of these matters.

---

<sup>11</sup> The failure to respond to an argument is quite different than the failure to answer a claim pled in a civil proceeding or the failure to respond to a request for admissions as part of the discovery process.