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STATE OF WISCONSIN

PERSONNEL COMMISSION

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MICHAEL ARNY,
 Appellant,

v.

Chairperson, PUBLIC SERVICE
 COMMISSION, and Secretary,
 DEPARTMENT OF EMPLOYMENT
 RELATIONS,
 Respondents.

Case No. 86-0200-PC

* * * * *

FINAL
ORDER

While neither party has objected per se to the attached proposed decision and order, the Commission adds the following comments for clarification.

The proposed decision includes at p. 8 the following:

In the absence of a contention now by respondent that a mistake was made in connection with the Newman and DeForest reclassifications,¹ and under the factual circumstances that have been discussed, the Commission cannot perceive how respondents can successfully argue that their de facto classification structure, which includes this liberal interpretation of the lead work definition should not be applicable to appellant.

¹ Such a contention would give rise to the argument that those reclassifications should not serve as any form of precedent with respect to the instant transaction.

A long-standing tool of the classification process is the comparison of positions, see, e.g., Galbraith v. DP, Wis. Pers. Commn. No. 82-55-PC, (3/31/83). For example in determining whether a position is properly classified as an Administrative Officer 4 or Administrative Officer 5, it

may be helpful to compare it to other positions so classified. In determining whether certain of a position's duties and responsibilities are at a certain level of complexity, it may be helpful to compare it to other positions whose duties and responsibilities have been identified at that level.

In this case, the reclassification decision hinged on whether appellant's position could be considered to have lead work duties and responsibilities. In making that decision, it is appropriate to look at other positions that have been determined to have lead work duties and responsibilities. However, this does not mean the employer is required to conform its current reclassification decisions to all previous reclassification decisions, whenever made, a concern in commenting on the proposed decision raised by respondent. Nor is it always necessary for the employer to decide an error was made in an earlier transaction to be able to avoid its effect as a comparison, as suggested by the proposed decision.¹

However, in this case, the respondent at hearing neither admitted, through the testimony of an expert witness or otherwise, that the earlier transactions were erroneous, not contended, for example, that there had been a change in policy or circumstances since those earlier transactions that somehow rendered them inappropriate as a source of comparison. Rather, respondent attempted to equate items from the positions' earlier PD's with the lead work definition. Under these circumstances, it was appropriate for appellant to compare his PD to those PD's.

¹ The Commission does not need to attempt to delineate in this decision all the circumstances that would properly give rise to an argument that an earlier reclassification decision was no longer an appropriate guide for a current transaction.

Finally, the Commission notes that because of the manner in which this case has been decided, it has not been necessary to deal with any perhaps more fundamental questions concerning the nature of the role of the allocation pattern in the classification process, and the subsequent alteration of that pattern.

ORDER

The attached proposed findings, conclusions, and order, and the discussion, as amended by the foregoing, is adopted by the Commission as the final disposition of this matter.

Dated: October 27, 1987 STATE PERSONNEL COMMISSION


DENNIS P. MCGILLIGAN, Chairperson

AJT:jmf
JMF07/3
Attachment


LAURIE R. MCCALLUM, Commissioner

Parties:

Michael Army
Public Service Commission
4802 Sheboygan Ave.
P. O. Box 7854
Madison, WI 53707

Charles Thompson
Chairman, PSC
P. O. Box 7854
Madison, WI 53707

John Tries
Secretary, DER
P. O. Box 7855
Madison, WI 53707

STATE OF WISCONSIN

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 COMMISSION and the Secretary,
 DEPARTMENT OF EMPLOYMENT
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Case No. 86-0200-PC

* * * * *

PROPOSED
 DECISION
 AND
 ORDER

NATURE OF THE CASE

This is an appeal pursuant to §230.44(1)(b), Stats., of the denial of a request for reclassification of appellant's position from Public Service Engineer 4 (PSE 4) to Public Service Engineer 5 (PSE 5).

FINDINGS OF FACT

1. Appellant has been employed at all material times by the Public Service Commission (PSC) in the classified civil service as a Public Service Engineer.
2. By a memo dated October 7, 1986, the PSC personnel manager denied appellant's request for reclassification of his position from PSE 4 to PSE 5. This transaction was handled on a delegated basis from the Department of Employment Relations (DER) pursuant to §230.04(1m), Stats. Appellant filed a timely appeal of this transaction with this Commission.
3. The class specifications for the PSE 4 and PSE 5 classifications contain the following definitions:

PSE 4

This is very technical work of a professional engineering nature in the regulation of public utilities. An employe in this class is responsible for reviewing continuing inventories and unit cost records of medium sized public utilities required for rate, security issue and transfer of ownership regulations. Work in this class may include conducting difficult engineering investigations on service complaints or the adequacy and cost of proposed major plant additions to public utilities. Work is performed under the general direction of professional supervisors, who check work through conferences and observations of results obtained.

PSE 5

This is difficult technical work of a professional engineering nature in the regulation of public utilities. An employe in this class is responsible for reviewing continuing inventories and unit cost records of large public utilities required for rate, security issue and transfer of ownership regulations. Work in this class may include conducting difficult engineering investigations on service complaints or the adequacy and cost of proposed major plant additions to public utilities. Work is performed under the general direction of professional supervisors, who check work through conferences and observations of results obtained.

4. The allocation pattern for Public Services Engineers which was published as part of the Personnel Management Survey of the Engineering and Architecture vocational areas which propounded the foregoing class specifications, contains the following allocations:

PSE 5	Review of large utilities Lead work responsibility
PSE 4	Review of medium sized utilities, some lead work responsibility.

5. Respondent PSC considers the foregoing allocation pattern to be an integral part of the class specifications.

6. In reclassifying the positions occupied by Newman and DeForest from PSE 4 to PSE 5 in 1982 and 1983, respectively, respondent PSC determined that both positions had lead work responsibilities. In making those determinations, the agency relied on the following parts of their position descriptions (PD's) as indicative of lead work responsibility:

Newman PD (signed by employe 9/7/82):

C. Development and application of computer program options to allow more accurate analysis and timely processing of gas utility rate and rule applications, conservation, rate design problems and innovations, and assist and train other staff in computer use.

* * *

C.2. Assist and train other staff in utilizing existing computer capabilities.

DeForest PD (signed by incumbent on 9/13/82):

A.13. Assist other staff in preparing cost of service and policy issue studies and in designing rates to allow recovery of costs for routine and complex cases.

* * *

B.11. Respond to requests by other bureau staff to provide engineering advice and other assistance.

C. Development and application of computer program options to allow more accurate analysis and timely processing of electric utility rate and rule applications, conservation, rate design problems and innovations, and assist and train other staff in computer use.

* * *

C.2. Assist and train other staff in utilizing existing computer capabilities for improved processing of rate and rule applications and more thorough analysis of energy conservation and rate design programs.

C.3. Assist in developing proposals for improving computer capabilities for improved processing of rate and rule applications and more thorough analysis of energy conservation and rate design programs.

7. In 1986 and 1985, subsequent to these reclassifications, new PD's were prepared for the positions of Newman and DeForest respectively. These included the following:

Newman (PD signed by incumbent 4/7/86):

Position Summary

...This position has lead worker responsibilities to assist the Bureau Director with planning, coordinating and reviewing work of other bureau staff involving formal applications, complaints and inquiries, administration of rules, training, and special studies relating to utility energy conservation programs...

DeForest (PD signed by incumbent 10/24/85):

...This position has lead work responsibilities to assist the Bureau Director with planning, coordinating and reviewing work of other rate analysts and rate engineers involving formal applications, complaints and inquiries, administration of rates and rules, training and special studies....

8. In the memo dated October 7, 1986, denying the appellant's reclassification request, respondent stated, in part as follows:

...Your position is equivalent, within the agency, to that of two PSE 5's (Paul Newman, and Wayne DeForest) in the level of complexity of the issues handled, minimal amount of supervision the position works under, the knowledge and skills required, levels of professional contacts and the degree of discretion exercised. The one area that remains in which your position does not meet the criteria for PSE 5 is in the lack of the traditionally defined "lead worker" responsibilities. Conventionally, this agency has interpreted "lead worker" to mean an employee whose assigned duties include training, assigning, guiding, and reviewing the work of one or more employees in the work unit on a permanent continuous basis. As specified in the job specifications for the PSE 5 level, the incumbent is not only required to be responsible for the engineering review of large/highly complex utility engineering issues, but also to have lead worker responsibilities.

9. In 1984, respondent PSC reclassified appellant's position from PSE 3 to PSE 4 despite its conclusion at that time that appellant's position did not have any lead work responsibilities, and the fact that the PSC allocation pattern for the PSE series, as set forth in Finding #4, above, requires "some lead work" at the PSE 4 level. Respondent PSC's position as to this transaction is that due to increasing complexity in the work of PSC engineers subsequent to the promulgation of the PSE class specifications,

the allocation pattern was modified, as set forth in the testimony of the PSC personnel manager at p. 53 of the hearing transcript:

...we attempted to recognize that [increased complexity] by raising the objective level essentially from a 3 to a 4 and therein, eliminating the absolute requirement for some lead work responsibility but also combining with the elimination of that requirement, the expectation that a person would be handling the larger kind of and the larger more complex kinds of cases in utilities as opposed to medium sized utilities as this box [in the allocation pattern] indicates.

10. Appellant's PD, signed by him 3/24/86, contains in part the following:

... A.1. Organize inter-disciplinary study teams which might include commission staff, utility staff, and intervenors.

* * *

B.4. Assist in developing environmental screenings of specific projects for the purpose of determining whether an impact statement should be prepared.

* * *

C. Coordinate commission review of utility electrical losses.

11. Appellant's PD reflects as much lead work responsibility as the Newman and DeForest PD's that were in effect at the time of the reclassifications of their positions.

12. Appellant's position includes lead work duties and responsibilities as respondent PSC has utilized the term, and is entitled to reclassification to PSE 5 based on the PSE 5 class specification and allocation pattern as interpreted and applied by respondent PSC.

CONCLUSIONS OF LAW

1. This matter is properly before the Commission pursuant to §230.44(1)(b), Stats.

2. The appellant has the burden of proving respondents erred in denying the request for reclassification of his position from PSE 4 to PSE 5.

3. Appellant has satisfied his burden of proof.

4. Respondents erred in denying the request for reclassification of his position from PSE 4 to PSE 5.

DISCUSSION

Respondents based their denial of the request for reclassification of appellant's position from PSE 4 to PSE 5 solely on the determination that his position lacked lead work responsibility. The requirement for lead work responsibility is not contained in the PSE 5 class specification, but is set forth in the PSC/PSE allocation pattern which was included in the personnel management survey document that was promulgated in 1970 as part of the effectuation of that survey.

Respondent PSC stated that it considers that allocation pattern to be an integral part of the class specifications. However, it also stated that due to the increased complexity of the duties and responsibilities of their PSE's since 1970, it had modified the allocation pattern to make PSE 4 rather than PSE 3 the "journeyman" level, and to eliminate the requirement for lead work responsibility for the PSE 4 class level.

The PSC personnel manager testified that the traditional or conventional definition of "lead work" is the "assigning, training, assisting, guiding, directing work of one or more employes in the work unit." Transcript, p. 14. She also testified that while nothing in the documentation, including the PD's relating to the Newman and DeForest reclassifications to PSE 5, reflected lead work responsibility in the traditional or conventional

sense, she interpreted certain PD items as indicative of lead work responsibility, as set forth above in Finding #6.

Appellant's case included the testimony of his immediate supervisor, David Schoengold, Director, Bureau of Systems Analysis, who testified that in his opinion appellant's position contained as much lead work responsibility as that of Mr. Newman and Mr. DeForest, based on the interpretation given their PD's by the PSC personnel manager. The record further reflects that at the time of the audit that preceded the reclassification denial, he had responded to the question "Does the employe have responsibility to review the work actions or decisions of others?" with the response "not formally although he is referred to on things that fall within his area." This is consistent with Mr. Schoengold's assertion that while appellant's position did not have lead work responsibility under the "conventional" or "traditional" definition of lead work, it had as much lead work responsibility as the record reflected with respect to the Newman and DeForest positions.

The record is quite clear that appellant's position does not have lead work responsibility in the sense of the conventional or traditional definition as set forth above in the memo quoted in Finding #8: "training, assigning, guiding, and reviewing the work of one or more employes in the work unit on a permanent continuous basis." However, the record also supports a finding that appellant's position has as much lead work responsibility as the Newman and De Forest positions when they were reclassified to PSE 5. In reaching this conclusion, the Commission relies in substantial degree on the testimony of Mr. Schoengold, who as appellant's direct line supervisor is in an excellent position to know the nature of appellant's work.

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Therefore, the key question in this case is whether the PSE 5 lead work requirement should be viewed in the context of the conventional or traditional definition or in the context of how it was applied in the cases of the Newman and DeForest reclassifications.

Clearly, respondent PSC has decided it could take, and has taken, a liberal approach to the interpretation and application of the PSE classification specifications and allocation patterns by eliminating the requirement of lead work at the PSE 4 level. It is also reasonably clear that it used a liberal approach to the definition of lead work when it decided the Newman and DeForest positions met the lead work requirement when it reclassified these positions. In the absence of a contention now by respondent that a mistake was made in connection with the Newman and DeForest reclassifications,¹ and under the factual circumstances that have been discussed, the Commission cannot perceive how respondents can successfully argue that their de facto PSE classification structure, which includes this liberal interpretation of the lead work definition should not be applicable to appellant.

Another way of looking at this question, which also is positive as to appellant's case, is that the Newman and DeForest positions are on this record comparable to appellant's position from a classification standpoint, thus supporting appellant's contention that his position should be at the PSE 5 classification. Respondents admitted that appellant's position was comparable to the Newman and DeForest positions in all respects except lead work, and Mr. Schoengold's testimony provides a basis to find that appellant's position was comparable to those positions as to lead work responsibility at the time of their

¹ Such a contention would give rise to the argument that those reclassifications should not serve as any form of precedent with respect to the instant transaction.

reclassification. The fact that the Newman and DeForest PD's were rewritten several years after the reclassification transactions to state more clearly their lead work responsibilities does not alter the effect of their comparability to appellant's position at the time of their reclassification, again, in the absence of a contention that those reclassifications were erroneous. In other words, while respondents can point to the fact that at the time of the denial of appellant's reclassification request the other PSE 5 positions had lead work responsibility that was more clearly set forth in their PD's than on appellant's PD, this does not negate the point that the Newman and DeForest PD's were approved for reclassification when their lead work responsibility was, on this record, comparable to appellant's, and there has been no contention that the decision to reclassify their positions was erroneous because based on an outmoded or otherwise improper interpretation of the meaning of lead work.

ORDER

Respondent's action denying the request for reclassification of appellant's position is rejected and this matter is remanded for action in accordance with this decision.

Dated: _____, 1987 STATE PERSONNEL COMMISSION

DENNIS P. MCGILLIGAN, Chairperson

AJT:jmf
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DONALD R. MURPHY, Commissioner

LAURIE R. McCALLUM, Commissioner

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Parties:

Michael Army
Public Service Commission
4802 Sheboygan Avenue
P. O. Box 7854
Madison, WI 53707 .

Charles Thompson
Chairman, PSC
P. O. Box 7854
Madison, WI 53707

John Tries
Secretary, DER
P. O. Box 7855
Madison, WI 53707