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JOHN F. PAMPERIN,

Appellant,

v.

Secretary, DEPARTMENT OF
EMPLOYMENT RELATIONS,

Respondent.

Case No. 90-0321-PC

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FINAL
DECISION
AND
ORDER

The Commission considered the objections filed by the appellant, and consulted with the hearing examiner. The major objections raised by appellant are discussed briefly below.

Appellant contended that the "200 governmental units" referenced on page 3 of the proposed decision should be changed to 2,000 units. The 1993-1994 Wisconsin Blue Book (p. 717) appears to support appellant's contention. However, the proposed decision was not amended because the hearing record references 200 units. The Commission also notes the result in appellant's case would not change if the proposed decision were amended to reflect 2,000 units because characterization of the work as managerial, engineering or analytical would remain the same whether performed in relation to 200 or 2,000 units.

Appellant raised a second concern with the proposed decision's description of his duties related to the Road Inventory and Certification Program (RICP). Specifically, he contested the conclusion that he does not use engineering judgements in performing this work. He contended that engineering judgements were used to determine what computerized factors on the state level would match federally-required factors. Such work was included on page 4 of the proposed decision, but in connection with his duties for the Highway Performance Monitoring System (HPMS). The hearing record was reviewed and found to support the decision as written.

Appellant contended the description of his work HPMS-related duties as recited in the proposed decision (p. 4), failed to acknowledge use of engineering judgements to determine how to collect samples. Appellant

indicated at hearing that field engineers do the sampling work. He failed to persuade the examiner or Commission that his own involvement in sampling work included a significant role in establishing collection methods, or in the alleged related use of engineering judgements.

The examiner concluded on pages 11-12 of the proposed decision, that appellant did not meet the second allocation pattern of having authority to commit the employer's resources. Appellant disagreed saying he formulated and administered state budget requests. His authority to request, however, is not as extensive as the authority to "independently commit" respondent's resources which was vested in Misters Bowers, Bordihn and Beekman (B-B-B). To counter this observation, appellant alleged that B-B-B used "canned" language and were otherwise coached in writing their position descriptions. The hearing record, however, is insufficient to support appellant's allegation.

ORDER

That the Proposed Decision and Order be adopted as the Commission's final decision.

Dated July 25, 1994.

STATE PERSONNEL COMMISSION

Laurie R. McCallum
LAURIE R. McCALLUM, Chairperson

Donald R. Murphy/jmr
DONALD R. MURPHY, Commissioner

Judy M. Rogers
JUDY M. ROGERS, Commissioner

Parties:

John F. Pamperin
5794 Portage Road
Madison, WI 53704

Jon E. Litscher
Secretary, DER
P.O. Box 7855
Madison, WI 53707-7855

NOTICE

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

Petition for Rehearing. Any person aggrieved by a final order may, within 20 days after service of the order, file a written petition with the

Commission for rehearing. Unless the Commission's order was served personally, service occurred on the date of mailing as set forth in the attached affidavit of mailing. The petition for rehearing must specify the grounds for the relief sought and supporting authorities. Copies shall be served on all parties of record. See §227.49, Wis. Stats., for procedural details regarding petitions for rehearing.

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

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

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

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

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

STATE OF WISCONSIN

PERSONNEL COMMISSION

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 Appellant,
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 Secretary, DEPARTMENT OF
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 Respondent.
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 Case No. 90-0321-PC
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PROPOSED
 DECISION
 AND
 ORDER

A hearing was held in the above-noted case on May 5, 1994. The parties made oral arguments at the close of hearing.

The issue for hearing was agreed upon at a prehearing conference held on January 25, 1994, as noted in the related Conference Report dated February 2, 1994. The issue as initially framed asked whether respondent was correct in reallocating Mr. Pamperin's position to a Civil Engineer Transportation Supervisor 4 (CET-Supv. 4), rather than as a Civil Engineer Transportation Manager 1 (CET-Mgr. 1).

DER's opinion on the correct reallocation changed as a result of the review undertaken to prepare for hearing. DER's position at hearing was that Mr. Pamperin did not spend a majority of time making professional engineering judgments and, therefore, his position could not be classified as a CET-Supv. or as a CET-Mgr. Rather, DER argued that the best fit for Mr. Pamperin's position was classification within the Research Analyst series.

CLASS SPECIFICATIONS (Class Specs)

The pertinent portions of the class specs for CET-Supv., CET-Mgr. and Research Analyst (RA) are in the record as R's Exhs. 1, 2 and 3, respectively.

THRESHOLD ISSUE - Research Analyst Series

Respondent did not raise its opinion that the Research Analyst series was the most appropriate for Mr. Pamperin's position until the day of hearing.

This is too late where, as here, the issues were agreed upon at the prehearing conference on January 25, 1994, and respondent did not request permission to amend the issues prior to hearing.

Furthermore, the Commission would have denied respondent's request for permission to amend the issues, even if such request had been made prior to hearing. Respondent initially determined the appropriate classification as CET-Supv., which Mr. Pamperin appealed feeling CET-Mgr. was correct. Permission to allow respondent to add the RA series as a consideration is akin to allowing respondent the right to appeal its own decision, a right not granted to respondent by statute. Nichols v. DER, 83-0099-PC (Interim Decision and Order 9/16/83).

The Commission, in Nichols, held that DER lacked standing to include a classification as a hearing issue when such classification was not considered by DER in the reallocation decision. The Nichols case involved an appeal of DER's decision to reallocate Ms. Nichols to a RA 2, rather than a RA 3. At prehearing, DER attempted to include the additional classification of Research Technician 4, and such attempt was rejected in the Commission's interim decision.

As an aide to the parties, however, the following sections include a discussion of the appropriateness of the RA class specifications. Such inclusion, however, does not mean that the Commission approved the addition of RA to the hearing issues.

BACKGROUND

The Department of Employment Relations (DER) undertook a survey of engineering positions which resulted in new class specs for Civil Engineer Transportation Supervisors (CET-Supv.), and for Civil Engineer Transportation Managers (CET-Mgr.). Positions were reallocated under the new class specs, effective June 17, 1990. The class specs for RAs were not included in the survey and have stayed the same since April 1983.

Mr. Pamperin's position was classified prior to the survey under the old class specs as a Civil Engineer-6-Transportation (Management)¹. DER placed

¹ The fact that Mr. Pamperin's position prior to survey was classified as "Management" was entitled to little weight. The old (pre-survey) class specifications were not in the record. Therefore, the examiner could not

Mr. Pamperin's position after the survey at the CET-Supv. 4 level. He filed an informal appeal, advocating for the alternative classification of CET-Mgr. 1. DER denied the informal appeal, leaving resolution to the Commission in a formal appeal. Mr. Pamperin retired on January 19, 1993.

His working title at the time of survey was "Chief, System Data Analysis Section". His immediate supervisor was Ernest F. Wittwer, Admin. Officer 5. His next removed supervisor was Marvin J. Schaeffer, Administrator of the Division of Highways and Transportation Services.

Mr. Pamperin's position served as the first-line supervisor of the following positions: four RA 4 positions, one RA 6 - Supervisor position, one CET-3 position and one Engineering Technician 5.²

Mr. Pamperin's Job Duties:

Mr. Pamperin described his position and corresponding time percentages based on his responsibility for specific program areas. His testimony in this regard is summarized in the chart below.

<u>Time %</u>	<u>Program Area, with short description of program</u>
50%	1. Road Inventory and Certification Program: This program determines the dollar allocation for transportation programs in about 200 governmental units in Wisconsin. Mr. Pamperin coordinates receipt and computerized storage of federally-mandated information. He prepares a resulting computer-aided analysis which he gives to a different section for actual payment to the local government units. Mr. Pamperin does not use engineering judgements in this work because all analytical factors are established by the federal government.

determine if the old class specs tied the "management" distinction to s. 111.81(13), Stats., as do the new (post-survey) class specifications. Furthermore, Mr. Pamperin's prior PD was not part of the record and, therefore, any similarity which might have existed between the duties of his position under the old and new class specifications could not be determined.

² The subordinate classifications given in this paragraph are from A's Exh. 10, p. 11 (as corrected by hearing testimony). The classifications, however, are expressed in terms of the pre-survey classification system. The record lacks information on the post-survey classification of subordinate positions.

- 50%
2. **Highway Planning and Research Programs:** This area is comprised of three separate programs, discussed below.
 - a. **Highway Performance Monitoring System:** Mr. Pamperin coordinates receipt and computerized storage of the results of road samples. The federal government requires the sampling and reporting process for 80 elements of road conditions. The majority of this work does not require Mr. Pamperin to make engineering judgements. The only instances where he is required to make an engineering judgement are where the federally-defined element is different from its corresponding state definition. The computer stores the information according to the state definition. Therefore, when the state and federal definitions differ, Mr. Pamperin must determine an alternative measure to approximate the federal definition using data already stored in the computer.
 - b. **Budget Studies:** The nature of these studies varies with information requested by the state legislature. About 2/3rds of the studies require Mr. Pamperin to exercise engineering judgements. The remaining 1/3rd, do not.
 - c. **Local Component of Road Inventory and Certification Program:** Item #1 above, described the federally-mandated process of this program. This item (#2c) describes the state counterpart component. Mr. Pamperin is required to make engineering judgements for the state component of this program.

Mr. Pamperin's duties were split between several people after he retired. The statewide reporting functions under federally-mandated procedures which did not require engineering judgements were given to Robert St. Clair. Mr. St. Clair had additional duties not performed by Mr. Pamperin. (See R's Exh. 8.) The local programs requiring engineering judgements were given to two different employees.

The record does not indicate what impact, if any, the reassignment of local programs requiring engineering judgements had on the individual positions expected to perform those duties after Mr. Pamperin retired. The impact on Mr. St. Clair's position (of the non-engineering duties from Mr. Pamperin's position) is described in the record.

Mr. St. Clair's position was classified as an Administrative Officer 2, after receiving the non-engineering duties from Mr. Pamperin's position. Later,

DER determined that the Program and Planning Analyst class specs were the best fit for Mr. St. Clair's position.

DISCUSSION

Civil Engineer Transportation Class Specs v. Research Analyst Class Specs

DER argued at hearing that neither of the civil engineering class specs apply to Mr. Pamperin's position because he does not perform engineering work a majority of the time. DER argued that the class specs for Research Analyst should apply as the best fit for Mr. Pamperin's position. The Commission disagrees.

The class specs for civil engineers do not require that a majority of the position involve professional engineering judgements.³ All that is required is what Mr. Pamperin already has shown, to wit: that professional engineering knowledge is required for successful performance.⁴

The above-noted conclusion is supported further by the class specs for RAs. While it is true that the duties of Mr. Pamperin's position could be viewed as meeting the broad "Inclusions" language of the RA class specs; his position would be eliminated from further consideration due to the "Exclusions" language in Items #4 and #5, as shown below.

Exclusions:

* * *

- 4) Positions performing applied or theoretical research in the natural or medical sciences, or which are identified in

³ Mr. Pamperin's case is unlike Miller, et. al. v. DER, 92-0122, 0143, 0144-PC (5/5/94). The class specifications at issue in Miller were for Environmental Engineers (EE). The "Inclusions" portion of the EE class specifications provided that only positions which spent a majority of their time providing engineering expertise would be included in the EE class specifications. The class specifications in Mr. Pamperin's case have no corresponding "majority of the time" language.

⁴ See Item #2 of the "Exclusions" language for CET-Supv. and Item #3 of the "Exclusions" language for CET-Mgr. Each cited item excludes from the CET class specs positions which do not require professional engineering knowledge for successful performance. The corollary would be to include positions which require such knowledge.

- classification series which are based on the specific discipline in which knowledge is required (e.g., economists);
- 5) All positions which are better defined in other classes or class series.

The RA class specs, in other words, exclude positions which involve applying professional judgements to a specific discipline identified in a more specific class spec. Here, Mr. Pamperin's position requires applying professional engineering judgements, duties which are identified in the more specific class specs for civil engineers (including CET-Supv. and CET-Mgr).⁵

DER attempted to show that Mr. Pamperin's position did not require professional engineering knowledge by referring to the classification decisions made for Mr. St. Clair. The offered comparison was unpersuasive because Mr. St. Clair's position did not assume Mr. Pamperin's engineering-related duties after Mr. Pamperin retired.

CET-Supv. versus CET-Mgr.

The terms "supervisor" and "management" are referenced in the class specs as taken from s. 111.81, Stats. The statutory language is shown below.

s. 111.81(19), Stats.: "**Supervisor**" means any individual whose principal work is different from that of his subordinate and who has authority, in the interest of the employer, to hire, transfer, suspend, layoff, recall, promote, discharge, assign, reward or discipline employes, or to adjust their grievances, or to authoritatively recommend such action, if his exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

s. 111.81(13), Stats.: "**Management**" includes those personnel engaged predominantly in executive and managerial functions, including such officials as division administrators, bureau directors, institutional heads and employes exercising similar functions and responsibilities as determined by the commission

⁵ A similar conclusion was reached in Mr. Pamperin's 1983 appeal. Pamperin v. DER, 83-0191-PC (PC 4/25/85), aff'd. by Dane Co. Cir. Court, Pamperin v. State Pers. Comm., 85-CV-2700 (10/30/85). The Commission did not consider the prior case determinative for Mr. Pamperin's 1990 appeal because the engineering class specs were different in 1983, as compared to the post-survey class specs under consideration here. Also, the current hearing record did not reveal whether Mr. Pamperin's job duties stayed the same since 1983.

[meaning the Wisconsin Employment Relations Commission (WERC)].⁶

It is undisputed in this record that Mr. Pamperin functions as a "supervisor", within the meaning of s. 111.81(19), Stats. The question explored in the following paragraphs is whether he also functions as "management", within the meaning of s. 111.81(13), Stats. The inquiry is narrowed somewhat on the basis of the statutory definition of "management" because Mr. Pamperin does not function as a division administrator, bureau director or institutional head. The CET-Mgr. 1 class specs, however, acknowledge the typical allocation at the section level. The inquiry then becomes whether Mr. Pamperin's position required the exercise of "similar functions and responsibilities" (within the meaning of s. 111.81(13), Stats.) in his Section Chief position.

The Wisconsin Employment Relations Commission (WERC), has provided guidance for interpreting the statutory phrase of "similar functions and responsibilities".

[M]anagerial status must be demonstrated by a showing that the holder of the position in question participates in a significant manner in the formulation, determination and implementation of management policy or that the holder of such a position has the effective authority to commit the ... employer's resources. Wis. Federation of Teachers, Local 3271, AFT, AFL-CIO v. State of Wisconsin, Case XXVIII, No. 16176, SE-63, Decision # 11885-M (WERC 11/23/82), citing Department of Transportation v. State of Wisconsin, 10592-F, (WERC 1/73), University of Wisconsin-Madison, 10648-B (WERC 11/72) and State of Wisconsin (Professional-Education), 15108 (WERC 12/76). The principal also was followed in later cases. See, for e.g., Wisconsin State Attorneys Association v. State of Wisconsin, Case 33, No. 16403, SE-65, Decision No. 11640-C (WERC 1/31/86).

Mr. Pamperin is responsible for the proper use of the budget allocated for his section's activities, but he does not have the effective authority to

⁶ The class specs for CET-Mgr.1 do not limit the classification to the bureau level and above. Rather, section chiefs are cited as "typical" in the class specs. The Commission took this difference into account in its analysis, as shown by later discussion in the decision.

commit the employer's resources. The inquiry, therefore, must focus on whether the record shows he participates "in a significant manner in the formulation, determination and implementation of management policy", as stated in the WERC cases noted above. The Commission concludes he does not.

Mr. Pamperin verified that the job duties and time percentages listed in his position description (PD) signed on May 30, 1991 (A's Exh. 10), were correct as of the effective survey date. Mr. Pamperin testified using the organization of his PD to characterize whether specific duties involved "engineering" or what he characterized as "management" tasks. His characterization of "management" tasks, however, was not in each instance consistent with the WERC interpretive cases. The most common point of departure was Mr. Pamperin's inclusion of RA-like duties as "management". In particular, he incorrectly included RA-like duties relating to the coordination, storage and analysis of computerized data. The RA-like duties form a basis which managers might use to formulate, determine and implement policy. The preparation of this knowledge base, however, is not the same as the use of the knowledge at a later point to formulate, determine and implement policy.

The chart shown below uses Mr. Pamperin's PD organizational structure. His opinion as to time percentages and the characterization of tasks as involving engineering judgements are included in the chart. His opinion as to management functions are included only where consistent with the WERC cases.

<u>Time %</u>	<u>Goals and Worker Activities</u>
15% A.	Formulation & administration of state/federal budget requests, programs, policies & procedures for the System Data Analysis Section activities.
A1. 5.0%	Management: Involves formulation, determination and implementation of policy for his section.
A2. 5.0%	Engineering.
A3. 2.5%	Supervisory; (which is included as management).
A4. 2.5%	Engineering.
	15.0%
25% B.	Management of the System Data Analysis Section's programs & direction of professional and technical staff on major studies affecting dept. policies, procedures, and programs.
B1. 2.5%	Data collection, storage, analysis duties. Not management.
B1. 2.5%	Engineering.
B2. 10.0%	Same as B1.
B3. 2.5%	Engineering.
B4. 2.5%	Same as B1.

- B5. 5.0% Engineering.
25.0%
- 25% C. Execution of dept. planning and research studies to evaluate, update & promote changes to transportation laws, administrative rules & dept. policies, plans, and programs.
 - C1. 10.0% Management. Involves formulation of policy for dept.
 - C2. 4.0% Management. Involves formulation of policy for dept.
 - C2. 4.0% Engineering.
 - C3. 5.0% Management. Involves formulation and implementation of policy for dept.
 - C4. 2.0% Management. Involves formulation and implementation of policy for dept.
25.0%
- 20% D. Preparation of analyses & reports on transportation facility extent, use and condition for federal and state aid programs.
 - D1. 10.0% Data collection, storage, analysis duties. Not management.
 - D2. 2.5% Same as D1.
 - D3. 2.5% Same as D1.
 - D4. 5.0% Same as D1.
20.0%
- 15% E. Establishment & provision of liaison with other divisions, depts., agencies & other general public to provide and receive advisory, engineering & administrative services and/or direction required to accomplish dept. goals and objectives.
 - E1. 5.0% Management. Involved in the implementation of dept. policies.
 - E2. 1.0% Data collection, storage, analysis duties. Not management.
 - E3. 1.0% Same as E2.
 - E4. 5.0% Management. Involved in the formulation of dept. policies.
 - E5. 2.0% Management. Involved in the formulation of dept. policies.
 - E6. 1.0% Same as E2.
15.0%

Mr. Pamperin is an important part of respondent's policy and planning process in that he coordinates collection and storage of data, and provides computer-aided analyses. On a department level, he is involved in the formulation and implementation of department policy, but not in the determination of department policy. On the section level, he is involved with the formulation, determination and implementation of policies for his section.

Mr. Pamperin's position, however, does not "participate in a significant manner in the formulation, determination and implementation of management policy", because his degree of participation in policy determination is too slight. The only task involving the determination of policy is shown in "A1" of his PD. Task "A1" represents only 5% of the duties assigned to the position and involves the formulation, determination and

implementation of policy on the section-only level. The percent of time spent solely on determination would be less than 5%.

Even if supervision were considered as part of Mr. Pamperin's managerial duties, the result would be the same. He only identified 2.5% of his position (A3) as supervision. However, some tasks most likely involved a combination of supervision and either management, engineering or RA-like duties; as evidenced by the Supervisory Analysis Form for his position (Exh. A10, p. 11) which estimates supervision at 10% and related activities at an additional 20%. Even if the 30% noted on the supervisory form were added as managerial duties to the 2.5% management duties noted for A3, this would result in only 32.5% managerial duties. The Commission could not conclude from this record that Mr. Pamperin was "engaged predominately in executive and management functions", within the meaning of s. 111.81(13), Stats.

CET-Supv. 4 is the Best Fit

The class specs for CET-Supv. contain 4 classification levels. Levels 1-4 are shown below.

CET-Supv. 1 Positions at this level perform professional supervisory work in the field of civil engineering. Positions allocated to this class perform professional journey level civil engineering work in transportation and directly supervise a unit of professional journey/senior level engineering specialists, non-professional engineering technicians, an/or, other related classifications.

CET-Supv. 2 Positions at this level perform professional supervisory work in the field of civil engineering in transportation. Positions allocated to this class directly supervise a small unit (1-5 FTE) of journey level transportation civil engineers and/or advanced engineering specialists. OR Positions allocated to this class may perform senior level engineering work and supervise staff as described in level 1.

CET-Supv. 3 Positions at this level perform professional supervisory work in the field of civil engineering transportation. Positions allocated to this class directly supervise a medium to large unit (more than 6 FTE) of professional journey level civil engineers in transportation OR the positions supervise staff as described in level 1, 2 or 3.

CET-Supv. 4 Positions at this level perform professional supervisory work in the field of civil engineering in

transportation. Positions allocated to this class directly supervise:
(1) a small to medium unit (1 to 10 FTE) of senior or advanced civil engineers in transportation OR (2) perform advanced 2 civil engineering work and supervise a staff as described in level 1, 2 or 3.

DER's classification expert said she would find the CET-Supv. 4 as the best fit for Mr. Pamperin's position if the choice were limited to the CET-Supv. 4 and the CET-Mgr. 1 classifications. The Commission considers this testimony as a concession that Mr. Pamperin's position meets one of the two allocation patterns noted in the CET-Supv. 4 class specs. The record is insufficient to allow the Commission to perform an independent analysis of whether Mr. Pamperin's job meets either allocation pattern because the post-survey classification of his subordinates is not contained in the record. Also missing from the record is a description of "advanced 2 civil engineering work", making it impossible to determine if Mr. Pamperin's engineering duties meet the criteria for advanced 2.

The Commission further notes that Mr. Pamperin did not dispute that he met one of the allocation patterns in the CET-Supv. 4 class specs. Rather, he felt he performed mostly managerial duties which took him out of the CET-Supv. class specs, even though he met an allocation pattern for CET-Supv. 4.

Comparable Positions Cited by Mr. Pamperin

Mr. Pamperin felt his position was comparable to the CET-Mgr. 1 positions held by Ronald L. Bowers; William H. Bordihn, Jr. and Marlin L. Beekman. The Commission disagrees.

The WERC decisions discussed previously as guidance for interpreting the statutory phrase of "similar functions and responsibilities" in s. 111.81(13), Stats., created two alternative tests. A position could meet the management requirements by either showing that: 1) the position participates in a significant manner in the formulation, determination and implementation of management policy, or 2) that the position has the authority to commit the employer's resources.

Mr. Pamperin did not meet the second test, so he attempted to demonstrate entitlement to the management classification by meeting the first test (which he did not meet). The three positions which Mr. Pamperin cites as comparables, however, meet the second test of allocation of the employer's

resources, as reflected in the Position Summary section of those PDs.⁷ (See A's Exhs. 11, 12 and 13.) The positions, therefore, are not useful for comparison to Mr. Pamperin's position.

The Commission further notes in the alternative that the three comparable positions cited by Mr. Pamperin are involved in the formulation, determination and implementation of management policy. This fact is shown by section A of Mr. Bordihn's PD; by section A and F4 of Mr. Bowers' PD, and by section A of Mr. Beekman's PD. Other sections of their (Bordihn-Bowers-Beekman) PDs indicate additional time spent in the formulation and implementation of management policy. The incumbents did not appear to testify as to the exact time percentages spent on these functions and such information is unclear from the PDs alone. However, it appears from the information available that more than half of their time was spent in managerial functions, as defined in s. 111.81(13), Stats.

ORDER

Respondent's decision to reallocate appellant's position to Civil Engineer Transportation Supervisor 4 is affirmed and this appeal is dismissed.

Dated _____, 1994.

STATE PERSONNEL COMMISSION

LAURIE R. McCALLUM, Chairperson

DONALD R. MURPHY, Commissioner

JUDY M. ROGERS, Commissioner

cc: John F. Pamperin
David Vergeront

⁷ The Position Summary for Mr. Bowers, Mr. Bordihn and Mr. Beekman contain the following specific authority, which is absent from Mr. Pamperin's PD:

This position has the authority to independently commit the Department's resources to achieve established goals and objectives.