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JOHN S. EAGON,

Appellant,

v.

Secretary, DEPARTMENT OF
EMPLOYMENT RELATIONS,

Respondent.

Case No. 90-0398-PC

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INTERIM
DECISION
AND
ORDER

This matter is before the Commission following the promulgation of a proposed decision and order. The Commission has considered the parties' written and oral objections and arguments and has consulted with the examiner. At this time the Commission adopts the proposed decision and order as its disposition of this matter on the merits, and adds the following comments with respect to certain of respondent's contentions.

The most significant issue raised by respondent's objections stems from the fact that the classification specification for the Architect/Engineer Manager series contains the following:

II. Definitions

Architect/Engineer Manager 2

This is professional managerial work in the field of architecture or engineering. Positions can function as chief architect/engineer in a large complex architecture/engineering services program OR as a deputy state chief architect/engineer, OR as a full-time deputy to an architect/engineer manager 3, OR any other comparable architect/engineer manager position.

REPRESENTATIVE POSITIONS

* * *

Director, Bureau of Buildings and Structures - Division of Safety and Buildings. This position is responsible for directing and administering the activities of the bureau, including an initial building plan entry system and a complex plan review procedure, a building consultation program, statewide building construction inspection program, and a local services program which involves electrical consultation-

inspection, rental property weatherization, and inspector certification activities.

Since appellant occupies the position of Director, Bureau of Buildings and Structures, and respondent DER identified this position through the survey process as a representative Architect/Engineer Manager 2 position, respondent argues that it is in excess of the Commission's authority to conclude that the decision to reallocate appellant's position to Architect/Engineer Manager 2 was incorrect, because this would amount to "rewriting" the class specifications. The Commission cannot agree that a decision, based on the definitions of Architect/Engineer Manager 2 and 3 contained in the class specifications, and a comparison to other positions, that appellant's position was incorrectly reallocated to Architect/Engineer Manager 2, is outside the Commission's authority because respondent chose to identify appellant's position as a "representative" Architect/Engineer Manager 2 position in the class specifications.

Sections 230.09(2)(a) and (am), Stats., provide as follows:

(2) (a) After consultation with the appointing authorities, the secretary shall allocate each position in the classified service to an appropriate class on the basis of its duties, authority, responsibilities or other factors recognized in the job evaluation process. The secretary may reclassify or reallocate positions on the same basis.

(am) The secretary shall maintain and improve the classification plan to meet the needs of the service, using methods and techniques which may include personnel management surveys, individual position reviews, occupational group classification surveys, or other appropriate methods of position review. Such reviews may be initiated by the secretary after taking into consideration the recommendations of the appointing authority, or at his or her own discretion. The secretary shall establish, modify or abolish classifications as the needs of the service require. (emphasis added)

Since §230.44(1)(b), Stats., provides for the Commission to hear decisions of the secretary under §230.09(2)(a), but does not provide for appeals of decisions made under §230.09(2)(am), this means that DER's decisions to reallocate or reclassify positions are reviewable by the Commission, while decisions to "establish, modify or abolish classifications" are not reviewable.

What has occurred in this case is that due to the particular nature of the process DER followed, there has been a melding of the process of establishing class specifications, which occurs under the authority of §230.09(am), and is

not appealable under §230.44(1)(b), and the process of reallocating positions, which occurs under the authority of §230.09(2)(a), and is appealable under §230.44(1)(b). That is, as a result of the survey, respondent elected both to reallocate appellant's position to Architect/Engineer Manager 2 and to include appellant's position in the class specification as a "representative" Architect/Engineer Manager 2. These circumstances lead to an apparent conflict. If the Commission were to accept respondent's position, this arguably would deprive appellant of any meaningful opportunity to exercise his right to appeal the reallocation of his position under §230.44(1)(b).¹ On the other hand, if respondent's position were not accepted, this arguably would interfere with respondent's authority to establish classifications.

In the Commission's opinion, this controversy must be resolved against respondent for three reasons.

The first reason is that respondent goes too far when it asserts that a decision in appellant's favor would constitute a modification of the class specifications. If the Commission were to rule in appellant's favor, presumably it merely would reject respondent's action reallocating appellant's position to Architect/Engineer Manager 2, and remand for action in accordance with the decision, in accordance with §230.44(4)(c), Stats. While respondent presumably would be required to reallocate appellant's position to the Architect/Engineer Manager 3 level at that point, it would not be required to modify the Architect/Engineer Manager class specification. While such a Commission decision conceivably would have the collateral effect of nullifying the identification of appellant's position as a representative position at the Architect/Engineer Manager 2 level, this does not mean the Commission's order itself would have been in excess of its authority. See Seep v. Personnel Commission, 140 Wis. 2d 32, 40, 409 N.W. 2d 142 (Ct. App 1987), where the Court rejected an argument that a Commission order which had the effect of requiring an employee's reinstatement improperly interfered with the employer's statutory power of appointment and was in excess of the Commission's authority:

¹ Respondent has not argued that the Commission does not have subject matter jurisdiction over the appeal. Rather, respondent's position is that the Commission has no authority other than to issue a decision on the merits affirming respondent's reallocation action.

Next, the department alleges that the commission exceeded its authority by ordering that Seep be reinstated. The department is simply proceeding upon a mistaken impression of what the commission did. The commission has the authority to "affirm, modify or reject the action which is the subject of the appeal." Sec. 230.44(4)(c), Stats. The commission may also issue an enforceable order, remanding the matter for action consistent with its decision. Id. In its order, the commission rejected the decision of the department denying Seep's reinstatement and remanded the case for action in accordance with its decision. While the effect of this decision may be Seep's reinstatement, the commission's actions were clearly within the confines of sec. 230.44(4)(c).

Furthermore, to the extent that it may be said that §230.09(2)(am)'s reservation of authority to the Secretary of the Department of Employment Relations to establish classifications conflicts with the Commission's statutory authority in a §230.44(1)(b) reallocation appeal to reject a reallocation decision and remand to respondent under §230.44(4)(c), such a conflict would be resolved against respondent's position in accordance with the principle of statutory construction that "[w]here a general statute and a specific statute relate to the same subject matter, the specific statute controls." Maier v. Racine Co., 1 Wis. 2d 384, 388, 84 N.W. 2d 76 (1957) (citation omitted).

Sections 230.44(1)(b) and 230.44(4)(c) provide a specific process for an employee whose position has been reallocated to appeal the reallocation and to obtain a remedy if successful. Appellant has followed this route, and now respondent argues that if he is granted the remedy set forth in the proposed decision, this will conflict with respondent's authority provided by §230.09(2)(am) to establish classifications. If this is indeed the case, and there is an irreconcilable conflict, then either appellant will lose his right to contest the reallocation of his position, or respondent's authority to establish classifications will be impacted to the extent that a representative position in the Architect/ Engineer Manager series will have been found to have been incorrectly designated on the basis of the general definitions and concepts DER has promulgated as part of the Architect/Engineer Manager class specifications, as well as by comparison to other positions whose classification respondent has determined. Applying the aforesaid canon of construction in the context of this case, the right to redress with respect to specific reallocation transactions conferred by §§230.44(1)(b) and 230.44(4)(c) appears to be more specific than respondent's general authority under §230.09(2)(am) to establish classifications, and therefore the former provisions should be

given effect. See State v. Amato, 126 Wis. 2d 212, 217, 375 N.W. 2d 75 (Ct. App. 1985):

Professor Sutherland in his treatise on statutory construction observes:

General and special acts may be in pari materia. If so, they should be construed together. Where one statute deals with a subject in general terms, and another deals with a part of the same subject in a more detailed way, the two should be harmonized if possible, but if there is any conflict, the latter will prevail....

Also, see Boyle v Larzelere, 245 Wis. 152, 159, 13 N.W. 2d 528 (1944) ("where a general statute covering an entire matter is so repugnant to a special statute covering some particular part thereof that effect cannot reasonably be given to both, the latter is to be read as an exception to the former."). This result is in keeping with the general rule that: "the purpose of statutory interpretation is to ascertain and give effect to the intent of the legislature." Ball v. District No. 4, Area Board, 117 Wis. 529, 37-38, 345 N.W. 2d 389 (1984). The overall legislative intent with respect to §230.09(2)(a), 230.09(2)(am), 230.44(1)(b), and 230.44(4)(c), Stats., appears to have been to reserve to the DER Secretary, free of administrative oversight, the authority to define in the class specifications the classifications used to categorize civil service positions, while providing individual employes the right to contest individual classification transactions affecting the levels of their positions via appeals to this Commission. Respondent apparently is free to ensconce in the class specifications the classification levels of specific positions by identifying them as "representative positions." However, it stands to reason that respondent cannot make a decision that a position is a representative position for a certain classification without first having made a decision about the conceptual nature of that classification. Therefore, preserving the right of an employe to challenge the reallocation of his or her position notwithstanding that it has been identified as a representative position, while not allowing the employe to challenge the general concepts defining the classification² appears to be consistent with the overall legislative intent.

² For example, as found in the "class definition" section of the class specification.

Finally, it appears that policy factors disfavor respondent's position. If it were upheld, this could open the door to potential abuse, as DER would have absolute and unfettered authority to shield any reallocation decisions from review that it chose simply by deciding to reflect the decisions in the position standard or class specifications developed as the result of a survey as representative positions. Even if one were to rule out any potential for intentional shielding of positions from review, one is still left with a situation where whether an employe has the right to contest a reallocation of his or her position rests solely on the question of whether DER has chosen to make a particular position part of an allocation pattern or a representative position. An employe sitting at one desk may have no right to challenge meaningfully a decision to reallocate his or her position as a result of a survey, because the position was identified as a representative position,³ while an employe sitting at the next desk whose position did not appear in the class specification as a representative position would have the opportunity to pursue his or her statutorily conferred rights to meaningfully contest the reallocation.

Respondent cites a number of Commission and judicial decisions holding that the Commission is bound by the class specifications as written and does not have the authority to revise or amend them. The Commission agrees, of course, that it is limited by §230.44(1)(b), Stats., to hearing appeals of decisions by DER to "reclassify or reallocate positions," §230.09(2)(a), and accordingly has no authority to hear appeals of decisions by DER to "establish, modify or abolish classifications" pursuant to §230.09(2)(am). However, none of the cases respondent cites involve the kind of issue presented by this case.

In Zhe v. DP, 80-285, 286, 292, 296-PC (11/19/81), affd., Dane Co. Cir. Ct. 81CV6492 (11/2/82), the Commission rejected appellant's contention that since the Officer 6 class specification obviously was outdated it should not be adhered to: "There is no doubt that an update of class specifications for positions in the Camp System is warranted, but this Commission has no authority in such matters and is bound by class specifications currently in effect." In Zhe, the Commission in effect was being asked to do something that clearly was within DER's province -- to revise outmoded class specifications. That case did not involve the issue present in the instant case, which is whether a reallocation

³ That is, under respondent's approach, such an employe would have the right to appeal the reallocation decision, but the Commission's authority on hearing the appeal would be limited to affirming the reallocation.

decision with respect to a specific position is insulated from any meaningful review under §230.44(1)(b), because DER decided to include the position in the class specification as a representative position. Similarly, none of the other cases cited by respondent involved this kind of issue.

In Lulling & Arneson v. DER, 88-0136, 0137-PC (9/13/89), the Commission observed that the class description for Typesetting System Input Operator 2 was almost an exact fit for appellants' positions, and concluded that it had to uphold the denial of the reclassification request notwithstanding that there were a number of nearly identical positions classified at the MIT 2 level. The Commission observed that: "where it is clear what the proper classification of the subject positions should be, the fact that a number of positions are misclassified ... sheds little light." The Commission also rejected appellant's demand that they be awarded a higher salary amount on equitable grounds. The position standard in Leith v. DNR & DER, 87-0154-PC (11/3/88), involved the categorization of properties by workload which was capped by level E for the largest parks. The Commission rejected appellant's contention that his property should be awarded an F or G rating, because to do so would be to rewrite the position standard. In Kennedy v. DP, 81-0180-PC, etc. (1/6/84), the Commission held that: "[i]t lacks the authority to require that a position be reclassified or an employe be regraded to a higher level in the PA series, on the theory that this would compensate for a perceived problem with the class specifications for the series that results in positions being systematically underpaid in comparison to positions in different series." pp. 8-9. Finally, the appellant in Wambold v. DILHR & DP, 82-161-PC (1/20/83), took issue with the position standard for capping recognition for supervision at "ten or more" and for failing to adequately reflect "the intense pressure, the level of responsibility or the importance of the processing unit as compared to the other program units within each district." p. 4. Again, the Commission held that it "simply lacks the authority to amend those standards." id.

In all of those cases, the Commission merely recognized that it lacked the authority to perform those functions statutorily reserved to DER: "to establish, modify or abolish classifications," §230.09(2)(am), Stats. None of those cases involved the issue raised here

Respondent also objects to the proposed decision on the ground that since the position of appellant's supervisor was reallocated to the Architect/Engineer Manager 3 level as a result of the survey, appellant's position could

not possibly be correctly classified at that level as well, because of the obvious differences between the positions. Respondent's objection would lead to the conclusion that when a unit or organization is subject to a personnel survey and resulting reallocations, if any one position is not subject to appeal, then the rest of the positions in the hierarchy are "locked in" to their reallocated levels because of a comparison to that position, regardless of how much other evidence supports a conclusion to the contrary. This is basically an exercise in circular reasoning. The degree of weight to be attached to a position comparison depends on the circumstances. In a situation like this, where two adjacent positions on the organization chart are reallocated at the same time as a result of the same survey, it cannot be argued successfully that because the higher-level position was reallocated to the Architect/Engineer Manager 3 level, the lower-level position is locked in to the Architect/ Engineer Manager 2 level to which it was reallocated.

In conclusion, the record reflects that respondent erred in its assessment of the significance of appellant's position, and that this misassessment resulted both in the reallocation of his position to the Architect/Engineer Manager 2 level and in its identification as a representative Architect/Engineer Manager 2 position. Accordingly, the Commission will adopt the proposed decision, reject respondent's decision to reallocate appellant's position to the Architect/Engineer Manager 2 level, and will remand this matter to respondent for action in accordance with this decision.

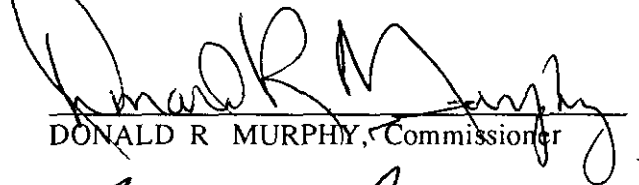
ORDER

The proposed decision and order is adopted, respondent's decision to reallocate appellant's position to the Architect/Engineer Manager 2 classification is rejected, and this matter is remanded to respondent for action in accordance with this decision.

Dated: March 23, 1992 STATE PERSONNEL COMMISSION


LAURIE R. McCALLUM, Chairperson

AJT:rcr


DONALD R. MURPHY, Commissioner


GERALD F. HODDINOTT, Commissioner

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JOHN S. EAGON,

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Secretary, DEPARTMENT OF
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Case No. 90-0398-PC

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PROPOSED
DECISION
AND
ORDER

This matter is before the Commission on appeal of a decision by the Department of Employment Relations to reallocate the position held by John S. Eagon to Architect/Engineer Manager-2 instead of Architect/Engineer Manager-3. The following findings are based on a hearing on this matter.

FINDINGS OF FACT

1. At all times relevant, John S. Eagon, the appellant, was employed at the Department of Industry, Labor and Human Relations (DILHR) as an engineer; currently, he is Director of the Buildings and Structures Bureau, within the Division of Safety and Buildings.
2. Eagon's immediate supervisor is the Deputy Administrator of the division, Ronald Buchholz, an architect. Buchholz's supervisor is the division administrator, Michael Corry.
3. The Department of Employment Relations (DER), respondent, is a state agency and is responsible for personnel and employment relations policies and programs for state government as an employer.
4. In 1985 DER initiated a survey of all state engineering positions. Subsequently, it was discontinued because of the Comparable Worth Program until 1988.
5. In April, 1990 DER reached agreement with the state engineer association to implement the Engineering Survey effective June 17, 1990.

6. Eagon's position was one of many positions reallocated under the Architect/Engineers (A/E) Managers series. His position was reallocated to the A/E Manager 2 level.

7. In August 1990 Eagon made an in-house appeal to DER of the June 17, 1990 allocation of his position. DER again reviewed Eagon's position and, by letter dated October 11, 1990, denied his request for reallocation to A/E Manager-3.

8. As a consequence of this denial, Eagon appealed the DER decision to the Commission on November 8, 1990.

9. Eagon's position description at the time of reallocation was:

Position Summary

Under general supervision by the Deputy Administrator, coordinate and administer the activities of the Bureau of Buildings and Structures within the Division of Safety and Buildings. Direct and supervise all programs within the Bureau including Plan Examination, Building Inspection, One- and Two-Family, Manufactured Buildings, Mobile Homes, Preliminary Design Consultation, Electrical, Weatherization, Plan Entry and Inspector Certification and Training.

Time % Goals and Worker Activities

40% A. Administration of Bureau Operations

- A1. Direct all Bureau activities including Plan Review (Building, Mechanical and Fire Protection), One- and Two-Family, Mobile Homes, Manufactured Buildings, Preliminary Design Consultation, Electrical, Weatherization, Building Inspections, Plan Entry and Inspector Certification and Training.
- A2. Analyze and formulate code interpretations where code language is vague or absent in order to operationalize and implement the Wisconsin Administrative Building Code.
- A3. Direct Section Supervisors on personnel and staffing matters, including selection, promotion, hiring, training, retention of staff, maintain discipline and monitor performance of employees.

- A4. Resolve problems and complicated questions arising from the specifications and calculations as determined by plan examiners during their plan examinations.
- A5. Direct the plan examination efforts for compliance with the Wisconsin Administrative Building Code and provide consistency in plan review.
- A6. Direct field inspection duties to assure that the Wisconsin Administrative Building Code requirements are satisfied with consistency.
- A7. Endorse referral of cases involving code violations to the Attorney General's Office for prosecution.
- A8. Coordinate with other bureaus in division on matters of mutual concern, code overlaps and conflicts.
- A9. Coordinate region office engineering technicians to assure proper assistance is provided to plumbing and private sewage plan review engineers.

Time %

Goals and Worker Activities

35%

B. Evaluation of Bureau Operations.

- B1. Monitor Bureau actions to insure that all performance requirements are met and arrange memoranda of agreement for nonduplication of workload.
- B2. Monitor and evaluate Bureau progress on implementation of action plans designed to improve the organization, work activities, and supervision.
- B3. Develop and implement standards of performance for Section Supervisors. Review other performance standards for the Bureau employees.
- B4. Assure the Bureau has a viable Affirmative Action Program.

- 15% C. Maintain liaison with external organizations.
- C1. Direct informational newsletters to keep professional organizations and local building inspectors informed.
 - C2. Attend or provide speakers, regarding code matters, when requested.
 - C3. Require field staff to maintain contact with local building inspectors.
 - C4. Maintain communication channels with local fire department inspectors.
 - C5. Coordinate uniform code enforcement efforts with the City of Milwaukee.
 - C6. Coordinate with other state and national organizations on matters of mutual concern, code overlaps and conflicts.
- 10% D. Performance of technical and administrative activities for the Bureau of Buildings and Structures.
- D1. Prepare responses to inquiries received by the Administrator.
 - D2. Prepare Bureau's budget request and quarterly report.
 - D3. Analyze information on collected fees and operational expenses to see if there is a need for fee adjustments.
 - D4. Review complex Petitions for Variance prepared by staff to assure an equivalent degree of safety has been provided.

10. The classification specification for the Architect/Engineer Manager series states in part:

II. Definitions

Architect/Engineer Manager 2

This is professional managerial work in the field of architecture or engineering. Positions can function as chief architect/engineer in a large complex architecture/engineering services program OR as a deputy state chief architect/engineer, OR

as a full-time deputy to an architect/engineer manager 3, OR any other comparable architect/engineer manager position.

REPRESENTATIVE POSITIONS

Department of Industry, Labor and Human Relations

Director, Office of Division Codes and Application - Division of Safety and Buildings. This position is responsible for the development, management, and administration of programs designed for the promulgation of all building safety codes enforced by the Department. Program functions managed by this position include the interpretation and application of existing codes, determination of petitions for variance and building material reviews, and the coordination of research for development of new codes.

Director, Bureau of Buildings and Structures - Division of Safety and Buildings. This position is responsible for directing and administering the activities of the bureau, including an initial building plan entry system and a complex plan review procedure, a building consultation program, statewide building construction inspection program, and a local services program which involves electrical consultation-inspection, rental property weatherization, and inspector certification activities.

Architect/Engineer Manager 3

This is professional managerial work in the field of architecture or engineering. Positions allocated to this class direct major, complex architecture/engineering services programs; typically supervise lower level architect/engineer managers, and can function as the State Chief Architect OR the State Chief Engineer OR any other comparable architect/engineer manager position.

REPRESENTATIVE POSITIONS

Department of Industry, Labor and Human Relations

Deputy Administrator - Division of Safety and Buildings. Under the direction of the Division Administrator, this position directs the general operation of all bureaus and offices within the Safety and Buildings Division. Responsibilities include development and administration of the division's work plans, budgets, and general administrative and organizational processes; policy planning and program development; and provision of technical expertise on a divisionwide basis. The position ensures the soundness of all division programs, participates as a member of the department's management team and generally represents the department before other state agencies, external groups and the public.

11. Specific reasons given by respondent for allocating his position to the A/E Manager 2 level were:

- 1) Appellant's position is specifically identified by the A/E Manager 2 allocation.
- 2) Appellant's position does not compare favorably to the six positions identified in the survey as Manager 3 positions.
- 3) Appellant's position is responsible for a ". . . large, complex A/E services program . . ." While A/E Manager 3 positions are responsible for a ". . . major, complex A/E service program . . ."
- 4) Positions comparable to appellant's include: Charles Quagliana and Craig Weiss — DOA (Deputy Directors); Kieth Goodwin — H&SS (Chief Engineer); Bruce Baker, Paul Didier, Robert Krill, Robert Roden, Edmond Borick — DNR; and at DOT eight District Directors for DH&TS along with seven state Engineering Specialist-Transportation (Section Chief) for Design, Technical Services, Traffic, Materials, Maintenance, Construction and Bridge.

12. In reference to the A/E Manager 2 and A/E Manager 3 classifications, the A/E Manager Series classification specification does not define the terms "large" and "major."

13. The bureau Eagon directs — Buildings and Structures — consists of five sections, with a staffing level of 78 persons, including 25 engineers.

14. The five sections of the Bureau of Buildings and Structures are:

1) Plan Review: All building construction in this state must have plans approved by this section or by municipal staff certified by this bureau.

2) Building Construction: This section is responsible for providing technical information about building codes to governmental bodies and the general public. It also controls one and two family homes and the manufactured housing industry.

3) Plan Entry: This section is responsible for regional expedition of plans.

4) **Building Inspection:** This section is responsible for field building inspections around the state. All public building construction must be inspected by this unit or by municipal inspectors certified by this bureau.

5) **Local Program Services:** This section is responsible for administering federal energy conservation regulations affecting all state rental units, electrical inspection of all buildings and structures and certifying all local inspectors.

15. The Bureau of Building and Structures has the authority to stop work on building construction projects anywhere in the state.

16. Four state agencies, the Department of Administration (DOA), the Department of Transportation (DOT), the Department of Natural Resources (DNR) and DILHR have major engineering programs.

17. The organizational structure of the Bureau of Engineering and Energy Management in DOA is similar to that of Eagon's bureau in DILHR. This bureau has four sections, staffed with 19 engineers and 4 supervisors and is responsible for management of all engineering activities related to the state building program.

18. This bureau in DOA is directed by an A/E Manager 3, with the classification title, State Chief Engineer. He has a deputy, who is an A/E Manager 2.

19. Eagon's bureau is also similar in organization to the DOA Bureau of Architecture. The director of this bureau, an A/E Manager 3, has the classification title of State Chief Architect. He also has a deputy at the A/E Manager 2 level. This bureau is responsible for all architectural activity associated with the state building program. It has 3 sections, staffed with 52 people including 16 engineers and 3 supervisors.

20. The Division of Highways & Transportation Services, (DH & T) DOT, has three Manager 3 positions. Each is the top position in the bureau and has the working title of director. These bureaus are much larger in size than counter parts in other agencies. Some of the sections in these bureaus are as large as bureaus of other agencies. DOT has its own management and engineering classification series, which is called the Civil Engineer Transportation Manager series. It is equivalent to the A/E Manager series.

22. The DOT Bureau of Engineering Development has five sections, of which three are involved in engineering programs. The three section chiefs are slotted at the Civil Engineer Transportation Manager 2 level. Individually, these sections are smaller, have less staff and have fewer programs than Eagon's bureau.

23. The DOT Bureau of Transportation Districts is divided into eight state districts. The directors of these districts are at the Manager 2 level. The LaCrosse district unit is similar in size to Eagon's bureau, but the authority of the director is limited to his district. Some district units in this bureau are larger in size than Eagon's bureau, others are smaller.

24. The DOT Bureau of Engineering Operations has four sections, headed by Manager 2 positions and a staff of 104 people.

25. State Maintenance Engineer-Highways is the largest section in the DOT Bureau of Engineering Operations. This section is headed by a Manager 2, is responsible for selection of types of pavements in compliance with national standards and for conducting roadway soil analysis. It is composed of 4 Manager 1 positions, 7 Supervisory positions, 8 Engineers, 6 specialists and 29 technical positions, a total of 54 people.

26. The Department of Natural Resources (DNR) does not have any engineer positions at the Manager 3 level. However, its Division for Environmental Quality has four bureaus, headed by directors with the position classification title of Environmental Engineer Manager 2. This classification is not in the A/E or CE Manager series.

27. The duties and responsibilities of Eagon's position are more comparable to the A/E Manager 3 positions in DOA than the Manager 2 positions in DOT or DNR.

CONCLUSIONS OF LAW

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

2. The appellant has the burden to prove respondent's decision re-locating his position to Architect/Engineer Manager 2 instead of Architect/Engineer Manager 3 was incorrect.

3. The appellant has sustained his burden of proof.

4. Appellant's position is more appropriately classified at the A/E Manager 3 level.

DISCUSSION

The primary issue in this appeal is whether appellant's position was correctly reallocated by respondent to Architect/Engineer Manager-2 rather than Architect/Engineer Manager-3. By law class specifications are the basic authority for assignment of positions to a class. In this particular dispute the class specifications for A/E Manager 2 and A/E Manager 3 classes come under scrutiny. Under the definition in the class specifications of an A/E Manager,

"[p]ositions can function as chief architect/engineer in a large complex architecture/engineering services program or as a deputy state chief architect/engineer, or as a full-time deputy to an architect/engineer Manager 3, or any other comparable architect/engineer manager positions. (emphasis added)

The class specification definition for an A/E Manager 3 provides:

Positions allocated to this class direct major, complex architecture/engineering services programs; typically supervise lower level architect/engineer managers, and can function as the State Chief Architect or the State Chief Engineer or any other comparable architect/engineer manager position (emphasis added)

Definitions of "large complex architecture/engineering services program and "major, complex architecture/engineering service programs" are not provided in the class specification.

Appellant argues that his position comports with class specification requirements for A/E Manager 3 positions. In support appellant presented evidence showing that his bureau is responsible for several statewide programs. These programs include: plan review of all building construction; inspection program for all public building construction; electrical inspection program; weatherization program; uniform dwelling code enforcement; mobile home inspection program; and petitions for code variances. This bureau is similar in organization, size and responsibility to the Bureau of Engineering and Energy/Management and the Bureau of Architecture in DOA.

Respondent argues that Mr. Buchholz, appellant's immediate supervisor, is classified as an A/E Manager 3 and holds the top engineer position in DILHR,

and therefore appellant cannot be at that same level. The evidence supports the factual portion of respondent's argument, but respondent's conclusion does not necessarily follow. While these facts may have some bearing, the question of whether appellant's position fits the class specification description of an A/E Manager 3 remains.

Respondent also argues that appellant's and Mr. Buchholz's positions are representative positions for the A/E Manager 2 and A/E Manager 3 classifications and must be accepted as such. This argument contains the supposition that the Commission has no authority to review an appeal of the classification of a position described in the class specifications as a "representative position." The Commission rejects this notion. Under §230.44(1)(b), Stats., the Commission has the authority to hear appeals of decisions to classify positions. This authority is not negated by respondent's inclusion of a position in a class specification as a "representative position."

Respondent also argues that aside from failing to meet the A/E Manager 3 requirement of directing major complex programs, appellant fails to meet the Manager 3 requirement of supervising lower level A/E managers. As appellant states in rebuttal, although this particular specification is viewed as typical of Manager 3 positions, it is not a mandatory requirement. Typically, engineer section chief or equivalent positions are classified at the Manager-1 or Supervisor-5 level. Appellant's section chiefs are at the Supervisor 5 level.

In conclusion, the Commission believes appellant's position best fits the class specification of the A/E Manager 3. Respondent's principle argument was that appellant's supervisor, Mr. Buchholz was correctly slotted at the A/E Manager 3 level, and, since appellant's position is not comparable to the Buchholz position, appellant cannot be an A/E Manager 3. This argument attempts to evade the question. The question is not whether appellant's position compares favorably to that of Buchholz — clearly it does not. Buchholz is the Deputy Administrator of appellant's division. He was promoted into the position as an Administrative Officer 5 (AO-5). Subsequently, the agency (DILHR) decided to utilize Buchholz's engineering background. Upon inquiry, respondents resolved the matter by writing the position into the pending engineering series as an A/E Manager 3. This in fact was a demotion for Mr. Buchholz. The question is whether appellant's position fits the classification specifications for an A/E Manager 3. And it is the belief of the Commission that

appellant's position meets the specifications for the A/E Manager 3 classification; and compares favorably with two A/E Manager 3 positions in DOA, which are also specifically written into the class specifications as "representative positions," and to positions in DOT at the Manager 3 level.

ORDER

Respondent's decision is reversed and this matter is remanded to respondent for action in accordance with this decision.

Dated: _____, 1991 STATE PERSONNEL COMMISSION

LAURIE R. McCALLUM, Chairperson

DRM:gdt/2

DONALD R. MURPHY, Commissioner

GERALD F. HODDINOTT, Commissioner

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