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STATE OF WISCONSIN

PERSONNEL COMMISSION

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THOMAS STEMRICH,

Appellant,

v.

Secretary, DEPARTMENT OF  
EMPLOYMENT RELATIONS,

Respondent.

Case No. 91-0058-PC

\* \* \* \* \*

DECISION  
AND  
ORDER

NATURE OF THE CASE

This is an appeal of a reallocation decision. A hearing was held on March 10 and 11, April 24, and May 8, 1992, before Laurie R. McCallum, Chairperson. The appellant requested and the respondent acceded to an extended briefing schedule and the final brief was filed on April 1, 1993.

FINDINGS OF FACT

1. Effective February 22, 1982, appellant was appointed to a Public Service Engineer 1 (PSE 1) position in the Public and Field Surveillance Bureau of the Public Service Commission (PSC). In July of 1984, appellant transferred from this position to a Pipeline Safety Engineer position in the PSC's Gas, Water & Federal Intervention Division. At the time of this transfer, this position was classified at the Public Service Engineer 3 level. As a result of a personnel management survey of engineering and related positions conducted by respondent and implemented effective June 17, 1990, this position was reallocated to the Public Service Engineer-Journey classification. Appellant filed a timely appeal of this reallocation with the Commission.

2. It is undisputed that the statement of goals and worker activities on the position description signed by appellant on June 4, 1990, i.e., the position description reviewed by respondent as part of the subject survey, is accurate. This position description indicates that the "supervision, direction, and review given to the work of this position is limited," i.e., that the level of supervision over this position is limited.

3. The statement of goals and worker activities on appellant's June 4, 1990, position description is essentially identical to that which appears on the October 18, 1990, position description of Scott Olson; and Hal Meyer is specified as the first-line supervisor on both of these position descriptions. The position description of the Olson position indicates that the level of supervision over this position is general.

4. The standard position description form which was used in completing the position descriptions described in Findings of Fact 2 and 3, above, includes the following definitions:

*"Close"* supervision implies that the work is performed according to detailed instructions and the supervision is available on short notice.

*"Limited"* supervision implies that the incumbent proceeds on his/her own initiative while complying with policies, practices and procedures prescribed by the supervisor. The supervisor generally answers questions only on the more important phases of the work.

*"General"* supervision implies that the work is performed independently. The incumbent seldom refers matters to supervisor except for clarification of policy.

5. Mr. Olson was appointed to a Public Service Engineer 1 position at the PSC effective September 4, 1984. Mr. Olson's position was thereafter reclassified on a progression basis to the Public Service Engineer 2, 3, and 4 levels. Mr. Olson left state service in late January or early February of 1990. Effective on or about October 18, 1990, Mr. Olson was appointed to a Public Service Engineer-Senior position at the PSC, i.e., the position described in Finding of Fact 3, above. The position description for this position, including the specification of the level of supervision, was completed by Lynn Boodry, the PSC's Personnel Director, prior to the selection of Mr. Olson.

6. On or around November 30, 1989, appellant had requested the reclassification of his position to the Public Service Engineer 4 level. The PSC, on a delegated basis, denied this reclassification. In the memo to appellant advising him of this denial, Ms. Boodry stated as follows, in pertinent part:

. . . Level of supervision and knowledge required are critical factors in determining the appropriate classification level for this position and for you as the incumbent of the position.

Although Mr. Meyer recognizes that your field work is conducted under general supervision, it is the other, less routine aspects of your work that cause him concern in stating that you require only general supervision. Specifically, Mr. Meyer states that your work on construction cases, gas extension rule changes and necessary documentation is not consistent with the full performance expected of an objective level Public Service Engineer 4. The level of professional judgement, thoroughness, follow-through, professional interactions and independence especially on controversial, politically sensitive issues normally expected of a PSE 4 is lacking and causes Mr. Meyer to monitor closely your activities in such cases by directing you in what has to be done and how it has to be done. Your 1988-89 performance evaluation indicates that you need improvement in other than pipeline safety matters which is consistent with your supervisor's statements. An engineer at the objective level is required to ably and independently handle most any assignment in their assigned area with the confidence of agency management.

I asked Mr. Meyer for examples of assignments which supported his concerns about your work products and the need for closer than general review particularly for the six month period immediately preceding your request. He provided no less than eleven (11) examples of cases which had been assigned to you, the results of which, upon his review, required substantial change and raised questions about the basis for your conclusions. They are too numerous to list here but a few specific examples include the application of Northern States Power Company to provide natural gas service in the Township of Lafayette, Chippewa County; Wisconsin Gas Co.'s application for authority to construct facilities and render natural gas service in the Village of South Wayne, Lafayette County; and Northern States Power Co.'s application to operate natural gas distribution facilities in the Township of Hughes, Bayfield County.

Mr. Meyer's assessment is that your analysis of a case is often a restatement of the utility's application for commission approval with little evidence of independent thought or study on your part. He said that you have been instructed on a number of occasions that the orders should be the conclusions or findings of our analysis of the company's request but that things have not changed. In another example relating to applications proposing changes in gas extension rule policy, Mr. Meyer had to ask you basic questions such as what the rate impact was, what the changes were, and then tell you when a formal hearing is required, associated docketing procedures, and how to dispose of the applications. Aside from the technical engineering review involved in his assessment of your work, this indicates that you are lacking familiarity with commission procedures which is a fundamental element of independent case processing. Further, Mr. Meyer stated that, as an engineer 3, your work product in the drafting of letters, memos to the commission and notices and

orders were continually reviewed for content, form and correctness. In most cases they had to be returned for further work and numerous corrections. His expectation was that you would learn from the corrections he made to your drafts in order to improve on future products. He sees little, if any, improvement in your subsequent assignments requiring his continued close review of these kinds of assignments. In my audit meeting with you on February 20, 1990, you stated that the review and rewrite of your work by your supervisor(s) has made you more lax because they'll just change it anyway. This would seem to verify your supervisor's assessment. I should note that Mr. Cullen shares these concerns.

Another cause for concern in reclassifying your position and regrading you to the PSE 4 level is your interactions with other staff and the negative effects brought about in working relationships. Over the last couple of years, there have been a number of instances regarding your working relationships which caused complaints to be made to your supervisor particularly from the environmental analysis and consumer services staff. Also, the Chairman asked for your removal from the WI Gas Company's pipeline interconnections with Northern Natural Gas case after witnessing behavior in public hearings which he viewed as unacceptable. This is not in keeping with criteria for reclassification to a higher level. While it is acknowledged that some time has passed since the latter incident, it continues to be another area requiring your supervisor's monitoring and intervention and verifies that the supervision required of you is not general.

7. Appellant's position and the Olson position perform equally complex assignments.

8. Mr. Meyer makes substantive changes in appellant's work products more than occasionally. Mr. Meyer makes these types of changes more often in relation to appellant's work products than in relation to Mr. Olson's. Examples of deficiencies noted by appellant's supervisors (Mr. Meyer and Mr. Cullen, appellant's second-line supervisor) in work produced by appellant in relation to assignments held by appellant at the time of the survey include:

- a. In relation to a draft notice of investigation prepared by appellant relating to competing applications filed by Wisconsin Power and Light (WPL) and Wisconsin Public Service Corporation (WPS) to serve the Town of Utica in Winnebago County, the information relating to cost and number of customers served was not presented in a manner which permitted meaningful comparison of the applications on these bases. In addition, appellant failed

to follow proper procedures in scheduling the hearing, failed to obtain a list of contiguous landowners, and failed to obtain the Bureau Director's signature on the draft as required.

- b. In regard to a complaint filed by a Mr. Klein relating to service provided by Northern States Power, appellant had failed to follow proper procedures by closing the customer complaint file without including an analysis by appellant of Mr. Klein's complaint and without documenting that appellant had ever communicated with Mr. Klein prior to closing the file.

These deficiencies were consistent with those present in appellant's work products prior to and during the time period relevant to the subject survey.

9. During the relevant time period, Mr. Meyer prohibited appellant from dealing directly with PSC environmental staff based on complaints received from environmental staff members and supervisors that appellant was preventing them from getting their work done. No such prohibition was in effect for Mr. Olson.

10. During the relevant time period, Mr. Meyer prohibited appellant from dealing directly with PSC administrative services staff on issues other than those related directly to appellant's employment. This prohibition was based on complaints received from administrative services staff members and supervisors that appellant was spending too much time in their offices asking questions and arguing with staff. No such prohibition was in effect for Mr. Olson.

11. During the relevant time period, Mr. Meyer attended and monitored more meetings outside the unit in which appellant participated than in which Mr. Olson participated. Mr. Meyer's presence at these meetings was for the purpose of overseeing and monitoring appellant's performance.

12. During the relevant time period, approximately 20% of appellant's position's work time was devoted to performing duties out in the field where there is no on-site supervisor and 80% in the office where an on-site supervisor is present. Appellant's position's field duties are more routine and clearly delineated than the duties performed in the office.

13. The position standard for the Public Service Engineer series states as follows, in pertinent part:

## II. CLASS DEFINITIONS AND REPRESENTATIVE POSITIONS

### Public Service Engineer - Entry

Class Definition: This is entry level work in the field of public service engineering. Positions allocated to this class perform entry level engineering duties to learn standard procedures and practices of the specific program area. Employees at this level exercise very limited discretion and function under close supervision.

### Public Service Engineer - Developmental

Class Definition: This is advanced entry or developmental work in the field of public service engineering. Positions allocated to this class are distinguished from those assigned to the preceding level primarily by the complexity of cases and duties assigned and the level of supervision received in relation to those assignments. Employees perform moderately complex cases and duties independently and assist higher level engineers on segments of complex assignments. Primary emphasis is placed on the application of broad engineering principles and practices to progressively more difficult assignments. Work is performed under close to limited supervision.

### Public Service Engineer - Journey

Class Definition: This is journey level engineering work in the regulation of public utilities. Positions allocated to this level are distinguished from those assigned to the preceding level primarily by the complexity and diversity of cases and duties assigned and the lessened degree of supervision received in relation to those assignments. Employees assigned to this class perform a wide variety of duties involving complex engineering problems and regulatory issues. Moderately complex and complex cases are completed independently, and assistance is provided to higher level engineers on segments of highly complex cases. Work is performed under limited to general supervision and is reviewed for general progress and upon completion for results, appropriateness of engineering methodologies and techniques, timeliness and consistency with Commission policy and pertinent regulations. Most positions at this and successive levels require the incumbent to present expert testimony in public hearings and otherwise participate in formal commission proceedings.

### Public Service Engineer - Senior

Class Definition: This is senior level work of a professional engineering nature in the regulation of public utilities. Positions allocated to this class perform complex assignments as project leaders or program specialists in a statewide engineering

regulatory program. Employees at this level perform complex and portions of highly complex cases independently; assist in the development and refinement of analytical models or tools; represent their assigned work units on intradepartmental and interdepartmental work groups; and provide engineering assistance to higher level engineers and supervisors on sensitive or difficult cases or assignments having a statewide impact. Work is performed under general supervision and is reviewed after it is completed to determine soundness and conformance with Commission policies and pertinent regulations.

Public Service Engineer - Advanced 1

Public Service Engineer - Advanced 1 - Management

Class Definition: This is advanced work of a professional engineering nature in the regulation of public utilities. Positions allocated to this class require a high level of engineering expertise and program knowledge to perform very complex planning, project management, engineering analyses and review of utility proposals, enforcement, research and consultation involving a major segment of a statewide engineering regulatory program. Positions at this level are differentiated from the preceding levels by assignments that require: (a) the analysis of major construction cases, rate cases or other formal actions involving highly complex engineering issues; (b) coordination and direction of special projects involving important regulatory issues, new operating procedures, policy formulation, long-range planning and forecasting, sensitive public issues, precedent-setting decisions or legislative action; (c) development of new analytical models and methodologies to assess energy technologies, system characteristics, operating practices or other regulatory matters; (d) interaction and liaison with higher level representatives from other state agencies, municipalities, utilities, consumer groups, the federal government and elected officials, often in an adversarial setting; (e) assistance in the formulation, planning and implementation of work unit objectives; and (f) guiding, training, instructing and reviewing the work of less experienced employees. Broad discretion and significant independence is required to be exercised at this level. Work is performed under general policy direction and is reviewed for results and conformance with Commission policies and pertinent regulations.

Public Service Engineer - Advanced 2

Public Service Engineer - Advanced 2 - Management

Class Definition: This is highly advanced professional engineering work in the regulation of public utilities. Positions allocated to this level perform the most complex assignments including policy, planning, standards and procedure development, evaluation, and administration for the specialty area. Employees at this level function as the state chief consultant

for a major statewide regulatory engineering program. The work performed requires a high level of interpretation and creativity, and has major impact on the actions of the Public Service Commission. Employees at this level have extensive authority to work with elected officials, policymakers, utility executives, and other high level representatives of consumer and industry groups, frequently in an adversarial setting with a focus on highly sensitive and complex regulatory problems and issues. Work is performed under general policy direction with authority to (1) make final statewide decisions or policy recommendations on major professional matters, and (2) review and approve work done by lower level engineers.

#### 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 that respondent's reallocation of his position to the Public Service Engineer-Journey level was incorrect.
3. The appellant has failed to sustain this burden.
4. The appellant's position is more appropriately classified at the PSE-Journey level than the PSE-Senior level.

#### OPINION

The Commission's task in reviewing a reallocation decision such as the one under review here is to determine the duties and responsibilities assigned to the subject position and then to determine which of the classification specifications under consideration provides the best fit for these assigned duties and responsibilities.

The factual dispute here relates to the level of responsibility actually assigned to appellant's position. Appellant appears to argue in the alternative that appellant's position is assigned a level of responsibility best described by the definition of "general" as opposed to "limited" supervision; or that, even if appellant's assigned level of responsibility is best described by the definition of "limited" supervision, his work performance justifies the assignment of "general" supervision to his position.

In regard to this first argument, it is not disputed that management has the right to assign duties and responsibilities to a position. "Duties and responsibilities" consist not only of worker tasks but also the independence



with which such tasks are to be carried out, i.e., the level of supervision. The record, primarily through the testimony of appellant's first- and second-line supervisors, shows that, although appellant's work products were reviewed at approximately the same points in the process as those of Mr. Olson, they were reviewed more closely both for content and for form than Mr. Olson's. In addition, appellant's supervisors more frequently attended and monitored meetings outside the unit in which appellant was participating than those in which Mr. Olson was participating. The definition of "general" supervision requires that work be performed independently and that the supervisor be consulted primarily for purposes of clarifying policy. The nature of the review and monitoring of appellant's work by his supervisors goes beyond the clarification of policy and, as a result, fails to satisfy the definition of "general" supervision. In addition, the record shows that appellant's work is more closely supervised than that of Mr. Olson and justifies the distinction, therefore, between the levels of supervision assigned to these two positions. Appellant has failed to show that he has been assigned to function under a general level of supervision.

Appellant also argues that his work performance justifies the assignment of a "general" level of supervision to his position. Since the assignment of duties and responsibilities to a position is a management right, the Commission questions whether this is a proper subject of inquiry here. Even if it were, the history of deficiencies in appellant's performance as illustrated both in the memo of denial of appellant's 1989 reclassification request and through the testimony of appellant's supervisors relating to more recent examples (See Finding of Fact 8, above), shows that respondent had a sustainable basis for maintaining a limited level of supervision over appellant's position.

Appellant contends that the civil service classification system requires that the characteristics of a position's assigned duties and responsibilities, not the characteristics of the position incumbent's performance of these duties and responsibilities, determine the level of classification of the position. This is accurate. Appellant goes on to argue that respondent violated this principle here by relying upon the quality of appellant's work performance to determine the classification level of his position. However, the record shows that the Public Service Commission, appellant's employing agency, relied upon the quality of appellant's work performance not to determine the

classification level of appellant's assigned duties and responsibilities but instead to determine that he should not be assigned higher level duties and responsibilities. It is an axiom of the work place that an employer is not likely to change a position by assigning to it higher level duties and responsibilities if the performance of the currently assigned duties and responsibilities does not justify such a change. Appellant has failed to show that respondent violated the principle of separation of performance and classification here.

The classification specifications for the PSE-Senior classification require that a position classified at that level function under general supervision. It is concluded from the record that appellant's position has not been assigned to function under general supervision and fails, therefore, to qualify for classification at the PSE-Senior level. Although appellant argues that respondent over-emphasized the level of supervision factor in reallocating appellant's position, the PSE position standard clearly and consistently relies upon the level of supervision as a means of distinguishing between different levels of classification within the PSE series. In addition, the characterization of the type of supervision accorded in the specifications to Journey level positions, i.e., review "for general progress and upon completion for results, appropriateness of engineering methodologies and techniques, timeliness and consistency with Commission policy and pertinent regulations" is a better description of the type of review conducted by appellant's supervisors of his work product as illustrated by the deficiencies cited by his supervisors in the Findings of Fact, above, than the type of supervision described for Senior level positions, i.e., review after work "is complete to determine soundness and conformance with Commission policies and pertinent regulations." The cited deficiencies in appellant's work products relating to basic analytical methodology indicate that the type of review conducted by appellant's supervisors related to results and appropriateness of engineering methodologies and techniques within the meaning of the PSE-Journey classification specifications.

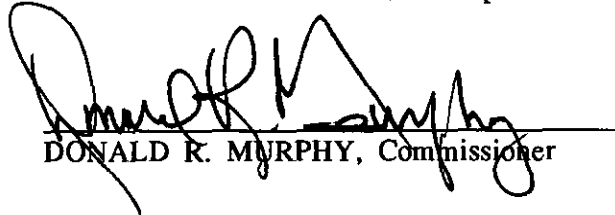
ORDER

The action of respondent is affirmed and this appeal is dismissed.

Dated: June 4, 1993 STATE PERSONNEL COMMISSION

  
LAURIE R. McCALLUM, Chairperson

LRM:rcr

  
DONALD R. MURPHY, Commissioner

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**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.