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STATE OF WISCONSIN

PERSONNEL COMMISSION

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WILLIAM H. LAUTZ,

Appellant,

v.

Secretary, DEPARTMENT OF  
EMPLOYMENT RELATIONS,

Respondent.

Case No. 91-0091-PC

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INTERIM  
DECISION  
AND  
ORDER

A proposed decision was issued in this matter and the respondent filed objections. Based upon a review of those objections, consultation with the hearing examiner and consideration of the record, the Commission adopts the proposed decision and order as the Commission's interim decision in this matter, a copy of which is attached hereto, with the following modifications.

ADDITIONAL FINDINGS OF FACT:

21. The "Definitions" portion of the Civil Engineer-Transportation series includes the following entries as "Examples of Duties" at the Advanced 1 level:

CENTRAL OFFICE - DIVISION OF HIGHWAYS AND TRANSPORTATION SERVICES

Design

Project Development Engineer

Positions at this level and in this area, provide guidance, project coordination, and review of highway designs and plans prepared by the Districts; assist in reviewing concept definition reports, environmental studies and reports, design study reports and plan preparation as well as assist in securing federal approvals as required; conduct field and office reviews; evaluate geometric design features and pavement designs.

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Utilities Development Engineer

Positions at this level and in[]this area advise and assist the Chief Utilities Engineer in making and completing contract arrangements for the relocation, modification and adjustment of utility facilities, the installation and modification of the railroad crossings and train-activated warning devices... the acquisition of utility and railroad interests in lands required for highway improvement projects and obtaining the necessary approvals; review contract special provisions to assure proper notice to contractors of utility and railroad arrangements for improvement projects; develop and maintain guidelines and procedures.

22. The railroad responsibilities of the Utilities and Roadsides Section in Central Office Design and of the District Offices are described in 17:5:1 of DOT's Facilities Development Manual as follows:

The Central Office Design/Utilities and Roadsides Section (URS) acts as the lead office responsible for making arrangements and agreements with the various railroad companies. The following is a list of activities of the URS:

1. Formulating policies, standards, and project procedures in the areas of railroad adjustments, relocations, grade crossings, grade separations, warning systems and lateral encroachments.
2. Developing and maintaining Chapter 17 of the Facilities Development Manual.
3. Administering approved policies, standards, and procedures.
4. Reviewing proposed legislation....
5. Reviewing and endorsing district selections and/or recommendations for candidate projects for inclusion in rail-highway improvement programs.
6. Developing and preparing agreements, cost estimates, and conveyances required for railroad crossings and for the rearrangement of railroad facilities.
7. Monitoring the status of current project negotiations with railroads.

8. Offering comments and recommendations, as deemed appropriate, on proposed plans for railroad crossing improvements and rearrangements of railroad facilities as well as making field inspections of railroad crossings....

9. Reviewing and recommending action on change orders affecting railroad agreements....

11. Representing the Department before the [Office of the Commissioner of Transportation] on matters requiring their approval and authorization. The districts may also be requested to provide testimony before the OCT on specific projects.

12. Conferring with the District on matters relating to crossing improvements and lateral encroachments affecting railroad lands.

13. Reviewing and recommending acceptance of documents prepared by the railroad or by the District, such as contract special provisions, appraisals of railroad right of way, conveyances of interests in land, project estimates, reports, construction plans, contested billings and insurance policies that are not in compliance with general and accepted policies, procedures and regulations.

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#### TRANSPORTATION DISTRICTS

The district offices are primarily responsible for the selection and recommendation of projects for highway improvement programs, the collection of project data and the preparation and development of plans, special provisions and estimates for construction projects, and the review and approval of railroad liability insurance provided by contractors, the administration of construction contracts, including final inspection and acceptance of projects, the review and acceptance of project billings, and participation in the closing of projects.

23. The district shapes the highway project, effectively deciding whether negotiations with the railroad are going to be necessary and, if so, on what topic. For example, the central office will provide advice as to whether there will be a bridge or not, but the decision does not rest with the appellant. Once the course of the project is set by the district, the appellant will perform any railroad negotiations necessary for reaching agreement as to what the railroad and the State should pay to perform the alterations necessary as a consequence of the highway improvement project.

24. The role of the Chief Utilities Engineer position has changed over time in that the volume of programs in his section has increased without an increase in staff size, with the result that the Chief Utilities Engineer is less able to be involved in railroad negotiations and the appellant has had to assume additional responsibilities as the chief consultant in that area.

ADDITIONAL LANGUAGE IN THE OPINION SECTION:

It is difficult to summarize the appellant's responsibilities, but according to Mr. Dresser's testimony, the appellant functions as the chief railroad technical consultant, including railroad negotiations. The appellant also serves as an expert witness in matters before the Office of the Commissioner of Transportation, but there are others, including Mr. Bolitho, who also serve as experts in some railroad areas. Rail negotiations are only performed in the central office, and Mr. Dresser identified other areas such as design services for rest areas and wayside facilities where central office does the work instead of having it performed in each individual district. Appellant is the chief technical consultant in rail negotiations in the sense that he is the person who performs the work and he must get certain information from the districts in order to complete his assignments.

In performing his work, the appellant must be able to analyze cost estimates submitted by the railroads for labor and materials they propose using in order to repair or construct track, signals and crossings necessitated by highway projects. The appellant ensures that the estimates do not include work which has the effect of enhancing track beyond what is necessary for purposes of the proposed highway project. Appellant's negotiations which generate a recommendation for a real estate transaction are reviewed by persons in DOT's central real estate office in terms of calculations and any appraisal.

Appellant also reviews district-prepared highway plans to make sure that clearances, drainage designs, and proposed structure are appropriate for highway/rail coordinated use. Appellant's review includes the crossing type (e.g. asphalt versus rubber panels), roadway approach geometrics for at-grade crossings, clearances and the signals that are needed at crossings.

One important portion of the classification definition in this case is the work example entitled "Utilities Development Engineer" in the Central Office,

as set forth in finding of fact 21.<sup>1</sup> The work example is written to describe railroad work rather than just utilities work. It is the appellant, not Mr. Bolitho, the Utilities Development Engineer, whose work is primarily involved in "making and completing contract arrangements for the installation and modification of the railroad crossings and train-activated warning devices, the acquisition of ... railroad interests in lands required for highway improvement projects and obtaining the necessary approvals." However, the key qualifier as listed in the work example is that the positions "at this level and in this area advise and assist the Chief Utilities Engineer" in performing these responsibilities. The evidence indicates that Mr. Nohr's role, as the Chief Utilities Engineer, has diminished and that while he still qualifies as an expert in these areas, it is the appellant who now serves in the capacity of the chief technical consultant with respect to railroad negotiations. Because the appellant is no longer in the "advise and assist" status, the work example cannot be said to specifically identify his position.

Appellant's position parallels the responsibilities of Advanced 2 Development Engineers such as James Whalen who oversees the process and reviews for completeness and accuracy: (1) Concept Definition (as related to railroad matters), (2) Investigation (to determine changes), (3) Design Study Report, (4) Final Design and (5) Pre-Contract Administration.

The Advanced 2 specifications require that "[p]ositions allocated to this class perform the most technically complex project management engineering assignments involving policy, standards and procedure development, evaluation, budget and administration." The second requirement at the Advanced 2 level is to "function as the chief technical consultant to lower level engineers, engineer supervisors, and engineer managers." While there are no positions specifically identified as work examples at the Advanced 2 level, there was substantial testimony seeking to compare the appellant's position to the Project Development Engineers who are classified at the Advanced 2 level but identified as a work example at the 1 level. Mr. Dresser, who is the second level supervisor for the Project Development Engineers and the second level supervisor for the appellant, testified that the positions were comparable in

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<sup>1</sup>Although the respondent did not appear to argue that this work example identified the appellant's position, there are enough similarities to require the Commission to address this point.

terms of supervisory authority, technical background, public agency contact, direction and guidance and authority vested in the positions. In contrast to the appellant, the Project Development Engineers are assigned to review the work being performed in one or more of the eight transportation districts. They cannot be said to have statewide authority, even though, as a group, their responsibilities extend statewide. There are approximately 30 points along the path of a project where the Project Development Engineers have been formally delegated authority to act on behalf of DOT. According to Mr. Dresser, a similar delegation agreement is unnecessary in the area of railroads given that more of the actual work is performed in the central office and there aren't the same number of points in the process where work product is shuttled back and forth from district to the central office. Railroad projects are held in Central longer, but appellant does track railroad projects to make sure that they are following the critical path toward completion. Mr. Dresser's testimony indicates that the appellant's position and the Project Development Engineers are comparable in terms of technical background, but the process used by the Project Development Engineers (which generated the delegation of authority to them) is more complicated than that of the appellant.

A second comparison is to the position filled by James Bolitho. Mr. Bolitho works at the same organizational level as the appellant in the Utilities Section under Mr. Nohr. Mr. Bolitho's working title of "Utilities Development Engineer" corresponds to the title of one of the representative positions at the Advanced 1 level. The majority of Mr. Bolitho's time is spent reviewing the documents being prepared at the district level relating to the interface between highways and utilities. Mr. Bolitho's focus is on reviewing the work of others to determine that the utility work by the districts is being completed and is consistent with state policy. Since early in 1990, Mr. Bolitho has also performed railroad responsibilities, primarily in the areas of rail consolidation projects and grade separation structures, i.e. bridges where highway and railroad cross each other on different planes. These duties, which are comparable to the duties performed by the appellant, represent approximately 20% of his time. Mr. Bolitho's knowledge base must cover both railroad and utility matters. The complexity of his utility work is tempered by the fact that his role is primarily to perform central office review but his position description does reflect that he assists district staff "in the technical aspects of utility co-

ordination arrangements, particularly regarding rare or unusual situations and circumstances."

Another comparison position which was referred to by the parties is that held by Jack Jones, District Utilities and Railroad Supervisor. Mr. Jones' responsibilities in the area of railroads are consistent with the general description of the responsibilities assigned to the transportation districts as outlined in additional finding #22. Jones' position in summary is as follows: Supervises, directs, reviews and recommends for approval all planning liaison procedures and right of way activities that relate to the adjustment and/or relocation of both public and private Utilities and Railroad facilities in coordination with the district design, construction, real estate, maintenance and planning sections and public agencies and private consulting engineering firms to accommodate the construction of highway improvement projects. Appellant's duties have statewide implications, he oversees the process and reviews district proposals including Jones' relating to railroad matters. Mr. Jones' utility work is subject to review by Mr. Bolitho.

In summary, the appellant's position is certainly not identical to any of the positions classified at the Advanced 2 level, but the appellant does perform work which requires comparable technical background to that of the Project Development Engineers who are now classified at the higher Advanced 2 level. Appellant is the chief technical consultant in the area of railroad matters, has continuing involvement in the development of policies and procedures regarding that area and must appear on a regular basis to represent the interests of the DOT or matters involving highway/railroad interface before the Office of the Commissioner of Transportation. These facts justify the same classification level for the appellant's position as that of the Project Development Engineers, and provides a basis for distinguishing the appellant's duties from those of the Jones and Bolitho positions at the Advanced 1 level.

Respondent contends that the Commission's recent decision in Schmidt v. DER, 90-0246-PC, 3/10/93, requires the Commission to follow the conclusions reached by the respondent's rating panel(s). In Schmidt, the appellant's position had a primary focus in the area of withholding tax rather than sales/use tax. The definition statement for the Revenue Agent 3 classification specifically referred to positions "responsible for performing the more complex and larger sales/use tax and/or withholding tax adjustments and/or other with-

holding tax activities." In contrast, the Revenue Agent 4 level definition statement specifically references "work involving field tax collection, bankruptcy or sales/use tax activities." None of the various allocation patterns identified at the RA 4 level made reference to withholding tax activities. In its decision, the Commission offered the following observation regarding Ms. Schmidt's allegations, including her contention that the rating panel had erred in assigning a higher classification level to positions performing advanced level work in sales/use tax than those performing advanced level work in withholding tax:

[A]ppellant is asking the Commission to second-guess the discretionary decisions made by program managers in matching positions and in rating duties and responsibilities using the 10 WQES factors. The Commission does not intend to substitute its judgment for that of these program managers because these are exactly the types of discretionary decisions the survey process and its statutory underpinnings leave to DER and to the program managers and other program experts who assist DER.

The Commission's observations in the Schmidt decision must be read in light of the very specific references in definition statements in the RA 3 and 4 specifications to sales/use tax and withholding tax. To have adopted the appellant's contention in that case would have required the Commission to ignore the language of the specifications, which placed positions performing advanced level work in the withholding tax area at the 3 level rather than the 4 level. Such a result would have required the Commission to substitute its judgment for that of the rating panel and to rewrite the class specifications. In Schmidt, the Commission held that it would not do that. However, in the present case, the Commission is not confronted with a situation where the appellant's subject matter responsibilities are specifically included at one class level, and not included in the specified allocation pattern at the other level. Here the rating panel's opinion is not entitled to conclusive effect and the analysis of the other evidence at hearing supports a conclusion that the appellant's position is more correctly classified at the Advanced 2 level.

Finally, the Commission feels compelled to comment on the application by DER of the Civil Engineer-Transportation classification specifications. As the records in this and other proceedings before the Commission have shown, DER's survey of engineering and related positions has utilized a variety of

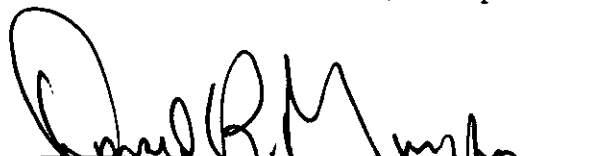


different surveying procedures depending on the employing agency of the positions under review. The Commission understands and accepts that the process used to survey positions and develop classification specifications needs not only to be valid and reliable but also flexible enough to accommodate differences among types of positions and employing agencies. However, once the classification specifications are finalized and approved by the Secretary of DER, the fluidity and flexibility of the process is substantially curtailed. The informal revision of the language of the specifications is required to end. In the instant case, the classification specifications under consideration identify and describe particular positions within the definition section. Both DER and the Commission are bound by the language of the definition section of these classification specifications in classifying positions. However, DER appears to have ignored this requirement in regard to the Project Development Engineer positions which DER has reallocated to the Advanced 2 classification despite the fact that they are identified and described as an entry in the "Examples of Duties" portion of the definition section of the Advanced 1 classification. Such action on DER's part adds confusion and uncertainty to a process which requires consistency in the application of clearly defined and stated standards and which does not permit the informal modification of the language of the definition section of the classification specifications.

Dated: June 23, 1993      STATE PERSONNEL COMMISSION

  
LAURIE R. McCALLUM, Chairperson

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DONALD R. MURPHY, Commissioner

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WILLIAM H. LAUTZ,  
 Appellant,

v.

Secretary, DEPARTMENT OF  
 EMPLOYMENT RELATIONS,  
 Respondent.

Case No. 91-0091-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 (Respondent) to reallocate the position held by William H. Lautz (Appellant) to Civil Engineer-Transportation-Advanced 1 instead of Civil Engineer-Transportation-Advanced 2. The following is based on a hearing on this matter.

FINDINGS OF FACT

1. At all times relevant, William H. Lautz, appellant, was employed at the Department of Transportation (DOT), Highways and Transportation Services, Central Office Design, Utilities Development Section, as an engineer.
2. Lautz's immediate supervisor was Ronald Nohr, the Chief Utilities Engineer and Section Chief.
3. Lautz's second-line supervisor was Joseph Dresser, the State Design Engineer for Highways and head of Central Office Design.
4. The Department of Employment Relations (DER) is a state agency and is responsible for personnel and employment relations policies and programs for state government, as an employer. It was functioning in that capacity at all time relevant to this controversy.
5. In 1985 DER initiated a survey of all state engineering positions. For various reasons it was discontinued until 1988.
6. Through legislative action, the survey became a part of the bargaining process and in April 1990 DER reached an agreement with the State Engineer Association to implement the Engineering Survey, effective June 17, 1990.

7. DER used the Wisconsin Quantitative Evaluation System (WQES) to obtain information about the engineering positions under survey.

8. The survey process was as follows:

1. Benchmark positions were identified with the assistance of agency coordinators

2. Composites of benchmarks and other positions were completed: Ten position items were rated and program summaries were provided.

3. A rating panel of 15 members, chosen on the recommendation of the agencies, reviewed 77 engineering or related benchmark positions. (All the large agencies had 2 raters on the panel.) The panel was facilitated by three DER personnel staff members.

4. The panel's raw scores of the positions were processed through a statistical analysis by a DER staff member. Factor weights were applied and bias adjustments made.

5. The final adjusted scores were then given to another DER staff member (Judy Burke) for review and cluster analysis: grouping positions based upon their adjusted scores and forming levels of positions, i.e., senior, advanced 1, and advanced 2.

6. The agencies rated the other positions, using various methods including whole job matches.

9. DOT used three teams of raters to rate its remaining positions. Lautz's position was rated at the Advanced 1 level and, along with other positions rated at DOT, was sent to DER for final decision, effective June 17, 1990.

10. Subsequently, DER instituted an informal appeal process for those employees dissatisfied with the reallocation of his/her positions.

11. Initially, DER personnel specialists Judy Burke and James Pankratz made the decisions in the informal appeals process in appeals of Senior to Advanced 1 level allocations. However, a rating panel was used to review informal appeals of persons allocated to the Advanced 1 level who were requesting reallocation to the Advanced 2 level.

12. In December 1990, panel members for informal appeals were sent composites to rate individually and independently. Being dissatisfied with the results using this procedure, DER reconvened the rating panel in April 1991. Only nine members participated in the April 1991 rating process.

13. Based on the April 1991 panel's rating of Lautz's position, DER wrote a letter to Lautz on May 10, 1991, denying his request for reallocation to the Advanced 2 level.

14. Lautz appealed the reallocation denial to the Commission on June 10, 1991.

15. Lautz's position description at the time of the reallocation was:

#### POSITION SUMMARY

Assist the Chief Utilities Engineer in all railroad related matters associated with highway improvement projects including:

- the development of guidelines for district office use
- the identification of needs and appropriate improvement concepts
- the analysis of plans to assure compliance with highway and railroad policies and practices
- the preparation of correspondence to parties affected by railroad-highway coordination
- the preparation of testimony for public hearings
- the advising and counseling of staff from district and central offices and from other state government offices and the legislature
- the monitoring of project costs to determine when program adjustments and financial management issues need to be addressed
- the review of plans and contract arrangements for construction or reconstruction of railroad structures and crossings and the modification or installation of warning devices to assure
  - the adequacy, accuracy, and reasonableness of estimates
  - the proper acquisition of land interests
  - the compliance with state, federal, regulatory agency, and railroad policies and requirements
  - the completeness of special provisions required for construction on or near railroad property

#### GOALS AND WORKER ACTIVITIES

25% A. Prepare correspondence, stipulations, railroad force work agreements, and other agreements involving work associated with railroad structures covering the interests of the state and local governmental units. Direct and oversee one or more subordinates who will assist in the following:

A.1 Initiate early contact with district office staffs on all future projects involving railroad coordination and aid them in the timely and effective development of needed information.

- A.2 Analyze highway plans and review highway programs to determine what arrangements need to be made with railroad companies.
- A.3 Prepare correspondence to railroad companies explaining to them how highway projects will affect their facilities and operations, and, in accordance with state and federal procedures, rules, and regulations, propose cost apportionment and maintenance arrangements.
- A.4 Prepare stipulations and force work agreements which include cost estimates and plan exhibits.
- A.5 Prepare letters of transmittal to railroad companies and the Federal Highway Administration for stipulations and agreements which summarize the contents.
- A.6 Coordinate the execution of stipulations and agreements with highway projects and distribute work progress reports.
- A.7 Inform district and central office staff of plan and design requirements related to railroad, state, and federal specifications for work involving railroad property.
- A.8 Communicate with district staff to arrange for construction plans required for proposals, stipulations, and agreements.
- A.9 Prepare and submit petitions for hearings before the Commissioner of Transportation to have structure improvements authorized.
- A.10 Represent the interests of the department at hearings.

20% B. Prepare correspondence, railroad force work agreements, and other agreements involving work associated with railroad grade crossing surfaces covering the interests of the state and local government units. Direct and oversee one or more subordinates who will assist in the following:

- B.1 Initiate early contact with district office staffs on all future projects involving railroad coordination and aid them in the timely and effective development of needed information.
- B.2 Analyze highway plans and review highway programs to determine what arrangements need to be made with railroad companies.
- B.3 Prepare correspondence to railroad companies explaining to them how highway projects will affect their facilities and operations and, in accordance with state and federal procedures, rules, and regulations, propose cost apportionment and maintenance arrangements.
- B.4 Prepare force work agreements which include cost estimates and plan exhibits.
- B.5 Prepare letters of transmittal to railroad companies and the Federal Highway Administration for agreements which summarize the contents.

- B.6 Coordinate the execution of agreements with highway projects and distribute work progress reports.
- B.7 Inform district and central office staff of plan and design requirements related to railroad, state, and federal specifications for work involving railroad property.
- B.8 Communicate with district staff to arrange for construction plans required for proposals and agreements.
- B.9 Prepare correspondence to and meet with representatives of the Office of the Commissioner of Transportation, Department of Transportation, Federal Highway Administration, engineering consultants, local units of government, and the general public for the purpose of exchanging information and providing guidance and recommendations regarding railroad at-grade crossings.
- B.10 Determine the type of crossing surface and method of construction best suited for the type and volume of rail and highway traffic.
- B.11 Prepare and submit petitions for hearings before the Commissioner of Transportation to receive authorization for grade crossing alterations, establishment of new grade crossings, signing crossings as "exempt", closure of unnecessary grade crossings, and repair of grade crossings as needed.
- B.12 Represent the interests of the department at hearings.
- B.13 Monitor project costs so that program adjustments and financial management issues can be addressed in a timely manner.

25% C. Prepare correspondence, railroad force work agreements, and other agreements involving work associated with the installation, modification, and relocation of railroad crossing warning devices. Direct and oversee one or more subordinates who will assist in the following:

- C.1 Initiate early contact with district office staffs on all future projects involving railroad coordination and aid them in the timely and effective development of needed information.
- C.2 Analyze highway plans and review highway programs to determine what arrangements need to be made with railroad companies.
- C.3 Prepare correspondence to railroad companies explaining to them how highway projects will affect their facilities and operations and, in accordance with state and federal procedures, rules, and regulations, propose cost apportionment and maintenance arrangements.
- C.4 Prepare force work agreements which include cost estimates and plan exhibits.

- C.5 Coordinate the execution of agreements with highway projects and distribute work progress reports.
- C.6 Inform district and central office staff of plan and design requirements related to railroad, state, and federal specifications for work involving railroad property.
- C.7 Communicate with district staff to arrange for construction plans required for proposals and agreements.
- C.8 Prepare correspondence to and meet with representatives of the Office of the Commissioner of Transportation, Department of Transportation, Federal Highway Administration, engineering consultants, local units of government, and the general public for the purpose of exchanging information and providing guidance and recommendations regarding railroad crossing warning devices.
- C.9 Determine the type of crossing warning devices best suited for the type and volume of rail and highway traffic, and crossing geometrics.
- C.10 Prepare and submit petitions for orders or hearings before the Commissioner of Transportation to receive authorization for installation, modification, and relocation of railroad crossing warning devices.
- C.11 Represent the interests of the Department at hearings.
- C.12 Monitor project costs so that program adjustments and financial management issues can be addressed in a timely manner.
- C.13 Review orders of the Office of the Commissioner of Transportation and distribute to district offices for project scheduling.
- C.14 Request railroad companies to prepare plans and cost estimates for furnishing and installing material for crossing warning devices by force work.

15% D. Prepare correspondence and agreements for parallel encroachments with and conveyances for acquisition of land interests from railroad companies. Direct and oversee one or more subordinates who will assist in the following:

- D.1 Initiate early contact with district office staffs on all future projects involving railroad coordination and aid them in the timely and effective development of needed information.
- D.2 Analyze highway plans and review highway programs to determine what arrangements need to be made with railroad companies.
- D.3 Prepare correspondence to railroad companies explaining to them how highway projects will affect their facilities and operations, and, in accordance with state and federal procedures, rules, and regula-

tions, propose reimbursement for land use and facilities adjustments.

- D4. Prepare force work agreements which include cost estimates and plan exhibits.
- D5. Prepare easement deeds which include plan exhibits and computations of offering price.
- D6. Prepare letters of transmittal to railroad companies and the Federal Highway Administration for easement deeds and agreements which summarize the contents.
- D.7 Coordinate the execution of agreements with highway projects and distribute work progress reports.
- D.8 Inform district and central office staff of plan and design requirements related to railroad, state, and federal specifications for work involving railroad property.
- D.9 Communicate with district staff to arrange for construction plans required for proposals, easements, and agreements.

15% E. Monitor, evaluate, and recommend changes in the development and execution of railroad-highway coordination. Direct and oversee one or more subordinates who will assist in the following:

- E.1 Analyze railroad cost estimates and plans for conformance with state and federal standards and the Orders of the Commissioner of Transportation.
- E.2 Evaluate the adequacy and definitiveness and, when necessary, offer improvements in the contract special provisions prior to bid lettings for highway projects involving railroad property, including insurance provisions.
- E.3 Inform district and central office staff and FHWA personnel of contract arrangement progress by means of a Railroad Negotiation Status Report.
- E.4 Evaluate proposed changes in guidelines, procedures, and statutes for acceptability, effectiveness, and problem resolution.
- E.5 Inform district and central office staff on procedures, areas of concern, new regulations, and practices.
- E.6 Prepare certification of projects to the Federal Highway Administration concerning arrangements and coordination of railroad matters with the planned construction.
- E.7 Assist the Bureau of Accounting and Auditing in the review of problem or questionable billings from railroads for furnishing and installing material.
- E.8 Evaluate potential railroad related changes to the Facilities Development Manual and draft and recommend changes and additions to manual



- E.9 Review project plans for each contract letting to determine where railroad provisions are needed in the contract special provisions.
- E10. Review sample proposals for each contract letting and add railroad provisions where needed.
- E11. Prepare memorandum to State Design Engineer for Highways for each contract letting advising as to the status of railroad negotiations for projects in the letting.
- E12. Prepare memorandum to State Construction Engineer for Highways for each contract letting advising if railroad negotiations have been completed and recommending what action to take.
- E13. As assigned, assist on special projects as determined by workload and as directed from time to time by the Chief Utilities Engineer.

16. The classification specifications for the Civil Engineer-Transportation series states in part:

CIVIL ENGINEER - TRANSPORTATION - ADVANCED 1

CIVIL ENGINEER - TRANSPORTATION - ADVANCED 1 - MANAGEMENT

This is advanced level 1 civil engineering work in such areas as planning, design, construction, maintenance, traffic, materials and/or operation of highways, structures, and other transportation facilities for which the department may be responsible. Positions at this level differ from lower level positions in that the engineer develops and follows his/her own broadly defined work objectives and the review of the work is limited to broad administrative evaluation by the supervisor. Positions at this level have extensive authority to deal with local officials, Federal Highway Administration officials, and agency top officials, especially in highly sensitive and complex issues and areas. The work performed by these engineers requires a high level of interpretation and creativity and has major impact on the planning, design, construction, maintenance and operation of transportation facilities. The engineer may be considered the in-depth expert in a specialty area. The work is performed under general supervision.

CIVIL ENGINEER - TRANSPORTATION - ADVANCED 2

CIVIL ENGINEER - TRANSPORTATION - ADVANCED 2 - MANAGEMENT

This is advanced level 2 civil engineering work in such areas as planning, design, construction, maintenance, traffic, materials and/or operation of highways, structures, and other transportation facilities for which the department may be responsible. Positions allocated to this class perform the most technically complex project management engineering assignments involving policy, standards, and procedure development, evaluation, budget and administration.

Employees at this level function as the chief technical consultant to lower level engineers, engineer supervisors, and engineer managers. Work is performed under the general policy direction of an engineer manager with authority to make statewide decisions on major technical/professional matters.

17. As Railroad Development Engineer, Lautz performs as the chief technical consultant on rail-highway matters. Lautz's responsibilities, degree of supervision and required technical background are very comparable to positions of Project Development Engineers, such as James Whalen, David Lyford, Donald Struckmeyer, Harold Amundson, and Leonard Stanek.

18. The following parallels and comparisons can be made of Project Development Engineer positions, Project-Supervisor positions, and Lautz's position:

AREAS:	Invol. in Project	No. of Issues	No. of Projects
<u>Positions:</u>			
Proj. Devel. Eng.	general	many	many
Proj. Sup. (Dist.)	in-depth	many	few
Lautz	in-depth	few	many

All of these positions perform the most technically complex engineering assignments.

19. The Utilities Development Engineer position held by J. H. Bolitho differs from Lautz's position in the following respects: Bolitho's supervisor, Ron Nohr, who also supervises Lautz, has the position title of Chief Utilities Engineer and is the chief technical consultant in utilities. In-depth utility project work is not performed in the central office but at the district level.

20. The duties and responsibilities of Lautz's position are more comparable to those of positions allocated to the Civil Engineer - Transportation - Advanced 2 level.

#### CONCLUSIONS OF LAW

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

2. Appellant has the burden of proving respondent's decision to reallocate his position to Civil Engineer - Transportation - Advanced 1 rather than Civil Engineer - Transportation - Advanced 2 was incorrect.

3. Appellant has sustained that burden of proof.
4. Appellant's position is more appropriately allocated as Civil Engineer - Transportation - Advanced 2.

#### OPINION

The issue in this case is whether the position held by appellant should be classified as Civil Engineer - Transportation - Advanced 1 or Civil Engineer - Transportation - Advanced 2. The classification specifications for the Civil Engineer - Transportation series distinguish the Advanced 2 level as: "Positions ... perform(ing) the most technically complex project management engineering assignments.... Employees at this level function as the chief technical consultant ... under general policy directives of an engineer manager with authority to make statewide decisions on major technical/professional matters."

Joseph Dresser, State Design Engineer for Highways and former Chief Utilities Engineer from 1986-1989, testified that appellant served as chief technical consultant in rail negotiations, similar to Project Engineer Stanek and others referenced in Findings of Fact 5. Dresser also testified that authority was formally delegated to Stanek to expedite review, but this was not necessary for appellant since he also performed the function.

Ronald Nohr, current Chief Utilities Engineer and immediate supervisor of appellant, testified that appellant was the technical consultant for projects involving railroads and that he (Nohr) is primarily involved in rail projects at the managerial and policy level. Further Nohr testified that Bolitho, whom he also supervised, deals at a different level with utilities than appellant with railroad projects.

These two witnesses testified that district officers are responsible for coordinating and negotiating utilities projects. In contrast, appellant has that responsibility for rail projects. Jack Jones, a district office supervisor who is responsible for utilities and rail projects, is expected to consult with appellant on rail matters.

Judy Burke, respondent's Personnel Analyst, testified that the Engineering Master Rating Panel reviewed appellant's position, using his responses to the WQES questionnaire, and submitted a raw score to respondent. Respondent took the panel's raw score, processed it through a statistical

analysis, then through grouping together positions with similar scores, determined that the score for appellant's position fit within the group ranked at the Advanced 1 level. The cutoff score for Advanced 2 level positions was 441. Appellant's position was rated at 411.5. Burke testified that the WQES questionnaire process provided an 80-90 percent accuracy rate.

After appellant appealed, Burke performed an informal "whole-job" analysis of appellant's position. Based on this analysis, Burke testified that appellant's position was comparable to James Bolitho, a Utilities Development Engineer; Jerry Vesperman, a Contract Developmental Engineer; and Jack Jones, a District Utilities and Railroad Supervisor; all rated at the Advanced 1 level.

Bolitho, a Utilities Engineer, assists his supervisor, Ron Nohr, the Chief Utilities Engineer. Vesperman reviews road and bridge improvement and maintenance contracts. He is accountable to the Chief Plans and Contract Engineer. Jones, a district office supervisor, is responsible for the production of projects within a framework provided by the central office.<sup>1</sup>

Respondent argues that appellant's position best fits the general definition language for Civil Engineer - Transportation Advanced 1 level positions and is comparable to those positions testified to by Judy Burke as being allocated to the Advanced 1 level. Also, respondent argues that the rating panel concluded appellant's engineering projects were not among "the most technically complex" and therefore did not meet the standard for Advanced 2 level positions. Finally, respondent argues that appellant's position lacked involvement in policy development, program evaluation, budget determination and administration.

Based on the evidence presented, the Commission believes appellant's position fits the classification specifications for the Advanced 2 level. The most persuasive testimony regarding appellant's position was the testimony of appellant's first- and second-line supervisors. These witnesses brought personal knowledge of the various positions under review for comparison. It is clear from their testimony that appellant's engineering projects are as technically complex as those of the positions at the Advanced 2 level. Also, it is clear from their testimony, that appellant is, in fact, the chief technical consultant for rail projects.

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<sup>1</sup> This sentence has been revised from the proposed decision to better reflect the record.

Respondent's arguments regarding appellant's lack of involvement in policy development, program evaluation, budget and administration appear inconsistent with the testimony of his supervisors. Also, these responsibilities are a minimal part of positions at the Advanced 2 level, and appellant's duties and percentages of duties in these areas were not clearly distinguishable from Advanced 2 level positions.

Based on the evidence presented, the Commission believes that appellant's position fits the classification specifications for the Advanced 2 level.

ORDER

The action of respondent is rejected and this matter is remanded for action in accordance with this decision.

Dated: \_\_\_\_\_, 1992      STATE PERSONNEL COMMISSION

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LAURIE R. McCALLUM, Chairperson

DRM:rcr

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DONALD R. MURPHY, Commissioner

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GERALD F. HODDINOTT, Commissioner

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