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ROBERT VON RUDEN, GARY *
 BROCKINGTON, JOHN P. BURKHARDT, *
 CORDELL B. LINDALL, GILBERT O. *
 BENNETT, WILLIAM F. LEISSO, *
 EDWARD M. BIDDICK, WAYNE L. *
 DESENS, THOMAS H. ROHRER, *
 ANTHONY A. LUKOMSKI, RICHARD C. *
 WENDT, JAMES VOBORSKY, DONALD R. *
 BEATY, FRANKLIN J. PABST, ALLEN C. *
 BEYER, GEORGE E. ROCK, JOHN E. *
 BERGGREN, KEITH JURKOWSKI, KIRK *
 KONKEL, *

Appellants, *

v. *

Secretary, DEPARTMENT OF *
 EMPLOYMENT RELATIONS, *

Respondent. *

Case Nos. 91-0149, 0138, 0152, *
 0153, 0154, 0155, 0156, *
 0157, 0159, 0160, 0164, *
 0166, 0167, 0169, 0172, *
 0175, 0178, 0180-PC, *
 90-0329-PC *

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INTERIM
 DECISION
 AND
 ORDER

These matters involve appeals of reallocations emanating from a survey. As set forth in a prehearing conference report dated January 2, 1992, the parties were "to submit briefs on the following legal issue which will be decided as a preliminary legal matter by the Commission: whether non-state employees can properly be considered under the class specifications in question as FTE's (full time equivalent) supervised."

The issues raised by these cases are very similar to the issues raised in Somers et al. v DER, 91-0197-PC, etc. In fact, respondent filed an identical brief in both groups of cases. Therefore, and because in the Commission's opinion the same decision is warranted in both groups of cases, it will rely on its decision in Somers, a copy of which is attached, rather than to reiterate the same points here. However, the Commission will address separately certain

arguments raised in appellants' brief in the instant cases which were not specifically addressed in the Somers cases.

Appellants cite Nutrena Mills, Inc. v. Earle, 14 Wis. 2d 462, 111 N.W. 2d 491 (1961); and In re Spring Valley Meats, Inc., 94 Wis. 2d 600, 288 N.W. 2d 852 (1980); for the proposition that "when interpreting written documents, the documents are interpreted against the drafter of the documents." Appellants go on to argue that since "the class specifications can be interpreted in more than one way, the Personnel Commission is compelled to construe the class specifications against the position of DER since they drafted them" However, the actual holdings of these cases were: "contracts should be construed against the party who drew them," Nutrena Mills, 14 Wis. 2d at 466, and "ambiguous contracts are to be construed against the maker or drafter." (citations omitted), In re Spring Valley Meats, Inc, 94 Wis. 2d at 609. In the instant cases, the Commission is not construing a contract but an administrative policy. In Beal v. First Federal Sav. & Loan Asso. of Madison, 90 Wis. 2d 171, 183, 279 N.W. 2d 693 (1979), the Court held. "It is black-letter law that the interpretation by an administrative agency of its own regulation is entitled to controlling weight unless inconsistent with the language of the statute or clearly erroneous." Section 227.01(13)(L), Stats., exempts a class specification from the definition of an administrative rule, and the Commission does not stand in the same relationship to the transactions appealed here as does a court to an administrative transaction. However, since the class specification is an administrative policy similar to a rule, it also is not appropriate to mechanistically interpret them against DER as the drafter.

Appellants also contend it is significant that "the classification requirement of civil engineer supervision is not prefixed by the word 'state.'" In the Commission's opinion, it is not significant that DER did not prefix with the word "state" every possible word or phrase in the class specification that was intended to refer to the state or have a state connotation, inasmuch as the document is headed "STATE OF WISCONSIN" and provides a classification structure for state positions. Furthermore, as discussed in Somers, the class specification at §I.C.3. explicitly ties supervision to supervision of state employes by reference to §111.81, Stats.

In the same vein, appellants argue as follows:

Secondly, the word "civil engineer" is a generic nonspecific entity. If, in fact, the class specifications intended to refer to State employees, it would have been easy for the class specifications to reference in capital letters the various civil engineering specification classifications. The fact that the civil engineering reference is in small case is significant.

In the Commission's opinion, it is far more significant that the class specification uses terms derived from the class specifications for other classification series than that these terms are in lower case. For example the Civil Engineer-Transportation Supervisor 4 definition refers to the supervision of "senior or advanced civil engineers in transportation." The class specification for the Civil Engineer-Transportation series (Respondent's Exhibit B) includes these levels.

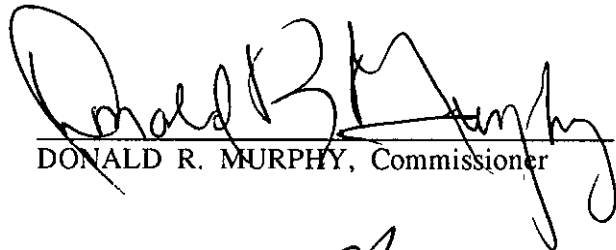
Finally, appellants argue that the inclusion of non-state employees is consistent with the overall intent of the specifications, which "is to attempt to equalize the compensation levels of employees who perform work similarly in the area of skill, effort, and responsibility." As discussed in Somers, the Commission only has the authority to interpret class specifications, not to revise or create them. On its face, the class specification for the Civil Engineer-Transportation Supervisor series excludes positions which do not supervise state employees. Respondent has made the decision, which is its prerogative under §§230.09(1) and (2)(am), Stats., that at least in the context of this series and with respect to supervisory responsibilities, class levels and associated pay ranges are to be determined by reference to the number and level of state employees supervised. The Commission lacks the authority to decide for perceived reasons of equity, that non-state employees should be included.¹ To do so would go beyond a reasonable interpretation of the class specification to add a concept that is not there.

¹ The Commission notes, however, without attempting to decide which approach is more consistent with the overall intent of the class specifications, that it is not facially apparent that the direction of non-state employees in consultant firms involves the same level of "skill, effort, and responsibility" as the direct supervision of state employees. Even assuming, arguendo, that the engineering aspects of the two activities are comparable, the supervision of state employees involves many issues of personnel administration (transactions involving civil service laws, contract provisions, etc.) not present with respect to the direction of employees of outside consulting firms.

ORDER

The Commission having concluded that non-state employes cannot properly be considered under the class specification for the Civil Engineer-Transportation Supervisor series as FTE's (full time equivalent) supervised, appellants are to advise within 20 days of the date of service of this order whether they intend to continue to pursue these appeals. If they do not, these appeals will be dismissed. If they do, a status conference will be scheduled.

Dated: July 8, 1992 STATE PERSONNEL COMMISSION


DONALD R. MURPHY, Commissioner

AJT/gdt/2


GERALD F. HODDINOTT, Commissioner