

STATE OF WISCONSIN

PERSONNEL COMMISSION

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JOEL J. OLSON, EARL GUTZMER,
and ROGER W. BECK,

Appellants,

v.

Secretary, DEPARTMENT OF
EMPLOYMENT RELATIONS,

Respondent.

Case Nos. 92-0071-PC
92-0081-PC
92-0089-PC

* * * * *

INTERIM
DECISION
AND
ORDER

This matter is before the Commission following the promulgation of a proposed decision and order pursuant to §227.46(2), Stats. The Commission, having considered appellants' response to the proposed decision, will adopt the proposed decision as its final substantive resolution of these cases. The proposed order will be amended in the interest of clarity.

In their response to the proposed decision, appellants continue to contend that their positions are most appropriately classified at the HVAC Specialist level. Most of their arguments are reiterations of their earlier contentions and fail to come to grip with the requirement in the position standard that such positions "must spend a significant portion of time (typically 90% or more) performing advanced work or HVAC and/or refrigeration equipment and systems." (emphasis added). Appellants contend that their work involving maintenance and upkeep should count toward this requirement. However, this is inconsistent with the following language in the position standard: "These positions are responsible for the most specialized and technically advanced environmental controls and typically lead maintenance mechanics in the more routine maintenance and repair of systems or perform this work incidental to their primary function as the systems expert."

Appellants also contend that the proposed order is confusing. In the interest of avoiding possible confusion, the proposed order will be amended as set forth below.


ORDER

The proposed decision and order, a copy of which is attached, is incorporated by reference as the Commission's final disposition of the merits of this matter, except that the proposed order is amended to read as follows:

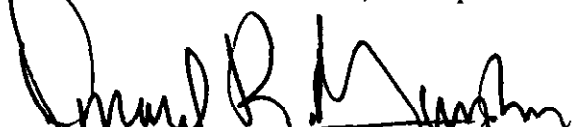
Respondent's action of reallocating appellants' positions to MM 2 rather than MM 3 or HVAC Specialist is affirmed in part (denial of HVAC Specialist classification) and rejected in part (denial of MM 3 classification), and this matter is remanded for action in accordance with this decision.

Dated: September 9, 1994

STATE PERSONNEL COMMISSION


LAURIE R. McCALLUM, Chairperson

AJT:rcr


DONALD R. MURPHY, Commissioner


JUDY M. ROGERS, 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.

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

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

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

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JOEL J. OLSON, EARL GUTZMER,
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v.

Secretary, DEPARTMENT OF
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Respondent.

Case Nos. 92-0071-PC
92-0081-PC
92-0089-PC

* * * * *

PROPOSED
DECISION
AND
ORDER

These cases are appeals of the reallocations following a survey of appellants' positions to Maintenance Mechanic 2 (MM 2). Appellants assert their positions at least should be at the MM 3 level, or preferably in the Heating, Ventilating, Air Conditioning (HVAC) - Specialist classification.

Appellants have been employed at the University of Wisconsin - Whitewater (UW-W) for a number of years. Their positions are in the Department of Facilities Planning and Management.

The current Maintenance Mechanic position standard (Respondent's Exhibit 2) provides in the "Inclusions" section that positions in this series "devote the majority of their time and are primarily responsible for providing mechanical maintenance to various building systems and other related equipment." The MM 2 and MM 3 definitions include the following language:

MAINTENANCE MECHANIC 2

This is general mechanical maintenance and repair work of a more complex nature [than MM 1]. Employees at this level are generally given instructions on more complex tasks to be completed and then go out and make the repair. This is distinguished from a maintenance mechanic 3 who is able to go out independently and troubleshoot a problem, diagnose the problem, determine alternatives to remedy the problem, make a recommendation on the best method to solve the problem and make the repair. Employees perform a full range of both routine and more complex mechanical maintenance and repair work to building systems. Employees in this class repair and maintain electrical and electronic, plumbing and various other types of mechanical and related equipment. The maintenance and repair work includes preventive maintenance and minor repairs to HVAC equipment. The work may also

include assisting higher level maintenance personnel and/or building trades craftworkers. Work at this level is characterized by the latitude to exercise individual initiative. Work is performed under the general direction of a higher level maintenance mechanic, HVAC and/or refrigeration specialist, maintenance supervisor or journey level building trades craftworker.

MAINTENANCE MECHANIC 3

This is advanced level mechanical maintenance and repair work. Employees in this class operate, maintain and make repairs on electrical, plumbing, heating, refrigeration, air conditioning and other mechanical systems and apparatus commonly used in office and institutional buildings and building complexes. There are five general allocation patterns for this level: ... 4) Area Maintenance - employees who are independently responsible for an entire mechanical maintenance operation in an institution, large state office building, a specific assigned area of a complex operation or a fish hatchery.... For all allocations work is normally performed under the general supervision of a maintenance supervisor, superintendent of buildings and grounds, or an administrator.

The HVAC Specialist position standard (Respondent's Exhibit 1) includes the following language in the "Inclusions" section:

This classification encompasses positions which function as system experts in the HVAC and/or refrigeration area. These positions must spend a significant portion of time (typically 90% or more) performing advanced work on HVAC and/or refrigeration equipment and systems. This classification is limited to only those few positions which are specifically assigned to perform advanced systems setup, monitoring, adjustment and control; troubleshooting, repair and systems modification; planning and coordinating HVAC and/or refrigeration projects; and would typically guide Maintenance Mechanics in the maintenance and repair of sophisticated HVAC and/or refrigeration equipment systems. The more routine adjustment, maintenance and repair to the systems is typically performed by positions allocated to the Maintenance Mechanics series, however, some routine work may be done by these types of positions as an incidental portion of their primary function as systems experts.

The HVAC Specialist definition reads as follows:

This is advanced level HVAC and/or refrigeration work performed under minimal supervision. Employees in this class troubleshoot, repair, adjust, modify and remodel sophisticated HVAC and/or refrigeration control systems (pneumatic, electric and electronic) and related mechanical and electronic equipment. These positions are responsible for the most specialized and technically advanced environmental

controls and typically lead Maintenance Mechanics in the more routine maintenance and repair of the systems or perform this work incidental to their primary function as the systems expert. These controls are used to balance elements such as outside vs. inside temperature, humidity and air velocity, taking into consideration factors such as time of day usage, system capabilities and energy efficiency. In addition, these employees may be responsible for the design, development, operation and ongoing maintenance of a computerized energy management system used to monitor and control heating and air conditioning systems and report and make recommendations on energy conservation procedures, controls and activities.

Appellants' positions are quite similar. They work under the very general supervision of a maintenance supervisor. Each is independently responsible for certain buildings on campus. They are responsible for all aspects of the operation of the machines in these buildings from routine maintenance¹ to building repair work to the extent of their competence, at which point they make the decision whether to call in a craftworker or other specialist or private contractor. The machines for which they are responsible include primarily large, complex chillers and other commercial air conditioning equipment and controls (primarily pneumatic). In addition to responding to work orders provided by management, appellants perform their activities in the course of making regular rounds of the buildings for which they are responsible, during which they check on the operation of the machines and respond to problems they perceive. Appellants perform some "Examples of Work Performed" in the MM position standard that are found under all three MM levels.

Appellants have made a strong showing that their positions should have been reallocated to the MM 3 rather than the MM 2 level. It is clear that they satisfy a significant criterion in the MM position standard that distinguishes the MM 2 from the MM 3 level:

Employees at his level [MM 2] are generally given instructions on more complex tasks to be completed and then go out and make the repair. This is distinguished from a maintenance mechanic 3 who is able to go out independently and troubleshoot a problem, diagnose the

¹ Shortly before the implementation of the survey on February 9, 1992, a private sector contractor took responsibility for some of the routine maintenance of the chiller units, such as routine oil changes, and for the spring startups and fall shutdowns of these units. The contractor was to handle repair work on an as-needed basis when the appellants were unable to handle the problems.

problem, make a recommendation on the best method to solve the problem and make the repair. (emphasis added)

Another factor supporting the MM 3 level pertains to the language in the MM 2 definition that "maintenance and repair work includes preventive maintenance and minor repairs to HVAC equipment." (emphasis added). The MM 3 definition provides:

This is advanced level mechanical maintenance and repair work. Employees in this class operate, maintain and make repairs on electrical, plumbing, heating, refrigeration, air conditioning and other mechanical systems and apparatus commonly used in office and institutional buildings and building complexes. (emphasis added)

This language provides another distinction between the MM 2 and MM 3 levels -- the MM 2 level does minor repair work and the MM 3 level does more advanced repair work on equipment that is associated with institutional buildings. The record reflects that appellants do some relatively major repair work on their chillers, cooling towers, etc. The testimony of appellants and their supervisor during the relevant period, as well as by the incumbents of the other positions involved in the comparison, clearly establishes that the level of complexity of their repair work exceeds that of a coworker (Richard Gransee) whose position is classified at the MM 3 level, and is at about the same level as performed on similar equipment by another coworker (Anthony Brown) whose position is classified at the HVAC - Specialist level.

Another factor supporting an MM 3 level for appellants' positions is that while they perform some of the work examples set forth in the position standard at all three levels, the most significant part of their activities falls within this example at the MM 3 level: "Inspect, repair and maintain commercial HVAC equipment including boilers, chillers and their control units." (emphasis added) This is particularly significant because while a number of activities could arguably be subsumed within work examples at all three levels, only the MM 3 level identifies work on commercial HVAC equipment such as chillers. That is, while appellants' work on chillers facially falls within more generic work examples at lower levels, such as "Repair and service various refrigeration and air conditioning units" (MM 2), and "Perform routine preventive maintenance and assist making minor repairs to HVAC systems" (MM 1), the fact that appellants are involved with commercial

chillers and related equipment is more consistent with the MM 3 level. This conclusion is reinforced by the reference in the MM 3 definition to "apparatus commonly used in office and institutional buildings and building complexes."

In addition to these points involving the MM position standard, appellants' case is also bolstered by a comparison of their position to the MM 3 position occupied by Mr. Gransee, mentioned above. The testimony of Mr. Gransee, the appellants, and their supervisor, makes it clear that these positions are very similar in all relevant respects except for the greater complexity of the equipment for which appellants are responsible,² and the greater degree of complexity and responsibility associated with work on that equipment.

Respondent's post-hearing brief presents a number of contentions in opposition to the MM 3 level. Respondent argues that classifications are based on duties actually assigned by management, and that appellants' "official"³ PD's (Respondent's Exhibits 6, 11 and 15) reflect a majority of their time in routine preventive maintenance. This contention is not conclusive, for two reasons.

First, while management has the right to assign duties, this is not a case where management disagrees with the employees over what the employees have been authorized to do. An example of this type of situation would be if the appellants were performing repair work beyond the level authorized by management. Here, there is no dispute about what the employees have been authorized to do; there is no contention, for example, that appellants have been told to stop doing the most complicated repairs. Rather, the parties dispute the proper characterization of their activities in the context of the position standard and more general classification principles. The PD's in question represent how management characterizes appellants' positions, but are not conclusive and must be considered in conjunction with what the rest of the record reflects about the nature and level of complexity of appellants' work.

Second, the Commission does not agree with the premise underlying respondent's contention concerning the PD's -- that a majority of time spent

² Mr. Gransee's buildings do not have commercial air conditioning equipment.

³ Appellants prepared their own versions of their PD's which management refused to approve.

on preventive maintenance activities on the type of equipment for which appellants are responsible is inconsistent with the MM 3 level. The obverse of this proposition is that the MM 3 level requires that a majority of a position's time be devoted to those activities which distinguish the MM 3 level from the MM 2 level, which is exemplified in respondent's brief as follows:

Appellants contend that their positions should be at the Maintenance Mechanic 3 level because they are "able to go out independently and troubleshoot a problem, diagnose the problem, make a recommendation on the best method to solve the problem and make the repair." (Resp. Exh. 2, p. 2). (Emphasis added.) The record reveals, however, that if Appellants do meet that standard, they do not do so for a majority of their time and a majority of their work is not the "advanced level mechanical maintenance and repair work necessary for Maintenance Mechanic 3 status." (Resp. Exh. 2, p. 3).

It of course is correct that at least a majority of the duties and responsibilities of a position must be identifiable at a higher level to justify classification at that higher level. However, this does not mean that every criterion associated with the higher level classification must in some way involve a majority of the employee's time. For example, one way of differentiating two levels in a series may be lead worker status. While a position would have to have lead work responsibility a majority of the time to qualify for the higher level, it would not have to exercise lead work functions a majority of the time.

In the instant case, the MM position standard provides that an MM 3 "is able to go out independently and troubleshoot a problem, diagnose the problem, make a recommendation on the best method to solve the problem and make the repair." This means that when faced with a problem, the employee must exercise this degree of independent exercise of discretion, as opposed to the MM 2 who is "given instructions on more complex tasks to be completed." It does not mean that the MM 3 must spend a majority of total time *independently trouble shooting, deciding how to resolve, and resolving* problems. Similarly, the MM 3 repair work must be more complex than that performed at the MM 2 level; the MM 3 does not have to be performing advanced level repair work a majority of total time.

This conclusion is reinforced by the comparison of appellants' position to Mr. Gransee's, which respondent has maintained is properly classified at the MM 3 level. The record evidence strongly supports the conclusion that his job

is performed very much like the appellants, with the primary exception being that he does not have responsibility for large and complex air conditioning equipment. The record reflects that Mr. Gransee does not spend more time than appellants, and he may spend less time, in making independent troubleshooting type decisions and in doing complex repairs.

Respondent also argues that appellant's claim to be doing MM 3 level work is undermined by the availability of craftworkers and outside contractors to do the most complex repairs. However, the record reflects that these workers were called in only infrequently. The contract with Murphy & Miller that was entered into shortly before the survey implementation date will result in appellants doing less routine maintenance (e.g., oil changes), and the contractor doing fall turnoffs and spring startups of the air conditioning equipment. However, the contractor will only be involved in repairs on an as-needed basis, which does not constitute a change. Since the repair aspect of this work is more significant with respect to class level, the Commission is not prepared to conclude that the implementation of this contract takes appellants' positions below the MM 3 level, particularly in light of the comparison to the Gransee position, which has no commercial air conditioning equipment at all.

Respondent also contends that Mr. Gransee's position is not comparable to appellants' position. Respondent argues that Mr. Gransee's pre-survey PD shows a "Maintenance Mechanic - 3 (HVAC Specialist) subspecialty under the old class specifications, and reflects more of an orientation on repair and less on maintenance. In the absence of the earlier class specification in this record, little weight can be attached to the HVAC Specialist suffix on this PD. More significantly, the testimony of Mr. Gransee and the appellants and their supervisor clearly establishes that Mr. Gransee's position is very comparable to appellants with the primary exception that it has no commercial air conditioning equipment and in that regard is less complex. Respondent also contends that it can be inferred from a comparison as to the number of facilities for which these positions are responsible and the amount of time required for making rounds, that Mr. Gransee spends less time on maintenance and more on repairs than appellants. However, Mr. Gransee testified explicitly that he spent about three or four hours a day on building checks and that his repair activities were basically the same as appellants.

With respect to the HVAC- Specialist classification, it is clear from the record, and particularly the amount of time appellants spend in maintenance activities, that they do not satisfy the requirements for this level. The HVAC - Specialist position standard (Respondent's Exhibit 1) contains the following in the statement of "inclusions":

This classification encompasses positions which function as system experts in the HVAC and/or refrigeration area. These positions must spend a significant portion of time (typically 90% or more) performing advanced work on HVAC and/or refrigeration equipment and systems. This classification is limited to only those few positions which are specifically assigned to perform advanced systems setup, monitoring, adjustment and control; troubleshooting, repair and systems modification; planning and coordinating HVAC and/or refrigeration projects; and would typically guide Maintenance Mechanics in the maintenance and repair of sophisticated HVAC and/or refrigeration equipment systems. The more routine adjustment, maintenance and repair to the systems is typically performed by positions allocated to the Maintenance Mechanic series, however, some routine work may be done by these types of positions as an incidental portion of their primary function as systems experts.

The record in this case falls considerably short of supporting a finding that appellants serve as system experts and spend 90% of their time performing advanced HVAC work. Such a conclusion would be inconsistent with the amount of maintenance and inspection appellants must perform, as well as the explicit testimony of one of their own witnesses, Howard Holland of Johnson Controls. Appellants have not really advanced this contention per se, but rest their case for the HVAC - Specialist on a comparison to the position at that level occupied by Anthony Brown.

The official PD for Mr. Brown's position is more consistent with the HVAC - Specialist classification than those of appellants. However, the testimony of Mr. Brown, the appellants, and their supervisor, establishes that Mr. Brown's job activities are very similar to appellants'. He is responsible for a group of buildings with equipment very similar to appellants, and functions very similarly to them in practice. Respondent attempts to infer from the fact that Mr. Brown needed to formally requisition a craftsman when needed, while appellants had theirs more readily available, that appellants had less advanced work. However, the testimony of the people in the best positions to know contradicts this inference.

In summary, while there is support in the record for the conclusion that Mr. Brown's position has somewhat more control work than appellants', the great bulk of their activities involves performing the same type of work on the same type of machines. If Mr. Brown's position is correctly classified at the HVAC - Specialist level, this position comparison would support appellants' claim to that class level. However, this case falls in the unusual category of cases where the key comparison position appears to be incorrectly classified. The Commission is constrained to conclude on the basis of this record, that notwithstanding DER's contention that the Brown position is correctly classified at the HVAC - Specialist level, it simply does not meet the requirements for this classification set forth in the position standard.

As noted above, it is clear from the nature of appellants' work involving nearly complete responsibility for the machinery in their assigned buildings that they spend significant percentages of their time on maintenance and inspection activities. Mr. Brown has very similar responsibilities in this regard, and it must be concluded on this record that his position does not satisfy the HVAC - Specialist requirement of functioning as a HVAC system expert and spending 90% of the time performing advanced HVAC work. Again this conclusion is also supported by Mr. Holland's explicit testimony which also addressed Mr. Brown's work.

Class specifications or position standards are "the basic authority for the assignment of positions to a class." §ER 2.04(2), Wis. Adm. Code. If a position does not meet the requirements set forth in the position standard for a classification, it cannot be classified at that level because of a comparison to a misclassified position. See, e.g., Danielski v. DER, 85-0169-PC (9/17/86); Augustine & Brown v. DATCP, 84-0036, 0037-PC (9/12/84).

While a similar argument could be made about the Gransee position, the Commission did not reach a similar conclusion about it. The distinctions between the MM 2 and MM 3 classifications are not as clearcut as the requirements for classification in the HVAC - Specialist classification, and it cannot be concluded that Mr. Gransee's position is outside the parameters of the MM 3 classification. Laying to one side the factor of independence of operation (which is not really at issue in this case), the distinction between MM 2 and MM 3 turns primarily on the level of complexity of the repair work performed, which usually is based on position comparisons. Respondent has

taken the position that the work of this position is at this level, and the record does not establish otherwise.

Because of the somewhat unusual nature of this case, the Commission will provide some observations which are basically dicta. It appears that what happened in this case is that five long-time employees (appellants, Mr. Gransee and Mr. Brown) had been performing essentially the same kind and level of work for a long period of time, albeit there were some variations in both their work and their PD's. Prior to the survey, all were at the same basic class level (MM 3 under the old class specification). During the survey process, new classifications were developed. The record suggests that an informal allocation pattern developed that called for one HVAC - Specialist and one MM 3 (as defined by the new position standards) in their employing unit. It is possible that management made the decision to put Mr. Brown's position in the HVAC - Specialist classification because he was the most logical candidate based on his somewhat more advanced involvement with and knowledge of control work, and that Mr. Gransee's position was considered the most logical candidate for the MM 3 slot, notwithstanding the basic similarity among the work performed by all of these positions. The PD's prepared by management during this period appear to have been modeled after the language in the relevant class specifications. It is possible they were prepared to reflect what management perceived as a restructuring of how the work would be accomplished in this area. In any event, the employees in these positions continued (at least up to the relevant date of the survey implementation and reallocations) to perform their jobs as they always had, and in keeping with management expectations, regardless of any descriptive verbiage in the PD's that might be considered inconsistent with the nature and level of the work they actually were performing. They have continued to independently trouble shoot problems and perform relatively complex repairs to the extent they have felt capable as part of their continuing responsibility for all of the equipment in their assigned buildings. It may be that the actual work of the positions in question could be reconfigured in a way that would support a HVAC - Specialist at UW-W. However, since the work Mr. Brown and the appellants actually have been performing does not on this record meet the requirements for HVAC - Specialist, the similarity among these jobs cannot serve as a lever for placing the other jobs at the HVAC - Specialist level as well.

ORDER

Respondent's action of reallocating appellants' positions to MM 2 is affirmed in part and rejected in part, and this matter is remanded to respondent for action in accordance with this decision.

Dated: _____, 1994 STATE PERSONNEL COMMISSION

LAURIE R. McCALLUM, Chairperson

AJT:rcr

DONALD R. MURPHY, Commissioner

JUDY M. ROGERS, Commissioner

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