

STATE OF WISCONSIN

PERSONNEL COMMISSION

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JOHN RILEY,

 Appellant,

v.

Secretary, DEPARTMENT OF
EMPLOYMENT RELATIONS,

 Respondent.

Case Nos. 92-0097-PC
 92-0849-PC

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FINAL
DECISION
AND
ORDER

Oral arguments were heard in the above-noted cases before the Commission on August 31, 1994. The Commission addresses below only the major arguments which are not addressed fully in the proposed decision and order.

A. Reclassification Issue

1. Insufficient changes occurred in the job duties of Mr. Riley's position from 1979-1987, to support his reclassification request.

The proposed decision affirmed DER's decision not to reclassify Mr. Riley's position reasoning that although the position had changed, the changes were insufficient to place his position at the Engineering Technician 4 (ET 4) level. Mr. Riley contended his job changed sufficiently to warrant the ET4 classification.

The hearing examiner found Mr. Riley credibly testified that his lead work responsibilities did not decrease from 1979 to 1987. (See second full paragraph on p. 5 of the proposed decision.) Mr. Riley argued if the examiner found him credible as noted, the examiner also must accept as true his testimony that more than 50% of his duties were related to controls.

The examiner heard Mr. Riley's initial estimate that more than half of his position duties related to working on controls. Upon further prodding, however, it became clear that Mr. Riley was including tasks which were not as advanced as contemplated under the ET 4 class specifications. One example is noted in the proposed decision and order. Specifically, the examiner did not feel vacuuming inside controls was the type of work envisioned for inclusion in the ET 4 class specifications. The examiner discounted portions of Mr. Riley's testimony due to his incorrect perception that all tasks related to controls (no matter how routine or unskilled) fit under the ET 4 class specifications.

2. The Pettit decision was not used as precedent.

Mr. Riley also asked the Commission to refrain from using as precedent, its decision in Pettit v. DER, Case No. 92-0145-PC. The Commission anticipated this request and purposefully refrained from issuing a final order in Pettit, until after consideration of oral arguments in Mr. Riley's case and in Burnson v. DER, Case No. 92-0096-PC and Miller v. DER, Case No. 92-0095-PC.

3. The Millard decision does not change the outcome of the reclassification issue.

Mr. Riley, in his request for oral arguments, cited as support of his reclassification the case of Millard, et al. v. DOT & DER, Case Nos. 84-0076, 0077 & 0079-PC (6/6/85). Mr. Riley argued that Millard supports his reclassification claim because it recognized lead worker duties as meriting the ET4 classification. The Commission disagrees.

The Millard case went to hearing with the parties agreeing he performed engineering technician (ET) work and the dispute being whether such work was performed at the ET 3 or 4 level. The Commission credited lead work as allowed within the framework of the ET class specifications. Such analysis has little, if any, carry over value in Mr. Riley's case because he failed to show that the majority of work he performed was of the nature intended for inclusion in the ET class specifications.

B. Reallocation Issue

1. Mr. Riley's equitable estoppel argument in relation to the reallocation issue is rejected.

Mr. Riley's case includes the 1987 reclassification issue and the 1992 reallocation issue. He raised equitable estoppel in post-hearing briefs as an issue related to the 1987 reclassification, and such argument is addressed in the proposed decision.

He did not raise equitable estoppel as an issue related to the 1992 reallocation until after the proposed decision was issued and he submitted his June 6th request for oral arguments. This newly-raised argument is rejected by the Commission. There is no evidence in the record to indicate that DER delayed in processing Mr. Riley's 1992 reallocation, nor were any specific delays on DER's part alleged at oral arguments held on August 31, 1994.

2. The Jenkins' case does not change the outcome of the reallocation issue raised by Mr. Riley.

Mr. Riley acknowledged he did not work with HVAC systems for 90% of his time, as required by the HVAC class specifications. He contended he still should be classified at the HVAC level because his work was comparable to work required in the HVAC class specifications. This general argument is addressed on page 9 of the proposed decision.

In his request for oral arguments, Mr. Riley attempted to support his contention by citing page 7 of the Commission's decision in Jenkins v. DOR & DER, Case No. 88-0061-PC (5/31/89). Jenkins, however, involved different class specifications for Revenue Administrators. Further, the Commission sees no language on page 7 of the Jenkin's decision to support Mr. Riley's reallocation case. Instead, page 7 addresses DER's defense that a comparable position was misclassified; an argument not raised in relation to Mr. Riley's reallocation case.

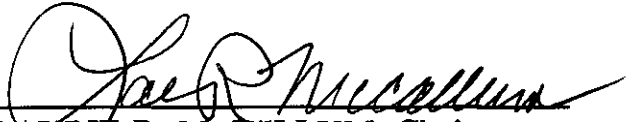
ORDER

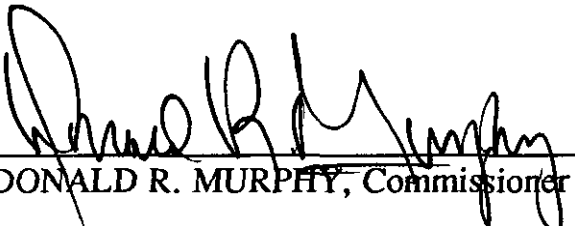
That the Proposed Decision and Order be adopted as the Commission's Final Decision, as supplemented by the discussion herein.

Date: September 9, 1994.

STATE PERSONNEL COMMISSION

JMR/jmr


LAURIE R. McCALLUM, Chairperson


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 per-

sonally, 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.)

Department. He began this work on February 7, 1977, where he remained until he retired on June 1, 1993. He was initially classified as a Maintenance Mechanic 2 and was promoted to a Maintenance Mechanic 3 on March 11, 1979. At least since 1979, he functioned as a leadworker over other maintenance mechanics and was responsible for repairs and preventive maintenance of sterilizers, kitchen and patient care related equipment. His work involved the analysis of operating data on a variety of equipment in order to detect deteriorating performance and recommend corrective action before a major piece of equipment failed. He recommended methods and estimated costs to improve the operating efficiency of all the equipment for which he was responsible. He also was involved in reviewing new construction and all new equipment purchases and was required to review equipment specifications to ensure maximum reliability and ease of maintenance for each major item. (A's Exh. 8, p. 4)

On January 20, 1987, the personnel office at UW Hospital forwarded to the UW-Madison's personnel office, a reclassification request to change Mr. Riley's position from a Maintenance Mechanic 3 (MM3) to an Engineering Technician 4 (ET4). (A's Exh. 8, p. 2)

The UW's initial in-house review of Mr. Riley's reclassification request was delayed because it was not recognized as a formal request. Sometime prior to September 9, 1987, Kenneth Kissinger from UW-Madison's personnel office, reviewed the request. On September 9, 1987, Mr. Kissinger sent the UW Hospital a memo indicating that he had reviewed the request and had forwarded the same to the Department of Employment Relations (DER) for approval. Although Mr. Kissinger stated his support of the reclassification request in the memo, he admitted at hearing that he is not a classification specialist and that he could not give an informed opinion on whether the MM3 or ET4 class specification was the best fit for Mr. Riley's position.

DER did not respond formally to Mr. Riley's reclassification request until December 1, 1992 (R's Exh. 10), about 5 years after DER apparently received the request. Jim Pankratz, in September 1987, worked with DER as a Senior Classification Analyst and was involved with all decisions regarding the movement of MM3 positions to the ET4 classification. He reviewed Mr. Riley's reclassification request and determined that the MM3 classification was the best fit for Mr. Riley's position. Mr. Pankratz returned the matter to the UW

for its further consideration. He heard nothing else about it. Neither the UW nor Mr. Riley made further inquiries of DER.

Time passed and Mr. Pankratz was promoted in DER to the Administrator of the Division of Classification & Compensation. In 1992, Troy Hamblin worked for DER as a classification specialist and was involved with DER's survey of maintenance mechanics. Mr. Hamblin learned about Mr. Riley's 1987 reclassification request during the survey process.

MM3 and ET4 Class Specs

The class specification for MM3 is shown below. (R's Exh. 1)

This is highly specialized and/or lead mechanical maintenance and repair work. Employees in this class repair and maintain the most complicated and intricate mechanical equipment associated with heating, ventilating, air conditioning, refrigeration, boiler operation, fuel storage and dispensing and electrical systems. Employees in this class may also function independently on a shift responsible for an entire mechanical maintenance operation in an institution, or for an assigned area of a complex operation. Work at this level is performed under the minimal supervision of a program supervisor or administrator.

The positions intended for inclusion in the Engineering Technician series are described in the General Information portion of the class specifications, as shown below in relevant part. The classification levels (from lowest to highest) include: Engineering Aid 1 (EA1) , EA2, Engineering Technician 1 (ET1), ET2, ET3, ET4, ET5 and ET6.

This series encompasses positions whose duties involve the performance of tasks ranging from sub-technical to technical to professional engineering work. Progressing from relatively simple routine and repetitive tasks performed under close supervision to highly responsible and complex technical, supervisory, and/or professional work under general direction; duties included in these positions involve carrying out . . . procedures and skills developed and prescribed by the administrative and professional engineering staff of . . . departments in state service. . .

The class specifications for ET4 are shown below. (R's Exh. 2)

Under supervision, performs difficult and complex technical and/or supervisory or coordinating duties such as layout of most

complex and unique structures, or independent inspection of plants fabricating routine steel structures or preparation of Planning and Research reports based upon analysis and forecast of traffic and land use patterns; or supervising a district program of marking and signing, or a medium sized construction project, or a geodetic field crew, or a central laboratory testing unit. Incumbent must have extensive knowledge of testing procedures and specification requirements for material testing or inspection, or ability to organize, supervise, and direct a routine construction project or portions of a district traffic program, to include interpretation and application of routine plans and specifications. May perform related work as required.

MM3 is the Best Fit for Mr. Riley's Position

The assigned duties of Mr. Riley's position prior to the reclassification request are reflected in his position description (PD) which he signed on March 12, 1979 (R's. Exh. 8). He signed a new PD for his reclassification request on January 16, 1987 (R's. Exh. 9).

The 1979 and 1987 PDs indicate changes in about 70% of the total job, as shown in the following chart. Specifically, the lead worker functions appears as 80% of the duties in 1979, and as 10% of the duties in 1987.

<u>% Time</u>	<u>1979 PD</u>	<u>% Time</u>	<u>1987 PD</u>
60%	A. Lead worker duties.	60%	A. Maintenance of sterilizers, refrigeration units, kitchen & patient care equipment.
20%	B. More lead worker duties - continuity of effort.	15%	B. Reporting & making recommendations.
20%	C. Assistant supervisor.	15%	C. Checking & testing.
		10%	D. Lead worker duties.

Mr. Hamblin correctly noted in his written analysis (R's Exh. 10), that reclassification requests require a logical and gradual change to the duties of the position, pursuant to ER 3.01(3), Wis. Admin. Code. He further indicated that change to more than 50% of the duties is considered as the creation of a new position, rather than a logical and gradual change as required by the administrative code. He concluded that if 70% of the position changed and justified a higher classification than MM3, this would be considered as creating a new position for which Mr. Riley would be required to compete.

(See R's Exh. 10, p. 5) In contrast, Mr. Riley would not have to compete if the position were eligible for reclassification based on a logical and gradual change in duties.

A potential disagreement which the Commission might have with Mr. Hamblin's analysis is to consider that the PDs compared (1979 and 1987) cover about an eight year period. Under these circumstances it is possible that a series of gradual changes occurred over the eight years which might meet the logical-and-gradual-change requirements of the administrative code. In other words, It may not be accurate to assume, for example, that the 70% change perceived by Mr. Hamblin occurred all at once.

Mr. Riley credibly testified at hearing that his lead work responsibilities did not decrease from 1979 to 1987. However, he said some technological changes occurred during that time which affected his job. For example, sterilizers and operating tables become more sophisticated moving away from purely mechanical parts to include automated (computerized) parts. In 1979, for example, operating tables were adjusted by using a foot pump to engage the hydraulics to, for instance, elevate the head of the table. The table controls were converted from foot pumps to remote control around 1984-1985. Also, starting in 1979, the hospital began adapting and replacing its four sterilizers which resulted in a move away from a purely mechanical to a computer-controlled processes.

The Commission is unpersuaded, however, that the technical advances in equipment which Mr. Riley's position is expected to maintain and repair result in performance of engineering work contemplated under the ET class specifications. Mr. Riley indicated that maintenance of controls included such simple tasks as vacuuming out the inside of the control boxes. He further indicated that repair of his control systems occurs on a basic level involving checking for loose wires or replacing a transistor. He does not get involved in the repair of computer chips. Rather, if a chip is defective, he orders (and replaces) the entire module which contains the defective chip. The tasks he performs do not appear to be of the nature contemplated in the ET class specs.

MM3 Remains the Best Fit Even Considering Comparable PDs

It was the conversion of some of the UW Hospital's equipment which led Mr. Kissinger to recommend Mr. Miller's reclassification. Mr. Kissinger noted

1.

that Jim Cimino of the UW personnel office advocated that the MM3 classification was no longer adequate for those positions responsible for performing non-mechanical controls maintenance on Heating, Ventilation and Air Conditioning (HVAC) equipment for a majority of the time. (A's Exh. 9, p. 1.) Mr. Kissinger further noted that several positions were reclassified from MM3 to ET4 using Mr. Cimino's rationale. Mr. Kissinger specifically noted the following positions all of which performed a majority of their time on HVAC systems: 1) John Thorson position at the Eau Claire campus, 2) Thomas Ducklow position at the River Falls campus, 3) Laurie Koepke position at the Oshkosh campus, 4 & 5) Robert Moats and Dale Bartelson positions at the Stout campus, 6) Phillip Davis position at the LaCrosse campus, and 7 & 8) Michael Way and Gregory Galecki positions at the Stevens Point campus.

Mr. Hamblin testified that the 8 positions listed above were reclassified by mistake. The examiner, however, found his testimony unpersuasive for several reasons. First, he was not involved in the 1987 reclassification requests. Second, Mr. Pankratz, who was involved in the 1987 decisions, noted there was a consensus in 1987 that the HVAC positions had become more complex and the individuals in those positions were not being paid the market price. Third, the number of reclassified positions (the 8 listed above) is significant and suggests a pattern rather than an isolated, erroneous deviation from the class specifications.

Even if the Commission deviated from the class specifications to the same degree as occurred under Mr. Cimino's rationale, Mr. Riley's position would not warrant the ET4 classification. Mr. Cimino's rationale included certain tasks only if performed on HVAC equipment. Mr. Riley performed some of the same tasks but not on HVAC equipment. His position, therefore, did not fit under Mr. Cimino's rationale and was not comparable to the UW-Systems positions which were granted the ET4 level.

REALLOCATION - Case No. 92-0849-PC

DER surveyed maintenance mechanics and related positions. The survey resulted in revised class specifications for maintenance mechanics (R's Exh. 41) and new class specifications for HVAC positions (R's Exh. 42). Mr. Riley's PD used for the survey is in the record as R's Exh. 44. As a result of the survey, his position was reallocated under the new class specifications for

MM3s, effective February 9, 1992. Mr. Riley appealed the reallocation because he felt his position should have been reallocated to a HVAC Specialist.

A general overview of his position is shown below using the organization of his PD (R's Exh. 44).

<u>Time %</u>	<u>Goals and Worker Activities</u>
60%	A. Maintenance of sterilizers, refrigeration units, kitchen equipment and patient care equipment.
20%	B. Leadwork responsibilities.
10%	C. Reporting and making recommendations.
10%	D. Checking and testing.

The class specifications for HVAC Specialist contain the following language from 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 the 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 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 following language appears in the "Exclusions" section of the HVAC class specifications.

Excluded from this series are the following types of positions:

1. Maintenance Mechanic positions whose work may include HVAC and/or refrigeration repair and maintenance, but are not assigned advanced systems control work involving significant portion of the time;
- * * *
5. All other positions which are more appropriately identified by other series.

Mr. Riley concedes that the HVAC class specifications call for 90% of the position's duties to be performed on HVAC or refrigeration systems. He further concedes that he does not work on HVAC systems. He does work on refrigeration systems, but not 90% or even a majority of his time. He feels, however, that the work he performs on equipment with controls are comparable to the duties listed in the HVAC class specifications.

Mr. Riley worked on various equipment at the Hospital. By 1992, most of the equipment had some type of control mechanism such as a remote control device on an operating bed or a control box on a sterilizer which automated the mechanical functions. The majority of his work, however, continued to involve mechanical repairs. The majority of his work did not involve repair to the control devices.²

DER undertook a labor market survey as part of the classification survey for maintenance mechanics and related positions. The higher classification for HVAC was based upon the gathered labor market information which lead DER to believe that state agencies would be unable to retain workers with HVAC specialties without an added inducement. The intent was to single-out individuals with HVAC specialties. There is no record evidence indicating that DER also intended to include specialties on non-HVAC systems which used comparable skills. In fact, two other positions perform control work in non-HVAC specialty areas and each is classified at the MM3 level. R's Exh. 59 (elevator specialty) and R's Exh. 60 (airfield lighting specialty).³

Mr. Riley would prefer that the class specifications treat his work with control systems on the same level as HVAC and refrigeration systems. The Commission, however, lacks authority to create or rewrite class specifications.

² At one point in his testimony, Mr. Riley stated that the majority of his job involved control work. Upon further questioning, however, it was discovered that he defined "control work" to include all work done on equipment which operated through the use of controls. The examiner had the distinct impression that Mr. Riley was avoiding a direct answer to the probative questions regarding the amount of time spent in control and/or other more advanced tasks.

³ Appellant's Exhibit 9 is a memo from Mr. Cimino to Mr. Pankratz dated May 5, 1983. Mr. Riley argued the memo supports a conclusion that a higher classification is justified for positions performing non-mechanical control work. The Commission disagrees. The memo, when read in its entirety, stands for the proposition that only control work performed on HVAC equipment for a majority of the time justifies the higher classification.

Zhe et. al. v. DHSS & DP, 80-285, 286, 292, 296-PC, 11/18/81; aff'd by Dane County Circuit Court, Zhe et. al. v. Pers. Comm., 81-CV-6492 (11/82).

The best fit for Mr. Riley's position under the new (post-survey) class specifications is MM3. The class specifications contain the following pertinent language about the MM3 level.

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: . . . 2) Leadworkers - employees who perform various types of mechanical maintenance, repair work and function as a leadworker over lower level maintenance mechanics. . . . 4) Area Maintenance - employees who are independently responsible for an entire mechanical operation in an institution, large state office building, a specific assigned area of a complex operation or a fish hatchery. 5) Computer Control Center Operator - such as those at the University of Wisconsin Hospital. Employees in this allocation monitor and operate the computerized environmental control center making minor adjustments at the keyboard.

DER contends that Mr. Riley's position meets the second allocation pattern noted above. Mr. Riley appears to agree that the allocation pattern could be used to describe the duties of his position.⁴ Mr. Riley feels the MM3 classification is inadequate for his position because it fails to acknowledge

⁴ Mr. Riley does not directly dispute that the second allocation pattern is applicable to his position. However, he apparently argues (incorrectly) that a basic rule or policy exists which prevents classifying lead workers at the same level as the employees over which the lead worker duties are performed. This argument could be re-structured as a dispute over the applicability of the second allocation pattern to his position. The examiner therefore considered whether Mr. Riley was functioning as a lead worker over "lower level maintenance mechanics" (as specified in the MM3 class specs) when he is the same classification as the MM3s for which he serves as lead worker.

The phrase "lower level maintenance mechanics" is not a defined term in the class specifications and was not addressed at hearing. The phrase could be used as a reference to a lower classification of mechanic. However, it appears from the "Examples of Work Performed" section of the class specs that the intended reference is simply to lower-level duties within the same classification. Either meaning could exist in any specific class specification. There is no rule that lead workers must be of a higher classification than those under his/her leadership. Nor is it uncommon for the lead worker to be of the same classification level as compared to the employee lead.

that the majority of equipment he works on operate by controls. The Commission, however, does not find that distinction recited as determinative in the class specifications and cannot rewrite the class specs to do so.

DISCUSSION

Theel Rationale - Reclassification Issue

Appellant asserts in his initial brief (starting at p. 34) that his lead work responsibility supports an ET4 classification and he cites as support the case of Theel v. DOT & DER, 84-0074-PC (11/8/84). The Commission disagrees with this assertion.

The Theel case involved a classification choice between an Engineering Technician (ET) 3 versus an ET4. The Commission, on page 7 of the decision, noted as follows:

[T]he ET4 class specifications identify positions performing "difficult and complex technical and/or supervisory or coordinating duties." The language of the specifications shows that classification to the ET4 level is appropriate for a position that performs difficult and complex technical duties, even though the position has no lead work responsibility. In the present case [where appellant Teel had no leadwork responsibilities] the appellant failed to establish that his position was comparable to non-lead workers classified as ET4's. (Emphasis supplied in the original.)

Mr. Riley is a lead worker. His lead worker duties could support the ET4 classification only if the Commission had concluded that the ET4 classification was the "best fit" for his position. The Commission's ruling, however, does not support such a conclusion.

Equitable Estoppel - Reclassification Issue

Mr. Riley contends DER should be equitably estopped from denying his reclassification request because it took DER over five years to respond to the request. The Commission disagrees.

The elements which must be established to prevail in an equitable estoppel claim against a state agency are as follows: a) the claiming individual relied 2) to his/her detriment 3) upon action or inaction by a state agency, 4)

that a serious injustice to the claiming individual would result if estoppel were not applied and 5) the public's interest would not be unduly harmed by application of estoppel. Dept. of Revenue v. Moebius Printing Co., 89 Wis. 2d 610 and 634 and 638, 279 N.W.2d 213 (1979).

The only detriments advanced by Mr. Riley are as follows: 1) he was left "uncertain and frustrated", 2) he was "placed at a disadvantage in litigating facts that arose five years ago" and 3) even though his wages would be paid in full retroactively if he won his appeal, such wages would have less buying power than they would have had if paid when earned. None of the claimed disadvantages were developed or even discussed in the hearing record.

Mr. Riley requests the Commission to take "administrative notice" of appellant's frustration from, for example, letters in the file. The concept of "administrative notice", however, is not so broad as to allow the Commission's reliance on information from file documents which are outside the record and unconfirmed at hearing.

In summary, the detriments claimed by Mr. Riley were not shown to be sufficient to warrant application of the equitable estoppel doctrine.

The Commission further notes that DER's apparent delay in processing Mr. Riley's reclassification request was unintentional. There is no evidence to suggest such delay was due to an intent to harm Mr. Riley's interests. Also, Mr. Riley knew in 1987, that DER review should take about 6-8 weeks, yet he failed to follow-up for several years.

ORDER

Respondent's decision to deny Mr. Riley's 1987 reclassification request is affirmed and case number 92-0097-PC is dismissed. Further, respondent's decision to reallocate Mr. Riley's position to Maintenance Mechanic 3 is affirmed and case number 92-0849-PC is dismissed.

Dated _____, 1994.

STATE PERSONNEL COMMISSION

LAURIE R. McCALLUM, Chairperson

DONALD R. MURPHY, Commissioner

JUDY M. ROGERS, Commissioner

cc: Atty. Talis
Atty. Vergeront