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GARY R. COEQUYT,
 Appellant,

v.

Secretary, DEPARTMENT OF
 EMPLOYMENT RELATIONS,
 Respondent.

Case No. 92-0189-PC

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DECISION
 AND
 ORDER

Nature of the Case

This is an appeal pursuant to §230.44(1)(b), Stats., of the reallocation of appellant's position to TSM-Entry (Traffic Signal Mechanic Entry).

Findings of Fact

1. Appellant is employed in the DOT (Department of Transportation), District 6 (Eau Claire) in a position in the classified civil service which was reallocated as a result of a survey to TSM-Entry, effective February 9, 1992.

2. Appellant's PD (position description), (Joint Exhibit 6) which was in effect as of the time of the survey implementation¹ includes the following:

POSITION SUMMARY

Under close/limited supervision by an electrician and sign crew chief, responsible for providing technical assistance in he maintenance, layout, and installation of highway signing and electrical facilities. Operate and maintain trucks, equipment and power tools. Independently perform installation and maintenance duties as directed and keep required records and documentation.

TIME % GOALS AND WORKER ACTIVITIES

¹Appellant's subsequent updated PD dated August 6, 1992 (Joint Exhibit 7) has only minor differences in the goals and worker activities . Also, the level of supervision reflects a change from "close/limited" to "limited." These differences have no impact on the outcome of this case.

- 70% A. Provide technical assistance to Electricians in the installation and maintenance of traffic operations equipment.
- * * * *
- 15% B. Assist in the installation and maintenance of traffic signing on State and Federal highways.
- * * * *
- 10% C. Place pavement marking on State and Federal Highways.
- * * * *
- 5% D. Perform various shop and field assignments as directed by sign shop supervisor.

3. The TSM position standard (Joint Exhibit 1) states that positions "allocated to this series are primarily responsible for providing specialized traffic signal maintenance and repair under the direction of a journeyman electrician." This position standard includes the following definitions:

TRAFFIC SIGNAL MECHANIC-ENTRY

Under close, progressing to limited supervision by a journeyman electrician, installs, maintains and repairs traffic signals. Positions also operate and maintain larger size mechanical equipment utilized by the electrical unit, including trucks, trailers and hoists. Other types of work may include the following: assist in the installation and maintenance of traffic signing on state and federal highways, assist the electrician with major wiring projects, conduct vehicle traffic counts and salvage damaged signal equipment.

TRAFFIC SIGNAL MECHANIC-JOURNEY

Under the general supervision of a journeyman electrician performs all the work of a Traffic Signal Mechanic-Entry position, and in addition, is able to independently prepare a job site for the electrician. Traffic Signal Mechanic-Journey positions could be dispatched to any job that arises and know what to do and how to handle the situation. This type of independence is generally gained through one to two years of experience as a Traffic Signal Mechanic or other comparable experience in traffic signal maintenance.

The TSM-Entry "examples of work performed" includes: "make installations safe from electrical hazards in emergency situations."

4. The ET (Engineering Technician) classification specification (Joint Exhibit 3) "inclusion" statement includes "positions that perform sub-technical to technical work in the field of architecture/engineering in the planning, design, construction, operation and maintenance of transportation facilities [which] include, but are not limited to: state highways, bridges, rest areas, and airports." The "exclusions" from this series includes:

Technical program support assistants, more appropriately identified by other class series such as Communication Technician, Electronic Technician, Mechanician, Instrument Maker, Maintenance Mechanic or Craftworker, etc., whose work involves complex and specialized electronic, electrical, mechanical, communication or craft functions involving the design, installation, systems analysis, repair, calibration, testing, modification, construction, maintenance or operation of equipment, machines, control systems, instruments or other comparable devices. These positions do not provide direct technical assistance to professional architectural or engineering employes, activities and programs.

5. The ES (Engineering Specialist) classification specification (Joint Exhibit 2) introduction section (Paragraph I.A.) includes the following:

Positions allocated to this series perform professional work in the field of architecture/engineering. Positions allocated to this series must meet the current definitions of professional in s. 111.81, Wis. Stats., and the Fair Labor Standards Act. (Positions classified at Journey level and above are exempt. Positions at Entry and Developmental levels will be evaluated on a position by position basis to determine their status.)

6. Appellant's position is non-exempt under the FLSA, i.e., he is eligible for premium compensation for overtime work. Appellant also does not meet the definition of professional employee found in §111.81(15), Stats. Rather, his work is of the nature associated with a journey level craft (electrician).

7. The ES classification also contains the following "exclusion:"

C. Exclusions

* * * *

4. Technical program support assistants, more appropriately identified by other class series such as Communication Technician, Electronic Technician, Mechanician, Instrument Maker, Maintenance Mechanic or Craftsworker, etc., whose work involves complex and specialized electronic, electrical, mechanical, communication or craft functions involving the design, installation, systems analysis, repair, calibration, testing, modification, construction, maintenance or operation of equipment, machines, control systems, instruments or other comparable devices. These positions do not provide direct technical assistance to professional architectural or engineering employes, activities and programs.

8. Appellant does not perform professional level work in engineering/architecture, and his position is not appropriately classified in the ES series.

9. Appellant's position at the time of the survey implementation was most appropriately classified as a TSM-Entry, and was appropriately reallocated to that classification.

Conclusions of Law

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

2. Appellant has the burden of proof to establish by a preponderance of the evidence that respondent's decision to reallocate his position to TSM-Entry was incorrect.

3. Appellant has failed to sustain his burden of proof, and it is concluded that respondent's decision to reallocate appellant's position to TSM-Entry was not incorrect.

Opinion

There is some degree of ambiguity as to which classifications are at issue in this case, as appellant refers to classifications outside the issue agreed to for hearing.² In any event, this decision will address all the classifications which the parties have discussed.

Appellant's position was appropriately reallocated to the TSM-Entry classification when the survey was implemented. The TSM-Entry classification

² The issue for hearing set forth in the September 4, 1992, conference report is: "Whether respondent's decision to reallocate appellant's position to Traffic Signal Mechanic-Entry instead of Engineering Technician-Transportation-4 was correct."

definition and examples of work performed clearly identify his position. It is also clear that at that time he was not performing work under general supervision, and with the independence required for the TSM-Journey level.

Appellant's position does not qualify for the ET 4 classification because the record does not establish that his work fits into the "inclusion" statement of performing "professional work in the field of engineering." The Commission notes that the ET series excludes positions that are doing even "complex or specialized" craft functions that do not involve the provision of "direct technical assistance to professional architectural or engineering employes, activities and programs." While some of the TSM work is generally analogous to or comparable to some of the work performed by positions classified in the ET series, appellant's position simply fails to meet the specific criteria required for classification in this series and as an ET 4 and is better described by the language in the ET series exclusion statement. In addition, even if appellant did meet the ET criteria, the TSM series would still constitute the more appropriate class series because it describes appellant's position far more specifically.

Many of the same comments apply to the ES series. In addition, appellant's position does not meet the definition of a professional employe found in §111.81(15), Stats; his work is of a nature associated with a journey level craft (electrician). It also is clear he is supervised by an electrician and not by a "higher level engineering specialist, architect/engineer, engineering specialist supervisor, or architect/engineer supervisor" as required by the ES definitions. Finally, his position is not FLSA exempt from overtime requirements as required at the ES Journey level.

In the Commission's opinion, the major thrust of this appeal involves appellant's disagreement with the class specifications developed in the survey, and the fact that there is limited upward or lateral mobility in the two level, relatively specifically defined, TSM series. For example, his post-hearing brief states: "To compensate equitably and ensure upward career mobility, why should the Traffic Signal Mechanic position not be integrated with the Engineering Technician or Engineering Specialist series . . ." However, the Commission has no authority to require changes in the class specifications. The Commission only has the authority pursuant to §230.44(1)(b), Stats., to review DER's decisions under §230.09(2)(a), Stats., to reallocate positions, and does not have any authority to hear appeals of DER's decisions made under

§230.09(2)(am), Stats., to conduct surveys and to establish, modify and abolish classifications, or its decisions under §230.09(2)(b), Stats., to assign and reassign classifications to pay ranges. On an appeal of this nature, the Commission's authority is limited to the question of whether DER's decision that a position is better described by one classification specification rather than another (or others) in the position standard was correct. See, e.g., Kaminski v. DER, 84-0124-PC (12/6/84); Zhe v. DHSS, 80-285-PC (11/19/81), aff'd Dane Co. Cir. Ct., Zhe v. PC, 81CV6492 (11/2/82). Since appellant's position is clearly and specifically described by the TSM-Entry classification, and does not meet either the ET or the ES criteria, respondent's decision must be upheld.

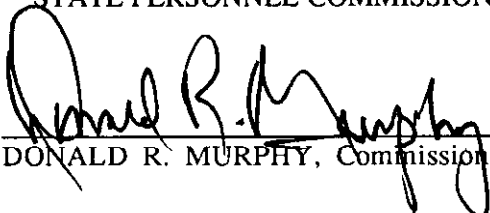
Order

Respondent's decision reallocating appellant's position to the TSM-Entry classification is affirmed and this appeal is dismissed.

Dated: August 11, 1993

AJT:irm

STATE PERSONNEL COMMISSION


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.