

* * * * *

THOMAS J. KERR,

Appellant,

v.

Secretary, DEPARTMENT OF
EMPLOYMENT RELATIONS,

Respondent.

Case No. 92-0195-PC

* * * * *

*
*
*
*
*
*
*
*
*
*
*
*

DECISION
AND
ORDER

NATURE OF THE CASE

This is an appeal of respondent's reallocation of appellant's position to the Engineering Specialist Transportation-Journey classification as the result of a personnel management survey of engineering and related positions. A hearing was held on March 25, 1993, before Laurie R. McCallum, Chairperson.

FINDINGS OF FACT

1. At all times relevant to this matter, appellant has been employed by the Department of Transportation, Division of Highways as the District 8 Lab Chief-Materials.
2. In anticipation of hearing, appellant prepared a position description which he believed accurately described the duties and responsibilities of his position during the time period relevant to the subject survey. This position description indicated that appellant's position functioned under general supervision in performing the following duties and responsibilities:

- 60% GOAL A. District Laboratory.
 - A.1 Receive and register samples from district construction projects and outside agencies. (B.I.A., Counties and B.F.M.).
 - A2. Establish priorities, schedule work, and assign personnel to prepare samples for testing.
 - A.3 Assigns personnel or performs and monitors the work to ensure the tests are procedurally correct.

- A.4 Keep current on specifications governing materials properties and test procedures as detailed in ASTM, ASSHTO and Wisconsin DOT specifications books.
- A.5 Prepare data sheets, record data, compute results and check computations of others.
- A.6 Prepare data sections of test reports for entry into mainframe computer.
- A.7 Operate mainframe terminal to update, verify and correct test reports which are part of the electronic Materials Laboratory Test System.
- A.8 Inform supervisor of the status of samples in varying stages of testing.
- A.9 Identify and evaluate failing samples to determine if supervisory action is warranted.
- A.10 Investigate sample failures to verify that equipment or procedures used were not a contributing cause in the sample failure.
- A.11 Serve as a reference source for testing information to district personnel and other agencies.
- A.12 Train new personnel, including LTE, county forces and contractor in proper methods of sampling and testing.
- A.13 Oversee continued operation of routine testing program.
- A.14 Handle inquiries from District and contractor personnel regarding interpretation of specifications or resolution of problems.

25% GOAL B.

Construction Quality Assurance and Independent Quality Control.

- B.1 Coordinates and observes the inspection of commercial ready-mix concrete plants.
- B.2 Insures that annual ready-mix plant calibrations and certifications are completed prior to beginning construction.
- B.3 Maintains inventory control and calibrates field testing equipment for Portland Cement Concrete.
- B.4 Prepares summary guide used by the project engineer and project contractors for materials sampling and testing.
- B.5 Prepares preconstruction materials documents for submittal to contractors prior to actual construction.
- B.6 Provide backup to district quality assurance technician in collecting and observing sampling and testing on construction projects.
- B.7 Tests Independent Quality Assurance Program samples and prepares and maintains final test reports.

- 10% GOAL C. Maintenance of testing equipment.
- C.1 Perform calibration checks on major equipment.
 - C.2 Service test equipment and recommend repairs.
 - C.3 Determine what equipment is to be sent out for service or calibration.
 - C.4 Assist in calibrating District laboratory compression testing machine.
 - C.5 Inventory and maintain testing supplies.
- 05% GOAL D. Perform other miscellaneous duties.
- D.1 Review and enter data collected for the Pavement Management Decision Support System (PMDSS).
 - D.2 Maintain the aggregate source information files.

Appellant's position, at the time of the survey, supervised one 0.5 permanent position as well as LTE and seasonal positions.

3. This position description is accurate except that Goal B.3. should not be listed; the percentage of time listed for Goal A should be less; and the percentage of time listed for Goal B should be more.

4. The following positions were offered for comparison purposes in the hearing record:

a. Kenneth Kluever--Engineering Specialist Transportation-Advanced 1--DOT Division of Highways, Central Office Materials/Materials Laboratory. This position, under the general supervision of the Physical Tests Engineer, is responsible for the testing of and the reporting of the physical properties of materials used in statewide DOT construction projects (75%); evaluation of new products (10%); maintenance of testing equipment (10%); and supervision of unit in absence of supervisor (5%). These responsibilities include developing procedures to test new materials, adapting present equipment or fabricating prototypes for testing new products, setting up specifications for new test equipment, training personnel in the use of new procedures and equipment, preparing equipment for National Bureau of Standards inspections, coordinating the work done on district equipment sent to the laboratory for repair and calibration, and assisting in calibrating district laboratory compression testing machines. The central office has certain equipment which is more sophisticated than that found in the districts and which permits this position to perform or supervise, for example, the testing of coatings on culvert pipes, the strength of steel bolts. This position supervises 4 permanent positions as well as LTE and seasonal employees.

b. Richard A. Grimsrud--Engineering Specialist-Advanced 1--DOT Division of Highways, District 8. This position functions under limited supervision as the District Quality Assurance Technician and is responsible for implementing the federally mandated sampling and testing of materials used in federal- and state-funded highway projects--this responsibility entails a substantial planning and evaluation component (60%); reviewing and submitting final test reports for approval by district Chief Material Engineer and reviewing and forwarding material certifications and certified test reports to proper projects (20%); coordinating efforts to get archeological surveys completed to prevent delays in highway projects, coordinating exchange of information between project contractor and central office lab, making recommendations relating to the procurement of testing equipment and supplies for use in district testing, and serving as the district verifier of the automated materials lab testing system (20%). This position has the same first-line supervisor as appellants position.

c. John R. Pope--Engineering Specialist-Advanced 1--DOT Division of Highways, Central Office Materials/Materials Laboratory. This position functions under general supervision and is responsible for the production of asphaltic mix designs used statewide on construction and maintenance projects; conducting tests on asphaltic mixtures and pavements; assisting in laboratory and field training and testing of district, contractor, and consultant personnel. The type of testing performed and supervised by this position is not done in the districts and is considered very complex testing. One of the pieces of equipment utilized by this position is one of only 3 in the nation. This position supervises 4 permanent positions and LTE and seasonal positions.

5. The other District Lab Chief positions are classified at the Engineering Specialist-Journey level.

6. The position standard for the Engineering Specialist-Transportation series states as follows, in pertinent part:

ENGINEERING SPECIALIST - JOURNEY

Positions allocated to this class perform a wide variety of difficult journey level engineering specialist assignments under the limited to general supervision of a higher level engineering specialist, architect/engineer, engineering specialist supervisor, or architect/engineer supervisor.

Examples of typical duties of Engineering Specialists at the Journey level are listed below:

DISTRICT - DIVISION OF HIGHWAYS AND TRANSPORTATION SERVICES

Materials

Materials Laboratory Specialist

This position directs the district laboratory activities in materials sampling, testing and inspection procedures; reports results of tests, inspections and calibrations to project personnel; maintains inventory control of field and laboratory testing equipment; trains district personnel in material testing procedures; coordinates and observes the inspection of commercial ready-mix concrete plants; ensures that annual ready-mix plant calibrations and certifications are completed prior to beginning of construction. State Material Manual guidelines establish the type, number and the extent of the testing procedure.

ENGINEERING SPECIALIST - SENIOR

Positions allocated to this class perform complex engineering specialist assignments under the general supervision of a higher level engineering specialist, architect/engineer, engineering specialist supervisor, or architect/engineer supervisor.

Examples of typical duties of Engineering Specialists at the Senior level are listed below:

DISTRICT - DIVISION OF HIGHWAYS AND TRANSPORTATION SERVICES

Materials

Quality Assurance Specialist

This position provides liaison between districts and Central Office Materials Section concerning policies and procedures of the materials independent quality assurance sampling and testing program; reviews and analyzes field and laboratory test data; maintains materials documentation records and prepares reports; identifies and evaluates problem areas and recommends changes in specifications, standards, procedures in the program; monitors routine laboratory test reports on aggregates and asphaltic mix extractions.

ENGINEERING SPECIALIST - ADVANCED 1

Positions allocated to this class perform very complex assignments under the general supervision of an architect/engineer, engineering specialist supervisor, or architect/engineer supervisor.

Examples of typical duties of Engineering Specialists at the Advanced level are listed below:

District

Materials

Independent Quality Assurance Specialist

This position evaluates each construction project for quality assurance requirements; schedules required quality assurance sampling and testing based on quality assurance program guides and project progress; evaluates, documents and reports on the field sampling and testing procedures performed in the District; reviews project test records reports and material certifications; provides specialized material inspection and testing on construction projects; trains others in proper methods of sampling and testing of materials incorporated in the construction of highways.

Materials Review Specialist

This position provides guidance to design, construction, and maintenance personnel on construction material requirements; monitors material testing in the laboratory; resolves problems arising from field application of materials testing to assure specification compliance and adequate documentation; review all project materials records for completeness and specification compliance; review project testing procedures on all types of improvement projects; complete the final quality control review of project materials files prior to preparing and processing the final test report record; develop and conduct materials training for district personnel.

Central Office

Materials

Soils and Aggregate Specialist

This position provides guidance and expertise for the production of asphaltic mix designs used statewide on construction and maintenance projects; conducts special tests and assists in training district field personnel; reviews contract requirements for mix design parameters; schedules activities of the asphaltic mix design unit; monitors the work of the mix design unit; monitors the work of the mix design unit; conducts special tests to evaluate new materials or procedures; directs the work of lower level engineering specialists or technicians.

7. The duties and responsibilities of appellant's position are better described by the language of the position standard for the Journey classification than for the Senior classification and are comparable to those of the Journey positions offered for comparison purposes in the hearing record.

CONCLUSIONS OF LAW

1. This matter is appropriately before the Commission pursuant to §230.44(1)(b), Stats.
2. The appellant has the burden to show that respondent's decision to reallocate his position to the Engineering Specialist Transportation-Journey classification was incorrect.
3. The appellant has failed to sustain this burden.
4. The appellant's position is more appropriately classified at the Journey level than the Senior level.

OPINION

The issue to which the parties agreed is:

Whether respondent's decision to reallocate appellant's position to Engineering Specialist Transportation-Journey instead of Engineering Specialist Transportation-Senior was correct.

The duties and responsibilities of appellant's position and the other District Lab Chief-Materials positions are specifically identified in the language of the Engineering Specialist Transportation-Journey specifications in the description of the District Material Laboratory Specialist position. The duties and responsibilities of the Grimsrud position are specifically identified in the language of the Engineering Specialist Transportation-Senior specifications in the description of the District Materials Quality Assurance Specialist position. Appellant has failed to show where in either the general language of the Senior specifications or in the identification and description of positions in the Senior specifications his position would or should fit and it is not apparent from the language of the specifications themselves. It is also not apparent from the record that the duties and responsibilities of appellant's position are comparable from a classification standpoint to those of the Grimsrud position. In fact, the record shows that, in view of the significant planning and evaluation component of the Grimsrud position, it is a stronger position than appellant's.

The record shows that the Kluever and Pope positions are significantly stronger from a classification standpoint than appellant's position due at least in part to the significantly greater complexity of the materials they test and the equipment they utilize, as well as the fact that their duties are statewide

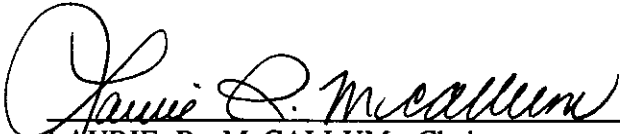
whereas appellant's are district-wide. Appellant does not disagree that they are stronger, only that they are not sufficiently stronger to justify a two-level difference in classifications. However, the Pope position is specifically identified and described in the Advanced 1 specification, i.e., Central Office Materials--Soils and Aggregate Specialist; and the record shows that the Kluever position is more closely comparable from a classification standpoint to the Pope position than to appellant's position or the Grimsrud position.

It appears as though appellant is really challenging the language of the classification specifications and the two-level difference in the specifications between the Journey level District Material Laboratory Specialist and the Advanced 1 Central Office Materials-Soils and Aggregate Specialist. The Commission is, however, bound by the language of the classification specifications as written and approved by respondent. In the absence of a showing that the Senior specifications better describe appellant's position's duties and responsibilities than the Journey specifications, the Commission will affirm respondent's reallocation of appellant's position to the Journey level.


ORDER

The action of respondent is affirmed and this appeal is dismissed.

Dated: May 20, 1993 STATE PERSONNEL COMMISSION


LAURIE R. McCALLUM, Chairperson

LRM:rcr


DONALD R. MURPHY, Commissioner

Parties:

Thomas Kerr
2305 John Avenue
Superior, WI 54880

Jon Litscher
Secretary, DER
P.O. Box 7855
Madison, WI 53707

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.