

\* \* \* \* \*

TERRENCE C. McKNIGHT,

Appellant,

v.

Secretary, DEPARTMENT OF  
EMPLOYMENT RELATIONS,

Respondent.

Case No. 92-0493-PC

\* \* \* \* \*

\*  
\*  
\*  
\*  
\*  
\*  
\*  
\*  
\*  
\*  
\*  
\*

RULING  
ON MOTION  
FOR  
SUMMARY JUDGMENT

On December 16, 1993, the respondent filed a Motion for Summary Judgment. The parties filed written materials relating to the motion. Based upon the documents and arguments filed by the parties, the motion must be denied.

FINDINGS OF FACT

1. As a result of a personnel management survey conducted by respondent, the appellant's position was reallocated to the classification of Environmental Analysis and Review Specialist-Advanced (EARS-Adv.) effective April 19, 1992. The appellant contends that his position is more appropriately classified at either the Environmental Analysis and Review Supervisor (EAR Sup.) or Manager (EAR Mgr.) levels.

2. The position summary on the appellant's position description which he signed on February 21, 1992, reads as follows:

Management of [North Central] District Environmental Analysis and Review (EAR) Program; coordination of preparation, review, and approval of DNR Environmental Impact Statements (EISs) and Assessments (EAs); interdisciplinary reviews of same from non-Department sponsors; Dept. of Transportation liaison; Biotech Coordinator; compliance with interagency cooperative agreements; public liaison for Wisconsin Environmental Policy Act.

This position description was also signed by appellant's supervisor and personnel manager.

3. Elsewhere in the position description, the following question was answered affirmatively: "Does this position supervise subordinate employees in permanent positions?"

4. That position description also reflects that as part of Goal F (5%) entitled "Planning, administration and supervision of District Subprogram," the appellant was assigned the following worker activity:

F3. Direction of permanent full-time staff.

Prepare Position Descriptions; interview prospective employees; train; assign responsibilities; evaluate performance.

5. The EARS classification specifications contain the following exclusion: "Supervisory positions as statutorily defined."

6. Both the EAR Sup. and EAR Mgr. specifications include the following language:

#### Inclusions

This classification encompasses non-represented supervisory positions, found in the central, district, or field offices of the Department of Natural Resources....

\* \* \*

#### E. Definitions of Terms Used in this Classification Specification

\* \* \*

Supervisor: means any individual whose principal work is different from his/her subordinates and who has authority, in the interest of the employer, to: hire; transfer; suspend; layoff; recall; promote; discharge; assign; reward; or discipline employees; or to adjust their grievances; or to authoritatively recommend such action, if his/her exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgement.

#### Discussion

In order to grant the respondent's motion for summary judgment, the Commission must conclude that there is no genuine issue as to any material fact and that the respondent is entitled to judgment as a matter of law.

The key question raised by respondent's motion is whether the appellant can be considered a supervisor for classification purposes. The EARS series specifically excludes supervisory positions, while the EAR Sup. and Mgr. classifications specifically require supervisory responsibility. These three classifications either cite the statutory definition of "supervisor" found in §111.81(19), Stats., or set out that definition without attribution. The statutory definition reads as follows:

"Supervisor" means any individual whose principal work is different from that of his subordinates and who has authority, in the interest of the employer, to hire, transfer, suspend, layoff, recall, promote, discharge, assign, reward or discipline employees, or to adjust their grievances, or to authoritatively recommend such action, if his exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

Respondent contends that appellant's position cannot meet this definition because it requires *multiple* subordinates. It is undisputed that the appellant only has one subordinate, Jim Grafelman. The appellant contends he has a supervisory relationship to that one individual and that this is sufficient to meet the requirements for classification as a supervisor or manager. In support of that contention, appellant points to: 1) the language of worker activity F3 in his position description, (set out in finding 4, above); 2) the reference on the face of his position description to providing supervision (finding 3); 3) the existence of positions in the Department of Transportation which are denominated as "supervisor" despite having only one subordinate; and 4) a memo from appellant's supervisor, Mark Stokstad, dated August 27, 1993, which states, in part:

Specific reference to supervision is because Terry [the appellant] is delegated responsibility for supervisory responsibilities for one employee. This has long been the case, with Terry recommending hiring, doing day-to-day supervision, and evaluating the employee. We do not consider Terry supervisory as this responsibility is for only one position. If in the future an additional position is allocated to this program, we will change the cover and submit a supervisory evaluation form.

While there may be some dispute between the parties as to whether the appellant has been delegated the full range of supervisory responsibility with

respect to the Grafelman position, that potential dispute would be moot if the Commission were to conclude that, as a matter of law, a "supervisor" must have more than one subordinate in order to meet the definition set forth in §111.81(19). In support of its reading of the statute, the respondent relies on the references in it to "subordinates" and "their grievances." However, respondent's analysis is contrary to §990.001(1), Stats., which provides:

In construing Wisconsin laws the following rules shall be observed unless construction in accordance with a rule would produce a result inconsistent with the manifest intent of the legislature:

(1) SINGULAR AND PLURAL. The singular includes the plural, and *the plural includes the singular.* (Emphasis added)

There is nothing in §111.81(19) which reflects a "manifest intent" of the legislature to require more than one subordinate in order to be considered a supervisor. It would have been very easy, if the legislature had intended such a result, to specifically reference "two or more subordinates" in the definition. Because there is no contrary "manifest intent," the Commission is required by §990.001(1) to read the definition of "supervisor" in §111.81(19) to include individuals who have only one subordinate and who otherwise meet that definition.

Respondent cites the Commission's decision in Felsner et al. v. DER, 91-0197, etc. -PC, 7/8/92, in support of its reading of §111.81(19). In Felsner, the Commission concluded that the reference in the Civil Engineer-Transportation Supervisor 5 definition to "11 or more FTE" was a reference to *state* employees, and non-state employees may not be considered when calculating whether a supervisor meets the definition. In reaching this decision, the Commission 1) relied upon the reference in the CE-Trans.-Sup. class specifications to the definition of "supervisor" in §111.81(19), 2) referenced the word "employees" found in that definition, and 3) then used that reference as a basis for relying on the definition of "employee" found in §111.81(7)(a), as being restricted to a "state employe in the classified service of the state." The Commission did not have to address the question of whether having one subordinate could meet the requirements of "supervisor." Other language quoted in the Felsner decision undermines the respondent's contention here. The decision sets forth language from the classification definition for the CE-Trans.-Sup. 4 level as

including positions which "directly supervise ... a small to medium unit (1 to 10 FTE) of senior or advanced civil engineers." If the CE-Trans.-Sup. 4 definition permits classification as at that level based upon supervising only *one* senior or advanced civil engineer, it would be inconsistent to read §111.81(19) as requiring at least two subordinates in the present case.

In terms of whether the respondent is entitled to summary judgment with respect to the classification level of EAR Manager, the Commission's analysis in Morrissey et al. v. DER, 92-0525, 0559-PC-ER, which is being decided on the same date as this matter, is applicable. A copy of the Morrissey decision is attached, and included by reference.

Because the respondent has been unable to establish that there are both no disputes of material facts and that respondent is entitled to a judgment as a matter of law, its motion for summary judgment must be denied.

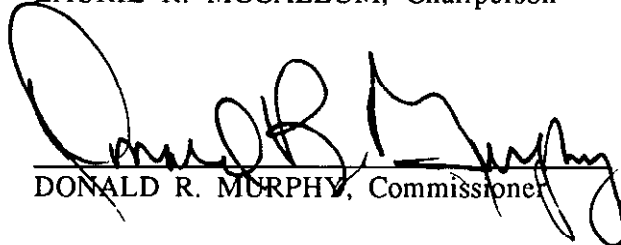
ORDER

Respondent's motion for summary judgment is denied. The parties will be contacted for the purpose of setting a new date for hearing.

Dated: May 2, 1994 STATE PERSONNEL COMMISSION

  
LAURIE R. MCCALLUM, Chairperson

KMS:kms

  
DONALD R. MURPHY, Commissioner

  
JUDY M. ROGERS, Commissioner