

* * * * *

EARNEST E. ELLIS,

Appellant,

v.

Secretary, DEPARTMENT OF
EMPLOYMENT RELATIONS,

Respondent.

Case No. 92-0548-PC

* * * * *

DECISION
AND
ORDER

This case involves an appeal of the reallocation of appellant's position to Engineering Technician - Transportation 3 (ET 3) rather than Engineering Specialist - Transportation - Senior (ES-Sr.) or Engineering Specialist - Transportation - Advanced 1 (ES-Adv. 1).

Appellant was employed for a number of years in an ET 3 position under the supervision of Ronald Felsner. In early May 1990, appellant transferred to another ET 3 position in another district under the supervision of Ronald Cech. Effective June 17, 1990, appellant's new position was reallocated, and appellant was regraded to the classification of ET 3 pursuant to a survey and following an informal appeal within DER. The latter classification was under a new position standard that had been developed as a result of the survey.

As of the effective date of the reallocation (June 17, 1990), appellant was serving in a position in the Waukesha district under the limited supervision of Mr. Cech. The duties and responsibilities of this position are essentially accurately described in a position description (PD) signed by appellant and his supervisor on May 14, 1990 (Respondent's Exhibit 3). The position summary includes the following: "This position is located in the Design Section of a D.O.T. District and operates a computer aided drafting and design system (CADDs) work-station or conventional drafting methods to produce engineering exhibits, detail drawings, roadway geometrics, right of way plat sheets and highway plan sheets." This PD reflects a 75% goal (B) of: "Performance of manual drafting to assist the project engineer in the design of routine and complex highway improvement plans."

The Engineering Technician position standard (Respondent's Exhibit 1) contains the following definition for the ET 3 classification:

This is a developmental level and a journey level classification within a technical engineering function. At this level, the position performs technical work in planning, design, construction, testing materials, inspection, traffic marking or signing work. This level requires more technical knowledge for successful performance of the tasks assigned to the position and the employee performs the tasks with greater independence than the previous level. Crew chief and other lead positions have considerable independence and lead lower level technicians and aids.

This definition describes appellant's job. Also, appellant's job is comparable to other ET 3 PD's in the record.

The ES-Sr. definition (see Respondent's Exhibit 2) contains the following: "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." The examples of typical duties in the design field include the direction of lower level specialists or technicians in the design activities for medium to large projects or acting as an "assistant design squad leader for large to reasonably complex road projects." Since appellant's PD shows he functions under limited, as opposed to general, supervision, and he is not engaged in any of the examples of typical duties at this level, the ES-Sr. classification is not appropriate for his position.

The ES-Adv. 1 class definition refers to the performance of "very complex assignments" under general supervision. Examples of typical duties include "the advanced level of design squad leaders." Again, appellant's PD reflects that he works under limited supervision, with a 75% goal of "[p]erformance of manual drafting to assist the project engineer in the design of routine and complex highway improvement plans." He has no responsibility for directing the work of others. Clearly his position is not entitled to an ES-Adv. 1 classification.

The major thrust of appellant's case involved a theory which was outside of the scope of the hearing as previously determined by the examiner. A September 17, 1993, letter from the examiner summarizes a conference call of that date as follows:

Based on further discussion, it appeared that appellant's case rested on the fact that he was transferred to his current position in May 1990, just before the June 17, 1990, survey reallocation. Appellant contends that his previous job was at a higher level, in terms of duties and responsibilities, than the job to which he was transferred, and that DOT management should have transferred him into a job with higher level duties

and responsibilities than they did, based on an agreement he had with DOT management.

I advised that the Commission's jurisdiction on this appeal would be limited to a determination of whether DER made the proper reallocation decision with respect to the class level of the position to which appellant was transferred, based on the duties and responsibilities assigned by management to that position as of June 17, 1990, the effective date of the survey. I further advised that it did not appear that appellant could raise the issues referred to in the preceding paragraph in this appeal.

It was agreed that appellant would advise no later than September 27, 1993, after he has had the opportunity to consult with his attorney, whether he wishes to proceed with the hearing on this appeal on October 13, 1993, at 9:00 a.m., and wants appearance letters issued to the above-named witnesses, or whether he intends to proceed in a different manner.

Appellant subsequently advised that he would proceed with the hearing.

At the hearing, appellant attempted to introduce evidence that his prior supervisor (Mr. Felsner) had discriminated against him and treated him unfairly, as well as introducing other evidence concerning his work in that position. Since the reallocation decision under appeal concerned his subsequent position which he occupied as of the effective date of the survey (June 17, 1990), this evidence was ruled irrelevant.¹ The Commission reiterates that evidence concerning his earlier position and his treatment in that position has no relevance to this appeal of DER's reallocation of a subsequent position. DER's reallocation decision is necessarily based on the duties and responsibilities assigned by management (DOT), which has the sole statutory authority to make such assignments, §230.06(1)(b), Stats. Appellant's contentions concerning mistreatment by a supervisor in a previous job are outside the scope of this appeal of DER's decision as to the class level of his subsequent position.

Appellant did present hearsay testimony that his current supervisor (Mr. Cech), who was not a witness, said he had been told by someone unnamed not to give appellant any projects. The objection to this testimony was properly sustained. While the Commission has discretion to permit hearsay, §PC 5.02(5), Wis. Adm. Code, this is the kind of hearsay statement that would be particularly prejudicial to the opposing party to be denied the right to cross-

¹ Appellant was allowed to present testimony on these matters as an offer of proof, and he was advised that he could attempt to pursue a discrimination complaint in a different proceeding.

examination of the declarant (Mr. Cech). Furthermore, as discussed above, DER must classify positions on the basis of the duties management assigns, and this line of testimony is also outside the proper scope of the hearing.

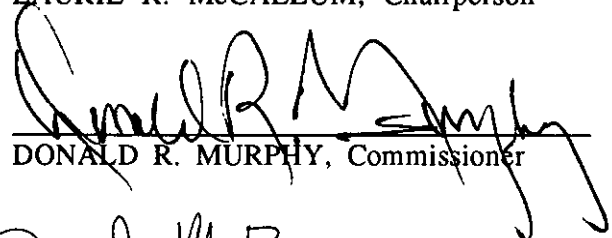
ORDER

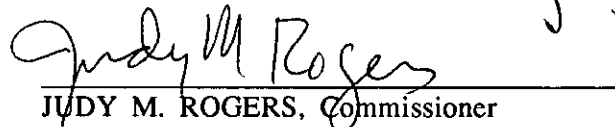
Respondent's action reallocating appellant's position to ET 3 is affirmed and this appeal is dismissed.

Dated: March 9, 1994 STATE PERSONNEL COMMISSION


LAURIE R. McCALLUM, Chairperson

AJT:rcr


DONALD R. MURPHY, Commissioner


JUDY M. ROGERS, Commissioner

Parties:

Earnest Ellis
P.O. Box 16214
Milwaukee, WI 53216

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.

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.)