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ROBERT W. MERTZ,
 Appellant,

v.

Secretary, DEPARTMENT OF
 EMPLOYMENT RELATIONS,
 Respondent.

Case No. 92-0747-PC

* * * * *

DECISION
AND
ORDER

On August 4, 1992, Robert W. Mertz, appellant, filed a timely appeal of the Department of Employment Relations' (DER) decision, reallocating his position to Engineering Technician - Transportation 3 instead of Engineering Technician - Transportation 5. A hearing on this appeal was held May 9, 1994, before Donald R. Murphy, Commissioner. At the close of the hearing, the parties presented oral arguments.

The record shows that appellant's duties, as described in his position description signed by him on August 21, 1990, provides:

Position Summary: Perform and write reports on traffic studies. Review, prepare and make recommendations regarding traffic permits. Communicate with other sections and local governmental units, providing technical guidance and gathering data. Maintain thorough knowledge of traffic-related statutes and manuals. Train and direct helpers. Represent unit at meetings as directed. Prepare traffic-related legal declarations for approval. Inspect airports in D-8 for compliance with FAA 5010 Program.

Time Percentages, Goals and Worker Activities:

- 50% Goal A. Perform or direct traffic studies and prepare the resultant reports and records.
- 5% Goal B. Prepare traffic permit applications for review and approval. Investigate sites and make recommendations regarding revisions or conditions.
- 15% Goal C. Represent the traffic supervisor at various meetings and as delegated in his absence. Retrieve information and provide technical expertise as appropriate.

15% Goal D. Prepare inspections of airports in District 8 for compliance with the Federal 5010 Program for the Wisconsin Bureau of Aeronautics.

15% Goal E. Coordinate computer data processing.

The state classification specification, Engineering Technician - Transportation Series, Engineering Technician 5 class description, in pertinent part, is:

This is senior level engineering technician work in the planning, design, construction, operation and maintenance of transportation facilities. Positions allocated to this level differ from lower levels through assignment of different duties; complexity of duties assigned; and independent work.

Examples of work at this level are:

Construction/Design Technician, located in the Construction and/or Design sections or the Construction/Design pool performing construction-related activities and/or design-related activities; Field Bridge Inspection/Repair Technician, positions responsible for inspection and maintenance of major structures; and Senior Crew Chief, positions responsible for directing and training personnel in taking samples of soils, field testing soils and operation of necessary equipment.

None of these representative positions are similar to the position held or duties performed by appellant. Nor are appellant's duties, relative to inspecting airports for compliance with Federal 5010 Program, found in Engineering Technician 5 positions.

Regarding Goal D of appellant's position description -- inspection of airports under the 5010 program for the Wisconsin Bureau of Aeronautics -- this work is performed in other districts by Aviation Consultant 2 level positions in DOT's Bureau of Aeronautics. However, appellant does not perform the full range of duties of these positions and these duties constitute approximately only 15 percent of appellant's total duties.

The majority of appellant's duties, as described in Goals A, B, C and E of appellant's August 1990 position description are identified as Traffic Studies Technician duties -- Engineering Technician - Transportation 3.¹ Also,

¹ The Traffic Studies technician representative position at the 3 level reads as follows:

appellant's position compares favorably with that of peer Vernon A. Aikens, Engineering Technician - Transportation 3, Transportation District 6, (Respondent's Exhibit #3).

Based on the record, the duties and responsibilities of appellant's position, at the time relevant to this appeal, do not satisfy the requirements for classification to the Engineering Technician - Transportation 5 level.

ORDER

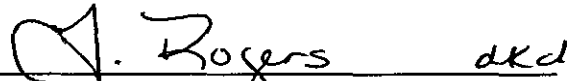
Respondent's reallocation decision is affirmed and this appeal is dismissed.

Dated: August 18, 1994

STATE PERSONNEL COMMISSION


LAURIE R. McCALLUM, Chairperson

DRM:rcr


JUDY M. ROGERS, Commissioner

Parties:

Robert Mertz
608 East 3rd Street
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

This position conducts routine traffic studies, such as vehicle speed studies, traffic counts, vehicle delay studies and vehicle count summaries, speed zone studies, accident investigations, oversize vehicle permits, including data collection and compilation; collects claims for accident damage to highway facilities maintained by the Traffic section; deploys changeable message signs in the field for use in conjunction with construction and maintenance projects; completes accident rate studies and cost analyses of alternative traffic control improvements; maintains liaison with county and local unit police agencies to provide enforcement branch input to traffic engineering decisions. Employee may oversee the work of lower level technicians or aids.

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.)