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WILLIAM P. KSICINSKI,

Appellant,

v.

Secretary, DEPARTMENT OF
EMPLOYMENT RELATIONS,

Respondent.

Case No. 92-0798-PC

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DECISION
AND
ORDER

This matter is before the Commission on the issue of whether the appellant's position should have been reallocated to the Engineering Specialist Transportation-Advanced 1 level rather than to the Engineering Specialist Transportation-Senior level. Elsewhere in this decision, these classifications will be referred to as the "Advanced" level and the "Senior" level, respectively,

The appellant serves as a construction project manager in District 2 of the Department of Transportation. The type of projects typically assigned to the appellant are different from those typically assigned to other project managers employed by the district. Most of the appellant's projects are railroad crossings or traffic signal replacements/modifications. The appellant is typically serving as project manager for multiple projects of this type at a given time, although the the individual project is small in comparison to other construction projects in the district.

The classification specifications read, in relevant part:

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:

* * *

Construction/Design Pool Specialist

These positions are located in the construction and design sections or construction/design pool working the majority of time in construction and the remainder in design. The percentages vary depending upon projects assigned. At this level, the position manages the medium to large construction projects or assists in the complex construction project.... Typical medium construction projects may be urban projects of 2 - 10 blocks with the traffic detoured from the area; less than 100 contract items; the construction of curb and gutter, sidewalk, and/or storm sewers; and utility issues. Medium construction projects may also include the construction of bridges over an interstate or large river of 100 to 150 feet. Staff include a lead inspector and part-time materials inspector.

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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

Construction

Design/Construction Pool Project Specialist

This is the advanced level of design/construction project specialists. These positions are located in the construction and design sections or construction/design pool working the majority of the time in construction and the remainder in design. At this level, the position manages large to complex highway construction projects. The projects at times will involve more than one contract, or the employe may manage two or more highway construction projects simultaneously. The projects involve numerous bid items, large dollar values, complex layout, utility conflicts, numerous subcontractors, and various types of construction such as grading, drainage, structures, granular subbase, base course, erosion control, asphaltic and P.C.C. surfacing, curb and gutter, storm sewer and difficult traffic handling operations....

The appellant has failed to sustain his burden of proof. The specifications do not specifically identify the duties assigned to the appellant. However, the specifications do differentiate between complex and very complex assignments which, in the allocation pattern for engineering specialists in the construction pool, are distinguished in terms of medium to large construction projects (Senior level) or large to complex highway construction projects (Advanced). The key differentiation between the two levels is in terms of project size rather than the number of projects assigned.¹ While the appellant showed that he worked on a large number of projects at a given time, these were projects which are smaller and do not meet the "large to complex" requirement.

This result is supported by the testimony of Leslie Fafard, who served as the District 2 Chief Construction Engineer during the relevant time period. Mr. Fafard testified that the appellant's work, i.e. the railroad contracts and the various AUP (Agreed Unit Price) projects, were not as complex as the roadway projects assigned in the district. The result is also supported by Resp. Exh. 6, which is used to define small, medium, large and complex roadway projects for purposes of the Civil Engineer specifications. This document lists "signalizing intersections" under the heading of "Small Roadway Projects."

Appellant's case is not strengthened by the fact that appellant's witness, Gerald Mueller, whose position is classified at the Advanced 1 level, performs the appellant's work when the appellant is on vacation. This assignment would be on a temporary basis, and would not be determinative in terms of establishing the proper classification level of Mr. Mueller's position.


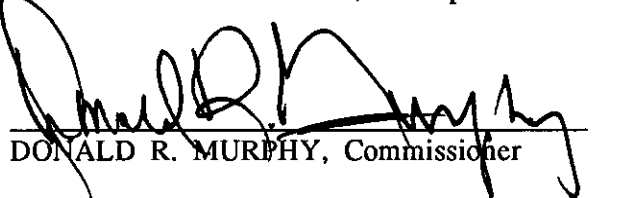
¹The Advanced level allocation does include one phrase which references positions which "manage two or more highway construction projects simultaneously." This phrase is still subject to the general requirement of "large to complex highway construction projects" found elsewhere in the description.

ORDER

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

Dated: June 21, 1994 STATE PERSONNEL COMMISSION

KMS:kms
K:D:Merits-reall (Ksicinski)


LAURIE R. McCALLUM, Chairperson

DONALD R. MURPHY, 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.

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.)