

STATE OF WISCONSIN

PERSONNEL COMMISSION

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RICHARD STORY, MICHAEL G.,
 WIDEN, WILBUR J. SCHOMAKER,
 and ROBERT A. SMITH,

Appellants,

v.

Secretary, DEPARTMENT OF
 EMPLOYMENT RELATIONS,

Respondent.

Case Nos. 92-0811-PC
 92-0817-PC
 92-0818-PC
 92-0822-PC

* * * * *

DECISION
AND
ORDER

This is an appeal of decisions by respondent to reallocate appellants' positions to the Construction Representative-Journey (CR-Jour) classification rather than the Construction Representative-Senior (CR-Sen) classification. A hearing was held on April 25 and 26, 1994, before Laurie R. McCallum, Chairperson. The parties were permitted to file briefs and the briefing schedule was completed on August 26, 1994.

Appellants' positions were reallocated to the CR-Jour classification from the Building Construction Superintendent 2 (BCS 2) classification as the result of a survey of engineering and related positions conducted by respondent and effective on June 17, 1990. Appellants filed timely appeals of these reallocations with the Commission. During the time period relevant to this survey, appellants' positions were located within the Division of State Facilities Management, Department of Administration, and were assigned responsibility for overseeing the performance of contractors and subcontractors to assure that state construction projects to which they were assigned were constructed in accordance with approved plans and specifications, with applicable contract documents, with the accepted practice of the construction industry,

and within applicable budgets and schedules; and for coordinating and scheduling the activities and progress of all contractors and subcontractors on assigned projects. The projects to which one of these positions was assigned at any one time could be numerous and could exhibit a range of complexity and duration.

None of the appellants' positions has ever been formally designated as a lead worker position. In regard to certain complex projects under construction prior to or at the time of the effective date of the subject survey, other BCS 2 positions were assigned to these projects although appellants' positions retained project oversight authority and accountability. These projects accounted for only a small percentage of the total number of projects assigned to appellants' positions. Examples offered in the hearing record included Carl Reed's assignment in 1990 to two or three projects for which appellant Widen was assigned oversight authority; Bill Lauschin's assignment from 1988-90 to a project for which appellant Schomaker was assigned oversight authority; Janet Gyland's assignment prior to June of 1990 to certain projects for which appellant Smith was assigned oversight authority; Jim Cestkiwski's assignment in 1987 to certain projects for which appellant Smith had oversight authority; and BCS 2 Wilkinson's assignment prior to 1990 to a project for which appellant Story had oversight authority. It was intended by the supervisors making these assignments that the two BCS 2's would work as associates on the particular project although one of them was designated as having project oversight authority and accountability in order to facilitate communication. In each of these instances, either the BCS 2 assigned to the project other than the appellant had a certain area of expertise (Lauschin = architecture) which the assigning supervisor felt would complement the expertise of the appellant; or each of the BCS 2's assigned to the project was able to assume responsibility for monitoring only certain aspects of the project (Reed = asbestos abatement, HVAC energy conservation, and roof inspection); or the BCS 2 other than the appellant needed to acquire training in an area in which the appellant had certain expertise (Wilkinson received training from Story in the mechanical area; Gyland gained experience on the Smith project with construction in certain soil conditions requiring "de-watering" and compaction of soil). In regard to other projects, certain of the appellants were assigned to the project although another BCS 2 position had overall project oversight authority and accountability. Appellants' positions

were also assigned responsibility on occasion for assisting in the training of new BCS employees, for directing the work activities of a summer intern, and for overseeing the work of contract consultants.

Appellants' positions each report to a Construction Coordinator position responsible for supervising a small unit of Construction Representative positions in an assigned geographical area. These Construction Coordinator positions are responsible for administering, supervising, planning, and assigning the work of the unit.

The classification specification for the Construction Representative series states as follows, in pertinent part:

Construction Representative - Journey

This is journey level construction representative work providing a wide variety of journey level construction representative assignments. Positions at this level differ from positions in lower levels in that many work assignments are generally long-term and are stated in broad general terms; assignments are completed without specific direction; and the supervisor reviews the work after it is completed to determine completeness and adherence to policy. Positions at this level will be involved in meeting with agency management or vendors on projects assigned, or other comparable areas with the supervisor and will coordinate projects which cross program lines. Positions at this level continually make more sensitive decisions and recommendations and function under general supervision.

Representative Position: Department of Administration, Division of Facilities Management. Perform all of the duties assigned to lower level construction representatives, however, projects administered would be numerous, at various locations with a wide range of complexity.

Construction Representative - Senior

This is senior level construction representative work providing complex assignments as a leadworker to lower-level construction representatives. Positions at this level differ from lower level positions in that most work objectives are long-term and broadly defined in relation to the position's total assignment; positions work on major work projects with little or no specific direction or review; and the supervisor reviews only the most complex work. Positions at this level function independently working with contractors, consultants and other agency staff. Positions at this level function under general supervision.

The only position classified at the CR-Sen level is that to which Ed Mochagen was appointed in July of 1991. Mr. Mochagen formerly occupied a BCS 2 position which was reallocated to the CR-Jour classification as the result of the subject survey. This CR-Sen position was created after the effective date of the survey and was filled through a competitive recruitment and selection process. This CR-Sen position is assigned project oversight responsibilities equivalent to those assigned to appellants' positions and performs these project oversight responsibilities 80-90% of the time. In addition, this CR-Sen position assists the Construction Coordinator in long-range workload planning and scheduling, in determining project assignments, in pre-construction negotiations with consulting engineers/architects, in monitoring employee performance and preparing employee performance evaluations, in establishing policies and procedures, in conducting pilot projects, and in serving as the acting Construction Coordinator in her absence. These responsibilities are performed for the unit as a whole, i.e., they are not limited to particular projects.

Respondent stipulated at the beginning of the hearing that the appellants satisfy the requirements of the language of the CR-Sen classification specifications except the language which requires that positions at this level be assigned responsibility for "providing complex assignments as a leadworker to lower-level construction representatives."

Appellants point to the assignment of other BCS 2 positions to projects for which appellants had oversight authority as evidence of their leadworker responsibilities at or prior to the effective date of the subject survey. These assignments did not qualify as leadworker assignments for several reasons. First, these assignments were either temporary or project-specific. In order to qualify as a leadworker, a position must be permanently assigned to direct the work activities of particular permanent staff positions. Second, appellants' supervisors, in making these assignments, did not intend to create superior/subordinate relationships in which appellants functioned as the superior and the other BCS 2 as the subordinate, but instead a relationship of colleagues or associates through which tasks were divided, different expertise was applied, and knowledge shared. It is interesting to note in this regard that, in regard to certain projects, appellants served as the "other BCS 2" who did not oversight authority and accountability for the project.

Appellants also point to their assignment to train new employees, to direct the work activities of a summer intern, and to oversee the work of contract consultants as evidence of their leadworker responsibilities at or prior to the effective date of the subject survey. The assignment to train new employees was a temporary assignment; the summer intern was not a permanent employee; and, not only are contract consultants not state employees but the assignment to oversee their work was temporary as well as project-specific. Consistent with the above discussion, none of these assignments constitutes an assignment of leadwork responsibilities and the duties and responsibilities assigned to appellants' positions fail to satisfy one of the requirements for classification at the CR-Sen level.

Appellants also argue that the Ed Moehagen position does not function as a leadworker over lower-level Construction Representative positions; that, as a result, it must be concluded that respondent does not regard this as a requirement for classification at the CR-Sen level; and that appellants' positions, since it has been stipulated by respondent that their positions satisfy the non-leadworker language of the CR-Sen specifications and perform the same basic duties as the Moehagen position except lead worker duties over lower-level Construction Representatives, qualify for classification at the CR-Sen level.

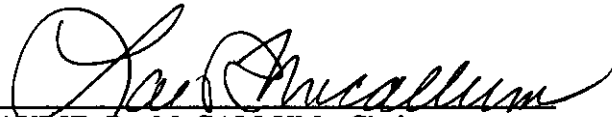
First of all, it should be noted that, if it were concluded that the Moehagen position was not assigned lead work responsibilities, the correct conclusion, in view of the lead work requirement stated in the CR-Sen classification specification, would be that the Moehagen position was misclassified, not that the appellant's positions qualify for classification at the CR-Sen level. Second, it should be noted in this regard that the CR-Sen classification of the Moehagen position was based on the duties and responsibilities assigned to the position upon its creation, and these duties and responsibilities are reflected in the 1991 position description (Respondent's Exhibit 17). If, in practice, the individual appointed to such a newly created position is not assigned responsibility for carrying out the worker activities listed on the position description, this does not impact on the classification of the position at its creation but should be reviewed in determining the proper classification of the position after the practice has continued for six months or more. In this case, the position description for the newly created CR-Sen position lists lead work as an assigned responsibility and it must be presumed

that the position was classified at the CR-Sen level as a result. In addition, the record shows that the Mochagen position, although not assigned responsibility for directing the day-to-day work activities of the lower-level Construction Representative positions in the unit, is assigned responsibilities in the areas of long-range workload planning and scheduling, determining project assignments for Construction Representatives in the unit, and monitoring employee performance and preparing employee performance evaluations. These are the types of responsibilities generally assigned to lead work positions; the unit workload planning and scheduling responsibility, and the responsibility for determining project assignments for unit Construction Representatives, satisfy the requirement in the CR-Sen classification specification for "providing complex assignments . . . to lower-level construction representatives;" and there is no parallel in the duties and responsibilities assigned to appellants' positions. Finally, the Mochagen position has higher-level administrative responsibilities in the areas of pre-construction negotiations with consulting engineers/architects, establishing unit policies and procedures, conducting pilot projects, and serving as the Construction Coordinator in her absence. The record does not show that equivalent duties and responsibilities are assigned to appellants' positions. The Commission concludes that appellants have failed to show that their positions are comparable from a classification standpoint to the Mochagen position.

Order

The actions of respondent are affirmed and these appeals are dismissed.

Dated: October 24, 1994 STATE PERSONNEL COMMISSION


LAURIE R. McCALLUM, Chairperson

LRM:lrn


DONALD R. MURPHY, Commissioner


JUDY M. ROGERS, 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.)