

examinations of equipment, overseeing fleet vehicle maintenance, and inventorying and ordering parts and supplies. Mr. Cox resigned during the spring of 1993. Mr. Landis, taking into account appellant's failure to score well enough on the exam in 1990 to be certified, decided to downgrade the AM 3 position to an AM 2 position and to continue to have appellant perform the pool management and administrative duties he had been performing. In addition, since the vacant AM 2 position was filled in 1993, appellant has been assigning and reviewing the work of this other AM 2 position and training the individual appointed to the position.

The AM 3 position standard requires lead work responsibility over other automotive mechanics. Section ER 3.01(3), Wis. Adm. Code, requires that the assignment of new duties to a position be both logical and gradual in order for a reclassification to be appropriate. Although a situation could conceivably arise where the assignment of lead work duties to a position would be considered gradual as well as logical and where competition for the resulting lead worker position would not be required, this is not one of those situations. During Mr. Cox's tenure in the AM 3 position, the assignment of pool management and administrative tasks to appellant's position must be considered a temporary or acting assignment due to the failure or inability of the incumbent of the AM 3 position to carry out these assigned tasks. An acting or temporary assignment, in the absence of a showing that the assignment continued for an extensive period of time, cannot serve as the basis for a reclassification.

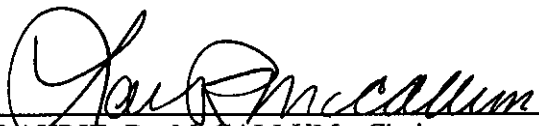
When Mr. Cox resigned from the AM 3 position, another opportunity existed for the AM 3 lead worker position to continue and for appellant to compete for it. Instead, Mr. Landis downgraded the AM 3 position to another AM 2 position, continued to have appellant perform pool management and administrative tasks, and assigned appellant to perform lead worker duties as well. This was a permanent assignment of these duties to appellant's position, was not gradual, and, as a result, did not satisfy the requirements for reclassification. To hold otherwise under these circumstances would be to sanction the creation and filling of new positions without competition which is clearly contrary to the civil service recruitment and selection process. Although Mr. Landis took a practical approach to getting the job done by the best-qualified person he knew, the process he followed does not qualify as a

reclassification and the Commission holds that respondents were correct in denying appellant's request for reclassification on this basis.

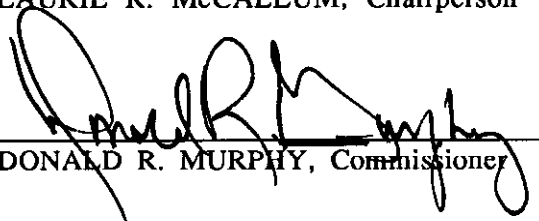
ORDER

The action of respondents is affirmed and this appeal is dismissed.

Dated: June 21, 1994 STATE PERSONNEL COMMISSION


LAURIE R. McCALLUM, Chairperson

LRM:lrn


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.)