

STATE OF WISCONSIN

PERSONNEL COMMISSION

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JOHN H. VESPERMAN,  
 Appellant,

v.

Secretary, DEPARTMENT OF  
 TRANSPORTATION, and  
 Secretary, DEPARTMENT OF  
 EMPLOYMENT RELATIONS,  
 Respondents.


Case No. 93-0101-PC


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FINAL  
ORDER

The Commission has reviewed the proposed decision and order, the objections thereto and the arguments of the parties and adopts the proposed decision and order as the final decision and order in this matter. In its review, the Commission did not consider extra-record information set forth in appellants' objections 4, 6 and 7.

Dated: December 7, 1995 STATE PERSONNEL COMMISSION

  
 LAURIE R. McCALLUM, Chairperson

  
 DONALD R. MURPHY, Commissioner

  
 JUDY M. ROGERS, Commissioner

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Parties:

John Vesperman  
 3821 Euclid Ave.  
 Madison, WI 53711

Jon Litscher  
 Secretary, DER  
 PO Box 7855  
 Madison, WI 53707-7855

Charles Thompson  
 Secretary, DOT  
 PO Box 7910  
 Madison, WI 53707-7910

NOTICE
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**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 (except an order arising from an arbitration conducted pursuant to §230.44(4)(bm), Wis. Stats.) 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.

2/3/95

\* \* \* \* \*

JOHN H. VESPERMAN,  
 Appellant,

v.

Secretary, DEPARTMENT OF  
 TRANSPORTATION, and  
 Secretary, DEPARTMENT OF  
 EMPLOYMENT RELATIONS,  
 Respondents.

Case No. 93-0101-PC

\* \* \* \* \*

PROPOSED  
 DECISION  
 AND  
 ORDER

This matter is before the Commission as an appeal from a reallocation decision. The parties agreed to the following issue for hearing:

Was the respondent's decision, effective June 17, 1990, to reallocate the appellant's position from Civil Engineer 3 to Civil Engineer Transportation-Journey correct, or should it have been reallocated to Civil Engineer Transportation-Advanced 1 as of that date?

In a ruling dated February 15, 1994, the Commission rejected the respondents' motion to dismiss the appeal as untimely filed. The Commission concluded that respondents had, in 1993, issued a written decision affirming the correctness of the original reallocation decision that had been made effective June 17, 1990, in response to a request by the appellant to review the classification level of his position.

The classification specifications for the Civil Engineer Transportation series state as follows, in pertinent part:

E. Classification factors

Individual position allocations are based upon the general classification factors from the Wisconsin Quantitative Evaluation System (WQES) described below:

1. KNOWLEDGE REQUIRED....

2. JOB COMPLEXITY....
3. CONSEQUENCE OF ERROR....
4. EFFECT OF ACTIONS....
5. AMOUNT OF DISCRETION:

This factor measures the amount of latitude the employe has in deciding what to do and when and how to do it. Specifically, the factor assesses controls over the assignment and scheduling of work; the extent to which goals, methods, procedures and priorities are determined or constrained by written or verbal instructions or guidelines (including manuals, established procedures, policies and regulations, statutes, traditional practices, and reference materials); and the nature and extent of review of the work.

6. PHYSICAL EFFORT....
7. SURROUNDINGS....
8. HAZARDS....
9. PERSONAL CONTACTS....
10. SUPERVISORY RESPONSIBILITIES....

#### F. How to Use This Classification Specification

This classification specification is used to classify professional positions as described under Section I.B. In most instances, positions included in this series will be identified clearly by one of the classification definitions which follow below in Section I of this classification specification. However, a position may evolve or be created that is not specifically defined by one of the classification definitions. In classifying these positions, it would be necessary to compare them to the classification definitions based on the factors described in Section E of the classification specification.

#### II. Definitions

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#### CIVIL ENGINEER - TRANSPORTATION - DEVELOPMENTAL

This is advanced entry or developmental level engineering work in such areas as planning, design.... Employes at this level function under *limited supervision*.

#### EXAMPLES OF DUTIES:

### Design

Positions at this level and in this area, develop contract plans, plats, and plans, specifications and estimates (PS&E's) and associated contract documents and reports for a small to medium highway projects. Typically, these projects involve the reconditioning of existing highways, minimum to no right of way purchases, intersections, safety projects, small bridge replacements, or local road projects. Positions at this level and in this area, may also assist in the development of PS&E's for more complex projects.

### CIVIL ENGINEER - TRANSPORTATION - JOURNEY

This is journey or developmental level civil engineering work in such areas as planning, design, construction, maintenance, traffic, materials and/or operation of highways, structures, and other transportation facilities for which the department may be responsible. Primary emphasis is placed upon the application of a broad knowledge of engineering principles and practices to varied and comprehensive engineering projects. Employees at this level generally direct project activities and provide guidance to engineering technicians or engineering specialists who perform inspection, surveying, drafting, and traffic studies. *Work is reviewed by professional engineering supervisors to determine soundness of technical engineering judgment and progress of the project, when the employe is not registered as a professional engineer. Some positions require registration as professional engineer.* Employees at this level function under general supervision.

#### EXAMPLES OF DUTIES:

#### DISTRICT - DIVISION OF HIGHWAYS AND TRANSPORTATION SERVICES

### Design

#### Design Project Engineer or Assistant Design Project Engineer - Squad Leader

Positions at this level and in this area, are leaders of one or more design squads, direct assigned personnel in the development of contract plans, plats, and plans, specifications and estimates (PS&E's) and associated contract documents and reports for medium to large highway projects. Typical medium design projects include the reconditioning of a roadway with minimum to no right-of-way purchases; the paving of shoulders and intersections. These projects involve minimum controversy or public interest and few environmental issues. The larger projects may involve the reconditioning of a roadway including substantial grading and potentially removing/moving part of the road, and environmental issues. Additional staff such as lower level engi-

neers, specialists and technicians [may] be assigned. At this level, the engineer would be assigned multiple projects of this size.

#### CIVIL ENGINEER - TRANSPORTATION - SENIOR

This is senior level civil engineering work in such areas as planning, design, construction, maintenance, traffic, materials and/or operation of highways, structures, and other transportation facilities for which the department may be responsible. For those positions which may progress to the Senior level or above, the differentiating characteristics of the Senior level include long-term and broadly defined objectives; major work products are completed with little or no specific direction or review; and the supervisor reviews the work after it is completed for informational or evaluation purposes. Positions at these levels assume a nearly independent role in working with local officials; work assignments may cross intra-departmental functional areas. The engineer may lead working groups on issue development, provide solutions, and direct negotiations on complex issues. Positions at this level make more decisions independently on more sensitive and political matters and function under *general supervision*.

#### EXAMPLES OF DUTIES:

##### DISTRICT - DIVISION OF HIGHWAYS AND TRANSPORTATION SERVICES

##### Design

##### Design Project Engineer or Assistant Design Project Engineer - Squad Leader

Positions at this level and in this area, are leaders of one or more design squads for large to reasonably complex highway projects. The more complex project would have a high cost with over 200 contract items; may be an existing roadway or new roadway; involve environmental issues; have substantial public involvement and be politically sensitive. Additionally, the more complex project would involve right-of-way issues. An engineer at this level may be assigned multiple large projects. The review and coordination of consultant-prepared plans of the same size is considered to be equivalent work.

#### CIVIL ENGINEER - TRANSPORTATION - ADVANCED 1

This is advanced level 1 civil engineering work in such areas as planning, design, construction, maintenance, traffic, materials and/or operation of highways, structures, and other transportation facilities for which the department may be responsible.

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Positions at this level differ from lower level positions in that the engineer develops and follows his/her own broadly defined work objectives and the review of the work is limited to broad administrative evaluation by the supervisor. Positions at this level have extensive authority to deal with local officials, Federal Highway Administrations officials, and agency top officials, especially in highly sensitive and complex issues and areas. The work performed by these engineers requires a high level of interpretation and creativity and has major impact on the planning, design, construction, maintenance and operation of transportation facilities. The engineer may be considered the in-depth expert in a specialty area. The work is performed under *general supervision*.

EXAMPLES OF DUTIES:

DISTRICT - DIVISION OF HIGHWAYS AND TRANSPORTATION SERVICES

Design

Design Project Engineer - Squad Leader

Positions at this level and in this area, are leaders of a design squad for a *complex* highway project. The complex highway project involves the design and development of multiple plans for a given highway project. These plans may involve exceptions to standards and require judgments and justifications by the project engineer, to the Federal Highway Administration or Division management. These projects are typically of high cost with over 200 contract items; involve environmental and right-of-way issues; are politically sensitive; include utility and traffic control issues; may involve archaeological issues and have considerable public involvement or controversy. The review and coordination of consultant-prepared plans of the same size and complexity is considered to be equivalent work; however, the employe may be assigned more than one such project.

III. QUALIFICATIONS

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Specific qualifications for a position will be determined at the time of recruitment. Such determination will be based on an analysis of the goals and worker activities performed and by an identification of the education, training, work or other life experience which provide reasonable assurance that the knowledge and skills required upon appointment have been acquired. *Registration as a professional engineer may be required, on a case-by-case basis, for all positions classified at the Senior,*

*Advanced 1* or *Advanced 2* levels. (underlining in original, italics added.)

Prior to the Fall of 1989, the appellant was employed by respondent DOT in Transportation District 1 as a construction engineer. During the winters of 1987 and 1988, after the construction season had ended, appellant worked in the design area under the supervision of Kimberly Johnson, a design unit supervisor. Appellant then returned to the construction area.

In the Fall of 1989, Karen Biesmann, one of the design engineers permanently assigned to Ms. Johnson's unit, was promoted and the appellant began working in District 1's design area on a permanent basis, although he did not formally transfer until approximately March 25, 1990. This delay in paperwork permitted the appellant to be reclassified from Civil Engineer 2 (Transportation) to Civil Engineer 3 (Transportation), effective February 11, 1990, based upon his previous duties in the construction area.

At the time the appellant began working in design in 1989, Ms. Johnson was one of eight design unit supervisors in District 1. Her design unit consisted of 5 to 8 engineers and technicians. The eight supervisors reported to the district's design chief, Tom Batchelor.

During the period from from 1987 to early 1990, the dollar amount of the projects constructed in District 1 had doubled, placing pressures on the design staff. Design units, including Ms. Johnson's, were overworked. Assignments to individual design engineers were made on the basis of workload (i.e., availability) and experience.

When he moved into the design unit, the appellant was assigned the American Parkway Interchange project (project number 1112-07-00), a complex and fast-paced project designed by a consultant: Howard, Needles, Tammen & Bergendoff (HTNB). The American Parkway project was one of the most politically sensitive projects in District 1 in 1990. The State of Wisconsin agreed to complete an interchange within a period of three years as compared to the average project duration of six years. The State negotiated an agreement (Resp. Exh. 17) with HTNB in 1988 to serve as the designer for the project. The agreement included standard language in terms of the services to be provided by the consultant and there was no evidence that the role of HTNB was anything other than the role normally played by a consultant on a complex project.



Appellant took over on the American Parkway project for Karen Biesmann, who had been classified at the Civil Engineer 3 level (Resp. Exh. 5).<sup>1</sup>

In addition to the American Parkway Interchange project, the appellant worked on two spin-off projects and 13 other highway projects during the period from January 1, 1990 through June 17, 1990. During this period, the appellant spent the majority of his time on the American Parkway Interchange project (1112-07-00).

Appellant's initial position description in his new position summarized his duties as "squad leader for medium and large sized highway projects." (Resp. Exh. 5). According to the position description, which the appellant and Ms. Johnson both signed on March 19, 1990, the appellant received the middle level or "limited" degree of supervision.

Ms. Johnson's goals for appellant, as reflected in the "Employee Performance Evaluation, Planning and Development Report" (App. Exh. 14), signed by the appellant on March 23, 1990, included "Familiarization (sic) of the Design process." The planning report, which was to be in effect for at least the next six months, stated that appellant was to "Participate in as much training as possible" for purposes of the appellant's "Job Related Development." The planning report also listed the "Employee Goals" relating to career development as follows: "Prepare for advancement to the CE4 level with registration as a professional engineer and more knowledge and independence."

Appellant's second position description for the design area was dated less than one month later (App. Exh. 15, Resp. Exh. 8). This position description, signed by the appellant and Ms. Johnson on April 6, 1990, again showed appellant as receiving "limited" supervision, but summarized his duties as "design project engineer on major highway projects."

Respondent DER implemented a classification survey which covered the appellant's position and was effective on June 17, 1990. Appellant's position was reallocated from Civil Engineer 3 to Civil Engineer-Transportation-Journey. At the time, the appellant was supervised by Ms. Johnson, was not registered as a professional engineer and was still serving his probationary period in his new position in the design section.

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<sup>1</sup> The Civil Engineer series, from CE 1 to 4, was a progression series for district jobs in the design area.

On March 13, 1991, Ms. Johnson completed the evaluation portion of appellant's evaluation, planning and development report referenced above. The evaluation included the following performance summary:

John has developed into a good designer since his transfer into the section last spring. He handled the completion at the USH 151 final plans with minimal guidance, and showed good initiative in resolving issues. He will need to develop those same skills over the next 6 - 9 month period in the early project development phase of his projects.

On August 28, 1991, appellant and Ms. Johnson signed appellant's third position description (Resp. Exh. 9) for his employment in the design unit. This position description showed the appellant was receiving "general" supervision and served as the "squad leader for complex design projects." It also states that the appellant had been performing these responsibilities since February of 1991. Appellant was reclassified from the Journey level to the Senior level, effective September 22, 1991, based upon this new position description.

In January of 1992, Dan Pruess became appellant's supervisor.

Appellant was reclassified from the Senior level to the Advanced 1 level effective October 18, 1992, based upon a position description signed by complainant and his supervisor during September of 1992, which listed "general" supervision and responsibility for the "development of the design of complex highway projects."

The Civil Engineer-Transportation class specifications differentiate design engineer positions at the Journey, Senior and Advanced 1 levels in terms of the complexity of the projects they are assigned.<sup>2</sup> Journey level positions are assigned "medium to large" highway projects, Senior level positions are assigned "large to reasonably complex" highway projects, and Advanced 1 level positions are assigned a "complex" highway project. The appellant has shown that he spent the majority of his time during the relevant period on the American Parkway Interchange project, a "complex" project within the

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<sup>2</sup> Respondent contended that the role of the consultant on the American Parkway Interchange project diminished the role of the appellant. The Advanced 1 specifications provide that a "complex" design project falls within the representative position irrespective of whether the design is being prepared in-house or by a consultant: "The review and coordination of consultant-prepared plans of the same size and complexity is considered to be equivalent work." There is no basis for drawing a distinction in this regard.

meaning of the class specifications. The appellant submitted his weekly time reports (App. Exh. 1) for the period including the weeks from the beginning of 1990 through the effective date of the survey. Those reports indicated the appellant worked a total of 1041.5 hours (including 81.5 hours of overtime) during this period. The reports also indicated that the appellant spent 554 hours on the American Parkway Interchange project (project number 1112-07-00) during the same period. The evidence clearly indicated this project was a complex project,<sup>3</sup> in that it involved more than 200 contract items, was politically sensitive, included utility and traffic control issues and had considerable public involvement. The time records show the appellant did not spend any time during this period on either of the other two projects he sought to identify as major or complex at hearing, the Evansville-USH51 project (5155-04-01) and the IH90-Cambridge Road project (3080-00-02). The specs at the Advanced 1 level indicate that an employe at that level "may be assigned more than one" complex project which relies on a consultant for the design work, but the specifications do not indicate that multiple assignments are required.

While the appellant has shown that he was working on a complex design project, the key issue in this matter relates to the level of supervision exercised by Ms. Johnson over the appellant during the relevant time period. Both the Journey and Advanced 1 levels in the Civil Engineer Transportation specifications provide that the employe functions under "general" supervision. However, if one concludes that the appellant was working under the more restrictive<sup>4</sup> category of "limited" supervision, it would be incongruous to also conclude that he was exercising the discretion and independence that is contemplated by the language of the Advanced 1 specification.<sup>5</sup>

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<sup>3</sup> Ms. Johnson, Mr. Pruess, Ms. Cullen and Mr. Chesnik all testified that the American Parkway Interchange project was a complex project.

<sup>4</sup> As indicated on line 16a of the various position descriptions that are of record in this matter, the three classes of "supervision, direction, and review" that may be provided to a position are "close," "limited" and "general."

<sup>5</sup> The Advanced 1 specifications indicated that "the engineer develops and follows his/her own broadly defined work objectives and the review of the work is limited to broad administrative evaluation by the supervisor." This does not describe an employe who receives "limited" supervision. To the extent that the appellant's position is "not specifically defined by one of the classification definitions," the specifications direct that there is to be a comparison to the classification definitions based on the WQES factors. One of

The parties point to different parts of the record to support their view as to the level of supervision provided by Ms. Johnson. Respondents rely on the specific references in appellant's March 19, 1990, and April 6, 1990, position descriptions. Both specify that the appellant received "limited" supervision. Respondents attempt to buttress their view through the testimony of Tom Batchelor, appellant's second-level supervisor during the period in question, and the testimony of Robert Stone and Kevin Chesnik, both of whom had experience in District 1 at both the unit supervisor level and the design section chief level. These witnesses testified to the effect that one would tend to provide a greater level of review to the work of a newly hired employe, that if a complex project was assigned to a journey level position, one would expect the supervisor to compensate, and that when the American Parkway Interchange project was assigned to the appellant, it was with the understanding of Mr. Batchelor that the appellant would not be able to "contribute fully on a professional and technical basis to the design" because the appellant was still developing professionally in terms of highway design. Mr. Batchelor also testified that he held his supervisors responsible for delivering projects on time and that when a supervisor had inexperienced staff, the supervisor had to pick up the slack. Respondent also relies on the previous conduct of Ms. Johnson relating to the classification of the appellant's position as supporting the lower classification. It is undisputed that in May of 1990, all of the design section supervisors met with Mr. Batchelor to exchange information and develop recommendations as to the classification of all design section staff. At that meeting, Ms. Johnson supported classification of appellant's position at the Journey level.

The appellant relies primarily on the testimony of Ms. Johnson to establish the supervisory level she provided him. Ms. Johnson testified appellant performed his duties on the American Parkway Interchange project "with

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This factor measures the amount of latitude the employe has in deciding what to do and when and how to do it. Specifically, the factor assesses controls over the assignment and scheduling of work; the extent to which goals, methods, procedures and priorities are determined or constrained by written or verbal instructions or guidelines (including manuals, established procedures, policies and regulations, statutes, traditional practices, and reference materials); *and the nature and extent of review of the work.* (emphasis added)

minimal guidance" However, she also stated that as the supervisor and given the importance of the project, she was "very involved in keeping up to date" on the project and that Mr. Batchelor also expected to know what was happening on the project. Ms. Johnson said she spent a "tremendous amount of time" on the project on issues associated with some of the decisionmaking. She testified that her role regarding the American Parkway project did not change when the appellant assumed the role of project manager from Ms. Biesmann and that because Mr. Batchelor had such high expectations of his supervisors for the highly important and politically sensitive projects, the only way she could meet these expectations was to be involved in many aspects of the project. Ms. Johnson also testified that during the period of January through June of 1990, the appellant was involved in the technical aspect of the American Parkway Interchange project, primarily associated with HNTB, and that in that role he made "independent decisions."

The designation of "limited" supervision in appellant's two position descriptions and Ms. Johnson's statement that she provided "minimal guidance" to the appellant are inconsistent. However, neither party asked Ms. Johnson to explain this inconsistency nor did either party ask Ms. Johnson any questions directly relating to the level of supervision she had specified on the position descriptions. It is Ms. Johnson, rather than other design unit supervisors or Mr. Batchelor who determined the actual level of supervision provided to the appellant during the period in question. Ms. Johnson did qualify her reference to providing "minimal guidance" through her various comments to the effect that she remained closely involved in the American Parkway Interchange project.

The appellant has the burden of proof in this matter and must establish the necessary facts by a preponderance of the evidence. Bluhm v. DER, 93-0303-PC, 6/21/94. If the trier of fact feels the evidence on each side of a disputed issue is equally weighted, or that the respondent's evidence is more weighty, the appellant cannot prevail as to that factual issue. Tiser v. DNR & DER, 83-0217-PC, 10/10/84; Hubbard v. DER, 91-0082-PC, 3/29/94 (appeal pending). Once the appellant established that he spent the majority of his time on "complex" assignments, the crucial element in meeting his overall burden was to establish that he was receiving "general" rather than "limited" supervision. Given the failure of Ms. Johnson to explain or specifically withdraw the refer-

ence to "limited" supervision on the position descriptions, the Commission concludes that the appellant has failed to sustain his burden of proof in this matter. Ms. Johnson was already familiar with the appellant's design work when he began working in her design unit in the Fall of 1989. By the time Ms. Johnson and the appellant signed the appellant's position description in March of 1990, and then a second version the following month, Ms. Johnson should have been very aware of the level of supervision she was providing to the appellant.

The Commission's conclusion regarding the level of supervision provided to appellant is supported, to at least a certain degree, by information found in appellant's performance evaluation. The first entries, dated March 23, 1990, stated the the appellant was to become familiar with the design process. This statement is clearly inconsistent with an Advanced 1 classification. The planning report also provided that appellant was to obtain "as much training as possible." This language does not specify the level of the training so it could be interpreted as either obtaining training at the highest level or at any level. Of these two possibilities, the more logical one is that it is not limited to training at the highest, i.e. Advanced 1, level. While it could be expected that an evaluation of an Advanced 1 level position would also make reference to obtaining periodic training to maintain and enhance skills, the concept of obtaining "as much training as possible" is a different concept.

Zogg position.

The comparison position relied upon by the appellant to justify the classification of his own position to the Advanced 1 level was the position held by Jerry Zogg, another design engineer in District 1. Mr. Zogg was hired by respondent at the Civil Engineer 4 level in November of 1989.<sup>6</sup> Under the classification scheme then in effect, the 4 level was the highest available objective level. At the time of his hire, Mr. Zogg was a registered engineer and had previously worked for a private engineering firm where he was a senior project manager and worked on a consultant basis to the State on highway projects of up to \$35 million. Mr. Zogg's position at DOT was initially reallocated, as part of the classification survey, to the CE Senior level. Mr. Zogg appealed this

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<sup>6</sup> Mr. Zogg's initial position description (Resp. Exh. 18) dated November of 1989 shows he received "general" supervision. He completed his probationary period on May 5, 1990. (Resp. Exh. 20)

decision internally and in December of 1992, the decision was changed so that Mr. Zogg's position was classified at the Advanced 1 level as of the effective date of the survey, i.e. June 17, 1990. The appellant contends that the reallocation of Mr. Zogg's position to the Advanced 1 level was based, at least in part, upon duties he performed before his hire by DOT as well as duties he began performing after June 17, 1990. The appellant also contends that some of the projects which served as the basis for the reallocation of Mr. Zogg's position were not "complex" and that Mr. Zogg did not serve as the project manager for at least one of the projects that was complex. The Commission agrees that the classification of Mr. Zogg's position should be based upon the duties he was performing as of the effective date of the survey. If he was not serving as project manager or design squad leader for complex design projects at that time, his position should not have been classified at the Advanced 1 level. However, to the extent the respondents may have relied upon misinformation in determining the proper classification level for Mr. Zogg's position, any error made relative to that position may not serve as justification for misclassifying the appellant's position. In Roberts & DeLaMater v. DER, 92-0481, 0638-PC, 3/9/94, the Commission held that even though it appeared, based upon the record established at hearing, that a comparable position had been misclassified at the higher level, as long as the appellants' positions did not meet the higher level specifications, the Commission would not compound any error which might exist as to the comparable position.

In contrast to the appellant's evaluations, The "Development Report" portion of the evaluations of Mr. Zogg's performance includes language that is somewhat less limiting than used by Ms. Johnson with respect to the appellant. As indicated in Resp. Exh. 20, Mr. Zogg was to engage in the following activities in order to improve job performance:

to better understand department policy and become acclimated to district procedures, and departments computer program used on project development.  
Broaden skills to become a better designer.

The activities identified for Mr. Zogg relate less to designing generally and relate more to the specific procedures used by the Department of Transportation.

In view of his relative lack of experience, the record shows that appellant was not functioning at the time of the reallocation with a degree of independence equivalent to the degree of independence contemplated by the Advanced 1 classification.

ORDER

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

Dated: \_\_\_\_\_, 1995      STATE PERSONNEL COMMISSION

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LAURIE R. McCALLUM, Chairperson

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DONALD R. MURPHY, Commissioner

K:D:Merits-reall (Vesperman)

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JUDY M. ROGERS, Commissioner

Parties:

John Vesperman  
3821 Euclid Ave.  
Madison, WI 53711

Jon Litscher  
Secretary, DER  
PO Box 7855  
Madison, WI 53707-7855

Charles Thompson  
Secretary, DOT  
PO Box 7910  
Madison, WI 53707-7910