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THOMAS H. WEBER,

Appellant,

v.

Secretary, DEPARTMENT OF
EMPLOYMENT RELATIONS,

Respondent.

Case No. 94-0066-PC

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DECISION
AND
ORDER

This case involves an appeal pursuant to §230.44(1)(b), Stats., of the reallocation of appellant's position from Automotive Mechanic 2 to Automotive/Equipment Technician - Senior rather than Automotive/Equipment Technician - Master.

In the context of this case, the key language in the Master level definition found in the class specification (Respondent's Exhibit 1) is as follows:

The three main differences between the Automotive/Equipment Technician-Senior and the Automotive/Equipment Technician-Master are that the Master-level Technician overhauls engines, transmissions and various other systems, works on all types of vehicles, including off road heavy equipment, such as dozers, end loaders, etc., and must work on diesel engines some of the time, while the Senior-level Technician does not overhaul engines, etc., and works on fewer types of vehicles.

It is undisputed that if appellant satisfied this language with respect to the overhaul of engines or other equipment, this position would qualify for the Master level classification. It also is undisputed that appellant has been in this position for four or five years and had never performed an overhaul,¹ although he was capable of doing so and he would have been given this assignment if the need arose and his supervisor decided it was cost-effective to do the job in-house. Based on these facts, the Commission must conclude that DER did not err when it reallocated appellant's position to the Senior rather than the Master level.

¹ His unit had performed one overhaul some time before appellant's tenure in this position.

In deciding this case, the Commission must apply the class specification as it is written, see e.g., Brandt v. DNR & DER, 87-0155-PC (11/3/88). It is clear from the class specification (Respondent's Exhibit 1), that the class levels are differentiated on the basis of work actually performed, as opposed to work that could be performed if the need should ever arise. For example, Para. I. B. provides that to be classified at the Master level, "the positions must perform the work described in the Master level definition a majority of the time." (emphasis added). The Master level definition states: "[p]ositions at this level perform all duties of an Automotive/Equipment Technician-Senior, and, in addition, spend the majority of their time performing highly-skilled repairs ... the Master-level Technician overhauls engines..." (emphasis added). This approach is consistent with general principles of position classification, see, e.g., §230.09(1), Stats.: "Each classification so established shall include all positions which are comparable with respect to authority, responsibility and nature of work required." (emphasis added).

Appellant contends that a contributing factor to the lack of overhaul work is that his unit has been so effective in its maintenance and upkeep of its machinery that the need for overhauls has been avoided. He contends that, in effect, he is being penalized with respect to his classification because of the good work he has been doing. This argument cannot affect the outcome of this case, because, as discussed above, the Commission must decide this matter on the basis of the class specification as promulgated.²

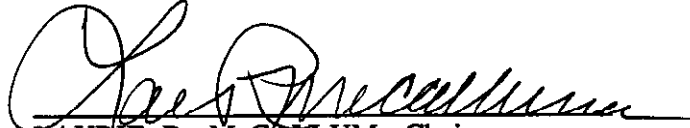
Finally, this decision is consistent with the Commission's recent decision of a similar matter, Runyan v. DER, 94-0052-PC (9/21/94).

² DER developed the class specification, as it is statutorily authorized to do, §230.09(2)(am), Stats., as part of the survey process. In so doing, it consulted with a committee of primarily DNR mechanics. According to Mr. Hamblin of DER, it was the consensus of this committee that a big differentiation between the senior and the master classifications should be the engine overhaul factor. It would have been appropriate at this level, where the class specification was developed, to have considered points such as the one appellant now raises.

ORDER

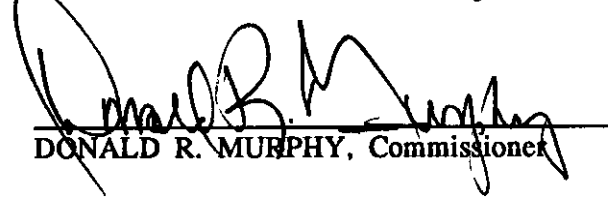
Respondent's action is affirmed and this appeal is dismissed.

Dated: November 22, 1994 STATE PERSONNEL COMMISSION



LAURIE R. McCALLUM, Chairperson

AJT:rcr



DONALD R. MURPHY, Commissioner



JUDY M. ROGERS, Commissioner

Parties:

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Wisconsin Rapids, WI 54494

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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.)