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JAMES C. JOHNSON,  
 Appellant,

v.

Secretary, DEPARTMENT OF  
 EMPLOYMENT RELATIONS,  
 Respondent.

Case No. 94-0332-PC

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DECISION  
 AND  
 ORDER

This matter is before the Commission on appeal of a decision by the respondent, Department of Employment Relations (DER) to reallocate the position held by the appellant, James Johnson, to Real Estate Specialist-Journey. The following discussion and conclusions are based on evidence presented at a hearing held March 10, 1995, and were determined after consideration of posthearing briefs filed by the parties.

The issue in this matter is: Whether respondent's decision reallocating appellant's position to Real Estate Specialist-Journey rather than Real Estate Specialist-Senior was correct.

Definitions for the applicable position classifications as provided in the State Classification Specification, Real Estate Specialist Series are:

B. Real Estate Specialist-Journey

This is the full performance level. Employes have acquired and utilize a working knowledge of the fundamental concepts, practices and procedures of the real estate field. Duties and tasks are frequently non-routine. Resolves most questions and problems, and refers only the most complex issues to higher levels.

Positions perform work that is varied and difficult in character and spend the majority of time working in one or more of the following functions: prepare property appraisals of varying degrees of difficulty and substantiate recommendations and valuation determinations; review non-detailed appraisals and approve offering prices based on these appraisals; negotiate for the acquisition of property or its rights and complete the necessary documentation; interview and counsel individuals who must be relocated and offer information and assistance relating

to the housing alternatives available; prepare relocation plans; initiate actions for the public sale of land remnants; arrange public auctions, including preparation of bills of sale, collection of payments and preparation of applicable legal instruments; investigate and review claims for refinancing, moving expenses, housing supplements, and prepare the applicable documents and reports; attend public hearings for the purpose of informing the public and property owners of the nature of proposed projects, the necessity of acquisition, or the purpose of rezoning property; or testify in court, defending actions taken in the real estate program. Assist in the training and direction of other real estate personnel when these employees are assigned as assistants on real estate projects. Work is performed under the limited to general supervision of a Real Estate Supervisor.

and

C. Real Estate Specialist-Senior

This is senior level professional real estate work applying considerable knowledge of principles, practices, and procedures to the completion of difficult and complex assignments. Duties and tasks reflect variety and complexity. Positions assigned to the Senior level are differentiated from lower level positions in that positions spend the majority of time: (1) functioning as a district/area coordinator in one functional area AND performing routine to complex duties in two or more other functional areas; OR (2) performing routine to complex duties in two or more of the following function areas: appraisal, negotiation, relocation, property management, direct housing loan program, or LPA program coordination AND providing on the job training to lower level Real Estate Specialist; OR (3) specializing in one functional area performing routine to complex duties on a statewide basis. Work is performed in accordance with program or project guidelines and is reviewed through program reports and progress conferences. Work is performed under the general supervision of a Real Estate Supervisor, program manager or district manager.

Pertinent parts of appellant's position description in effect at the time of reallocation are:

#14 Position Summary

This is a full performance level professional position in the District Real Estate Section. Difficult and complex assignments in appraisal, negotiation and litigation are independently carried out at this level. This position carries a significant amount of decision-making responsibility and accountability for actions taken. Supervision is general in nature and limited largely to providing direction at the beginning of an assignment and periodic review of work for technical soundness and compliance to policies and laws.

#15 Goals and Worker Activities

- 20% A. Negotiates for the purchase of properties, including the very complex or politically sensitive parcels of real estate required for transportation improvement projects.
- A.1 Attend informational meetings and make public relation calls on property owners to explain proposed transportation projects and to explain how the Department of transportation purchases real estate for these projects.
  - A.2 Prepare for negotiations by obtaining and studying resource material such as right of way plats, construction plans, appraisal reports, title reports and conveyance documents. Check legal descriptions used in conveyance documents.
  - A.3 Meet with individual property owners to negotiate for purchase of right of way parcels. At the meeting interpret and explain right of way plats and construction plans for property owners and communicates what effects right of way acquisition will have on their property. Explains to the property owner their rights under Eminent Domain Laws.
  - A.4 Applies good communication skills to develop rapport with property owners in order to assess problems and determine solutions.
  - A.5 Prepare and process negotiation documents such as purchase agreements, deeds jurisdictional offers, awards of damage, vouchers, negotiation diaries and notes to the construction engineer. Maintain complete and accurate negotiation files for each parcel.
  - A.6 Report to District Real Estate Supervisor on status of negotiations. Report new information learned during negotiations which may be used as a basis for revised offering price or an administrative settlement above the approved offer. Report owner's problems and recommend possible solutions.
  - A.7 Negotiates just compensation settlements with property owners of nominal value parcels, without supporting appraisal, but based upon the agent's analysis of market data in the area.
  - A.8 Construct administrative settlements and provide supporting documentation to substantiate these settlement.
  - A.9 Analyze complex negotiation problems and situations and arrive at valid settlements and solutions.
- 20% B. Prepare independent appraisals and nominal value estimates of various types of property including residential, commercial, industrial, agricultural. Assignments include routine to moderately complex appraisals involving severance, change of grade, loss of access and other damages.

- B.1 Research, obtain and interpret resource material such as right of way plats cross sections, construction plans, zoning information, soil types, comparable sales data, property tax assessments etc. Consult with experts in highway design, zoning, planning, soils etc.
- B.2 Verify and evaluate sales data, analyze market ranges, and prepare sales data book.
- B.3 Inspect properties to be appraised and confer with property owner. Explain to property owners the proposed highway improvement and the appraisal process.
- B.4 Analyze and correlate the information obtained and prepare appraisal reports.
- B.5 Confer with review appraisers and make revisions/corrections to appraisal reports of [sic] required.
- B.6 Insure that all appraisals conform to the Uniform Standards of Professional Appraisal Practice, the applicable state statutes and the applicable federal statutes.
- B.7 Assist new agents in accomplishing the various appraisal activities.
- B.8 Attend Public Information meetings.
- B.9 Estimate project right of way costs.
- B.10 Review property owner and/or state appraisals and advise management on settlement issues.
- B.11 Testify as an expert witness at county condemnation hearings and jury trials.

10% C. Under the general direction of the real estate supervisor, the project agent will coordinate and monitor assigned projects from the planning and design stages through to the successful No. 1 project certification.

- C.1 Represents Real Estate Section in a district wide project team assigned to improvement project.
- C.2 Researches and provides project team with cost estimates, feasibility studies, and other real estate information required by team to successfully complete the project scope.
- C.3 Represents the Real Estate Section at informational meetings, public hearings, and other meetings with the public, elected government officials, consultants, and Wis DOT managers.
- C.4 Prepares or directs the preparation of right of way plat and relocation order submittals with project estimates (project and delivery).
- C.5 Projects completion schedule with supervisor for all activities necessary to complete project.
- C.6 Monitors progress on appraisal assignments and reports status to supervisor.
- C.7 Monitors progress on acquisition and relocation assistance activities and reports status to supervisor.

C.8 Drafts, updates, and submits right of way certification reports to assure letting of construction project to contract.

50% D. Coordinate litigation activities within the District. Act as representative of the State and/or District for all appeals, pretrial activities, trials and/or commission hearings as requested by Management.

- D.1 Review acquisition and relocation activities that present a potential for future litigation. Recommend settlements, appeals, or revised offering prices under the direction of the supervisor.
- D.2 Receive and review appeal notices. Request legal representation. Evaluate existing files, appraisals and diaries. Develop attorney files and parcel summaries.
- D.3 Recommend and contract for services of experts. Record dates, coordinate deadlines. Coordinate meetings and represent the district at conferences with counsel and expert witnesses.
- D.4 Advise counsel and experts, recommend courses of action. Develop and prepare or obtain exhibits.
- D.5 Prepare reports, keep status records, process payments, close files.
- D.6 Train other personnel in litigation activities and roles.

There are three allocations in the Real Estate Specialist-Senior position definition: (1) functioning as a district/area coordinator in one functional area AND performing routine to complex duties in two or more other functional areas; or (2) performing routine to complex<sup>1</sup> duties in two or more of the following functional areas: appraisal, negotiations, relocations, property management, direct housing loan program, or LPA program coordinator AND providing on the job training to lower level Real Estate Specialists, or (3) specializing in one functional area performing routine to complex duties on a statewide basis.

Appellant asserts that he performs all the required duties of a Real Estate Specialist-Senior. He specifically claims that he performs complex negotiations, complex appraisals and that he is the district litigation coordinator. However, these arguments do not imply that appellant is

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<sup>1</sup>The definition for Real Estate Specialist-Journey positions provides: Resolves most questions and problems and refers only the most complex issues to higher levels (emphasis added). This is one distinction between the Journey level classification and higher classifications, i.e. the Senior and Advanced Level Classifications.

claiming he satisfies allocation pattern two, which requires that he provide OJT to lower level Real Estate Specialist or allocation pattern three, which requires that his duties be on a statewide basis. And, in fact, appellant presented no evidence to support such claims. As a consequence, appellant's specific claims are addressed in connection with allocation one.

In support of his claim of being district litigation coordinator, appellant presented in addition to his testimony three exhibits: Appellant's Exhibit 1, Appellant's Position Description, pp 4-5, paragraph D; Appellant's Exhibit 3, a Litigation duty sheet; and Appellant's Exhibit 8, a Reclassification Request/Report, dated April 29, 1994. All three documents refer to appellant as litigation coordinator.

In support of his claim that he performs "complex duties in two or more functional areas," appellant points to his position description, item A where it refers to appellant as negotiating property purchases "including very complex or politically sensitive parcels of real estate," and item B, where it indicates appellant is assigned, "routine to moderately complex" appraisals. Also, appellant points to the testimony of Senior level Real Estate specialist Barbara Mortensen, the district review appraiser, who testified she reviewed Appellant's Exhibits 15, 18 and 19, three appraisals prepared by appellant, and concluded they were complex appraisals. Ms. Mortensen acknowledged that she did not review these appraisals as a part of her duties and that she was currently appealing her position reallocation by respondent.

Other evidence shows that on June 18, 1993, the Department of Transportation, District 1, entered into a contract, from approximately July 6, 1993 to July 1, 1994 with G.W. Mayo, a real estate appraisal consultant to provide appraisal services, direct and train District 1 staff appraiser and review appraisals. And while appellant and Jennifer Queram, another staff appraiser, testified in disclamation of Mayo, they were among those under his training for about 1 year, ending near the effective date of the reallocation at issue.

DOT District 1 Real Estate Supervisor Melvin Hoff, whose subordinates included the appellant, Queram and Mortensen, testified he hired Mayo to train appellant and other new staff members, that he assigned Mortensen the more complex appraisals; that in April '94 he wrote an equivalent Journey level reclass request for appellant; that as of June 26, 1994 he had not assigned any appraisals to appellant he would classify as complex, nor had appellant performed any complex negotiations as of that date.

DER Personnel Specialist June Strevler testified that she authored the classification specifications for the Real Estate Specialist Series, functioned as survey manager and made the decision at issue. Strevler testified that appellant's litigation coordination activities (PD Item D) were similar to duties found in the Legal Assistant-Confidential classification specification, and characteristic of paralegal positions classified at the Administrative Assistant 3 or 4 levels; and that these classifications were considered in determining the proper allocation of appellant's position. Strevler also testified that appellant's litigation coordination duties did not fit the definition of "coordinator" in the Real Estate Specialist series classification specification.<sup>2</sup> Other testimony by Strevler was that negotiation and appraisal duties of appellant's position were not of the complexity required of Senior level positions.<sup>3</sup>

The appellant testified and presented other witnesses in an effort to call into question Strevler's knowledge as to the duties of Real Estate Specialists. However, that was not the issue to be decided.

The evidence presented does not sustain appellant's appeal. The more credible evidence demonstrates that appellant was not performing appraisals, negotiations or litigation coordinator functions at the level required for Senior level positions.

#### ORDER

Respondent's decision is affirmed and appellant's appeal is dismissed.

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<sup>2</sup> The specification defines "coordinator" as "An employe who is assigned duties which include planning, organizing, scheduling, tracking, evaluating, and directing the flow of work, and completion of projects; as well as handling complex assignments within the area of coordination. Coordinators do not have supervisory authority as defined under Wis. Stats. 111.81 (19).

<sup>3</sup> The language of the second and third sentences of this paragraph was changed from that in the Proposed Decision and Order for purposes of clarification.

Dated: December 20, 1995 STATE PERSONNEL COMMISSION

  
LAURIE R. McCALLUM, Chairperson

DRM:bjn

  
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 (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.

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