

STATE OF WISCONSIN

PERSONNEL COMMISSION

DAVID BROOKE,
Appellant,

v.

**President, UNIVERSITY OF WISCONSIN
SYSTEM, and**

**Secretary, DEPARTMENT OF
EMPLOYMENT RELATIONS,**

Respondents.

**INTERIM DECISION
AND ORDER**

Case No. 99-0034-PC

A hearing was held in the above-noted case on July 29, 1999. The parties were given an opportunity to file post-hearing briefs, with the final brief filed on October 22, 1999. A proposed decision and order (PDO) was mailed to the parties on December 16, 1999. The deadline for submitting written objections was extended at respondent's request, with the final objection filed on February 14, 2000. The Commission reviewed the objections filed. Substantive changes to the PDO are made herein and are highlighted through use of alpha footnotes. The Commission did not disagree with the examiner's credibility determinations.

The issue for hearing is shown below (see conference report dated June 3, 1999, as amended by appellant's letter dated May 31, 1999, and confirmed by Commission letters dated June 7, 1999 and June 23, 1999):

Whether respondents' decision to deny appellant's request for the reclassification of his position from Instrument Maker-Entry was correct, or whether it would be more appropriate to classify his position at the Physical Sciences Laboratory (PSL) Ultra High Vacuum (UHV) Specialist level. Sub-issue: What is the effective date for the reclassification?

I. Background

The Department of Employment Relations (DER) conducted a classification survey, which included positions at PSL that fabricated and repaired scientific equipment, as well as performing support shop duties. DER placed the majority of these PSL positions under the

Classification Specification entitled "Instrument Maker" (Exh. A-25, showing a revision date of 6/94).

At the time of the survey, there was one PSL employee, Leon Siverling, whose job was different than the others in that he worked on ultra high vacuum (UHV) equipment. The majority of this work was performed for PSL. He also performed some UHV work in the nearby Synchrotron Radiation Center (SRC) which housed a synchrotron and an Aladdin ring. DER created for Mr. Siverling's position a new classification specification entitled "Physical Sciences Laboratory (PSL) Ultra High Vacuum (UHV) Specialist" (Exh. A-26), effective June 26, 1994.

The appellant has worked at PSL since August 1995. His position initially was classified as "Mechanician - Entry (Project),"¹ and the duties associated with his **first position description (PD)** (hereafter, **First PD**)² are shown below (Exh. R-101).

Position Summary: Working under the supervision of the Instrument Shop Supervisor, this position supports the mission, staff and customers of the Physical Sciences Laboratory (PSL), by performing a variety of fabrication and assembly operations in support of the development, construction and repair of scientific instrumentation. This position also provides a variety of Support Shop activities involving specialized assembly processes, construction of specialized shipping/storage containers and operation material handling equipment. This position is responsible for performing the following functions:

65% A. Instrument Fabrication and Repair

- A1. Working from blueprints, sketches, and verbal instructions, this position supports the Instrument Shop by completing fabrication, repair and assembly projects involving scientific components and apparatus utilizing lathes, milling machines, drill presses, surface grinder, tool grinder, shear and break press, as well as oxy-acetalene cutting equipment. The incumbent is responsible for working to and checking quality down to .001 of an inch.
- A2. This position performs the assembly of fabricated parts into a finished assembly, testing for functionality, and performing any rework necessary to meet the design specifications.

¹ The record contains no explanation of why the appellant's project position was not classified as an Instrument Maker.

² The appellant signed the First PD (Exh. R-101) on August 21, 1995.

- A3. Under the direction of the Shop Supervisor, this position occasionally provides direct support to staff, researchers, and students on projects.
- 35% B. Support Shop Operations
- B1. Constructs and assembles specialized structures, fixtures and equipment used in the assembly of instrumentation.
 - B2. Fabricates and constructs storage and shipping containers for scientific instruments, and prepares equipment for shipment or storage. Operates a variety of hand power tools and machinery (i.e. table saw, jig saw, table router, drill press, miter saw, planer) in the fabrication of containers.
 - B3. Operates material handling equipment such as fork lifts, jib and overhead cranes, to load, unload, and move large equipment. Operates a 2.5 ton stake truck between the KRC and Madison campus.
 - B4. Assists researchers, staff and students in the operation of shop equipment in the Support Shop.

Mr. Siverling stopped working in December 1996 pursuant to retiring in or around February 1997. Thereafter, the appellant's supervisor, Bill Cotter, began assigning UHV work at the PSL to the appellant. Initially, this was thought of as a temporary assignment with half of the position's time devoted to UHV work.

A **Second PD**³ was written in early 1997, to reflect the changes in the appellant's job, as shown below (Exh. R-102). The classification remained as "Mechanician - Entry (Project)."

Position Summary: Working under the supervision and guidance of the Shop Supervisor, this position supports the staff and users of the (PSL), by performing a variety of machine tool and metal fabrication processes to fabricate, repair, and assemble specialized components and scientific apparatus. This position involves working with researchers and students and requires a high degree of precision and quality.

- 40% A. Instrument Fabrication and Repair
- A1. Working from blueprints, sketches, and verbal instructions, this position involves the fabrication, repair and assembly of scientific components and apparatus utilizing lathes, milling machines, drill presses, surface grinder, tool grinder, shear and break press, as well as oxy-acetalene cutting equipment. This position, producing structurally safe welds with a quality appearance, as well as the soft

³ The appellant signed the Second PD (Exh. R-102) on February 25, 1997.

soldering and silver brazing of a variety of materials. The incumbent is responsible for working to and checking quality down to .001 of an inch.

- 10% B. Support Shop Operations
- B1. This position is responsible for performing the assembly of fabricated parts into a finished assembly, testing for functionality, and performing any rework necessary to meet the design specifications. The incumbent is responsible for preparing notes and sketches of all rework for documentation changes.
- 50% C. Vacuum Shop Operations
- C1. Under the guidance of the Shop Supervisor, this position occasionally works with staff, researchers, and students on projects. The incumbent may assist students with the operation of shop equipment in the absence of the shop supervisor.
- C2. Does final assembly and UHV pump down and testing to PSL and/or customer specifications.
- C3. Works with RGA's, various UHV pumps, leak detectors and all other vacuum shop equipment.
- C4. Orders, stores, uses and disposes of chemicals/hazardous materials per UW/PSL policy.
- C5. Works on PSL safety committee for vacuum shop.

A **Third PD**⁴ was written for the appellant in June 1997, when he became a permanent employe. At this time, the classification of his position was changed to Instrument Maker - Entry. The duties of this third PD (Exh. R-103) are shown below. The UHV work still was viewed as a temporary assignment and was expected to account for less of the position's time.

Summary: Working under the limited supervision of an Advanced Instrument Maker or the Shop Supervisor, this position is responsible for producing highly precise parts and assemblies for unique scientific apparatus. The position functions as a skilled machinist with a working knowledge of most machine tools, metal fabrication and construction techniques, and common prototype shop materials, and contributes to the development process. This position also supports the specialized assembly and Ultra High Vacuum (UHV) operations of the PSL Support Shop and UHV Shop. The incumbent will be responsible for providing ever increasing levels of assistance to researchers, engineers and students in the development of instrumentation projects and provide training in techniques unique to scientific instrumentation construction.

- 65% A. Construction. Working from blueprints, sketches, and verbal instructions this position is responsible for fabricating, repairing, in-

⁴ The appellant signed the Third PD (Exh. R-103) on June 18, 1997.

pecting, assembling and testing components and assemblies to conform to design specification using a variety of instrument shop equipment, materials, and tools.

- A1. This position is responsible for the layout and fabrication of precision prototype components, using a variety of instrument shop equipment and techniques including but not limited to: lathes and milling machines (manual and CNC), boring mills, surface grinders, drill presses, power metal saws, sheet metal cutting and bending equipment, welding (Gas Tungsten Arc Welding), Gas Metal Arc Welding, Manual Shielded Arc Welding, brazing, soldering, and Plasma, Carbon Arc and flame cutting. This includes all machine or processes set up, and fixturing.
 - A2. Using a variety of inspection tools and apparatus (micrometers, calipers, optical comparitors, etc.), the incumbent is responsible for verifying the conformance of fabricated parts and assemblies to engineering specifications, sketches or verbal instructions, and making modifications to correct any deficiencies that might occur.
 - A3. Machines components to UHV standards and specifications.
 - A4. Assembles fabricated components into working assemblies, diagnoses problems, and makes modifications to achieve functionality where required.
 - A5. Repairs, rebuilds, modifies and installs improvements on existing instruments, laboratory equipment and instrument shop tools.
 - A6. Selects correct material from stock and cuts per cut sheet, drawing or verbal instructions.
- 5% B. Design Consultation.
- B1. This position assists researchers, engineers and students in the design process by reviewing requirements and limitations of a proposed design. Suggests alternatives in materials and design parameters that will impact quality, cost considerations and functionality.
 - B2. Determines and develops specialized jigs and fixtures for use in the prototype phase of instrument development or welding tasks.
- 15% C. Support Shop Operations
- C1. Develops, fabricates, and assembles specialized structures, fixtures and equipment necessary for the assembly of instrumentation.
 - C2. Fabricates and constructs specialized instrumentation, and apparatus and performs specialized assembly processes (e.g. magnet fabrication and coil winding, potting processes, coating operations, etc.)
 - C3. Assists researchers, non-shop staff and students in the operation of shop equipment in the Support shop.

- 15% D. Vacuum Shop Operations
 - D1. Prepares UHV components for assembly using specialized cleaning processes including, but not limited to: acid etching, solvent degreasing, ultrasonic and high temperature bakeout processes.
 - D2. Operates a variety of UHV pumps, leak detectors and other vacuum shop equipment. Performs assembly and UHV pump down and testing to PSL and/or customer specifications.
 - D3. Orders, stores, uses and disposes of chemicals/hazardous materials per Federal, State and University policies and works on PSL safety committee for the vacuum shop.
 - D4. Supports the vacuum testing maintenance program which involves calibrating, maintaining and repairing a variety of UHV equipment including: ion pumps, cathodes, sublimators, Residual Gas Analyzer, Mass Spectrometer and a variety of gauges.

A Fourth PD⁵ was written for the appellant's position in February 1998 (Exh. A-11). The classification remained Instrument Maker - Entry. The duties in the Fourth PD were similar to those in the Third PD. The changes are noted below. One change was that his UHV work increased to 25% of the position's time. Respondent contends UHV work still was considered as a temporary assignment.

- 50% A. Construction.
The only change here was reducing the time percentage from 65 to 50 percent.
- 5% B. Design Consultation.
No change was made here.
- 20% C. Support Shop Operations.
The time percentage for this goal increased from 15%. Also, a new task was added as shown below:
 - C4. Designs, builds and orders materials for specialized shipping containers, for shipping scientific instruments.
- 25% D. Vacuum Shop Operations.
The time percentage for this goal increased from 15%. Also, new language was added to tasks D2 and D3, as shown below.
 - D2. Orders ultra high vacuum parts and components as necessary for projects.
 - D3. Inspects PSL emergency eyewashes and showers, reports any necessary repairs to Maintenance Supervisor. Incumbent performs inventory of and maintains PSL First Aid supplies.

⁵ The appellant signed the Fourth PD (Exh. A-11) on February 6, 1998.

Respondent concedes (see Exh. R-109) that the appellant performed vacuum work for 59% of his time in 1998.^A This percentage was based on 1061.5 total hours vacuum work out of 1,887.4 total working hours; with 449.2 hours of vacuum work during the first half of the year and 612.3 hours in the second half. Respondent further concedes that the appellant performed vacuum work during the first 5 months in 1999 (the most recent information available at hearing) for 75% of his time (577.9 out of 695.6 total working hours), including 113.2 hours of vacuum work through January 24, 1999. The figures for time spent performing vacuum work after January 21, 1999,^B are not relevant to the question of the appellant's entitlement to reclassification but are relevant to the question of whether the PSL continues to have such work. Information about the amount of UHV work at PSL beyond the time period covered at hearing is extra record and inappropriate for respondent to reference in objections.

In November 1998, the appellant spoke with his supervisor, Bill Cotter, and verbally requested a reclassification. Nothing in the hearing record indicates that Mr. Cotter agreed to support or advance the appellant's request.

The appellant discussed his position and the need to change his PD to reflect the duties actually performed.^C He discussed this with Mr. Cotter and Clayton Vinje (in charge of personnel for the PSL and the SRC). There was no promise or suggestion from either Mr. Cotter or Mr. Vinje that the requested changes would be made or that a change in classification would occur if they were made. In or around February 1999, the appellant developed a **draft Fifth PD** (Exh. A-19) using a copy of his Fourth PD and making handwritten notes on what changes were needed. The major changes noted by the appellant were to recognize that he only spent about 3% of his time on Goal A tasks (construction), 15% of his time on a reduced number of Goal C tasks (shop support operations) and 80% of his time on UHV work. Mr. Cotter returned the draft copy of the draft Fifth PD to the appellant, with the following hand-written comment on the last page:

^A Changes were made in this paragraph to address the first objection raised by respondent in arguments February 4, 2000.

^B January 21, 1999, is the effective date of the reclassification request as discussed later in this decision.

The comments and changes suggested by Dave on this PD are not totally accurate because they are based on a narrow range of projects that have been available in the shop over the past year. Dave has not had the opportunity to be involved in the other responsibilities on his PD as much as anticipated to this point. I believe this will change during the next year.

The hearing record does not support Mr. Cotter's statement that "this will change during the next year."

II. Instrument Maker Classification Specification

The classification specification for Instrument Makers (Exh. A-25) is shown below (emphasis added):

I. INTRODUCTION

- A. *Purpose of This Classification Specification.* This classification specification is the basic authority . . . for making classification decisions relative to present and future Instrument Maker positions. Positions allocated to this series are primarily responsible for providing specialized machinist or tool and die work.
- B. *Inclusions.* This series encompasses Instrument Maker positions found in the Technical Bargaining Unit, and located at colleges throughout the University of Wisconsin System. These positions devote the majority of their time and are primarily responsible for the design, construction, inspection, testing and possibly shipping of highly specialized equipment including but not limited to mechanical, laboratory and precision instruments. Positions in this series generally work with machine shop equipment when constructing instruments . . .
- C. *Entrance and Progression Through This Series:* Employees typically enter this classification series by competitive examination for entry-level positions. Progression to the journey-level will normally occur through reclassification. Progression to the advanced-level will normally occur through competitive examination. However, reclassification of a position from the journey-level to the advanced-level may be permitted when it can be demonstrated that the change in duties and responsibilities justifying the class change are a logical and gradual outgrowth of the position's previous duties and responsibilities. It is anticipated that not all positions in this series will reach the advanced-level.

^c Changes were made to this paragraph to accurately reflect the record. See objections 2 and 3 noted in the appellant's letter dated January 18, 2000.

II. DEFINITIONS

INSTRUMENT MAKER – ENTRY: Under limited, progressing to general supervision, performs as a highly-skilled and independent machinist or tool and die-maker in the design and creation of unique, highly intricate and precise scientific equipment. Recommends and aids in the layout, design and construction of research instruments utilizing his or her knowledge of materials, methods, and machine tools to fabricate the required item. Receives direction in the form of blueprints, sketches, and oral descriptions, which may only give details of specific components, with the remainder of the instrument design left to the initiative of the person assigned to the project.

EXAMPLES OF WORK PERFORMED

INSTRUMENT MAKER – ENTRY and JOURNEY

- 1) Produce and assemble unique scientific parts using lathes, milling machines, boring mills, drill presses and other related machines and equipment.
- 2) Assist in the designing and building of jigs, fixtures and tools by performing machining operations that cannot be accomplished by conventional methods.
- 3) Repair and maintain laboratory instruments.
- 4) Design and construct laboratory, teaching and related equipment.
- 5) Performs standard welding using a variety of materials including steels, stainless steels, aluminum and other non-standard alloy metals used in the fabrication of parts and equipment. Set up and operate machine tools for machining task at hand using standard and exotic materials and maintaining tolerances.

III. PSL UHV Specialist Classification Specification

The classification specification for PSL UHV Specialist (Exh. R-107) is shown below:

INTRODUCTION: This classification specification is the basic authority . . . for making classification decisions relative to the function of the PSL Vacuum Specialist. This single position is located within the University of Wisconsin System, University of Wisconsin Madison, Graduate School, Physical Sciences Laboratory in Stoughton, Wisconsin.

DEFINITION: This position allocated to this classification is the UHV specialist at the PSL. This position is primarily involved with UHV development, operation, troubleshooting, maintenance, and preparation processes. Prepares, assembles, tests and installs components, devices and complex UHV systems. Troubleshoots and repairs UHV assemblies, devices, and systems for leaks. Cleans material used to fabricate UHV devices. Maintains and calibrates UHV equipment.

EXAMPLES OF WORK PERFORMED

- 1) Maintain and calibrate UHV equipment and test instruments.
- 2) Test materials to determine UHV operating and suitability.
- 3) Test unknown metals for identification and hardness.
- 4) Spot weld UHV assemblies.
- 5) Prepares UHV components and devices for assembly, final testing, and installation using specialized UHV cleaning and bake-out techniques and equipment such as Residual Gas Analyzers, sensors, and heating equipment.
- 6) Act as information resource for clients, workers, and graduate students regarding UHV technology, equipment, and materials selection and use.
- 7) Diagnose failures, repair and maintain UHV systems and devices using specialized techniques and equipment (e.g., Residual Gas Analyzers, UHV pumps, and ion gauges).
- 8) Train new staff in UHV technology, procedures and equipment.
- 9) Clean UHV assemblies and instruments.

QUALIFICATIONS: The qualifications required for this position will be determined at the time of recruitment. Such determinations will be made based on the goals and worker activities performed and an identification of the education, training, work or other life experience which would provide reasonable assurance that the knowledge and skill required upon appointment have been acquired.

IV. Respondents' Arguments^D

Respondents contend that the appellant lacks the necessary experience for classification as a PSL UHV Specialist. This argument is without support in the classification specification. As noted in the prior section, the "Qualifications" section is stated in general terms. Furthermore, the appellant demonstrated at hearing that he has the qualifications necessary to perform

^D Changes were made in this section to clarify that DER, in creating the UHV Specialist classification specification (CS), did not rely on Exh. R-110 but on a prior version of Mr. Siverling's PD. The hearing record supports the conclusion that the prior version was essentially the same as Exh. R-110. Respondents' second objection to the PDO (arguments dated 2/4/00) refers to the fact that Exh. R-110 post-dates the creation of the UHV Specialist CS. Respondents contend that they made an error in using the wrong PD for Mr. Siverling's position at hearing and that the correct PD is different (but the differences were not explained) Respondents' hearing strategy depended upon the accuracy of Exh. R-110 as representing the duties performed by Mr. Siverling during the time period relevant to this case. It is too late to claim an error of this nature.

the UHV work at the PSL as demonstrated by the fact that he has been performing those job duties successfully for a number of years.^E

Respondents also contend that the appellant does not perform the duties necessary for classification as a PSL UHV Specialist. This argument is shown below (p. 2, brief filed by cover letter dated October 7, 1999):

The testimony and evidence clearly indicated that UHV Specialist classification was created with the highest level of experience in mind. As testified by Clay Vinje and represented in the documents (Ex. R-106), the Department of Employment Relations worked closely with Mr. Vinje and the Physical Sciences Lab in establishing the requirements for the UHV Specialist positions based on the position description . . . of Leon Siverling . . .

Mr. Siverling's position description, which served as the basis for the state classification specifications . . . represents the level at which one needs to perform to be considered a UHV Specialist. (Ex. R-110). As testified by Mr. Vinje, the "specialist" term indicates the highest level of experience in working with UHV. More specifically, Mr. Siverling's 30 years of experience in all areas and levels of UHV and his responsibility for the most complex UHV System, the Aladdin Ring at the Synchrotron Radiation Center (Ex. R-119), represent the "Specialist" element of the UHV Specialist position . . .

Respondents' above-noted arguments are unsupported by the record. As detailed in the following paragraphs, the history behind development of the PSL UHV Specialist classification specification (as referenced by respondent) does not support respondents' arguments. Furthermore, the duties performed by Mr. Siverling during the relevant time period do not support respondents' contention that work on the Aladdin Ring at the SRC was contemplated as the deciding factor for inclusion as a PSL UHV Specialist.

Part of the history referenced by respondents relates to the fact that DER shared the initial draft of the classification specification with the University of Wisconsin (UW). The

^E Respondents incorrectly contend that this sentence is without basis in the hearing record. (See objection 4, respondent's arguments dated 2/4/00.) For example, the appellant reviewed the UHV Specialist classification specifications and testified that he does all work noted in the definition section and does all work noted in the examples of work performed although he rarely does the third example. Through this (and other) testimony, the appellant also established that he works on complex systems.

draft title was "Physical Sciences Laboratory (PSL) Vacuum Specialist"(Exh. R106, p. 4).

Pertinent portions of the draft text are shown below:

- I. **INTRODUCTION:** This classification specification is the basic authority . . . for making classification decisions relative to the function of the PSL Vacuum Specialist. This single position is located within the University of Wisconsin System, University of Wisconsin Madison, College of Letters and Science, Physical Sciences Laboratory in Stoughton, Wisconsin.
- II. **DEFINITION:** The position allocated to this classification is the ultra high vacuum specialist at the PSL. Assembles and tests new and complex vacuum systems. Cleans materials used to fabricate ultra high vacuum devices. Checks ultra high vacuum assemblies and devices for leaks.
- III. **EXAMPLES OF WORK PERFORMED**
 1. Maintain and calibrate high vacuum equipment and test instruments.
 2. Test materials to determine ultra high vacuum operating and suitability.
 3. Test unknown metals for identification and hardness.
 4. Spot weld vacuum assemblies.
 5. Clean ultra high vacuum assemblies and instruments.
 6. Acts as information resource for clients, workers and graduate students regarding vacuum equipment and materials selection and use.
- IV. **QUALIFICATIONS:** The qualifications required for this position will be determined at the time of recruitment. Such determinations will be made based on the goals and worker activities performed and an identification of the education, training, work or other life experience which would provide reasonable assurance that the knowledge and skill required upon appointment have been acquired.

The draft was shared with Clay Vinje, Personnel Manager of the PSL and the SRC. Mr. Vinje, by letter dated July 19, 1993, made the following suggested changes regarding the nature of work performed (Exh. R106, pp. 2-3, showing same numbering system below as used in the letter):

2. We feel that the Position Definition needs to consistently reference Ultra High Vacuum (UHV) technology not just "vacuum." This position . . . (is) involved with vacuum levels in the 10 to the minus 9 Torr range as a

minimum. UHV levels require specialized knowledge of preparation and cleansing procedures as well as knowledge of specialized equipment and materials.

3. This position involves more than just check UHV assemblies and devices for leaks. The Position Definition section needs to include language to the effect that these positions involve the installation, troubleshoot, repair and calibration [of] UHV assemblies, devices, instruments (e.g. monochrometers, beamlines, chambers) and complex scientific systems (e.g. Synchrotron's) (sic).

We would like to suggest the following Definition be considered, which would incorporate the above comments.

“Positions allocated to this classification are primarily involved with Ultra High Vacuum development, operation, troubleshooting, maintenance, and preparation processes. Prepares, assembles, tests and installs components, devices and complex UHV systems. Troubleshoots and repairs UHV assemblies, devices, and systems for leaks. Maintains and calibrates UHV equipment.

4. Some additional examples of Work Performed could also include:

- New) Diagnoses failures, repairs and maintains UHV system and devices using specialized techniques and equipment (e.g. Residual Gas Analyzers, UHV pumps, ion gauges.)
- New) Trains new staff in UHV technology, procedures and equipment.
- 5) Prepares UHV components and devices for assembly, final testing, and installation using specialized UHV cleaning and bake out techniques and equipment such as Residual Gas Analyzers, sensors, and heating equipment.
- 6) Act as information . . . regarding UHV technology, equipment and material selection and use.

In the final version of the classification specification, the title was changed from “PSL Vacuum Specialist” to “PSL UHV Specialist.” The “Introduction” section stayed the same. The “Definition” section was amended to include Mr. Vinje’s suggested wording. Also, the section entitled “Examples of Work Performed” was amended as suggested by Mr. Vinje. The “Qualifications” section remained the same.

It is instructive to note that Mr. Vinge's letter suggesting changes to the draft classification specification does not support a conclusion that only a position working on the Aladdin ring or synchrotron was envisioned for inclusion in the final classification specification. There is no mention in his letter of an Aladdin ring. He did mention a synchrotron, but only as *one* example of a "complex scientific system." Furthermore, the changes he suggested to the section entitled "Examples of Work Performed" made no mention of an Aladdin ring or a synchrotron.

Respondents' argument that work on the Aladdin ring is the determining factor for classification as a PSL UHV Specialist also is unsupported by the duties performed by Mr. Siverling. The duties he performed while DER was drafting and finalizing the UHV Specialist classification specifications were the same as shown in his 1996 (later) PD, marked as Exh. R-110. The main focus of Mr. Siverling's position was his UHV work at the PSL. Goal A accounted for 50% of the position's time working on UHV Technology. Mr. Siverling's UHV work at PSL is included in section A, as is his UHV work at SRC. Goal A has 8 separate tasks; and only 2 of those tasks were specifically identified as work at the SRC.^F Furthermore, the PD indicates that all his work at the SRC (including work on the SRC accelerator ring and synchrotron) *was performed only in the absence of permanent SRC staff*. The only other mention of work at SRC is part of goal B (15% of the position's time) in task B2 (there are four tasks listed under goal B), noting that Mr. Siverling provided training to SRC staff "regarding UHV procedures, equipment and systems." Clearly, Mr. Siverling's PD focused on the UHV work at PSL, not his back-up or advisory functions to the SRC.

A third problem with respondent's argument relates to another historical fact that has not yet been discussed. The Aladdin ring and synchrotron always have been at the SRC and not at the PSL. When the classification specifications were drafted, Mr. Vinje specifically

^F Respondents faulted the proposed decision for identifying only 2 of the 8 goal A tasks as relating to work at the SRC. Respondent's objection (#5 in arguments dated 2/4/00) was based on testimony from respondents' hearing witnesses which was contrary to the language of Exh. R-110, or other documentation provided to DER at the time the classification specifications were being created. Important to the determination of DER's thinking is what DER knew at the time the classification specifications were written. Any additional information provided at hearing that the record does not establish as having been shared with DER is irrelevant to the question of DER's intent.

suggested in his letter dated July 19, 1993 (Exh. R106, pp. 2-3), that the draft be changed to potentially include positions at the SRC. DER rejected his suggestion. The specific wording of his suggestion is shown below (using same numbering system as appears in his letter):

1. The Position Definition and Introduction sections of the specification imply that there can only be one such position involving these activities. Activities similar to this are performed as part of another position at the Synchrotron Radiation Center (SRC). It might be appropriate to leave the definition open enough to incorporate a similar such position with SRC at some point in the future.

The DER staff person who rejected the above-noted suggestion did not testify at the hearing. DER's rejection of this suggestion leads the Commission to conclude that work on the Aladdin ring or synchrotron at the SRC were *not* intended as the defining requirement for inclusion as a PSL UHV Specialist. The inference raised is that DER felt it was the UHV work at PSL (the focus of Mr. Siverling's position) which warranted classification as a PSL UHV Specialist. The second inference raised is that if DER felt only work on the synchrotron or the Aladdin ring were sufficiently complex to merit inclusion, then DER would have adopted Mr. Vinge's suggestion to include SRC staff who had direct (not back-up) responsibility for those devices.

Respondents' final argument relates to the reclassification of a position held by Menghort Thikim at the SRC. In November 1996, the UW requested reclassification of Mr. Thikim's position from an Electronic Technician 4 to a PSL UHV Specialist based on his increased responsibilities working on the Aladdin ring and synchrotron. Ultimately, this request was granted. The hearing record shows that the UW felt it could have only one position classified as a PSL UHV Specialist and gave that classification to the position held by Mr. Thikim based on his work on the Aladdin ring and synchrotron. Respondents urge the Commission to use the reclassified Thikim position for comparison to the appellant's position and based on this comparison conclude that the appellant's position should not be classified as a PSL UHV Specialist. Such comparison and suggested conclusion are rejected. The classification specification specifically states that the sole position in this classification is located at the PSL, not at the SRC. Furthermore (as discussed previously) respondents' reliance on work on the Aladdin ring or synchrotron as a defining requirement for classification as a PSL UHV Specialist is un-

supported by the classification specifications, the history of developing the same and Mr. Silverling's PD.

V. Best Fit Analysis

Once a factual determination has been made as to the specifics of an incumbent's job, they must be applied to the various specifications. The specification providing the "best fit" is used to determine the actual classification. The "best fit" is determined by the classification specification that reflects the job duties on which the employe routinely spends a majority of his/her time. *DER & DP v. Pers. Comm. (Doll)*, 79-CV-3860 (Dane Co. Cir. Ct., 9/21/80), appeal settled, 80-1689 (Ct. App. 2/9/81).

The record clearly shows that the job duties performed by the appellant for a majority of his time are reflected by the PSL UHV classification specification. Respondent conceded that beginning in calendar year 1998, the appellant spent a majority of his time performing PSL UHV work and that the available information for 1999 shows this increased to 75% of his time.

An additional indication that the appellant's position is inappropriate for inclusion in the IM classification specification is that he is unable to progress through the series. The IM specifications provide for progression from the entry level to the journey and (in some instances) to the advanced level. It is undisputed that the appellant performs an insufficient amount of IM work to enable progression through the series.

Respondents attempted to show that the appellant's work does not meet all the requirements for inclusion in the PSL UHV Specialist. For example, Mr. Cotter testified (using Exh. R-108 as a guide) that the appellant performed no preparation, assembly, testing or installation of complex UHV systems and that he did not troubleshoot or repair complex UHV systems. The fatal flaw with Mr. Cotter's analysis is that he defined complex UHV systems as including only work on the Aladdin ring and the synchrotron.

VI. Effective Date

The Commission has long held that, as a general rule, the effective date for reclassification requests is measured from the date the employing unit's personnel office received the

appellant's written request for reclassification. See, for example, *Tiffany et al. v. DHSS & DER*, 83-0225-PC, 7/6/84; *Baggott v. DNR & DER*, 87-0012-PC, 12/23/87; *Carlin v. DHSS & DER*, 94-0207-PC, 6/22/95 and *Abdulghani v. DOT & DER*, 96-0143-PC, 11/7/97.

The appellant did not submit a written request for reclassification to his agency's personnel office until January 21, 1999 – the date respondent claims as the appropriate effective date. On January 21, 1999, the appellant sent a memo to Sue Adler, who works in the Graduate School's Budget and Personnel Office. The content of the memo is shown below (Exh. A-18, p. 1):

Here is a copy of the actual time I have spent working here at PSL. This is for 1998. 1997 would be basically the same. PSL has been working on vacuum parts and chambers for 30+ years and still is. I want a job audit in order to get a reclass to the job I am doing . . .

Ms. Adler responded on March 9, 1999, as follows (Exh. A-18, p. 2):

I met with Pat Griffith of CPO (Classified Personnel Office) this morning. Since it is management who decides the duties and responsibilities of a position; only a reclassification request that had been approved and signed by your supervisor and PSL management would be reviewed. A supervisor is the only one who can update a PD.

Therefore any position description that you would submit to the Graduate School or to CPO without supervisory/management approval would be rejected. The Instrument Maker title series is a position delegated to UW-Madison so review by DER would not be an option. Hopefully some mutual resolution can be found . . .

The appellant claims entitlement to an earlier effective date of March 1, 1998. His argument is based, in part, on his "notes of the conversations between Bill Cotter and Clay Vinje from March 11, 1999 to April 27, 1999." The referenced notes are not in the hearing record and, accordingly, it is inappropriate for the appellant to reference the same in his brief. (See appellant's brief dated 8/29/99, p. 1.)

The appellant also contends that the hearing testimony supports the earlier effective date. He contends the record shows the UW failed to inform him that he was required to sub-

mit a written reclassification request when circumstances suggested that his verbal request would be acted upon. (See appellant's brief dated 8/29/99.) He concludes that the UW's actions constitute a ministerial error attributable to management which justifies use of the earlier effective date, citing as authority *Guzniczak and Brown v. DER*, 83-0210, 211-PC, 5/13/87; petition for rehearing granted and decision reaffirmed, 6/11/87. The Commission disagrees.

The Commission, in the *Guzniczak* case, found that the appellants had been misled by management conduct into assuming they were proceeding correctly in pursuit of reclassification. The Commission further found that the appellants had justifiably relied to their detriment on the misleading management conduct. Based on these findings and applying the principle of equitable estoppel, the Commission adopted an effective date prior to the date the appellants actually submitted a written request for reclassification. The present case lacks the elements of equitable estoppel found in *Guzniczak*. The record here does not indicate that management told appellant that his position would be reclassified pursuant to his verbal request or that management supported such action.

The present case is more akin to the circumstances in *Jones v. DHSS & DER*, 90-0370-PC, 7/8/92. It was clear to Mr. Jones that management did not support the reclassification of his position. Management also failed to inform Mr. Jones how to initiate his own written reclassification request. The Commission held that equitable estoppel requirements were not met under these circumstances.

The appellant also contends he is entitled to interest on the back pay he receives as the prevailing party in this appeal, pursuant to §PC 5.07, Wis. Adm. Code. The cited authority, however, pertains to other types of cases before the Commission (such as a discrimination case). It does not pertain to classification appeals.⁶


ORDER

Respondents' decision denying the appellant's request for reclassification of his position to PSL UHV Specialist is rejected, with an effective date of January 21, 1999. This case is

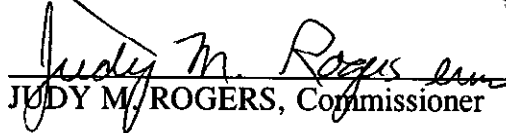
remanded to respondents for action in accord with this decision. The Commission retains jurisdiction to consider appellant's request for fees and costs under §227.485, Stats.

Dated: February 28, 2000.

STATE PERSONNEL COMMISSION


LAURIE R. McCALLUM, Chairperson


DONALD R. MURPHY, Commissioner


JUDY M. ROGERS, Commissioner

JMR:990034Adec1.doc

Parties:

David Brooke
5419 N. Fellows Road
Evansville, WI 53536

Katharine Lyall
President, UW System
1720 Van Hise Hall
1220 Linden Dr.
Madison, WI 53706

Peter Fox
Secretary, DER
345 W. Washington Ave.
P. O. Box 7855
Madison, WI 53707-7855

⁶ The Commission cannot explicitly award back pay in a reclassification appeal. *Manthei et al. v. DER*, 86-0116, etc.-PC, 1/13/88, citing *Seep v. Pers. Comm.*, 140 Wis. 2d 32, 41-42 (Ct. App, 1987).