

STATE OF WISCONSIN

PERSONNEL COMMISSION

RICHARD A. CAMPBELL,
Appellant,

v.

**President, UNIVERSITY OF WISCONSIN
SYSTEM¹, and**

**Secretary, DEPARTMENT OF
EMPLOYMENT RELATIONS,**

Respondents.

**FINAL DECISION AND
ORDER**

Case No. 99-0091-PC

A hearing was held in the above-noted case on February 15, 2000. The parties decided not to file post-hearing briefs. A proposed decision and order (PDO) was issued on February 18, 2000, and the parties had until March 20, 2000 to file objections. No objections were filed.

The Commission made changes in this final decision to reflect its decision rationale (as denoted by alpha footnotes). The credibility of witnesses was not a factor in the changes made.

The parties agreed to the following issue for hearing (see Conference Report dated October 28, 1999):

Whether respondents' decision to deny appellants' request to reclassify his position from Experimental Farm Laborer to Farm Equipment Operator was correct, or was appellant's position more appropriately classified at the Farm Equipment Operator level.

The appellant works in the Dairy Forage Research Center of respondent's Agricultural Research Station in Prairie du Sac, Wisconsin. The position has changed since he started working there in 1984. The primary duties of his position in 1984 included milking dairy

¹ The name of the UW respondent has been corrected to the UW System.

cattle (50%), feeding dairy cattle (20%), cleaning dairy cattle and facilities (15%), observing and handling cattle (10%) and general farm work (5%). Automation, the reduction of labor staff, an increase in the number of cattle and an increase in the number of specialized diets to be prepared for the cattle have impacted on the appellant's job. In general, his direct contact with the cattle has decreased and his operation of equipment used for feeding the cattle has increased.

The position description (PD) for the appellant's position in April 1995 (Exh. A-6) showed that his time was spent feeding dairy cattle (60%), cleaning dairy cattle and facilities (20%), observing and handling cattle (10%), milking dairy cattle involved in research projects (2.5%) and performing general work (7.5%). He used the following equipment as part of feeding cattle: tower silo unloader, feed conveyor, roller mill, hammer mill and motorized feed mixing car. He used the following additional equipment to perform other tasks: manure handling system and milking parlor equipment.

The appellant's PD was revised in 1998, in connection with the reclassification request (Exh. A-5). This PD indicated that the appellant operated farm equipment to load, mix and deliver specific diets to dairy cattle (70%); maintained feeding records (10%), maintained cattle feeding and mixing areas, as well as the general facility (10%); performed routine equipment maintenance and repair (5%); and performed general farm work (5%). He used the following equipment as part of feeding cattle: farm tractors equipped with front end loaders, skidsteer loaders, payloaders, scale equipped mixing wagon, tower silo unloader, feed conveyor, roller mill, hammer mill and motorized feed mixing cart. He used the following additional equipment to perform other tasks: skidloader, as well as lawn and pasture mower equipment.

The definition of Experimental Farm Laborer contained in the classification specification dated June 1994 (Exh. R-107) is shown below. The definition is re-formatted here for ease of reference in this decision.

- A. This is agricultural work related to the care of research animals.
- B. Positions allocated to this classification:
 - 1. feed, clean, and handle cattle and other research animals;

2. operate feeding, milking, and mixing machines, and other farm equipment and vehicles;
 3. administer experimental additives to animals according to research protocols;
 4. record amounts of feed or additives consumed, or volumes of milk obtained;
 5. weigh animals and restrain for veterinary treatment;
 6. observe animals for signs of illness or injury, maintain animal health records, and treat animals for minor illnesses or injuries, as directed by Farm Supervisor and/or Veterinarian;
 7. clean animal housing areas and provide dry bedding materials; and
 8. perform related duties, such as transporting and storing hay, and maintaining equipment.
- C. Positions may carry out experimental/research activities related to crops.
- D. Positions function as a single farm laborer at a small facility or as a member of a team serving a large research farm and/or several simultaneous research projects.
- E. Positions function under the general supervision of a Farm Supervisor or research personnel.

The classification specification for Farm Equipment Operator dated March 1994 (Exh. R-108), includes the following statement in the Introduction section:

Positions allocated to this classification are primarily responsible for the operation, maintenance and repair of sophisticated farm machinery used to till, plant, fertilize, spray, cultivate and harvest farm crops.

The classification specification includes the following definition of a Farm Equipment Operator. The definition is re-formatted here for ease of reference in this decision.

There are numerous duties which Farm Equipment Operators perform as part of their daily work activities, and they are identified below. However, not all of the Farm Equipment Operators perform all the work listed below. Rather, they generally perform a combination of the duties depending on the season.

- **Semi Driver** – Employes may drive a semi (tractor-trailer) hauling animals, bedding, equipment, seed, etc., which may require overnight and possibly out-of-state travel . . . The tractor may haul a cattle trailer, flat bed trailer, low-boy trailer or a conventional van trailer. When hauling animals the operator is required to load and unload the animals. The operation of a semi requires a Commercial Drivers License . . .

- **Heavy Equipment Operator** – Employees may be required to haul a dozer to another research station by semi and operate the dozer to prepare a building site for construction . . . Other types of heavy equipment that may be operated by the employe include loaders, gravel trucks and graders. Employes may have to operate an end loader in a barn or animal stall to remove manure to be used as fertilizer, or may have to operate a grader to resurface farm roads.
- **Grain Drier Operator** – Employes may have to operate the grain drier which is run on natural gas or LP gas and has two burners. When the grain drier is in operation, grain is constantly being unloaded. This is a conveyor system that is chain-driven and requires the operator to maintain the legs, the chain links, the belts and the proper greasing of the system. This is a sensitive piece of equipment which requires a skilled operator to prevent the grain from burning or catching on fire.
- **Pesticide Applicator** – Some employes apply pesticides to research fields as instructed by the professor or researcher. In addition, these positions apply pesticides to production fields which are not used for research, but are used to grow crops to feed the research animals. There are numerous factors which must be taken into consideration when applying pesticides, such as the wind, which plots receive which types of pesticide, which pesticides can or cannot be rained on for it to be effective, and knowing how close you may spray to neighbors' fields.
- **General Operator** – All employes operate some of the following equipment: plows, discs, harrows, cultipackers, grain drills, cultipacker seeders, fertilizer applicator, mower conditioners, rakes, balers, self-unloading wagons, blowers, elevators, pull-type and self-propelled forage harvesters, combines, stalk choppers, mowers, corn planters, cultivators, and manure spreaders.
- **Leadworker** – One employe functions as a leadworker for other Farm Equipment Operators. This includes assisting other supervisors with the direction of workers and coordinating operations on production and research fields.
- **Farm Equipment Operators** usually help the mechanics during the winter season performing all types of preventive maintenance and minor repairs.

DISCUSSION

The appellant contends his position should be classified as a Farm Equipment Operator rather than as an Experimental Farm Laborer. The parties agreed at hearing that if appellant's contention were correct, the effective date would be March 15, 1998.

The Farm Equipment Operator classification specification contains the general headings shown above in bold print. The appellant is not claiming that he operates a semi, a grain drier

or a pesticide applicator. He does train staff but without formal assignment as a leadworker. Even if he had formal assignment as a leadworker, he does not train positions classified as Farm Equipment Operators (or otherwise act as a leadworker). Accordingly, his position does not warrant classification as a Farm Equipment Operator under the headings mentioned in this paragraph. ^A

The classification specification for Experimental Farm Laborer specifically recognizes that operation of machinery will be required to feed animals (“Positions allocated to this classification feed . . . animals [and] operate feeding . . . machines, and other farm equipment and vehicles.”) There is no mention of using such equipment for feeding animals in the classification specification for Farm Equipment Operator. Accordingly, the classification of Experimental Farm Laborer is the best fit for the appellant’s position.

The appellant operates some of the same equipment as positions allocated to the higher classification and he contends that operation of the equipment should be valued the same whether used in the barn (as he does) or out of doors. This argument has a common-sense appeal. However, the distinction about which he complains is encompassed in the classification specifications. The Commission does not have the authority to direct respondent to re-write the specifications to recognize this common-sense argument. Rather, the Commission must apply the classification specifications as written. *Zhe et al. v. DHSS & DP*, 80-285, 286, 292, 296-PC, 11/18/81; affirmed *Zhe et al. v. Pers. Comm.*, 81-CV-6492 (Dane Co. Cir. Ct. 11/82).

Use of comparable positions as a classification tool is a well-established practice in classification cases and can be used to demonstrate how respondent has interpreted or applied the criteria listed in a classification specification. *Jacobson v. DER*, 94-0147-PC, 4/20/95. Also see, for example, *Langteau v. UW & DER*, 83-0246-PC, 2/13/85. None of the offered comparable positions suggest that positions using farm equipment mainly to feed cattle have been classified as a Farm Equipment Operator, rather than as an Experimental Farm Laborer. The comparable positions, accordingly, support respondent’s decision to deny the appellant’s request to reclassify his position to Farm Equipment Operator.

^A Changes from this point on were made to reflect the decision rationale of the Commission.

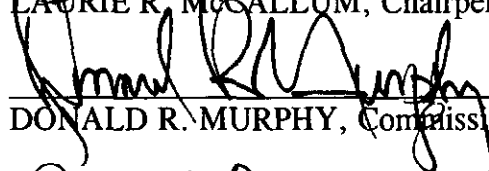
ORDER

Respondent's decision is affirmed and this case is dismissed.

Dated: May 3, 2000.

STATE PERSONNEL COMMISSION


LAURIE R. McCALLUM, Chairperson


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.)

2/3/95