

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

GLEN TRZEBIATOWSKI, Appellant,

vs.

DOA-OFFICE OF STATE EMPLOYMENT RELATIONS, Respondent.

Case 579
No. 62827
PA(der)-40

Decision No. 31949-A

Appearances:

Glen Trzebiatowski, appearing on his own behalf.

David J. Vergeront, Chief Legal Counsel, Office of State Employment Relations, 101 East Wilson Street, 4th Floor, P.O. Box 7855, Madison, Wisconsin 53707-7855, appearing on behalf of DOA-Office of State Employment Relations.

DECISION AND ORDER

This matter is before the Wisconsin Employment Relations Commission on an appeal filed by Glen Trzebiatowski (Appellant) seeking review of Respondent Administration-Office of State Employment Relations' decision to reallocate his position from Engineering Specialist-Transportation Senior to Engineering Technician-Transportation Advanced 2 effective July 13, 2003.

Peter G. Davis of the Commission's staff was designated as the hearing examiner.

By agreement of the parties, the Appellant's appeal was held in abeyance for a lengthy period of time based on the potential that the Appellant's position would be reallocated to a position he found acceptable. Such a reallocation did not occur.

The issue established by Examiner Davis and appropriately resolved through this proceeding is:

Whether the Respondent's decision to reallocate the Appellant's position to Engineering Technician-Transportation Advanced 2 as of July 13, 2003 rather than either Engineering Specialist-Transportation Senior or Surveyor was correct? ¹

¹ At hearing, Appellant identified Surveyor-Senior as the Surveyor allocation that he sought and the parties then litigated the matter with that understanding.

Examiner Davis conducted a hearing on April 17, 2008 in Madison, Wisconsin. The hearing was electronically recorded. Appellant and Respondent made oral argument at the close of the hearing and Appellant filed written argument on April 21, 2008. The examiner issued a proposed decision on March 16, 2009. Any objections were due by April 16, 2009, but none were filed.

The chain of events that ultimately led to Appellant's reallocation began with a February 2002 decision of the Commission (STATE OF WISCONSIN, DEC. NOS. 11245-S and 11667-C (WERC, 2/02) determining whether certain Engineering Specialists-Transportation were professional employees as defined in Sec. 111.81 (15), Stats. Following issuance of that decision, Respondent reviewed the then existing Classification Specifications for Engineering Specialist-Transportation and Engineering Technician-Transportation and, effective July 13, 2003, made changes in the Classification Specifications that Respondent concluded were appropriate in light of the Commission's February 2002 decision. Applying the July 13, 2003 changes to the Appellant's job duties, Respondent reallocated the Appellant's position from an Engineering Specialist to an Engineering Technician effective July 13, 2003.

As of July 13, 2003, Appellant performed the following work for 70% of the time:

- 70% A. Preparation of right of way (R/W) plats and descriptions for transportation projects.
- A1. Researches the files and old plans to locate and plot the existing right of way lines.
 - A2. Plots individual property locations from title searches.
 - A3. Computes new R/W, existing R/W and easement areas utilizing automation tools.
 - A4. Describes new R/W line utilizing automation tools.
 - A5. Independently produces R/W plats utilizing the CADD microstation and Caice.
 - A6. Obtain slope intercept information from design squads and uses them to establish right of way requirements for proposed projects.
 - A7. Through the use of coordinate geometry (COGO), interpret field survey information for laying out property boundaries, section and forty lines, platted areas, utilities, and other topographic features. Compute pertinent coordinates for all points (State plane, County, Metric).
 - A8. Prepare and process original and revised location orders and submit documentation to appropriate County and DOT offices.
 - A9. Communicate all revisions made on completed plats to proper real estate unit personnel.
 - A10. Reviews, writes, checks and corrects legal descriptions on most projects.
 - A11. Review right of way plats prepared by consultants for content and adherence to established standards. Prepare written critique of their work product.

The July 13, 2003 Classification Specification for Engineering Specialist-Transportation contains the following relevant Inclusions and Exclusions:

B. Inclusions

This series encompasses professional engineering specialists positions at the Department of Transportation that devote the majority of their time and are responsible for duties related to the engineering support functions to the multi-modal transportation systems. Positions included in this series must meet the Qualifications prescribed under Section III.

C. Exclusions

Excluded from this classification series are the following types of positions:

1. Positions that require a Bachelor of Science degree in engineering or equivalent and require a professional engineer responsibility and are more appropriately classified as Civil Engineers.
2. Positions that perform complex technical engineering work for the majority of time (more than 50%) and are more appropriately classified as Engineering Technicians.
3. Positions that are not located within the Department of Transportation.
4. Positions that do not spend the majority of their time performing professional engineering work (as interpreted by the Wisconsin Employment Relations Commission) in the multi-modal transportation systems in such areas as design, construction, maintenance, materials, planning, traffic and related programs identified herein and are more appropriately classified as Engineering Technician-Transportation.
5. All other positions that are more appropriately identified by other classification series.

The July 13, 2003 Classification Specification for Engineering Technician-Transportation contains the following relevant Inclusions and Exclusions:

B. Inclusions

This series encompasses positions located at the Department of Transportation that perform technical work in the field of architecture/engineering in the planning, design, construction, operation, and maintenance of transportation facilities. These facilities include, but are not limited to state highways, bridges, and airports.

C. Exclusions

Excluded from this series are the following types of positions:

1. Positions which perform professional work in the field of architecture/engineering and meet the statutory definition of professional employee, as defined in s. 111.81(15), Wis. Stats., as administered and interpreted by the Wisconsin Employment Relations Commission.
2. Positions that require a Bachelor of Science degree in engineering or equivalent and require a professional engineer responsibility and are more appropriately classified as Civil Engineer.
3. Office and administrative positions in which the technical aspects of the job are well formulated, detailed, and easily conveyed to and applied by a new employee with no previous sub-professional engineering training or experience.
4. Technical program support assistants more appropriately classified by other class series, such as Communication Technician, Electronic Technician, Instrument Maker, Maintenance Mechanic, Craftworker, etc., whose work involves complex and specialized electronic, electrical, mechanical, communication, or craft functions involving the design, installation, systems analysis, repair, calibration, testing, modification, construction, or maintenance or operation of equipment, machines, control systems, instruments, or other comparable devices for a majority of the time. These aforementioned positions do not provide direct technical assistance to professional architectural or engineering employees, activities, and programs.

5. Positions that meet the statutory definitions of supervisor or management, as defined in s. 111.81(19) and (13), Wis. Stats., and perform sub-professional, technical, or professional engineering work.
6. All other positions that are more appropriately identified by other classification specifications.

The July 13, 2003 Classification Specification for Engineering Technician-Transportation contains the following relevant Definition:

ENGINEERING TECHNICIAN TRANSPORTATION ADVANCED 2

This is a developmental, objective, or advanced level work within a technical engineering function. Work is performed under general supervision and is the most complex technical engineering work. Work at this level differs from previous levels in complexity of work assigned, scope and size of projects, and independence of work.

Factors to be considered for determining the size and complexity include, but are not limited to: dollar value of project; duration; number of bids items; number of jurisdictions involved; environmental; urban traffic flows; and historical/archeological or political sensitivity. Examples of duties of positions at the Engineering Technician Transportation-Advanced 2 level are listed below:

...

Right of Way Plat Technician: This is objective level work that coordinate (sic) plat scheduling with the CADDS/Drafting Unit, the Utility Unit, and the Real Estate Unit; coordinate (sic) and review plat plans prepared by design consultants for current standards and ensure (sic) that plats are properly tied to public land systems; develop (sic) right of way plats to be filed with County Clerk or Register of Deeds; interpret (sic) title searches to plot property lines; compute (sic) new right of way, existing right of way, and easement areas utilizing automation tools; write (sic) legal descriptions for conveyance to be recorded with Register of Deeds; and review (sic) and research (sic) highway right of way to locate and plot existing right of way lines. This position may mentor lower level technicians. Positions at this level work on the most complex right of way assignments.

The Classification Specification in effect on July 13, 2003 for the position of Surveyor contains the following Inclusions, Qualifications and Exclusions:

B. Inclusions

This series encompasses positions at the Department of Agriculture, Trade and Consumer Protection (DATCP); Department of Natural Resources (DNR), and the Department of Transportation (DOT) which devote the majority of their time and are primarily responsible for land surveying activities. Positions included in this series must meet the Qualifications prescribed under Section I.C.

C. Qualifications

Specific qualifications for a position will be determined at the time of recruitment. Education required may include an associate degree in surveying and/or certification from the Department of Regulation and Licensing. Knowledge required may include land surveying principles; layout standards and technical mapping requirements; automated map design, production and geographic information system technology; boundary law including order of control and priority in the element of description; standard processes used to resolve boundary disputes ranging from voluntary agreements, assessor plats to judicial action; and procedures and principles of investigation and compliance. Also required is the ability to perform land surveying mathematics and complex computations including traverse adjustments, closure, area and right-of-way curve computations, coordinate adjustments, and transformations; ability to manage time and prioritized projects within statutorily established deadlines; and good written and oral communication skills.

D. Exclusions

Excluded from this classification series are the following types of positions:

1. Positions that require a Bachelor of Science degree in engineering or equivalent and require a professional engineer responsibility.
2. Positions that do not spend the majority of their time in surveying and related activities.
3. Positions which assist in surveying functions, which perform surveying functions on construction sites primarily for staking purposes utilizing a transit, and which are best classified as Engineering Technicians.

4. All other positions which are more appropriately identified by other classification series.

As of July 13, 2003, Appellant did not spend a majority of his time performing “professional engineering work” within the meaning of the Classification Specification for Engineering Specialist-Transportation.

As of July 13, 2003, the majority of Appellant’s work was a “best fit” in the Engineering Technician-Transportation Advanced 2 classification because: (1) this work is specifically identified and included in the Classification Specification for Engineering Technician-Transportation Advanced 2 as that of a Right of Way Plat Technician; and (2) there is no internal inconsistency between said inclusion and any other portions of said Classification Specification.

The Commission issues the following

ORDER²

Respondent’s decision to reallocate Appellant’s position to Engineering Technician-Transportation Advanced 2 was correct.

Appellant’s appeal is dismissed.

Given under our hands and seal at the City of Madison, Wisconsin, this 12th day of May, 2009.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Judith Neumann /s/

Judith Neumann, Chair

Paul Gordon /s/

Paul Gordon, Commissioner

Susan J. M. Bauman /s/

Susan J. M. Bauman, Commissioner

² Upon the issuance of this Order, the accompanying letter of transmittal will contain the names and addresses of the parties to this proceeding and notices to the parties concerning their rehearing and judicial review rights. The contents of that letter are hereby incorporated by reference.

DOA-Office of State Employment Relations (Trzebiatowski)

MEMORANDUM ACCOMPANYING DECISION AND ORDER

Trzebiatowski (Appellant) seeks Commission review of Respondent's decision to reallocate his position from Engineering Specialist-Transportation Senior to Engineering Technician-Transportation Advanced 2 effective July 13, 2003.

Appellant argues that his position is a "best fit" within the Surveyor-Senior or the Engineering Specialist-Transportation Senior classifications. Consistent with its reallocation decision, Respondent asserts that Engineering Technician-Transportation Advanced 2 is the "best fit" for Appellant's position.

Respondent and Appellant agree that Appellant's March 17, 2003 Job Description is accurate and that, as indicated therein, he spends 70% of his time performing the listed duties. Those duties relate to the preparation of right of way plats. From the testimony of Appellant, John Kedrowski and the language of Sec. 443.01 (4), Stats.,³ we are satisfied that Appellant's plat preparation can accurately be categorized as surveying. Respondent and Appellant disagree as to whether those surveying duties fall within the Classification Specifications of Engineering Specialist, Surveyor, or Engineering Technician.

Looking first at the Engineering Specialist Classification Specification, Exclusion 4 contained therein provides that positions that "do not spend a majority of their time performing professional engineering work (as interpreted by the Wisconsin Employment Relations Commission)" cannot be included in the Specialist Classification Series. In STATE OF WISCONSIN, DEC. NO. 11667-C (WERC, 2/02), the Commission concluded that "surveying" was not professional engineering work. See Finding of Fact 20 and page 56 of that decision. Therefore, because Appellant's surveying work is not professional engineering work, his position has been specifically excluded from the Specialist Classification specification. Thus, Appellant cannot be a "best fit" in an Engineering Specialist position.

Turning to the Surveyor Classification Specification, the "Purpose of This Classification Specification" portion states in pertinent part:

This classification specification is the basic authority under Wis. Admin. Code ER 2.04 for making classification decisions relative to positions primarily responsible for providing a specialized expertise in surveying.

³ Section 443.01 (4), Stats. provides:

(4) "Land surveying" means any service comprising the determination of the location of land boundaries and land boundary corners; the preparation of maps showing the shape and area of tracts of land and their subdivision into smaller tracts; preparation of maps showing the layout of roads, streets and rights-of-way of same to give access to smaller tracts; and the preparation of official plats, or maps, or land in this state.

The “Inclusions” portion thereof states in pertinent part:

. . . encompasses positions at . . . the Department of Transportation (DOT) which devote a majority of their time and are primarily responsible for land surveying activities. Positions included in this series must meet the Qualifications prescribed under Section I.C.

The “Qualifications” prescribed under Section I.C are as follows:

C. Qualifications

Specific qualifications for a position will be determined at the time of recruitment. Education required may include an associate degree in surveying and/or certification from the Department of Regulation and Licensing. Knowledge required may include land surveying principles; layout standards and technical mapping requirements; automated map design, production and geographic information system technology; boundary law including order of control and priority in the element of description; standard procedures used to resolve boundary disputes ranging from voluntary assignments, assessor plats to judicial action; and procedures and principles of investigation and compliance. Also required is the ability to perform land surveying mathematics and complex computations including traverse adjustments, closure, area and right-of-way curve computations, coordinate adjustments, and transformations; ability to manage time and prioritized projects within statutorily established deadlines, and good written and oral communication skills.

Respondent witness Rommel conceded that Appellant possesses these “Qualifications”. Thus, in the context of the “Purpose” and “Inclusions” language above and Appellant’s surveying duties, we conclude that Appellant “fits” within the Surveyor Classification.

The “Exclusions” portion of the Surveyor Classification Specification provides in pertinent part:

. . .

2. Positions that do not spend a majority of their time in surveying and related activities.
3. Positions which assist in surveying functions, which perform surveying functions on construction sites primarily for staking purposes utilizing a transit, **and** which are best classified as Engineering Technicians. (Bold emphasis added)

Exclusion 2 does not impact on Appellant's "fit" within the Surveyor Classification as he clearly spends a majority of his time (70%) on "surveying and related activities." Nor does Exclusion 3. As written with use of the word "and", this Exclusion requires that all three elements of the Exclusion be present. There is no substantial evidence that Appellant performs work "primarily for staking" purposes and thus one of the three elements is clearly missing. Thus, none of the Surveyor "Exclusions" apply to Appellant.

Given all of the foregoing, we conclude the Surveyor Classification Series provides a reasonable "fit" for Appellant's work.

However, as Respondent correctly argues, the issue to be resolved is what is the "best fit."? To make that determination, the Classification Specification for the Engineering Technician position into which Appellant was reallocated is obviously relevant. The "Introduction" portion thereof states in pertinent part:

Positions allocated to this series perform sub-technical to technical engineering work and perform duties ranging from the relatively simple routine and repetitive tasks to responsible and complex technical work.

The "Inclusions" portion thereof states:

This series encompasses positions located at the Department of Transportation that perform technical work in the field of architecture/engineering in the planning, design, construction, operation, and maintenance of transportation facilities. These facilities include, but are not limited to state highways, bridges, and airports.

The "Exclusions" portion thereof excludes: (1) employees performing professional engineering/architecture work; (2) civil engineers; (3) certain office and administrative positions; (4) certain technical support employees; (5) supervisors and managers; and (6) positions more appropriately placed in another classification.

Looking first at the "Introduction" and "Inclusion" language, as noted earlier herein, the Commission determined in its 2002 decision that surveying is technical as opposed to professional engineering work and thus Appellant's current position fits within the language used in these portions of the Classification Specification. None of the "Exclusions" apply to Appellant with the possible exception of (6) if the Surveyor Classification Series proves to be a "better fit" for Appellant.

But for the critical fact that Appellant's work/position (Right of Way Plat Technician) is specifically identified and included in the Engineering Technician Classification Specification, we would be confronted with two Classification Specifications (Surveyor and Technician) both of which "fit" the Appellant's work. However, as long as this specific part of the Engineering Technician Classification Specification is not inconsistent with other portions of said Specification, the inclusion of the Right of Way Plat Technician job in the Technician Specification is determinative as to the "best fit" for Appellant. *EAGON v. DER*, 90-0398-PC (3/23/92); *MERTENS v. DER*, 90-0237-PC (8/8/91). As discussed above, inclusion of Appellant's work/position in the Engineering Technician Classification Specification is consistent with all other portions of Technician Classification Specification. Thus, we must conclude that Appellant's work/position is a "best fit" in the Engineering Technician-Transportation Advanced 2. Therefore, Respondent's allocation decision was correct and Appellant's appeal of that decision is dismissed.

Dated at Madison, Wisconsin, this 12th day of May, 2009.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Susan J. M. Bauman /s/

Judith Neumann, Chair

Paul Gordon /s/

Paul Gordon, Commissioner

Susan J. M. Bauman /s/

Susan J. M. Bauman, Commissioner