

STATE OF WISCONSIN  
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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**GREGORY L. MATTSON**, Appellant,

vs.

**DOA-OFFICE OF STATE EMPLOYMENT RELATIONS**, Respondent.

Case 587  
No. 62835  
PA(der)-48

**Decision No. 32263**

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**Appearances:**

**Gregory Mattson**, appearing on his own behalf.

**David J. Vergeront**, Chief Legal Counsel, Department of Administration-Office of State Employment Relations, 101 East Wilson, 4<sup>th</sup> Floor, P.O. Box 7855, Madison, Wisconsin 53707-9820, appearing on behalf of the Department of Administration-Office of State Employment Relations.

**FINAL DECISION AND ORDER**

This matter is before the Wisconsin Employment Relations Commission on an appeal filed by Gregory L. Mattson seeking review of Respondent Department of Administration-Office of State Employment Relations' decision to reallocate his position to Engineering Technician-Transportation Advanced 2 effective July 13, 2003. Mattson contends that his position should have remained within the Engineering Specialist- Transportation series and that he should have been reallocated from Engineering Specialist-Transportation Senior to Engineering Specialist-Transportation Advanced 2. Peter G. Davis of the Commission's staff was designated as the hearing examiner and conducted a hearing on January 11, 2007 in Madison, Wisconsin. The hearing was electronically recorded. Respondent made oral argument at the conclusion of the hearing and Mattson filed written argument on January 17, 2007. The hearing examiner issued a proposed decision on November 8, 2007. No objections were received by the requisite due date of December 10, 2007.

The chain of events that ultimately led to Mattson'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,

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2003, made change to the classification structures that Respondent concluded were appropriate in light of the Commission's February 2002 decision. Applying the July 13, 2003 changes to Mattson's job duties, Respondent concluded that Mattson should be reallocated from an Engineering Specialist to an Engineering Technician effective July 13, 2003.

The July 13, 2003 Classification Specification for Engineering Specialist-Transportation contains the following Inclusion:

This series encompasses professional engineering specialists positions at the Department of Transportation that devote a majority of their time and are responsible for duties related to the engineering support functions to the multi-modal transportation systems.

The July 13, 2003 Classification Specification for Engineering Specialist-Transportation contains the following Exclusion:

...

4. Positions that do not spend a 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 more appropriately classified as Engineering Technician-Transportation.

...

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

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 limited to state highways, bridges and airports.

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

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.

...

As of July 13, 2003, Mattson performed a variety of work in the Northwest Region-Superior Office of the Department of Transportation under the general supervision of Civil Engineer Michael Ostrenga. Although Mattson's work assignments varied from day to day, as a general matter he was collecting and analyzing highway traffic data (35%), reviewing and approving traffic permits (30%), assisting in the development of and preparing documents for projects to improve existing traffic signing, marking and signaling (20%), developing/coordinating an ITS system (10%), and inspecting bridges under the direction of the Regional Bridge Engineer (5%).

As of July 13, 2003, Mattson did not spend a majority of his time performing "professional engineering work" within the meaning of the Classification Specifications for Engineering Specialist-Transportation.

As of July 13, 2003, Mattson did spend a majority of his time performing "technical work in the field of architecture/engineering in the planning, design, construction, operation, and maintenance of state highways, bridges and airports" within the meaning of the Classification Specifications for Engineering Technician-Transportation.

The Commission issues the following

**ORDER**<sup>1</sup>

Respondent's decision to reallocate Mattson's position to Engineering Technician-Transportation Advanced 2 is affirmed and Mattson's appeal of that decision is dismissed.

Given under our hands and seal at the City of Madison, Wisconsin, this 30<sup>th</sup> day of January, 2008.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Judith Neumann /s/

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Judith Neumann, Chair

Paul Gordon /s/

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Paul Gordon, Commissioner

Susan J. M. Bauman /s/

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Susan J. M. Bauman, Commissioner

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<sup>1</sup> 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 as a part of this Order.

**DOA-OSER (Mattson)**

**MEMORANDUM ACCOMPANYING FINAL DECISION AND ORDER**

Mattson's appeal 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.

Mattson argues that: (1) the reallocation decision was incorrect because as of July 13, 2003 he did spend a majority of his time performing professional engineering work; and (2) any of following Engineering Specialist allocations would be a "better fit" than the Engineering Technician classification: Senior District Bridge Inspector; Advanced 2 District Bridge Inspection and Rehabilitation Specialist; District Maintenance Permits Specialist; Senior District Project Development Specialist; or Advanced 2 District Signing and Marking Coordinator.

As the Appellant, Mattson has the burden of proof and must establish by a preponderance of the evidence that the Respondent's decision to reallocate this position to Engineering Technician-Transportation was incorrect and that his position is better described in the requested classes of either Engineering Specialist-Transportation Senior or Engineering Specialist-Transportation Advanced 2. *ELLINGSON v. DNR & DER, CASE NO. 93-0057-PC (PERS. COMM. 5-28-96)*. We conclude that while Mattson performs important work for the Department of Transportation, he has not met his burden of proof and thus we have dismissed his appeal.

The reallocation notice received by Mattson specified that the reallocation was based on a "change in classification structure." As previously noted, that "change" was based on Respondent's analysis of a February 2002 Commission decision determining whether certain Engineering Specialist-Transportation positions were held by professional employees within the meaning of Sec. 111.81 (15), Stats. Respondent's analysis of that 2002 Commission decision produced (1) changes in the then existing Classification Specifications for Engineering Specialist-Transportation and Engineering Technician-Transportation and then (2) a review by Respondent of certain Engineering Specialist positions to determine whether the positions should continue to be classified as Specialists or whether the positions now fell within the Engineering Technician classification series. Mattson's position was one of the positions reviewed and Respondent concluded that his position was not an Engineering Specialist under the new Classification Specifications because the position did not spend a majority of time "performing professional engineering work (as interpreted by the Wisconsin Employment Relations Commission) . . ." but rather was an Engineering Technician.

As evidenced by the above-quoted Inclusion and Exclusion language in the Classification Specifications for the Specialist and Technician Classification Series, a position must perform "professional engineering work (as interpreted by the Wisconsin Employment Relations Commission)" for a majority of the time to be an Engineering Specialist. Thus, the threshold question in this appeal is whether Mattson performed such "professional engineering work" for a majority of time in his position in July 2003. We conclude he did not.

The evidence in this record makes it clear that “professional engineering work (as interpreted by the Wisconsin Employment Relations Commission)” is a reference to the Commission’s February 2002 decision which applied the statutory definition of “professional employee” found in Sec. 111.81(15), Stats., to the work of certain Engineering Specialist positions.

In that decision, the Commission noted that disputes over professional employee status often turn on an application of Sec. 111.81(15)(a)4, Stats., which provides that a professional employee’s work must require “. . . knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study in an institution of higher learning. . . .” As to professional engineering knowledge, the Commission also found the provisions of Section 443, Stats., to be instructive. In that same decision, the Commission found the following definition of “Engineering Technician” to be helpful:

Under the direction of engineers and scientists, an Engineering Technician analyzes and solves technological problems, prepares formal reports on experiments and tests and other projects, and carries out technical support functions such as drafting, surveying, designing, technical sales, technical writing or training.

Although it noted that attainment of an Engineering Specialist-Senior position (the position held by Mattson at the time of this reallocation) was generally achieved through time in grade as opposed to performance of “professional engineering work”, the Commission concluded that judgments as to the “professional employee” status must be based the work being performed by the individual employee and the level of knowledge needed to perform that work. When doing so, the Commission found that an Engineering Specialist-Senior employee (Moes-Kleifgen), with work responsibilities similar to Mattson’s, was not a “professional employee.” Moes-Kleifgen’s primary duty was serving as a member of a two person traffic team (the other team member was a civil engineer who made all final decisions for the team) that reviewed traffic control signals, designed signal plans for state trunk highways, reviewed consultant plans and city plans for signals and set up timing and coordination between signals.

In his appeal filed August 14, 2003, Mattson asserts that his pre-reallocation Engineering Specialist-Senior classification was not accurate (and presumably that the Commission’s doubts about Engineer Specialist-Senior employees’ professional status are not applicable to him) because he was then performing duties at an Engineering Specialist-Transportation Advanced 2 level. Because our decision on his appeal is based on the evidence presented as to the work Mattson was actually performing in July 2003, if the record before us substantiates Mattson’s assertion of higher than Senior responsibilities, Mattson is correct that those actual duties will be the basis for our decision. However, to the extent Mattson is arguing that performance of Engineering Specialist-Transportation Advanced 2 responsibilities under the pre-July 2003 Classification Series makes him a professional employee, we reject that argument. Mattson’s status will be resolved based on the Classification Series in effect at the time of his reallocation (ie, the Series that became effective July 13, 2003).

Mattson's May 2006 Position Description was the primary document presented by Respondent at hearing to describe Mattson's work in July 2003. Testimony of witnesses, including Mattson, generally used the May 2006 Position Description as the basis for their testimony. With the ITS exception discussed below, the testimony of witnesses did not dispute the general accuracy of the May 2006 Description as a summary of Mattson's July 2003 job duties. Whatever job description was in effect in July 2003 was not placed into evidence by either Mattson or Respondent. Thus, while Mattson points out the absence of the earlier job description as part of his written post-hearing argument and suggests the earlier version would have been more beneficial to his case, we can make no assumptions one way or the other as to what the earlier description would have revealed and which side it might have helped. Ultimately and of necessity, we base our decision on the evidence actually presented as to Mattson's July 2003 job duties. As noted above, part of that evidence is the May 2006 Position Description which we conclude is a generally accurate summary thereof.

Based on the evidence presented, we conclude that Mattson's July 2003 job duties consisted of collecting and analyzing highway traffic data (35%), reviewing and approving traffic permits (30%), assisting in the development of and preparing documents for projects to improve existing traffic signing, marking and signaling (20%), developing/coordinating an ITS system (10%), and inspecting bridges under the direction of the Regional Bridge Engineer (5%). While his May 2006 Position Description specifies that Mattson's ITS duties are to "Assist in Coordination of NW-Region Superior office ITS system activities . . .", the testimony of Mattson and Traffic Engineer Bowker persuades us that his ITS role was more significant and is better described as "Development/coordination" of the ITS system. However, we remain persuaded that the 10% time percentage for ITS duties is accurate. While Mattson argues in his post-hearing argument that his actual job duties and percentage allocations are not accurately reflected in the May 2006 Position Description, aside from the ITS function, he failed to present any persuasive evidence upon which we can come to different conclusions than those noted above.

Based on his knowledge of Mattson's job duties and the evidence presented at hearing (including Mattson's broader ITS role), Mattson's supervisor (Civil Engineer Ostrenga) in July 2003 and at present testified that Mattson did not perform professional engineering work for a majority of the time in July 2003. Civil Engineer Zogg echoed Ostrenga's testimony based on his review of the May 2006 Position Description and testimony presented during the hearing. Zogg also credibly testified that when making his assessment, whenever a duty was arguably professional in nature, he erred on the side of concluding the work was professional. Given their own engineering education and job responsibilities, the opinions of these witnesses constitute substantial credible evidence that Mattson was not performing professional engineering work for a majority of the time in July 2003. Mattson did not present any contrary testimony from an engineer.

Measuring Mattson's duties against the analysis contained in the Commission's February 2002 decision also leads to the conclusion that Mattson was not performing professional engineering work for a majority of the time in July 2003. In large measure, Mattson's work involves the collection and analysis of various types of data which an Engineer

ultimately uses to make decisions. As the portions of the Commission's February 2002 decision quoted earlier herein make clear, collection and analysis of data is not professional engineering work - particularly when the employee is not the final decision-maker as to any engineering decisions that flow therefrom. In addition, Mattson spends a significant amount of time reviewing and approving permits for moving houses/buildings and attending County safety meetings where highway safety issues are discussed. While this work requires the exercise of significant judgment, discretion and tact, there is no persuasive evidence in the record that this work requires knowledge customarily acquired through substantial engineering course work.

Given all of the foregoing, we conclude that in July 2003, Mattson did not perform "professional engineering work (as interpreted by the Wisconsin Employment Relations Commission)" for a majority of the time and thus has not met the burden of proof necessary to overturn Respondent's decision to reallocate his position to an Engineering Technician-Transportation Advanced 2. Therefore, we have dismissed his appeal.

Dated at Madison, Wisconsin, this 30<sup>th</sup> day of January, 2008.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Judith Neumann /s/

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Judith Neumann, Chair

Paul Gordon /s/

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Paul Gordon, Commissioner

Susan J. M. Bauman /s/

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Susan J. M. Bauman, Commissioner