STATE OF MONTANA
BEFORE THE BOARD OF PERSONNEL APPEALS

IN THE MATTER OF CLASSIFICATION APPEAL NO. 2-2006:

DEBORAH A. WAMBACH,	)	Case No. 1473-2006
PAUL R. STURM AND	)	Case No. 1474-2006
LAWRENCE L. SICKERSON,	)	Case No. 1475-2006
ENVIRONMENTAL SCIENCE SPECIALISTS,	)	
ENVIRONMENTAL SERVICES DIVISION,	)	
MONTANA DEPARTMENT OF	)	
TRANSPORTATION,	)	**FINDINGS OF FACT; CONCLUSIONS OF LAW; AND RECOMMENDED BOARD ORDER**
Appellants,	)	
vs.	)	
STATE PERSONNEL DIVISION,	)	
DEPARTMENT OF ADMINISTRATION,	)	
Respondent.	)	

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I. INTRODUCTION

On October 8, 2005, appellants Deborah A. Wambach, Paul R. Sturm and Lawrence L. Sickerson, with their union, each filed a classification and wage appeal with the Board of Personnel Appeals (BOPA) alleging that the work of their positions within the Environmental Services Division, Montana Department of Transportation, as Environmental Science Specialists IV so closely paralleled that of the Civil Engineer IV positions within the same division that appellants' biologist positions should be within the higher market value for the engineer positions, pursuant to Mont. Code Ann. § 2-18-202.

On January 13, 2006, appellants notified BOPA that they were dissatisfied with respondent Department of Administration's Step 2 response and wished to move the appeals to Step 3. On January 18, 2006, the Board ruled all three appeals complete at that step, elected not to conduct a preliminary investigation and transferred all three appeals to the Hearings Bureau for contested case hearings pursuant to Admin. R. Mont. 24.26.508(4)(d).

Hearing Officer Terry Spear, on behalf of BOPA, consolidated the three appeals and held a contested case hearing on June 26-29, 2006. Appellants attended with their attorney, Carter N. Picotte, and the designated representative for their union, Richard Letang. Respondent attended through its designated representative, Chris Blazer, with its attorney, Susan J. Rebeck. The Hearing Officer's tables of exhibits and witnesses accompany this proposed decision. On November 8, 2006, the appellants filed their reply brief and these consolidated matters were deemed submitted for decision.

II. ISSUE

The issue in this case is whether Wambach, Sturm and Sickerson are properly classified or compensated pursuant to Mont. Code Ann. Title 2, Chap. 18, parts 1-3.

III. FINDINGS OF FACT

1. Deborah A. Wambach, Paul R. Sturm and Lawrence L. Sickerson are employees of the Montana Department of Transportation (MDT). They all three work in the Environmental Bureau at MDT's Helena Headquarters. Exhibit 212 is the organizational chart for MDT's Environmental Bureau.

2. MDT's Environmental Bureau contains a multi-disciplinary team that works to coordinate, investigate and consult to develop transportation engineering designs that have minimal environmental impacts. Wambach, Sturm and Sickerson are members of that team, as are some civil engineers to whose salaries Wambach, Sturm and Sickerson compare their own and assert improper classification or compensation. The civil engineers in the Environmental Bureau whose higher wages are at issue here are Barry Brosten, Heidy Bruner, Thomas Gocksch, Art Jacobsen and Susan Kilcrease. Other positions included in the multi-disciplinary team are identified in later findings.

3. Wambach, Sturm and Sickerson have positions as Environmental Science Specialists, with working titles of "District Biologist." Exhibits 53 and D are both copies of the position description for their jobs. Their jobs are in Pay Band 7 (complexity level 7) under the new state Broadband Pay Plan (Pay Plan 020). Under the prior Pay Plan (Pay Plan 060), their jobs were in Grade 16. They are biologists.

4. Utilizing the Standard Occupational Classification (SOC), the Occupational Information Network describes the Environmental Science Specialist positions of Wambach, Sturm and Sickerson as being in job class number 19-2041, "Environmental Scientists and Specialists, Including Health," 192417, found in major group 19-000, Life, Physical and Social Science Occupations.

5. The occupational group of biologists, whether broadly or narrowly defined, is not dominated by males or females.

6. Brosten, Bruner, Gocksch, Jacobsen and Kilcrease have positions as Civil Engineering Specialists, with working titles of "District Engineer." Exhibit 34 is a copy of the position description for their jobs. Their jobs are in Pay Band 7 (complexity level 7) under the new state Broadband Pay Plan (Pay Plan 020). Under the prior Pay Plan (Pay Plan 060), their jobs were in Grade 16. They are engineers.

7. Utilizing the SOC, the Occupational Information Network describes the Civil Engineering Specialist positions of Brosten, Bruner, Gocksch, Jacobsen and Kilcrease as being in job class number 17-2051.00, "Civil Engineers," within major group 17-0000, Architecture and Engineering occupations.

8. The wages for the three biologists were and are as follows:

Name	Base hourly wage on 9/29/05, appeal filing date	Base hourly wage 3/05, with market adjustment
Wambach	$24.307	$24.992
Sturm	$21.200	$24.992
Sickerson	$21.204	$24.992

9. The wages for the five engineers were and are as follows:

Name	Base hourly wage on 9/29/05, appeal filing date	Base hourly wage 3/05, with market adjustment
Brosten	$25.377	$27.756
Bruner	$25.377	$27.756
Gocksch	$26.280[1]	$27.756
Jacobsen	$25.377	$27.756
Kilcrease	$25.377	$27.756

10. The biologists and the engineers both investigate MDT project compliance with the National Environmental Policy Act and the Montana Environmental Policy Act. They both monitor project development to insure the design addresses environmental issues, either to prevent or mitigate environmental damage.

11. The biologists plan, design and conduct comprehensive project and resource evaluations to analyze, assess, and document the impacts of MDT transportation construction and maintenance activities on biological resources. They develop policies, practices, and procedures to avoid, minimize or compensate for such impacts in compliance with state, federal, tribal and local laws, regulations and policies related to the environment. Their duties include field reviews, comprehensive biological, wetland,

[1]Gocksch has an additional qualification of being a Professional Engineer (P.E.).

and natural resource investigations, wetland delineations and biological assessments. Their work includes providing technical expertise and professional consultation to project managers on a range of environmental compliance issues. They provide expert consultation and guidance in interagency wildlife research studies. They initiate, coordinate, prepare, submit, and secure the Stream Protection Act SPA-124 permit, issued by the Montana Department of Fish, Wildlife, and Parks and necessary for MDT construction work in and around streams.

12. The engineers serve as advisors to the District Engineer, Preconstruction Engineer and Bridge Engineer, as circumstances require. The engineers coordinate construction timing, archeological documentation, historical assessments, visual treatments, revegetation and design changes (the biologists provide the environmental data necessary for some portions of the coordination). The engineers perform a thorough engineering analysis and technical review of transportation design concepts, plans, and reports on proposed projects. They determine the most environmentally sound engineering design solutions for minimizing environmental impacts. They monitor ongoing project development to provide environmental engineering insight to design and consulting engineers to ensure the wide variety of interrelated technical features typically present in the project design are within the limits imposed by environmental considerations. They review design plans and recommend engineering solutions to avoid or minimize impacts into wetlands, jurisdictional waters of the U.S., and sediment discharges into surface waters.

13. Assigned duties of the engineers, for which there are no equivalents for the biologists, include coordination, investigation, and consultation to develop complex transportation engineering designs for minimal environmental impacts; engineering analysis for MDT's Stormwater Runoff Program and Erosion Control Plan; performance of thorough engineering analysis and technical review of transportation design concepts, plans, and reports on proposed projects; and determination of the most environmentally sound engineering design solutions for minimizing environmental impacts. The engineers continuously monitor ongoing project development and provide engineering insight to design engineers and consulting engineers to ensure the wide variety of interrelated technical features always present in the project design are within the limits imposed by environmental issues.

14. The engineers also must integrate complex design alternatives, parameters, land use, utility, right-of-way, and highly sensitive environmental issues into an appropriate environmental document, assure that the process and the documentation for environmental approvals are adequate to meet federal, state, tribal, county, and city environmental regulations, and are based on the most appropriate engineering standards and methods, initiate, coordinate, prepare, submit and secure Clean Water Act – Section 404 and Section 402 permits, tribal water resource permits, and other water resource permits as necessary for highway construction projects, review design plans and recommend other engineering solutions to avoid or minimize impacts into wetlands, jurisdictional waters of the U.S., and sediment discharges into surface waters, compute riprap quantities and areas of impact, prepare and integrate drawings for submission with the Section 404/Tribal permit application, monitor the status of permit

application and advise appropriate sections in MDT or consulting engineers of mitigation requirements.

15. The engineers provide continuous, ongoing engineering analysis and support to the lead design agent or consulting engineer when design changes or additions occur after completion and approval of the initial engineering document and/or permits. They prepare requests for proposals, evaluate and rate proposals, prepare agreements and contracts for consulting engineering services and they administer, direct, monitor, evaluate and coordinate activities under agreements and contracts with consulting engineers, including actual work, schedules, conformity, and compensation.

16. The engineers coordinate, review and distribute reports prepared by consulting engineers, environmental documents, permits, and estimates as necessary as they are developed and submitted. They monitor each consulting engineer under contract or agreement for progress and quality of performance during active retained duration. They are required to provide leadership and guidance to consulting engineers on accepted procedures, practices, regulations, and coordination to ensure that completed reports, environmental documents and permits are technically correct and complete.

17. The engineers also provide engineering analysis and technical support as needed on all matters associated with environmental issues, concerns or opportunities associated with the project. They are expected to provide technical and professional innovative solutions and recommendations during all phases of project development, describing accurately the level of environmental awareness necessary for the successful development of the project design. They also must provide continuous ongoing support and coordination to the district administrators for scoping meetings and public hearings to assure project success. They arrange, coordinate and participate in various communication processes including meetings, monitoring, evaluations, conferences, various reviews, and negotiations.

18. The engineers additionally must assist the public, consultants, and other agencies by providing information and answering design questions regarding environmental impacts from projects. They initiate requests for project-related studies and reports on wetlands, cultural and natural resources, noise, air and water quality, and hazardous waste. They also advise other sections in the Environmental Bureau of unusual or unique project conditions or of the potential need for specialized resource analysis reports.

19. The biologists provide the environmental data necessary effectively to write a project's environmental document and describe the scope of work. The engineers write the project's environmental document, using materials submitted by the biologists and by others working on the multi-disciplinary team. Although the engineers may sometimes adopt verbatim the biologists' language describing environmental data, the engineers are responsible for the entirety of the environmental documents.

20. The biologists provide information used to help select alignments and grades, design bridges, select culverts, and plan maintenance activities, and sometimes

make suggestions for these design features. Civil and professional engineers who are not in the MDT's Environmental Bureau perform the actual selection of alignments and grades, design of bridges, selection of culverts and plan of maintenance activities. The engineers in this case are engineering consultants and advisors to those other engineers responsible for the "hard engineering" performance.

21. Although biologists and engineers alike must have undergraduate degrees in their respective specialities and progressive experience in their respective disciplines, these similarities are not identities. In like fashion, other members of the multi-disciplinary team, the Wetland Specialist, the Botanist, the Archaeologist and the Historian, bring different although somewhat similar education, training and experience to the collaborative effort.

22. As team members learn their work and become better at the cooperative efforts involved, there necessarily develops some overlap, where a biologist may make an engineering suggestion which is accepted by either an engineer on the team or an outside engineer doing the "hard engineering." This indicates that the multi-disciplinary team concept is functioning properly. It does not establish that the biologist is now an engineer. The biologists are not required to have a B.S. degree in engineering–such as civil engineering, environmental engineering, bioresources engineering, agricultural engineering or construction engineering–together with an Engineer in Training certification and four years of progressively responsible transportation/highway engineering work experience.

23. The position descriptions for the biologists and for the engineers require different knowledge, skills, and abilities. The job duties require experience in work that is not the same or similar.

24. MDT employs five biologists, but employs more than 100 professional engineers as well as 100 civil engineers and engineer interns. MDT is Montana's largest employer of engineers, and, as an entity, is basically a large engineering firm. The engineers whose higher wages are involved in this case would be eligible for positions (at engineering wage rates) in at least a dozen other MDT bureaus.

25. Historically MDT has experienced retention and recruitment difficulties for engineering positions. MDT has never experienced a lack of biologist applicants to fill the biologist positions.

26. MDT has a career ladder for engineers, but not for biologists.

27. Engineers are in higher demand than biologists in state and national markets.

28. As a result of these various factors, engineers have greater market worth and greater value to MDT than biologists.

29. The Department of Administration has applied civil engineering market values to MDT employees who, although not civil engineers per se, are within SOC

major occupational group 17-0000, Architecture and Engineering occupations. There has never been such an adjustment applying engineering market values to occupations outside of the engineering occupational group.

30. The market analyses applied by the Department of Administration to the biologists and the engineers are appropriately different.

IV. DISCUSSION[2]

Mont. Code Ann. § 2-18-1011 authorizes the Board of Personnel Appeals (and the hearing officer, acting for the Board) to hear complaints of employees affected by the operation of parts 1-3 of Title 2, Chapter 18. The current complaints arose under Mont. Code Ann. § 2-18-202, and are wage appeals–the biologists assert that their positions should have similar pay as the engineers, based upon market values assigned to engineers. The parties do not dispute the accuracy of the market values assigned to persons with the qualifications of education, experience, knowledge, skill, and ability of either the biologists or the engineers. Because they are in higher demand, harder to recruit and harder to retain, engineers have higher market value. The parties hotly dispute which market values–those applicable to biologists or those applicable to engineers–should apply to these biologists.

Mont. Code Ann. § 2-18-202(1) provides:

> In providing for the classification plan, the department shall group all positions in the state service into defined classes based on similarity of duties performed, responsibilities assumed, and complexity of work so that: (a) similar qualifications of education, experience, knowledge, skill, and ability can be required of applicants for each position in the class; (b) the same title can be used to identify each position in the class; (c) similar pay may be provided under the same conditions with equity to each position within the class.

This law makes the Department of Administration responsible for developing a means of grouping positions based on certain similarities, and the Department has selected the Standard Occupational Classification (SOC) system and coding structure. Federal agencies use the SOC for a variety of purposes, including gathering and reporting salary survey data by occupational group based upon work performed, skills, education, training and credentials. The SOC distinctions between occupational groups parallel the requirements of Mont. Code Ann. § 2-18-202 for distinctions based on the similarity of duties and responsibilities, education, knowledge, skill and ability, and job titles. Jobs in separate SOC categories have fundamental differences in the work performed and responsibilities undertaken. In this case, the jobs involved (biologists versus engineers) also have substantial

[2] Statements of fact in this discussion are hereby incorporated by reference to supplement the findings of fact. *Coffman v. Niece* (1940), 110 Mont. 541, 105 P.2d 661.

differences in educational requirements. These are all meaningful criteria for distinguishing between the positions for purposes of determining applicable labor market salary information.

Occupational distinctions are based on the field of study rather than the level of the degree required. It is not enough to say that both classes of jobs are similar because both require a bachelor's degree. If this were enough similarity, market value for any occupational group requiring any bachelor's degree could be applied to any other occupational group requiring a different bachelor's degree. Market values for jobs requiring bachelor's degrees in different disciplines are not interchangeable, because different undergraduate degrees command different and sometimes far different market ranges of salaries.

Comparison of the educational requirements for the degrees required for the engineer positions versus the degrees required for the biologist positions reveal significant differences in the knowledge areas covered. The degrees for the two jobs are far different, even though the same amount of schooling may be required for each baccalaureate degree.

The knowledge, skill and ability required for the two jobs are also far different. The biologists' positions and the engineers' positions both require four years of progressively responsible experience to develop the knowledge, skills, and abilities required for the respective positions. These requirements, like the respective degrees, are similar but far from identical. The biologists must have four years' experience in wetlands, wetland delineation, natural resources evaluation, impact assessment and mitigation, including two years of transportation related experience. The engineers must have four years' experience in transportation/highway engineering, plus completion of the Fundamentals of Engineering exam (FE) or certification as an Engineering Intern (EIT) (see Mont. Code Ann. § 37-67-307 for the specific requirements for intern certification).

The type of experience needed to perform the primary duties of a job is one of the keys to occupational distinctions in the current system of state occupational classification. Experience in a biological field does not provide what is needed to perform the engineers' work any more than experience in engineering, or even in environmental engineering, provides what is needed to perform the biologists' work.

In addition, the purposes of the two jobs are not the same, as the findings reflect, and as the evidence proved in extensive detail. The actual work and the ultimate goals overlap, because both positions are part of the same multi-disciplinary team, but the job duties and responsibilities are not identical. The biologists bring education, experience, knowledge, skill and ability in biological science to bear upon identifying and minimizing biological and natural impacts of MDT projects. The

engineers bring education, experience, knowledge, skill and ability in engineering to bear upon minimizing all identified environmental impacts of MDT projects.

While the biologists are tasked with monitoring commitments made for minimizing biological and natural impacts, the engineers must safeguard the project so that competing concerns are balanced within budgetary and safety concerns. The engineers are not advocates for any one environmental consideration. Within the multi-disciplinary team the engineers have the broader responsibility to assure, with their engineering counterparts from the other Bureaus and Divisions on each project, that everything comes together in a sound engineering design, while also assuring, with the rest of the multi-disciplinary team, compliance with environmental law and cognizance of the long list of environmental considerations that extend beyond biological and natural impacts. The duties and responsibilities required of the engineers are sufficiently different from the duties and responsibilities required of the biologists so that the biologists' wage appeal should be denied.

Even if the duties and responsibilities of engineers and biologists were virtually identical (which they clearly are not), the biologists' wage appeal should still be denied. The education, experience, knowledge, skill and ability required of the engineers are also substantially different from those required of the biologists. The differences between the disciplines applied by the engineers and the disciplines applied by the biologists requires that different market value analyses would still apply to each even if they did exactly the same work.

The Walter Davis case the biologists cited is not precedent for this case. There is no law or regulation requiring that the Department of Administration must, in a Step 3 hearing process, apply the reasoning of a previous and unrelated Step 2 grievance determination.

More significantly, the positions compared in the Walter Davis case all involved engineering positions within SOC major group 17-0000, Architecture and Engineering occupations. The positions required similar education, experience, knowledge, skill and ability within the engineering field. Since the biologists' qualifications involve education, experience, knowledge, skill and ability within the field of biological sciences, the previous Step 2 grievance determination in the Walter Davis case offers no useful rationale for the present case and is, indeed, unrelated to the issue in this case.

V. CONCLUSIONS OF LAW

1. The Board of Personnel Appeals has jurisdiction over this case and controversy. Mont. Code Ann. § 39-31-207.

2. The Department of Administration correctly applied appropriate and different market value analyses to determine the proper base hourly wages of the biologists as opposed to the engineers in MDT's Environmental Bureau, pursuant to Mont. Code Ann. Title 2, Chap. 18, parts 1-3.

VI. RECOMMENDED ORDER

Appellants Deborah A. Wambach, Paul R. Sturm and Lawrence L. Sickerson, with their union, failed to prove that the duties and responsibilities, as well as the education, experience, knowledge, skill, and ability of their positions within the Environmental Services Division, Environmental Bureau, Montana Department of Transportation, as Environmental Science Specialists IV so closely paralleled those of the Civil Engineer IV positions within the same bureau that the Department of Administration improperly failed and refused to determine that appellants' biologist positions should receive the same base wages as those of the Civil Engineering Specialists in the same bureau, based on application of the market value for the engineer positions to the biologist positions. Mont. Code Ann. § 2-18-202.

DATED this 7th day of December, 2006.

BOARD OF PERSONNEL APPEALS

By: /s/ TERRY SPEAR
Terry Spear, Hearing Officer
Hearings Bureau
Department of Labor and Industry

NOTICE: Pursuant to Admin. R. Mont. 24.26.215, the above RECOMMENDED ORDER shall become the Final Order of this Board unless written exceptions are postmarked no later than January 2, 2007. This time period includes the 20 days provided for in Admin. R. Mont. 24.26.215, and the additional 3 days mandated by Rule 6(e), M.R.Civ.P., as service of this Order is by mail.

The notice of appeal shall consist of a written appeal of the decision of the hearing officer which sets forth the specific errors of the hearing officer and the issues to be raised on appeal. Notice of appeal must be mailed to:

Board of Personnel Appeals
Department of Labor and Industry
P.O. Box 6518

Helena, MT 59624-6518