

STATE OF MONTANA
BEFORE THE BOARD OF PERSONNEL APPEALS

IN THE MATTER OF CONSOLIDATED CLASSIFICATION APPEAL NO. 1-2007:

TIM FELLOWS, SCOTT CUNNINGHAM,	)	Case Nos. 1221-2007, 1993-2007,
JAMES DAY, BETH DORAN,	)	1994-2007, 1995-2007, 1996-2007,
CHARLES DURKIN, DANIEL FERESTAD,	)	1997-2007, 1998-2007, 1999-2007,
JOE FISCHER, EDWARD FOY,	)	2000-2007, 2001-2007, 2002-2007,
KENNETH GOLOB, STANLEY GRESS,	)	2003-2007, 2004-2007, 2005-2007,
DONALD KING, ROBERT LANGFORD,	)	2006-2007, 2007-2007, 2008-2007,
JOE MCCORMICK, STEVEN MEYERS,	)	2009-2007, 2010-2007, 2011-2007,
GARY MONTGOMERY, STEPHEN PALMER,	)	2012-2007, 2013-2007, 2014-2007,
CHARLES PEPOS, WILLIAM RICHARDS,	)	2015-2007, 2016-2007, 2017-2007,
ROSS ROWLING, RONALD RUSSELL,	)	2018-2007, 2019-2007, 2020-2007,
JAMES SHAW, DAVID SLOE, AARON SNYDER,	)	2021-2007
JOSEPH STRATMAN, PETER THELEN,)	
KEVIN THIELMANN, STEPHEN THOMPSON,	)	FINDINGS OF FACT,
JAMES VUKASIN, MARC ZAHNER AND	)	CONCLUSIONS OF LAW
JAMES VINSON, CIVIL ENGINEERING	)	AND PROPOSED ORDER
TECHNICIANS, DEPARTMENT OF)	
TRANSPORTATION,)	
)	
Appellants,)	
)	
vs.)	
)	
STATE HUMAN RESOURCES DIVISION,)	
DEPARTMENT OF ADMINISTRATION,)	
)	
Respondent.)	

* * * * *

I. INTRODUCTION

Throughout this decision, the 30 individual appellants are called “appellants,” and this decision addresses the status of the positions they held and may still hold. Their employing agency, the Montana Department of Transportation, is called “MDT.” The Department of Administration’s State Human Resources Division, whatever its title at various times during the history of this proceeding and the prior proceedings involving the same positions, is called “SHRD.”

There is a long procedural history leading to this decision. The appellants, represented by MPEA, filed appeals invoking the formal procedures of the Board of Personnel Appeals (BOPA) in early 2007. All 30 appeals were denied at Steps 1 and 2 by SHRD.

At Step 2 of the 2007 appeals, SHRD referred to a 2003 classification appeal regarding the same positions. According to the 2007 Step 2 denial, in 2003 SHRD had found, at Step 2

of those classification appeals, that the appropriate Pay Band for the positions was level 5, and the appellants had not proceeded to Step 3. In the 2007 Step 2 denial, SHRD further stated that “additional audits of the appellants’ positions, and comparison of the work now performed with the work performed during the previous appeals, found that the work has not changed, the complexity level of the appellants’ positions remains at complexity level 5, and the previous evaluation submitted in the classification appeal in 2003 still stands.”

SHRD then went on to add, in the 2007 Step 2 denial, that in 2005, at Step 2 of “a wage appeal” (that involved the same position descriptions as that in both the 2003 classification appeals and the current 2007 appeals) SHRD had found that the appellants “were aggrieved by the establishment of separate market ranges for level 5 of the similar work of civil engineering specialists based solely on a degree where [MDT’s] advancement policies clearly indicate that the work can be performed without the degree given sufficient experience in highway project management.”

SHRD completed the “evaluation” section of its 2007 Step 2 denial by recounting that, as directed by SHRD in the 2005 Step 2 decision, MDT had created a single market salary range for level 5 civil engineering technicians and civil engineer specialists that “used the same market rate starting point and provided an adequate spread between entry and maximum.”

SHRD’s Step 2 denial of the 2007 appeals thus held both that the complexity level of the positions had not changed from 2003 to 2007 and that MDT had resolved the problem that had aggrieved the holders of the positions in 2005.

The appellants advanced the 2007 appeals to Step 3 on June 22, 2007, stating the same issue they had presented at Steps 1 and 2 – if the work performed by the Civil Engineering Technician IV positions and the work performed by the Civil Engineer Specialist III positions is the same, their pay should be the same.

On June 27, 2007, BOPA’s agent ruled that the “conditional consolidated classification appeal” of the 30 appellants was “complete at this step,” and transferred the consolidated appeal to the Hearings Bureau “to conduct a hearing under ARM 24.26.508(4)(d).” The Hearing Officer set a contested case hearing to convene on November 8, 2007.

In October 2007, the parties agreed to continue the hearing pending “an ongoing classification review of the Field Construction Engineer Specialist III position description,” because the parties “agreed that the appeal may be moot” depending upon the outcome of that classification review. The appellants hoped that the classification review would result in the Civil Engineer Specialist IIIs’ assigned complexity being set at Level 6, and, since the appellants performed the same predominant duties as those specialists, might result in support for their argument that they should be at the same complexity level and receive the same pay as the Civil Engineering Specialist IIIs. Curiously, the appellants also apparently would have been satisfied, in the alternative, with the classification review generating a reduction in the wages of the civil engineers. Neither outcome followed.

In April 2008, the Hearing Officer, at the request of the appellants, reset the contested case hearing for August 28, 2008. The appellants, in requesting the hearing go forward, also requested that the appeal be modified “to consider the complexity factor of the Civil

Engineering Technician IV,” asserting that SHRD had “misfactored the position at Level 5,” again stating that the appellants’ work and the work of the Civil Engineer Specialist III positions were “performing the same responsibilities.”

In July 2008, SHRD filed a motion requesting that the Hearing Officer dismiss the proceeding and require that the appellants start over with a new Step 1 grievance. The basis for the motion was that the appellants’ proposed modification of the appeal changed the nature of the appeal and shifted the controversy to grounds upon which SHRD had not had an opportunity to undertake appropriate Step 1 and Step 2 responses. The hearing was again postponed, to allow the Hearing Officer time to decide the motions to amend and to dismiss.

Throughout the proceedings involving appropriate pay for the appellants’ positions, SHRD has consistently recast the issues the appellants raised, to conform their issues to the enumerated appealable issues in BOPA’s rules. SHRD has also consistently refused to exercise its discretion to consider any issues other than its specific restatements of the appellant’s issues in each case. SHRD has been within its rights to do so in each instance.

The Hearing Officer denied the motion to dismiss and denied the motion to amend the issue for hearing, noting that complexity issues might already be a proper part of the evidence at hearing on the issue presented by the consolidated appeals. The hearing was again reset, this time for November 17, 2008, then reset again by agreement of the parties, who also agreed that the predominant work of the Civil Engineer Specialist III positions (Pay Band 6) was the same as that of the Civil Engineer Technician IV positions (Pay Band 5).

The hearing was ultimately held on May 7 and 8, 2009. Exhibits 101, 102, 103, 104, 105, 106, 107, 108, 201, 202, 204, 205, 206, 207, 208, 209, 212, 213, 214 and 216 were admitted for all purposes by stipulation of the parties. Tim Fellows, Pete Thelen, Jack Carlson, Breta Duncan, Ed Shea, Louise Stoner, and John Amestoy testified in the technicians’ case. Bonnie Shoemaker, Paula Stoll, Jennifer Jensen, and Stefan Streeter testified in SHRD’s case. No rebuttal evidence was offered. The evidentiary record closed at the end of the contested case hearing.

After a postponement to allow the parties additional briefing time, the appellants filed the final brief on July 16, 2009, and the case was submitted for decision. Having fully considered the evidence, the record and the filings of the parties, the Hearing Officer now issues the following findings, conclusions and recommended BOPA order.

II. FINDINGS OF FACT

1. At the time they filed what is now this present “conditional consolidated classification appeal,” the appellants held Civil Engineering Specialist positions with MDT. Their employment was and is covered by two collective bargaining agreements (CBAs), the Supplemental Agreement and the Master Agreement. The CBAs do not waive the right of employees covered by them to file a wage and classifications appeal. The CBAs also cover Civil Engineering Specialist positions at MDT.

2. The Montana Department of Administration is the State agency the Montana legislature has charged with establishing, maintaining, and managing the pay plans applicable to all State employees.

3. Most State employees are paid according to the State's market-based, broadband pay plan. Title 2, Chapter 18, Parts 1, 2, and 3, Mont. Code Ann. This pay plan is informally known as "Pay Plan 20." The Pay Plan 20 is a classification and compensation system. Prior to adoption of Pay Plan 20, most State employees were paid according to the classification/pay plan, "Pay Plan 60" (MDT's civil engineering specialists were in "Pay Plan 68" before moving to Pay Plan 20).

4. Montana created and moved to Pay Plan 20 for four reasons:

- a. To match more closely salaries for comparable work in competing markets, making Montana State government more competitive in hiring and retaining employees;
- b. To compensate similar work similarly across all State agencies, ensuring a significant degree of internal equity;
- c. To base State employees' compensation on merit; and
- d. To establish a pay plan that could be maintained in a fiscally responsible manner.

5. Starting in the late 1990s, the Montana legislature began the move to the market-based, broadband pay methodology by authorizing State agencies to develop and submit compliant pay plans to SHRD. MDT began the move to Pay Plan 20 in the early 2000s.

6. Both the appellants' positions and the Civil Engineering Specialist positions are covered by Pay Plan 20. Under Pay Plan 20, all occupations are classified within nine "broad bands." Each band contains large numbers of occupational groups.

7. To classify a job, both the factor or complexity level and the occupation must be determined. The combination of these two components yields a classification job code.

8. The factor or complexity level is determined solely by the complexity of the predominant duty. Predominant duty is work performed at least 50% of the time. The factor or complexity level equals the Pay Band level in Pay Plan 20. A Pay Band in Pay Plan 20 is a very broad range of pay set by SHRD. A State agency may set pay for a job anywhere in the applicable band – or even above the band – so long as the agency does not go below the minimum pay in the band. Under Pay Plan 20, not all occupations in the same Pay Band are paid the same.

9. Occupation is determined by the required knowledge, skills, and abilities of particular jobs. Typically, the knowledge, skills, and abilities of the predominant duty for a job will determine the occupation. In some instances, there are also legal requirements involved in determining the occupation. Montana has such legal requirements for civil engineers (Mont. Code Ann. § 37-67-101 *et seq.*).

10. SHRD follows the Standard Occupational Classification (SOC) system and coding structure for determining occupational groups. The U. S. Department of Labor, Bureau of Labor Statistics, developed the SOC system to classify jobs.

11. The SOC distinctions between occupational groups parallel the requirements of Mont. Code Ann. § 2-18-202, regarding the similarity of duties and responsibilities, education, knowledge, skills, and abilities. Jobs in separate SOC categories have, among other things,

fundamental differences in educational and licensing requirements. Based on these fundamental differences, SOC identifies two separate occupations for civil engineers and civil engineering technicians.

12. SHRD's analysis of the labor market outside State government is one of many factors used for setting pay. SHRD provides this market analysis to State agencies. The market analysis helps agencies better understand the market rate or range for a given occupation.

13. Collective bargaining agreements and an agency's pay plan rules determine the pay for particular jobs. For union jobs, pay is a mandatory subject of bargaining under Montana law (Mont. Code Ann. § 39-31-305).

14. MDT has adopted pay plan rules for its use of Pay Plan 20, consistent with SHRD's pay policy for Pay Plan 20. MDT's rules allow for wage adjustments, depending upon available funding. MDT has wage adjustments for market-based pay, competency-based pay, strategic pay, situational pay, results-based pay, and longevity pay increases. Pay exceptions, which existed under prior pay plans, do not exist under Pay Plan 20.

15. MDT uses competency-based pay to reward employees for development, growth, and demonstration of job-related competencies. Strategic pay is intended to attract or retain employees critical or vital to achievement of MDT's mission or strategic objectives.

16. MDT has positions in the "Civil Engineering Technician" occupation at ascending levels I through IV. These four levels were defined in conformity with a "career ladder" that MDT developed and implemented. Educational requirements for a Civil Engineering Technician are a high school diploma or a GED with course work in algebra, geometry, and trigonometry.

17. MDT has positions in the "Civil Engineering Specialist" occupation at ascending levels I through III. These levels were also defined in conformity with a different "career ladder" MDT developed and implemented for engineers. Beyond these levels, a Civil Engineering Specialist has many career options within MDT and the private sector. The educational requirements for a Civil Engineering Specialist are a bachelor's degree in civil engineering, civil engineering technology, or construction engineering technology, or a related engineering bachelor's degree such as environmental engineering or engineering science.

18. To attain a Civil Engineering Technician IV position, the employee must have at least eight years of engineering technician experience, two of which are attained at the Civil Engineering Technician III position. A bachelor's degree in civil engineering or civil engineering technology, with certification as an engineering intern, substitutes for four of the eight years of engineering technician related experience. A professional engineer license substitutes for all eight years of the engineering technician related experience requirement.

19. To attain a Civil Engineering Specialist III position, the employee must at a minimum be certified as an engineer intern. To be certified as an engineer intern, the applicant must be a graduate of an engineering or engineering technology curriculum of four years or more (alternatively, be a graduate of a related science curriculum of four years or more, with a record of four or more years of progressive experience on engineering projects of grade and character satisfactory to the Board of Professional Engineers and Professional Land Surveyors); pass the

“fundamentals of engineering” exam; be of good character and reputation; and submit three character references to the Board of Professional Engineers and Professional Land Surveyors.

20. A Civil Engineering Specialist I must become certified as an engineer intern within two years of being hired. If this certification does not occur, the Civil Engineering Specialist I is moved to a Civil Engineering Technician II position, with a downward pay adjustment consistent with the MDT’s pay plan rules. Upon achieving certification, the employee may reapply for a civil engineering position and, if successful, re-enter the Civil Engineering Specialist Advancement Policy. In short, absent certification, an engineer is downgraded to a technician position.

21. In 2003, Civil Engineering Specialist II and Civil Engineering Technician IV positions were assigned Pay Band 5 (complexity level 5).

22. In 2005, SHRD ordered that the Civil Engineering Technician IV and Civil Engineering Specialist II positions should be paid based on a salary range that used the same market rate starting point and provided an adequate spread between entry salary and maximum salary. SHRD stated that its decision in no way prevented MDT from using other wage adjustments (such as competency or situational pay) to adjust pay for given positions or groups of positions.

23. Though not required to do so under SHRD’s 2005 order, MDT has chosen to pay Civil Engineering Specialist II and Civil Engineering Technician IV positions the same.

24. Prior to 2008, Civil Engineering Specialist III jobs were in Pay Band 6 (complexity level 6). In late 2008, SHRD and the appellants agreed that the predominant work of the Civil Engineering Specialist III and Civil Engineering Technician IV positions was the same. After evaluating the predominant duty, the Civil Engineering Specialist III position was reassigned to Pay Band 5 (complexity level 5).

25. The knowledge, skills, and abilities required are not the same for the Civil Engineering Specialist III positions as for the Civil Engineering Technician IV positions. The technicians are not required to have a bachelor’s degree in engineering—like civil, environmental, or construction engineering—together with meeting the requirements for becoming an engineer intern.

26. The position descriptions for the technicians and the engineers require different knowledge, skills, and abilities.

27. Engineers are in higher demand than technicians in state and national markets. In national markets, engineers’ average pay is higher than that of technicians.

28. Historically, MDT has experienced retention and recruitment difficulties for engineering positions. MDT has not experienced a lack of technician applicants to fill technician positions, and there is very little turnover in these positions. This retention rate suggests that the pay for the Civil Engineering Technician IV position in particular is competitive and fair.

29. There are differences in knowledge, training, and experience requirements between a Civil Engineering Specialist II position and a Civil Engineering Specialist III position.

30. The appellants' requested pay increase for the Civil Engineering Technician IV position would result in a significant increase in salary expense to MDT of approximately \$650,000 annually, dependent upon overtime requirements during construction season. This increase would also be inconsistent with the collectively bargained salaries that MDT and the union negotiated over many years.

31. The Civil Engineering Specialist II and III positions assigned to field engineering crews are assigned a complexity level 5 in Pay Plan 20. The Civil Engineer Specialist III receives a higher rate of pay based upon the market values used for the Civil Engineer Specialist III at the former level complexity 6 market rate.

32. The Civil Engineering Technician IV positions are also assigned a level 5 complexity under Pay Plan 20, and presently receive a rate of pay equivalent to the Pay Band 5 Civil Engineer Specialist II market rate.

33. The predominant work of the appellants, in their Civil Engineering Technician IV positions, and the Civil Engineering Specialist III positions is the same.

34. MDT, in the past and presently under the Broad Band Pay Plan, has assigned non-degree engineering employees to the Civil Engineering Specialist III occupation and paid them at the same level as degree Civil Engineering Specialist IIIs. Assignments to these civil engineering occupations are based upon performing civil engineering work. MDT has assigned Civil Engineer Specialist III pay to employees who are not degree holding civil engineers and who work in engineering related occupations. Historically, MDT had greater difficulty recruiting and retaining people for those positions than for engineering technician positions, and therefore, developed higher salaries for those positions. The State's broadband pay policy and MDT's pay plan rules allow for these types of wage adjustments, and these assignments are not in violation of the Broad Band Pay Plan, nor MDT's pay plan rules.

35. The Engineering Technician IV occupation is covered by an MDT developed certification-promotion policy, and the Civil Engineering Specialist III occupation is covered by an MDT developed promotion policy. Prequalifiers for the Civil Engineer Specialist III to advance to Field Project Manager are a P.E. Engineering License or a Level IV Engineering Technician Certification.

36. All employees at MDT are covered under Pay Plan 20 with the exception of Highway Maintenance Occupations which are covered by the Blue Collar Pay Plan.

37. None of the field Civil Engineering Specialist III positions working on field engineering crews receive any pay exception for recruitment or retention. Currently, all Civil Engineering Specialist III positions assigned to field engineering crews are paid at the current market value plus legislative raises over the current state biennium.

38. The appellants as well as other MDT employees, such as engineering contract specialists and utility engineering specialists, are members of the MPEA bargaining unit. Their pay is a mandatory subject of collective bargaining, under Mont. Code Ann. §§ 2-18-303 and 39-31-305. The MPEA and MDT negotiated the appellants' current pay, as well as their past pay, under a series of CBAs. At least during recent years, MPEA has not advanced a proposal to pay the appellants' position at the same rate as the Civil Engineering Specialist III position.

III. OPINION

Montana law requires the Department of Administration (which performs this function through SHRD) to develop a classification plan for State employees and permits employees to appeal the allocation of positions to classes in the system. Mont. Code Ann. §§ 2-18-201(1) and 2-18-203(2) (emphasis added). The function of developing guidelines for classification (again, performed by SHRD) is delegated to the Department of Administration. Mont. Code Ann. § 2-18-202.

The BOPA's function in this matter is limited to determining whether a position is properly classified. The purpose of that function is to review the actions of SHRD and to ensure that SHRD properly adheres to its rules, regulations, and practices. *Mead v. BOPA* (1988), 235 Mont. 208, 213-14, 766 P.2d 1300, 1303. *See also, Dept. of Admin. v. BOPA* (1992), 255 Mont. 507, 844 P.2d 68. The appellants bear the burden of proof in this matter to demonstrate by a preponderance of the evidence that they have been aggrieved by the SHRD classification of their positions. Mont. Code Ann. § 2-18-1012; Admin. R. Mont. 24.26.513(f).

In 2007, the Montana legislature enacted the broadband classification pay plan for State employees to "measure the difficulty of the work and the knowledge or skills required to perform the work." Mont. Code Ann. § 2-18-101(5), (6). The broadband classification system looks to a "benchmark" to determine the pay band for an occupation. A benchmark is "a representative position in a specific occupation that is used to illustrate the application of the job evaluation factor used to determine the pay band for an occupation." Mont. Code Ann. § 2-18-201(3). A job evaluation factor is defined as "a measure of the complexities of the predominant duties of the job." Mont. Code Ann. § 2-18-201(12). It is the classification of this single factor to one of nine levels of complexity (classification factor levels) that determines the pay band assignment for a position. Broadband Classification Manual, Vol. III (Eff. Jan. 2007), pp. 6, 29 through 53.

The Broadband Classification Manual sets out the principles of application of the BFM to a given position and provides the framework against which SHRD's classification determination in any case must be measured. The BFM in place under the present rules requires a classifier to "evaluate the work performed against factor level definitions and the benchmarks." Broadband Classification Manual, Vol. III, p. 4. Under the applicable procedures, proper classification requires:

- (1) Use of the predominant work principle, meaning that the work to which the factors are applied must be work performed 50% or more of the position's work time.
- (2) That the predominant work be fully equivalent to the overall intent of the factor level chosen.
- (3) That the classifier start at the first factor level and progress to the first level that most fully describes the total predominant work.
- (4) Comparison to benchmark positions. Comparison requires more than just matching specific words and phrases to the position description. "It requires consideration of the full intent of each factor level and selection of the

level that best reflects the nature of the position under review.” The intent of factor level language is demonstrated in the benchmarks.

Broadband Classification Manual, Vol. III, pp. 4 through 6.

Classification review involves three basic steps: job analysis, job evaluation, and documentation. “Job analysis means collecting information about the position through the job profile and other sources, such as conversations with the supervisor or incumbent. Job evaluation applies the benchmark factoring methodology to determine the appropriate factor level for the job. Documentation summarizes the job analysis and job evaluation in a written statement that explains and defends the classification decision.” *Id.* at page 6.

It is the classification of a single job factor to one of nine levels of complexity (classification factor levels) that determines the pay band into which a particular occupation falls. However, the pay for a particular occupation falling within a particular pay band may be different from the pay for another particular occupation that falls within the same particular pay band.

In the present case, the appellants contend that since their predominant duties are the same as those of the Civil Engineering Specialist III positions, they should not be paid at rates comparable to the Civil Engineering Specialist II positions. Simply put, although it has been translated into a number of different issue statements by both the appellants and SHRD, the appellants assert that under Pay Plan 20, jobs with the same predominant duties should receive the same pay.

Although “same pay for same work” is an attractive formulation, it is a vast oversimplification of the way Pay Plan 20 operates. In developing market ranges for various occupations, SHRD classifies the occupations based upon the qualifications required and the salaries received in both public and private sectors within and outside of Montana, among other criteria. For qualifications and salaries, it is crystal clear that civil engineers both (a) must have more extensive formal training and education and (b) typically command higher salaries than engineering technicians. MDT places both civil engineers and engineering technicians in positions doing the same predominant duties, as individuals in both occupations progress through their separate career ladders. Because of the differences in qualifications and salaries, CBAs and retention and hiring practices, as well as career ladders, have reflected and still reflect the monetary value of the more extensive formal training and education required of civil engineers and the higher salaries available to civil engineers in the actual markets in and around Montana.

In its decision in *Matter of the Classification Appeal of Warren C. Mead* (1988), 235 Mont. 208, 766 P.2d 1300, the Montana Supreme Court generally stated that the primary question to be considered in an appeal regarding pay plan determinations made by the SHRD is whether or not the SHRD has appropriately applied the statutes, regulations, policies, and practices of the SHRD in doing its work – not whether someone could make an alternative determination. The appellants have not established that SHRD has erred in applying Pay Plan 20 to their occupation. They have not proved that Pay Plan 20 must or necessarily should result in a wooden application of “same pay for same work” that would raise pay for their positions at MDT to match that of the Civil Engineering Specialist III position. Although the Hearing Officer is

sympathetic to their underlying equity argument, the evidence does not establish that they are entitled to any relief. In determining that the Civil Engineering Technician IV position should not be assigned the same pay rate as the Civil Engineering Specialist III position, SHRD has appropriately applied its statutes, regulations, policies, and practices, recognizing the differences between the two occupations involved.

Proper application of the pay plan statutes, regulations, policies, and practices can lead to results that seem inequitable. The Civil Engineering Technician IVs are doing work at the same complexity level as both Civil Engineering Specialist IIs and IIIs. They are performing the same predominant duties as Civil Engineering Specialist IIIs. They are paid at the same level as Civil Engineering Specialist IIs. However, the difference in pay between Civil Engineering Technician IVs (the appellants) and the Civil Engineering Specialist IIIs is well within the scope of MDT's authority to make pay decisions and is consistent with the CBA covering the appellants. The pay difference is justified by the differing qualifications and earning power of the two occupations involved, properly recognized by SHRD in performance of its classification responsibilities.

IV. CONCLUSIONS OF LAW

BOPA has jurisdiction over this matter. Mont. Code Ann. § 2-18-1011. Appellants have not established that SHRD failed to follow the statutes, regulations, policies, and practices applicable to determining the current pay for the Civil Engineering Technician IV position, and therefore, appellants' positions are properly classified. Mont. Code Ann. § 2-18-1012; Admin. R. Mont. 24.26.513(f).

V. RECOMMENDED ORDER

Based on the foregoing, the hearing officer recommends that Classification Appeal No. 1, Case Nos. 1221-2007 and 1993-2007 through 2021-2007 be DISMISSED.

DATED this 18th day of August, 2009.

BOARD OF PERSONNEL APPEALS

By: /s/ TERRY SPEAR
TERRY SPEAR
Hearing Officer

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 September 10, 2009. 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