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**IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION**

**CLERK
U. S. DISTRICT COURT
MIDDLE DIST. OF ALA.**

JOHNNY REYNOLDS, et al.,

Plaintiff,

v.

ALABAMA DEPARTMENT OF
TRANSPORTATION, et al.,

Defendants.

CIVIL ACTION NO. 85-T-0665-N

RECOMMENDATION OF THE MAGISTRATE JUDGE

I. Introduction

Pursuant to the requirements of Article XV of the consent decree, the defendants have conducted a multi-grade job study of the SPD project classifications and propose a new classification structure for some job titles. The issue before the court is whether this new structure¹ comports with the requirements of Article XV.

Article XV, ¶ 3 provides as follows:

3. Multi-Grade Jobs: The following steps will be taken by the defendants:

(a) A job classification study will be conducted by the State Personnel Department encompassing the job classifications at Highway in a multi-

¹This proposed classification structure for the SPD classes, Defendants' Exhibit 12 to June 17-18, 1997, hearing, is attached.

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grade series.² Such study will commence with the following multi-grade jobs:

- Engineering Assistants
- Civil Engineers
- Professional Civil Engineers
- Highway Maintenance Technicians and Highway Maintenance Superintendent
- Right-of-Way Specialists
- Project Cost Auditors

(b) In the event such job classification study discloses that existing distinctions in the levels of multi-grade jobs do not reflect actual differences in duties, responsibilities, or qualifications, the jobs will be collapsed or restructured so that (i) they will reflect the actual distinctions, if any, shown by the study and (ii) are capable of being administered and utilized so that only persons occupying that classification perform the duties associated with it on a regular or non-emergency basis.

(c) Any restructuring of multi-grade jobs will likely involve reducing the number of grades and broadening the pay ranges within the newly defined classifications]. Such restructuring shall be implemented in a way that the opportunities for black employees to advance, and for the defendants to achieve the goals and purposes of this Decree, are enhanced and not diminished.

(d) In the event that the study results in the consolidation of classes (e.g., HMT-1 and HMT-2), all persons will be assigned to pay ranges appropriate to their years of service, provided that black employees shall not be downgraded or have a reduction in pay as a result of the reclassification study unless it is demonstrated by the Highway Department that they have not performed after being given the opportunity to do so, and are not capable of performing with reasonable training, the duties and responsibilities of the job classification to which they are assigned.

²This recommendation addresses only the multi-grade classification study done with regard to the Article XV, ¶ 3(a), SPD classifications and challenged by the plaintiffs. There is now pending before Chief Judge Thompson the issue of whether the "job classifications at Highway" language means all classifications used by ALDOT including interdepartmental classifications used by other departments of state government as well.

The plaintiffs object to some³ of the recommendations as follows:

1. The defendants propose to restructure Civil Engineer (CE) I-IV into CE I/II and CE III/IV. The plaintiffs object and contend that there should be a single CE classification.

2. The defendants propose to restructure Engineering Assistant (EA) I-III into EA I and EA II/III. The plaintiffs object and contend that there should be a single EA classification.

3. The defendants propose to restructure Highway Maintenance Technician (HMT) I-III into HMT I and HMT II/III. The plaintiffs object and contend that there should be a single HMT classification.

4. The defendants propose to restructure Right-Of-Way Specialist I-III into four separate classifications: Right-Of-Way Specialist, Senior Right-Of-Way Specialist, Real Property Valuation Analyst and Senior Real Property Valuation Analyst. The plaintiffs object and contend that there should be a single Right-Of-Way Specialist classification.

Before addressing the plaintiffs' objections to the recommendations, it is necessary to set out in some detail, the nature of the study done by the State Personnel Department (SPD). Then the court will address the question before it.

³See Plaintiffs' Post-Trial Memorandum on Multigrade Job Study at 4 n. 3 (doc. # 2061).

II. The Classification Structure Study and Recommendation

A. The Form 40s and the Functional Sort. The study began in early 1994 when SPD had all employees of the Alabama Department of Transportation complete a Form 40. In essence, the Form 40 obtains from individual employees their descriptions of the work and duties they perform on the job. Analysts in the SPD reviewed the Form 40s and categorized them. The categorization was done by placing the forms into functional area groupings. Steve Dukes, an analyst with SPD explained the process.

Q Describe for the Court, please, how you went about making the functional area groupings using the Form 40s.

A We reviewed all the project class Form 40s that were completed, and divided those into stacks according to the type of work that was being performed by the incumbents.

Q Who actually did the review that you're talking about now?

A Myself. There were two stages of the review. The first stage was done by myself, Phillip McIntosh and Phyllis Hopkins.

Q Go ahead.

A We divided the forms out into very small stacks, and then we went back to see if we could combine any of the stacks, see if the work was similar enough into two groups so we could combine stacks. And we ended up with a certain number of stacks. We just tied a label to each of the stacks, and the labels on the functional area titles that you see.

Q All right. Now, in making your review of the Form 40s and deciding which stacks to put each Form 40 into, what were you looking at? What criteria did you use?

A We looked at the job duties that were performed by the

incumbent. We considered the location where the incumbent worked, considered job title to some degree, but that was a minor consideration. We considered the supervisor that the person reported to. Just the whole document itself, basically.

Transcript at 151-152, Evidentiary Hearing, June 17, 1997, Testimony of Steve Dukes.

Based on a sampling plan⁴ for each functional area, SPD analysts randomly⁵ selected from each functional area stack a certain number of the Form 40s which had been completed by ALDOT employees. It is these employees to whom a classification study instrument was administered.

B. The Position Analysis Questionnaire (PAQ). The next step in the process chosen by SPD to perform the multi-grade study was an analysis of each functional area. This analysis was done using an instrument known as the Position Analysis Questionnaire (PAQ). Dr. S. Morton McPhail described this instrument as follows:

The Position Analysis Questionnaire is a structured job analytic tool designed to measure under a theoretical perspective of worker oriented job analysis. By that I mean it's intended to analyze the aspects of work that place requirements upon workers, rather than to examine the specific tasks that a particular job may perform such as a task analysis might accomplish.

The advantage that that allows is that it allows us to compare jobs that may be very different with respect to their technological or specific

⁴There is no dispute about the sampling plan.

⁵The plaintiffs do not raise any issue about this sampling technique which literally involved a person pulling a predefined number of forms from the functional area stacks of Form 40s. Dr. Morton McPhail, the consultant who oversaw the work, stated that while he would not describe the process as a "statistically random sample . . . [it] is adequate for purposes of this kind of analysis." Transcript of June 17, 1997, Evidentiary Hearing at 50.

task assignments on a common metric. The instrumental use for a quantification of that information by the use of expert analyses and analysis, and the way the instrument is used, which I think is the second part of your question, is that we collect information about jobs by a variety of methods, reviewing written documents, examining observations at the workplace and, most importantly, by interviewing incumbents or other experts such as supervisors or trainers and so forth regarding the content of the work that's being performed. Based upon that job-specific information, analysts then make evaluations on a hundred and eighty-six -- a hundred and eighty-seven, pardon me, specific job elements with regard to their importance or other characteristics with respect to that particular job. Those ratings, those evaluations are subjected to statistical analysis in a variety of different ways, which I assume you're going to want to discuss in a moment.

Transcript at 27-28, Evidentiary Hearing, June 17, 1997, Testimony of S. Morton McPhail.

The PAQ Job Analysis Manual⁶ describes the PAQ as containing six divisions (information input, mental processes, work output, relationships with other persons, job context, and other job characteristics) which provide a “logical structure to use in approaching the analysis of any job and in organizing the data obtained from the job analysis.” The PAQ was administered by interview to all of the persons selected in the sampling process described above. The data derived was then subjected to analysis which produced a variety of statistical and other information including PAQ points. This data was then used information to assist in creating the new classification structure

Having looked at the data and examined them, I suggested to them that a hundred points was probably a fairly meaningful difference. One of

⁶Defendants' Exhibit 1 to June 17-18, 1997, hearing.

the difficulties in talking about a meaningful difference is that when you build a structure, you have to draw a line at some point. You have to say that these jobs are on this side and these jobs are on the other side of that line.

The problem that that presents is that work is not necessarily in discreet chunks; work tends to be somewhat continuous in nature. That is, we're taking a qualitative entity of job and looking at it in a quantifiable fashion. When we look at points, then, if I draw a line between two jobs and one of them has a hundred points and the other has a hundred and fifty points and I draw a line between them, I'm saying there is some distinction between them.

But if that distinction is only fifty points, we ask the question is that a meaningful distinction. Because there is no definitive answer to that question, we have to start at some point. I suggested to them a hundred points would be a good place to start, and then evaluate the extent to which that distinction was meaningful in the context of the Department of Transportation jobs.

Transcript at 75-76, Evidentiary Hearing, June 17, 1997, Testimony of S. Morton McPhail.

C. The Proposed Class Structure. Representatives of SPD met with McPhail and his associates several times to discuss the PAQ data and how to interpret it. *See* Transcript at 168, Evidentiary Hearing, June 17, 1997. Then SPD began the process of developing a new classification structure.

Q Once you had received the analysis from Jeanneret and Associates⁷ and had these discussions with Jeanneret representatives, how did S P D then proceed in using that information to develop the class structure?

A There was several Analysts involved in that process, myself, Cindy Jackson, Phyllis Hopkins, Phillip McIntosh. We also had the

⁷This is the firm for which Dr. McPhail works.

assistance of Dr. Hicks in that process. We met with the P A Q information, and all the other information that we had at the time, to develop the new structure.

Q And in addition to the P A Q Analysts themselves and the advice you received from Drs. Jeanneret and McPhail, what other information did you look at and consider in developing the class structure?

A We looked at the organizational structure at the Department of Transportation. We considered the Department of Transportation's needs as far as classification structure. We considered the information that we had gathered from the P A Q interviews, the knowledge that we had obtained from actually conducting the interviews about the different kinds of work that was being performed.

We also used our years of working with the Department in developing the class structure.

Transcript at 168-169, Evidentiary Hearing, June 17, 1997, Testimony of Steve Dukes.

The one hundred PAQ point differential was used as a general rule in deciding how many levels there should be for a particular job. *Id.* at 171.

Q Yes. When you were analyzing the available data for classification series, did you take into account occasions when you found that the point, the P A Q points within that series were overlapping, or were overlapping with another series?

A Yes, there was some overlapping points.

Q And when you had that issue before you, how did you consider that? What did you do?

A Well, first we looked for reasons of why the points were overlapping. Tried to find reasons why they were overlapping.

Q What type of information would you look at to try to determine that?

A We went back and looked at the Form 40s that the position represented to see if the overlap was caused by somebody working at a higher level, and therefore not really representing the overlap but representing correct points for the higher level class.

Also, we looked to see if the overlap was caused by some work that had slipped in that just didn't belong in that particular area.

THE COURT: What do you mean by that?

THE WITNESS: In some instances there is especially positions out there that perform work that really doesn't belong with the majority of work that's being placed that's in a classification.

THE COURT: Isn't that what this study was supposed to determine?

THE WITNESS: Talking about not as far as level, but, for instance, we have a class, a position where the person is a computer specialist, he's currently within the C E series. We don't really have -- it doesn't really belong in that series, but we don't really have a classification for that type of work.

That's the best fit for the duties he's performing, but it's really not representative of the main work that's performed by C E incumbents. So we didn't throw any information out, but we discounted some information because it just was not representative of the main body of work represented by the classification. And, therefore, this one little segment of work shouldn't drive our decision on how many levels of a particular class that we should have.

Id. at 172-174.

In development of the proposed structure for the SPD classes, the SPD representatives also considered information about structures used in departments of transportation in surrounding states. *Id.* at 174. The proposed structure was chosen

because it allegedly represented to the SPD personnel working on the project the "best fit" of the data. *Id.* at 176. For each of the new jobs under the proposed structure⁸ SPD developed specifications which in essence contains a job description including a list of typical duties. *See* Defendants' Exhibit 14, Evidentiary Hearing, June 17-18, 1977.

The information and data available to SPD and which the SPD representatives working on this project used in developing the structure guided their judgment. However, the final proposed structure was based on judgment informed by this data and not the mechanical application of data in some formulaic manner.

III. Discussion - Does The Structure Comply With The Decree?

A. Introduction. The consent decree requires that the new structure "reflect the actual distinctions, if any, shown by the study"⁹ and . . . [be] capable of being administered and utilized so that only persons occupying that classification perform the duties associated with it on a regular or non-emergency basis." The decree further requires that the "restructuring shall be implemented in a way that the opportunities for black employees to advance, and for the defendants to achieve the goals and purposes of

⁸ The information and data available to SPD and which the SPD representatives working on this project used in developing the structure guided their judgment. However, the final proposed structure was based on judgment informed by this data and not the mechanical application of data in some formulaic manner.

⁹The plaintiffs do not raise any issue about whether the study found actual distinctions or whether the study itself was appropriate for the purposes set out in the consent decree. Indeed, the plaintiffs accept some of the classification structure proposed by the defendants.

this Decree, are enhanced and not diminished.” It is against these requirements that the plaintiff’s objections to the proposed structure must be tested. In considering the plaintiff’s objections, the court also must discern the meaning of the decree according to well established principles which have been applied throughout this case.

A consent decree or judgment has the attributes of a contract and thus, as with a contract, its meaning "must be discerned within its four corners." *United States v. Armour & Co.*, 402 U.S. 673, 682, 91 S.Ct. 1752, 1757 (1971). In some cases, however, this cannot be done because a term is ambiguous. "A contract term is ambiguous if [it is] 'reasonably susceptible to more than one interpretation....' " *Orkin Exterminating Co., Inc. v. F.T.C.*, 849 F.2d 1354, 1360 (11th Cir.1988), cert. denied, 488 U.S. 1041, 109 S.Ct. 865 (1989) (quoting *Fabrica Italiana Lavorazione Materie Organiche, S.A.S. v. Kaiser Aluminum & Chemical Corp.*, 684 F.2d 776, 780 (11th Cir.1982)). To determine whether a writing is ambiguous, the court must first assess the plain meaning of the language of the writing and determine whether there are two possible reasonable interpretations. *Dahl-Eimers v. Mutual of Omaha Life Ins. Co.*, 986 F.2d 1379, 1382 (11th Cir.1993). If the court determines that the contract is ambiguous, it "should ... endeavor to ascertain the true intent of the parties [,] ... and then, so far as it is possible so to do consistently with legal principles, give effect to that intention." *Pickren v. United States*, 378 F.2d 595, 599 (5th Cir.1967). When faced with an ambiguous term and the task of determining the intention of the parties, the court may rely "upon certain aids to construction ... Such aids include the circumstances surrounding the formation of the consent order, any technical meaning words used may have had to the parties, and any other documents expressly incorporated in the decree." *United States v. ITT Continental Baking Co.*, 420 U.S. 223, 238, 95 S.Ct. 926, 935 (1975).

Reynolds v. Alabama Department of Transportation, ____ F.Supp. ____, 1996 WL 378271 (M.D.Ala. June 7, 1996)(footnote omitted).

B. The Plaintiffs’ Objections. The plaintiffs’ objections to the proposed classification structure for civil engineer, engineering assistant, highway maintenance

technician, right-of-way specialist and real property valuation analyst are expressed in numerous ways. However expressed, the objections can be distilled into a single point: The proposed classification structure for these jobs does not comply with Article XV because the different levels of positions within a classification have common duties distinguishable only by proficiency in performance. The plaintiffs argue that the structure does not comport with Article XV because it does not meet the requirement that "only persons occupying that classification perform the duties associated with it on a regular or non-emergency basis." The plaintiffs contend that the requirements of Article XV were intended to do away with levels of multi-grade jobs which did not reflect actual differences in duties so that no longer would employees of ALDOT work side-by-side doing the same job but receiving vastly different amounts of pay.

By requiring classifications in the new structure to embody definable differences in duties, the Decree sought to assure that there could no longer be pseudo-promotions in situations in which there was only a change in proficiency, rather than duties.

Plaintiffs' Post-Trial Memorandum On Multigrade Job Study at 3. (Doc. # 2061).

The plaintiffs contend that where duties in two different levels of a classification are mere differences in "proficiency" the duties are not different within the meaning of ¶3 of Article XV. The plaintiffs argue that for there to be two or more different levels within a classification, the levels must be distinguished by characteristics which amount to a promotion. Dr. McPhail explained the progression/promotion distinction in this

way.

Q And you explained, as I understand your testimony in your deposition, to the Transportation Department and the Personnel Department the difference between a progression and a promotion, correct?

A Yes, sir.

Q And you mentioned that in your direct examination, too. Tell us the difference between a progression situation and a promotion situation.

A I would be glad to do that. I will also add one other category, if you don't mind, to fully flesh that out.

By my definition -- and I make no assertion that this is, in fact, the State's definition, this is my definition -- a "progression" occurs when job duties change little, except in terms of complexity or responsibility or difficulty. And a person can be expected to progress through a growth curve in terms of knowledge, ability and learning as they move through that progression.

In other words, it's work that's highly similarly arranged in the hierarchy of explaining responsibility and so on. A "promotion" would be defined, then, as a change in job duties to a group of duties different from those performed previously that are at a higher level.

To complete that analysis, one might also identify a "transfer," which would be a change in job duties at a similar level of the organization or of difficulty or responsibility.

Q And it was your recommendation to the defendants in this case that it had too many levels, because some of the levels were really progressions rather than promotional situations, correct?

A That's true.

Q Now --

THE COURT: How do you determine the difference, for example

you say that the "promotion" is a change of job duties different -- well, done at a higher level. What's the difference between that and increasing difficulty or responsibility?

THE WITNESS: In the simplest case you might think of it as the difference between becoming promoted to a supervisor and becoming a senior Analyst, for example. One performs similar duties to what one has done previously but one has more responsibility to do more complex analyses, where a supervisor has different duties, disciplining, assigning work and so forth.

Transcript at 114-115, Evidentiary Hearing, June 17, 1997.

C. The Defendants' Response. The defendants argue that nothing in ¶ 3 of Article XV

purports to prohibit persons of different classifications from performing **any** of the same duties. It would be impossible for any organization to adhere to such a requirement. The requirement is, rather, that there be actual distinctions between what is required of persons in each classification . . . For example . . . both a draftsman and a designer may perform some drafting work, but it is the performance of design work that distinguishes the positions.

Defendants' Memorandum In Support of Multigrade Job Study at 3 n.2 (doc. # 2084).

D. The PAQ Points Problem. At this juncture it is necessary for the court to set forth more fully its conclusions about the use of the PAQ points. Data derived from the PAQ include PAQ points.

Q Now, in terms of the use of the P A Q points, we've discussed earlier that you suggested to the State Personnel Department the use of a hundred points as a starting place. If I understand you correctly, that was for distinctions between classes, or jobs.

A That would represent jobs that were really pretty different.

Q And is there a point value assigned to each job in the P. A. Q.?

A Yes, there is.

Q Other than looking at them to determine distinctions between those jobs with respect to their point values, do you use the points in any other way?

A One of the ways you might use the points is to look at the range in variation of points within a grouping. One might compute the mean, one might compute the variance, one might compute the minimum and maximum values to determine the extent to which a particular range was cohesive.

Q What would you derive from that?

A Well, one of the things you might derive is that a job, there would almost certainly be overlap between neighboring jobs. In particular, that's true in the jobs such as the Department of Transportation has which tend toward being progressions rather than promotions.

The extent of that overlap should be examined. The extent to which jobs that fall deeply into the overlap may or may not be correctly classified should be examined.

More important than the extremes of the distribution, however, one would also want to examine the variation near the center of that distribution of jobs to determine the extent to which they tend to hold together. That would be looked at in conjunction with looking at the cluster analytic results to determine which jobs should be collapsed; that is to say, are there jobs that show no distinction and therefore should be put together, or do they show enough distinction that they should be maintained as separate.

Transcript at 81-83 , Evidentiary Hearing, June 17, 1997, Testimony of S. Morton McPhail

At first blush, then, it seems that the PAQ points do operate in the way suggested by the defendants who claim that the points represent a basis on which to differentiate

between jobs. While the PAQ may demonstrate that some differentiation between jobs exists, the evidence before the court does not demonstrate with any appropriate degree of acceptable proof the *basis* on which the differentiation exists.

The evidence before the court shows that the PAQ questionnaire is designed to determine the *attributes* of a job. Review of the questionnaire confirms this. For example, within the domain of information input an employee must rank¹⁰ the importance of such activities as (1) estimating the speed of moving parts, (2) estimating the speed of moving objects, (3) judging condition or quality, and (4) estimating size. Within the domain of mental processes an employee must rank¹¹ for example (1) the level of decision making; (2) the level of reasoning required in applying knowledge, experience, and judgment to problems; (3) the use of job-related knowledge; and (4) the use of short-term memory. Within the domain of work output an employee must rank for example the importance to the job of (1) precision tools, (2) drawing or related instruments, (3) variable setting controls, (4) air or space vehicles, and (5) balancing.

As these examples indicate, the information derived from the PAQ relates to characteristics of jobs as performed. The introduction to the questionnaire itself describes the PAQ as "a structured job analysis questionnaire that can be used for

¹⁰The rank order is as follows: 0 Does not apply; 1 Very minor; 2 Low; 3 Intermediate; 4 High; 5 Extreme.

¹¹The scales for different domains and some questions within domains are different. Generally, the scale relate to the importance of the action to the job.

analyzing jobs on the basis of 187 job elements that describe generic human work behaviors.” The PAQ points themselves are developed from refining the raw data through proprietary¹² algorithms. Transcript at 67-68, Evidentiary Hearing, June 17, 1997. The defendants presented no evidence about these algorithms or the underlying meaning of the PAQ points themselves other than the conclusory observation that the points may be used to differentiate between jobs. This conclusion itself is an inadequate basis upon which the court may premise a finding. Moreover, the defendants offer absolutely no evidence that the PAQ points differentiate on the basis of *duties* as required by the consent decree. In fact, Dr. McPhail’s testimony confirms this. As noted above, he described the PAQ as “intended to analyze the aspects of work that place requirements upon workers, *rather than to examine the specific tasks that a particular job may perform* such as a task analysis might accomplish.”(emphasis added)

Article XV, ¶ 3(b) requires that “jobs . . . be collapsed or restructured . . . so that only persons occupying that classification perform the duties associated with it on a regular or non-emergency basis.” The focus of this provision in the decree is on *duties* of the job, not the *attributes* of work performed. The importance of this observation is underscored by the testimony of Dr. McPhail who described the advantage of the PAQ process as allowing a comparison of very different jobs on a “common metric.”

¹²The algorithms are the property of PAQ Services. Transcript at 68, Evidentiary Hearing, June 17, 1997.

Transcript at 28, Evidentiary Hearing, June 17, 1997. From the evidence presented to the court, that common metric, however, is not *duties* as that term is used in the consent decree.

Q Before you move on, then, to the actual administration of the P A Q, you mentioned earlier that the P A Q measures or looks at things about work that requires something of the worker rather than actual looking at the specific task. I'd like to discuss that a little bit more. If you could describe for the Court in some more detail what the P A Q looks at and what it's intended to measure.

All right. Let me start by giving an example. At the risk of sounding pedantic, let me try that first.

We might wish to examine two jobs. For lack of a better choice, say a baker and a truck driver. And we might start that analysis by collecting a list of all the things that bakers and truck drivers have to read as part of their job. So we might list on our list of things that bakers read recipes, and weights, and measures and ingredients, and truck drivers might read such things as bills of lading, and weigh bills and street signs and maps. Those lists would probably be largely unoverlapping. There would be no comparison between those lists, because they would be quite different. Bakers and truck drivers tend to read different sorts of things.

On the other hand, we could examine what demands are relatively placed on those two jobs. One way we could do that would be to ask the question, to what extent do these two jobs require the worker to use written information as a source of information in order to perform their job. That, in fact, is the first item that appears on the P A Q That is the extent to which written sources of information are utilized by the job in performing the work.

In that case, we now have a common metric. We can ask the question, to what extent do truck drivers or bakers read -- must use written materials more or less in comparing those two jobs.

Transcript at 34-36, Evidentiary Hearing, June 17, 1997.

While the information derived from the PAQ study may give insight into the nature of *how* duties are performed and the requirements placed on a person to perform duties, the evidence before the court does not demonstrate that the PAQ study shows that duties between jobs are different “so that only persons occupying . . . [a] classification [may] perform the duties associated with it on a regular or non-emergency basis.” In short, the evidence presented to the court does not demonstrate that the PAQ points show that jobs are different according to the duties of the job.¹³

E. Resolution of the Interpretive Issue. Too much time has been spent by the parties and the court on delving into the arcane PAQ points issue. The reason for this observation is straightforward. The evidence shows and the court finds that the PAQ points were not the determinative factor on which SPD structured the new classifications. At the evidentiary hearing, testimony was presented that SPD also considered the ALDOT organizational structure, ALDOT’s needs, the PAQ information, knowledge derived by SPD employees from the interviews conducted in carrying out the PAQ study, and SPD employees’ general knowledge of the work done by ALDOT. The court credits this testimony but it is not particularly helpful to the court in deciding the issues because

¹³Common sense shows that this is so. Obviously, a baker and a truck driver have very different *duties*. However, reading may be very important to both. This may be true with respect to other job attributes of the two jobs. It is possible, therefore, for the PAQ points for the two jobs to be very close because the nature of the *attributes* of the two jobs are similar. This does not mean that the *duties* are not different. This example shows that the PAQ points measure something entirely different. The evidence does not show what is measured beyond a conclusory and unhelpful statement that job attributes are measured so jobs may be compared.

no evidence was offered to explain how each of these factors affected the new classification structure.

As noted above, the plaintiff's contend that the new classification scheme is inconsistent with the consent decree because for the challenged classifications the different levels have common duties which can be distinguished only by levels of proficiency and which are not "capable of administration" as required by the decree. The defendants argue that nothing in the decree prohibits common duties so long as there are actual distinctions between what is required of persons in each classification.

None of the parties have compared the job descriptions proposed by SPD for each of the challenged positions. The court will undertake to do so in a limited fashion because this analysis is instructive with respect to determining compliance with the decree.

1. Highway Maintenance Technician. The HMT I description states that it is "distinguished from the Highway Maintenance Technician II/III level in that its primary responsibility is to perform routine maintenance tasks and simple equipment operation." The description of duties shows that employees in this class perform "simple unskilled manual work" and use "hand and power tools." The HMT II/III description states that employees in this class "are responsible for leading a crew." Additionally, employees in the class perform "routine to highly skilled tasks" including operation of "heavy construction equipment" and perform "skilled finish work with graders and/or

bulldozers.”

2. Engineering Assistant. The description states that the EA I class is distinguished “from other engineering positions in that incumbents are employed with no prior experience and receive training in one or more of the engineering specialty area. The description for EA II/III states that the class is distinguished from EA I “in that employees are expected to be fully functional within a specialty areas such as materials testing . . . [N]ew work is performed under close supervision of a Civil Engineer I/II.”

3. Civil Engineer. The description for CE I/II states that job activities include service as “assistant project engineer on major projects.” The description for CE III/IV states that job activities include service as “senior project engineer on highway construction jobs . . .” The description of CE I/II also indicates that employees in this position “supervise lower level assistants in the completion of duties.” The description of CE III/IV states that it is distinguished from CE I/II “in that employees are assigned complex projects which involve substantial supervisory responsibilities over other paraprofessional employees.”

4. Right-Of-Way Specialists.¹⁴ The ROW I classification is described as “technical and professional work in relocation assistance, property management, and securing title to property needed for departmental purposes.” The description of ROW I

¹⁴In some documents before the court the two classifications for a Right-Of-Way specialist are referred to as Right-Of-Way Specialist and Senior Right-Of-Way Specialist.

states that it is distinguished from ROW II/III “in that employees are hired with no prior experience and are trained in one or more right-of-way functions.” The ROW II/III classification is described as “supervisory technical and professional work in relocation assistance, property management, and securing title to property needed for departmental purposes.” The description of ROW II/III states that it is distinguished from ROW I in that the incumbent “functions as a supervisor or lead worker over a specific right-of-way function.”

Also within the ambit of the original right-of-way classifications is the new Real Property Valuation Analyst and Senior Real Property Valuation Analyst. These are appraisers. The Senior position is distinguished by the responsibility of supervising other appraisers or supervising consulting appraisers.

Article XV ¶ 3(b) requires that if

the jobs . . . [are] collapsed or restructured . . . [they must be] capable of being administered and utilized so that only persons occupying that classification perform the duties associated with it on a regular or non-emergency basis.

The plaintiffs argue that this language means that there can be no overlapping *duties* among different levels of a classification. The defendants argue that nothing in the decree prohibits persons in different classifications from performing the same duties so long as there are actual distinctions between what is required of persons in each classification. Thus, for the defendants the more responsible task of welding bridge parts

as opposed to the task of welding a handle on a garbage can is an actual distinction supporting a difference in the HMT I and HMT II/III classifications. The plaintiffs argue that this is not a distinction; rather, it is a “progression” as that term was used by Dr. McPhail who stated that a “progression” occurs when job duties change little, except in terms of complexity or responsibility or difficulty. Transcript at 114, Evidentiary Hearing, June 17, 1997. A “promotion” occurs when there is “a change in job duties to a group of duties different from those performed previously that are at a higher level.” *Id.* at 115.

After careful consideration, the court concludes that the progression/promotion distinction posited by the plaintiffs and explained by Dr. McPhail, the defendants’ consultant, is a useful one for the purpose of distinguishing when different levels of a classification are consistent with the decree. However the court further concludes that the plaintiff’s argument that “multigrade classifications were to no longer have common duties that straddled or overlapped two different classifications that were distinguishable only by proficiency in performance” is too extreme an interpretation of Article XV, ¶ 3(b). That language requires only that “only persons occupying that classification perform the duties associated with it.” Nothing in this language admits of a construction which prohibits two classifications from containing similar or even identical duties. Rather, the plain language of the prohibition prevents employees from performing duties which are not encompassed within the job which they hold. Therefore, the court

concludes that the proper construction of Article XV, ¶ 3 (b) is that in different levels of a classification there may exist a requirement that employees perform similar duties so long as higher levels of the classification reflect true distinctions which go beyond mere progressions in proficiency.¹⁵ The court finds that this interpretation captures the essence of the intent of the parties as reflected in the language of the decree. Based on this finding, the court will now endeavor to give effect to the parties' intent.

IV. Review of Each Classification

A. Highway Maintenance Technician. Arguably operating a operating a bulldozer or other heavy equipment (part of HMT II/III) as compared with operating a lawn mower (part of HMT I) represents merely a progression. Common sense dictates otherwise. Using small hand and power tools is markedly different from operating heavy equipment. Moreover, the court is not restricted in this instance to relying on such distinctions. An HMT II/III also is responsible for "leading a crew." The supervisory responsibilities placed on an HMT II/III distinguish the position from the HMT I position is exactly the way contemplated in the decree. Supervision of other employees by an HMT II/III shows that this position is not merely a progression but is truly a distinct position. Thus, the court concludes that the HMT I and HMT II/III classifications should be approved.

¹⁵The court is cognizant that the distinction between a "promotion" and a "progression" may not be easy to give effect to in every case.

B. Engineering Assistant. The EA I position is for persons with no experience in engineering specialty positions. The EA II/III position is for persons “fully functional” within an engineering specialty position. The court has carefully reviewed the descriptions of the proposed classifications for engineering assistants and finds that the two levels have no distinction other than mere proficiency in the performance of the duties of the position. Therefore, the court concludes that the proposal for two separate engineering assistant classifications should be disapproved, and the court should order that SPD and ALDOT implement only one classification of engineering assistant.

C. Right-Of-Way Specialists. The ROW I classification is for employees with no prior experience who are trained in right-of-way responsibilities. The ROW II/III classification is for persons who function as “a supervisor or lead worker over a specific right-of-way function.” While many of the duties performed by an ROW II/III are identical to that performed by an ROW I, the requirement of supervisory responsibility is a sufficient distinction to support two different levels of the classification, and the proposed Right-Of-Way classifications should be approved. The same analysis applies to the new Real Property Valuation Analyst and Senior Real Property Valuation Analyst. The senior position is distinguished by the duties of supervision of other employees or consultants. Thus, these two positions should be approved.

D. Civil Engineer. The CE I/II and CE III/IV positions are described as paraprofessional positions. A CE I/II will serve as an “assistant project engineer.” A CE

III/IV will serve as a “senior project engineer.” A CE I/II will “supervise lower level assistants in the completion of duties.” The description of CE III/IV states that it involves “substantial supervisory responsibilities over other paraprofessional employees.” In short, the only major distinctions between the CE I/II and CE III/IV positions lies in the level of supervisory responsibility and the level of complexity of jobs assigned. These distinctions properly are characterized as “progressions” rather than “promotions.” Therefore, the court concludes that the proposed classifications of CE I/II and CE III/IV should be disapproved and the court should order that these two positions be combined into a single classification.

V. Conclusion

The decree requires that the new classifications must be “capable of being administered and utilized so that only persons occupying that classification perform the duties associated with it on a regular or non-emergency basis.” The court has construed this language as only prohibiting assigning employees duties which are not encompassed within their job descriptions. However, the court has not discussed whether the new classification structure is capable of being administered and utilized in this fashion. The parties presented to the court no evidence touching on these questions. Perhaps that is understandable because the issue is prospective. In any event, the court finds that the new classification structure which is recommended here is one which can be administered so that only persons having those duties perform those duties. It remains to

be seen whether the Department of Transportation will administer the system in the manner required by the decree.¹⁶ Likewise, whether these new classifications will be implemented so that there are "opportunities for black employees to advance, and for the defendants to achieve the goals and purposes of . . . the Decree, are enhanced and not diminished"¹⁷ is a question for future inquiry.

The court has determined the specific issue before it which concerns only the SPD classifications identified in Article XV. The court must now conclude that the defendants are not in compliance with the consent decree because no classification structure has been proposed for other classes, even for those which are exclusively ALDOT classes.¹⁸ Thus, the court should require the State Personnel Department to proceed on a set schedule to develop and propose those classifications.

Accordingly, it is the RECOMMENDATION of the Magistrate Judge as follows:

1. That the court approve the proposed new classifications for Highway Maintenance Technician I and II/III, Right-Of-Way Specialist I (Right-Of-Way Specialist) and II/III (Senior Right-Of-Way Specialist) and Real Property Valuation Analyst and Senior Real Property Valuation Analyst.
2. That the court disapprove the proposed classifications of Engineering Assistant

¹⁶It is unlikely that any classification system can be devised which would prevent discrimination by those "who are of a mind to discriminate." *See e.g., Batson v. Kentucky*, 476 U.S. 79, 96 (1986).

¹⁷Consent Decree I, Article XV, ¶ 3(c).

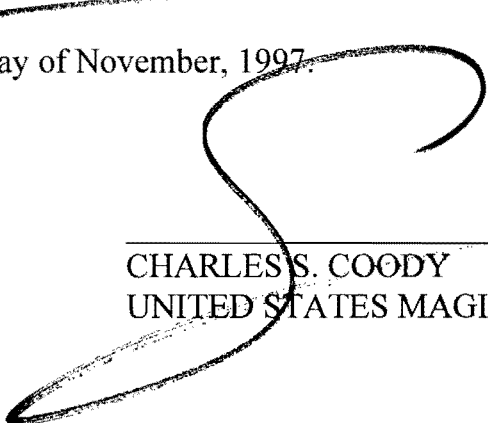
¹⁸*See supra* at footnote 2.

I and Engineering Assistant II/III and require the defendants to implement a single engineering assistant classification.

3. That the court disapprove the proposed classifications of Civil Engineer I/II and Civil Engineer III/IV and require the defendants to implement a single classification encompassing the proposed duties of Civil Engineer I/II and Civil Engineer III/IV.

4. That the court order the defendants to proceed immediately to develop the remaining classifications and that the court set a time schedule for proposing the new classification structure.

Done this 19th day of November, 1997.



CHARLES S. COODY
UNITED STATES MAGISTRATE JUDGE

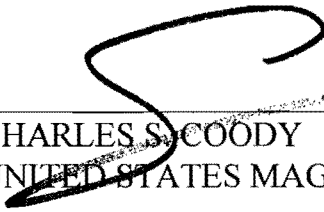
CIVIL ACTION NO. 85-T-0665-N

ORDER

The Clerk of the Court is ORDERED to file the Recommendation of the Magistrate Judge and to serve by mail a copy thereof on the parties to this action. The parties are DIRECTED to file any objections to the said Recommendation within a period of 13 days from the date of mailing to them. Any objections filed must specifically identify the findings in the Magistrate Judge's Recommendation objected to. Frivolous, conclusive or general objections will not be considered by the District Court.

Failure to file written objections to the proposed findings and recommendations in the Magistrate Judge's report shall bar the party from a de novo determination by the District Court of issues covered in the report and shall bar the party from attacking on appeal factual findings in the report accepted or adopted by the District Court except upon grounds of plain error or manifest injustice. Nettles v. Wainwright, 677 F.2d 404 (5th Cir. 1982). See Stein v. Reynolds Securities, Inc., 667 F.2d 33 (11th Cir. 1982). See also Bonner v. City of Prichard, 661 F.2d 1206 (11th Cir. 1981, en banc), adopting as binding precedent all of the decisions of the former Fifth Circuit handed down prior to the close of business on September 30, 1981.

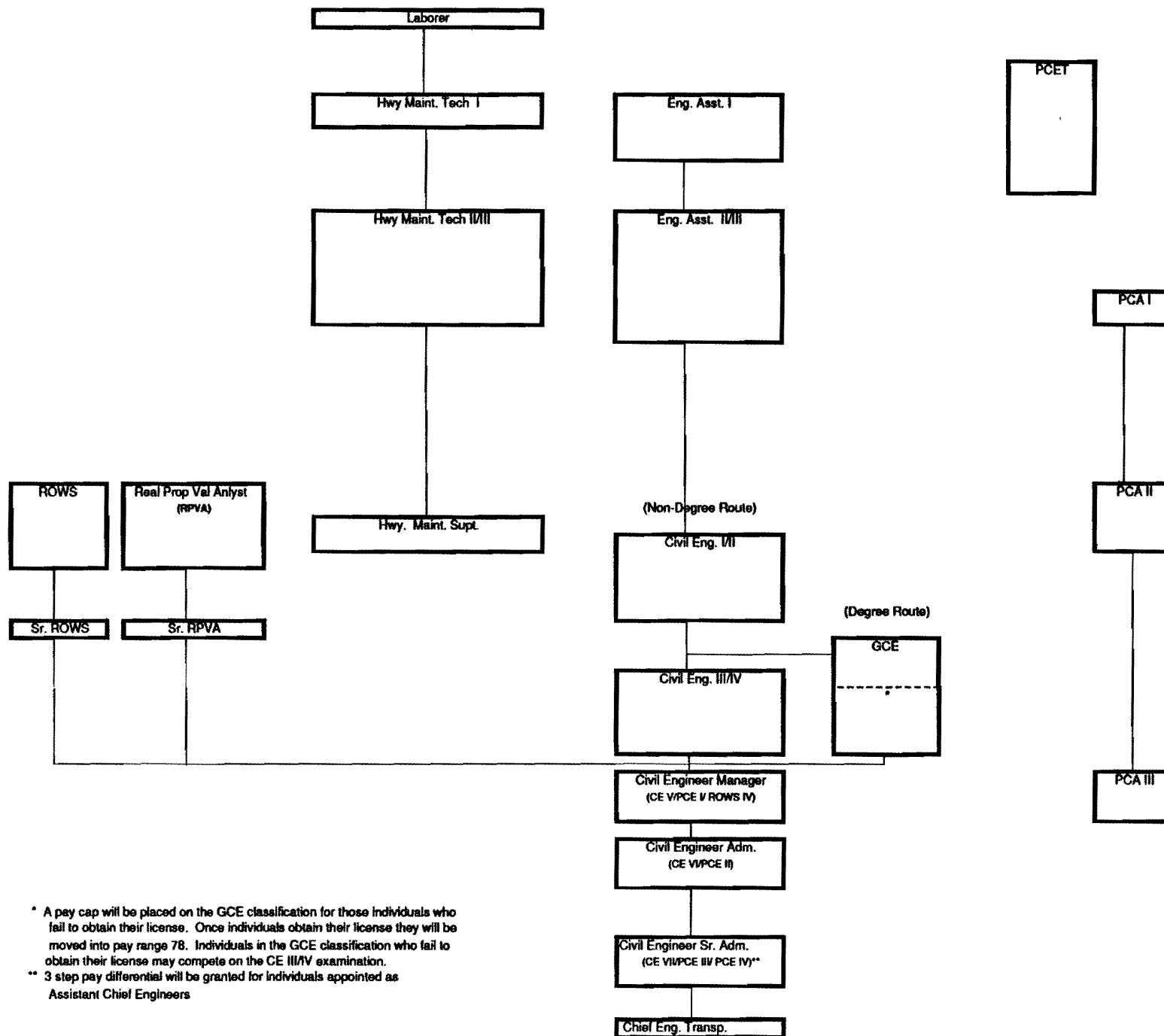
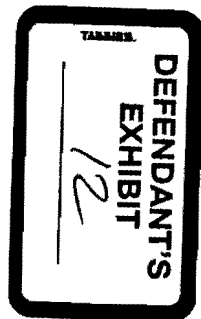
Done this 19th day of November, 1997.



CHARLES S. COODY
UNITED STATES MAGISTRATE JUDGE

Department of Transportation SPD Project Class Structure

9-19-96



* A pay cap will be placed on the GCE classification for those individuals who fail to obtain their license. Once individuals obtain their license they will be moved into pay range 78. Individuals in the GCE classification who fail to obtain their license may compete on the CE III/IV examination.

** 3 step pay differential will be granted for individuals appointed as Assistant Chief Engineers

SPD PROJECT CLASS STRUCTURE COMPARISON

CURRENT CLASS CODE	CURRENT CLASSIFICATION(S)	PROPOSED CLASS CODE	PROPOSED CLASSIFICATION
90241	Hwy Maintenance Technician I (48)	90241	Hwy Maintenance Technician I (48)
90242	Hwy Maintenance Technician II (54)	90245	Hwy Maintenance Technician II/III (54-59)
90243	Hwy Maintenance Technician III (59)		
90248	Hwy Maintenance Superintendent (62)	90248	Hwy Maintenance Superintendent (69)
20111	Engineering Assistant I (48)	20111	Engineering Assistant I (48-50)
20112	Engineering Assistant II (52)	20115	Engineering Assistant II/III (54-60)
20113	Engineering Assistant III (60)		
20441	Civil Engineer I (69)	20481	Civil Engineer I/II (69-72)
20442	Civil Engineer II (72)		
20443	Civil Engineer III (75)	20482	Civil Engineer III/IV (75-78)
20444	Civil Engineer IV (78)		
20445	Civil Engineer V (80)	20483	Civil Engineering Manager (80)
20433	Prof Civil Engineer I (80)		
20314	Right of Way Specialist IV (79)		
20446	Civil Engineer VI (82)	20484	Civil Engineering Administrator (82)
20434	Prof Civil Engineer II (82)		
20447	Civil Engineer VII (86)	20485	Civil Engineering Sr. Administrator (86)
20435	Prof Civil Engineer III (86)		(3 step pay differential for incumbents designated as Asst Chief Engineer)
20436	Prof Civil Engineer IV (87)		
20311	Right of Way Specialist I (67)	20310	Right of Way Specialist (67-71)
20312	Right of Way Specialist II (71)		
20313	Right of Way Specialist III (75)	20315	Senior Right of Way Specialist (75)
20311/154	Right of Way Spec I (Appr. Option) (67)	20320	Real Property Val. Analyst (67-71)
20312/154	Right of Way Spec II (Appr. Option) (71)		
20313/154	Right of Way Spec III (Appr. Option) (75)	20322	Senior Real Property Val. Analyst (75)
20430	Grad Civil Engineer (74)	20430	Graduate Civil Engineer (74,78)
20431	Grad Registered Engineer (78)		
20429	Prof Civil Engineer Trainee (52)	20429	Prof Civil Engineer Trainee (44-52)
10671	Project Cost Auditor I (59)	10671	Project Cost Auditor I (59)
10672	Project Cost Auditor II (66)	10672	Project Cost Auditor II (67-69)
10673	Project Cost Auditor III (80)	10673	Project Cost Auditor III (80)