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JAY HOCHMUTH, *

Appellant, *

v. *

Administrator, DIVISION OF *

PERSONNEL, *

Respondent. *

Case No. 81-76-PC *

* * * * *

DECISION
AND
ORDER

NATURE OF THE CASE

This is an appeal, pursuant to s.230.44(1)(a), Wis. Stats., of the denial by respondent of appellant's request for reclassification of his position from Environmental Engineer 6 to Natural Resources Administrator 3.

FINDINGS OF FACT

1. At all times relevant to this matter, the appellant has been employed in the classified civil service by the Department of Natural Resources. Appellant was appointed to his current position as Special Assistant-Milwaukee Metropolitan Sewerage Commission in December of 1978 and such position has been classified as an Environmental Engineer 6 (EE6) since that time.
2. On February 26, 1981, the respondent denied a request for reclassification of appellant's position from EE6 to Natural Resources Administrator 3 (NRA3).
3. The duties and responsibilities of appellant's position are as set forth in Respondent's Exhibit 2, the position description signed by appellant on July 14, 1980. In summary, these duties and responsibilities include: integration of all DNR activities relating to the Milwaukee Metropolitan Sewerage District (MMSD) (35%); representation of the DNR in meetings with the MMSD and its engineers and consultants, the EPA, communities served by the MMSD and the Southeast Wisconsin Regional Planning Commission, and other governmental agencies (20%); preparation of compliance progress

reports (5%); representation of the DNR in dealings with the Department of Justice (DOJ) relating to the MMSD (5%); representation of the DNR in complex enforcement actions involving major sources of water pollution (5%); providing technical and enforcement-related information during the development and implementation of wasteload allocation procedures for the Fox and Wisconsin Rivers (15%); and assisting in the development of the Municipal Compliance Strategy (10%).

4. The inclusion section of the position standard for a Natural Resources Administrator states, in pertinent part, that:

This series encompasses all administrative/managerial positions within the Department of Natural Resources which are responsible for administering natural resource and/or environmental protection programs.

Positions allocated to this series are primarily responsible for program policy development and/or implementation. Additionally, all positions allocated to this series must function as "true" employe supervisors with responsibility for effectively recommending the hiring, transfer, suspension, layoff, recall, promotion, discharge, assignment, evaluation, discipline, and adjustment of grievances of subordinate permanent employes.

Appellant does not function as a true employe supervisor and therefore does not satisfy the requirements for classification as a NRA3.

5. A review of the class descriptions for the Administrative Officer series and of positions classified in the Administrative Officer series indicates that employes in such positions provide auxiliary support services in an administrative/managerial capacity and do not generally perform the line functions of the agency. Appellant's position primarily involves the performance of technical, regulatory duties relating to water pollution abatement, one of the line functions of the DNR, and therefore would not appropriately be classified as an Administrative Officer 3 (A03).

6. The definition section of the class description for an Environmental Engineer 7 (EE7) provides that:

This is responsible administrative and professional work in environmental health sanitation, protection, and engineering. Employees in this class direct a highly specialized and varied public health program on a statewide basis under the general supervision of a Division Chief in a large department, or a Bureau Chief in a major department.

Seventy percent of appellant's duties relate directly to the Milwaukee Water Pollution Abatement Project (MWPAP), a regional as opposed to a statewide program as required for classification as an EE7.

7. The definition section of the class description for an EE6 provides that:

This is responsible administrative and professional engineering work in environmental health or protection. An employe in this class directs a complex environmental sanitation program in a district in the capacity of district administrative officer and district sanitary engineer; plans and directs a difficult and specialized program of sanitary or civil engineering and environmental health or protection on a statewide basis; work involves supervision of professional and technical assistants as well as performing highly complex planning and advisory responsibilities in assisting public officials, civic groups or private individuals in their public health engineering problems. Work is reviewed through conferences and written reports by an administrative supervisor.

The duties of appellant's position closely parallel this definition: both administrative and professional engineering work relating to water pollution, an environmental health program, are involved and this work is performed on both a regional and statewide basis and involves planning as well as advising officials of the MMSC, DNR, DOJ, EPA, state legislature, municipalities, and the public.

8. Appellant's position is more accurately described by class specifications for an EE6 than class specifications for an NRA3, A03, or EE7.

CONCLUSIONS OF LAW

1. This matter is appropriately before the Commission pursuant to s.230.44(1)(b), Wis. Stats.

2. The appellant has the burden of proving that respondent's decision denying the reclassification of appellant's position from Environmental Engineer 6 to Natural Resources Administrator 3 was incorrect.

3. The appellant has failed to meet that burden of proof.
4. Respondent's decision denying appellant's reclassification was correct.

OPINION

Appellant argues that the position of Special Assistant-Milwaukee Metropolitan Sewerage Commission is more appropriately classified as a Natural Resources Administrator 3, an Administrative Officer 3, or an Environmental Engineer 7 than an Environmental Engineer 6, its current classification.

The proper classification of a position involves a weighing of the class specifications and the actual work performed to determine which classification best fits the position. In appeals of reclassification denials, it is frequently the case that the duties and responsibilities of the subject position overlap in some respects both of the class specifications in question. The position is not entitled to reclassification because some aspects of the work involved fall within the higher class, Kailin v. Weaver and Wettengel, 73-124-PD (11/28/75), particularly if those aspects constitute less than a majority of the total duties and responsibilities of the position.

The Natural Resources Administrator position standard states that "all positions allocated to this series must function as "true" employe supervisors with responsibility for effectively recommending the hiring, transfer, suspension, layoff, recall, promotion, discharge, assignment, evaluation, discipline, and adjustment of grievances of subordinate permanent employes. Appellant testified that he did not have such responsibilities. However, an attempt was made by appellant to demonstrate that his relationship with certain other DNR employes was equivalent to a true supervisory relationship. First of all, the wording of the position standard is clear - all positions so classified must have the supervisory responsibilities listed.

The appellant does not. Moreover, although the record indicates that appellant's job duties require him to work closely with certain other DNR employes, to make direct requests for information from them, to guide them in their development of a work product, and to communicate on an informal basis to their supervisors his impression of their job performance, such contacts with other DNR employes are clearly not supervisory in nature within the meaning of the NRA position standard.

Upon agreement of the parties, appellant was permitted to file a post-hearing exhibit with the Commission. This exhibit consisted of the 1977 position description of Mr. Lowell Hansen who was then classified as a Natural Resources Administrator 4. In offering this exhibit, appellant intended to show that, because Hansen's position had no supervisory duties and yet was classified as an NRA 4, it was not necessary for a position to function as a "true" supervisor in order to be classified in the NRA series. First, the Hansen position description lists certain duties which satisfy some, though not all, of the criteria for a "true" supervisor, i.e., "assists the Deputy and Secretary in the hiring, training and evaluation of 6 District Directors," and for which there is no parallel in the Hockmuth position description or position. Second, the position standard in effect at the time of Appellant's reclassification request was enacted in July of 1979. The Hansen position was classified as an NRA 4 in September of 1977 in accordance with the position standard in effect at that time. A comparison of the two position standards indicates that the class description for an NRA 4 (Hansen classification) in 1977 does not contain language specifically requiring "true" supervisory duties for classification in the NRA series. Finally, although comparisons with other positions in the classified service may be helpful in classifying a particular position, such comparisons are not to be regarded as dispositive of the classification question under consideration. Each position must be reviewed separately and the

"best fit" standard applied on an individual basis.

A review of the Administrative Officer series indicates that the majority of the duties of positions so classified are administrative/managerial in nature and do not involve the performance of the line functions of the agency. Appellant's position, however, primarily involves such line functions, i.e., technical, regulatory work, as opposed to those auxiliary support services which characterize positions in the AO series. Appellant's position primarily involves the preparation and compliance review of wastewater treatment, sewer extension, and water quality plans and schedules; the establishment, compliance review, and enforcement of environmental standards; the preparation and compliance review of applications for financial assistance; and coordination, liaison, advisory, spokesperson, and expert witness activities associated with the above. These duties are clearly representative of the technical, regulatory responsibilities of the DNR, i.e., its line functions. Not included in appellant's position are those business management-related duties, e.g., personnel, fiscal, purchasing, data processing, budget, and those general agency-wide public and legislative-relations duties typical of positions in the AO series.

The definition section of the Environmental Engineer 7 class description states that:

This is responsible administrative and professional work in environmental health sanitation, protection, and engineering. Employees in this class direct a highly specialized and varied public health program on a statewide basis under the general supervision of a Division Chief in a large department, or a Bureau Chief in a major department.

The requirement that the program directed by an EE7 operate on a statewide basis is clearly stated. Reason dictates, and the rules of statutory construction require, that the clear meaning of the class description language be applied. This language does not present the "statewide" requirement as an option and, therefore, a program

limited by its title and operation to a particular region of the state does not satisfy the requirements for an EE7. Appellant argues that the size and complexity of the Milwaukee Water Pollution Abatement Program are so extensive as to render the MWPAP equivalent in scope to a statewide program. However, the fact that a program is larger and more complex than similar programs located in other areas of the state or results in actions which have an impact on other programs does not elevate a regional program to a statewide program taking into consideration the plain and clear meaning of the word "statewide." In addition, appellant argues that, because some of his duties, i.e., Fox and Wisconsin Rivers wasteload allocation project, municipal compliance strategy development, and uniform clean water compliance program, are of statewide scope, the criteria for an EE7 are satisfied. However, the majority of appellant's duties (70%) involve the MWPAP. In applying the "best fit" rule, the specifications which best describe the majority of the duties of a position control. In this instance, the majority of appellant's duties are not statewide in scope and, therefore, do not satisfy the requirements for classification as an EE7.

The definition section of the Environmental Engineer 6 class description states that:

This is responsible administrative and professional engineering work in environmental health or protection. An employe in this class directs a complex environmental sanitation program in a district in the capacity of district administrative officer and district sanitary engineer; plans and directs a difficult and specialized program of sanitary or civil engineering and environmental health or protection on a statewide basis; work involves supervision of professional and technical assistants as well as performing highly complex planning and advisory responsibilities in assisting public officials, civic groups or private individuals in their public health engineering problems. Work is reviewed through conferences and written reports by an administrative supervisor.

There is a very close fit between this description and the duties of appellant's position: appellant's duties are both administrative and technical (professional

engineering) in nature; his duties deal with water pollution abatement and these clearly fall within the area of environmental health or protection; he directs a complex environmental sanitation program; although this is not technically a district-wide program (the MMSD does not coincide exactly with the boundaries of a DNR district), the regional nature of the MWPAP renders it more akin to a district-wide program than a statewide program; 30% of appellant's duties involve assisting with the development of statewide programs relating to environmental health - although appellant could not be said to "plan and direct" every phase or aspect of these programs, his involvement is significant; although appellant does not supervise other professional and technical staff, he does work with, assist, and direct the activities of DNR employes as they relate to his areas of responsibility - it should be noted that true supervisory duties are not stated as an absolute requirement for classification as an EE6 as they are for positions in the NRA series; appellant performs highly complex planning and advisory responsibilities in relation to officials of the DNR, the Department of Justice, the Department of Development, municipalities, and the Environmental Protection Agency; legislators; and the public. Consequently, the duties of appellant's position fit best within the framework presented by the EE6 class specifications.

During the course of the hearing and in his brief, appellant expressed the belief that the procedure followed by respondent in reviewing his reclassification request should be an issue considered by the Commission in this appeal. Due to the fact that the Commission's hearing on the appeal is a de novo proceeding and the facts considered are not limited to the findings made by respondent in its review of the request, consideration of the procedure followed by respondent in making its findings would serve no useful purpose and would have no probative value in relation to the issue in this appeal.

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ORDER

Respondent's denial of appellant's request for reclassification is affirmed
and this appeal is dismissed.

Dated: October 27, 1982

STATE PERSONNEL COMMISSION

Laurie R. McCallum

LAURIE R. McCALLUM, Commissioner

James W. Phillips

JAMES W. PHILLIPS, Commissioner

LRM:ers

Chairperson Donald Murphy abstained from
voting in this matter.

Parties

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