

STATE OF WISCONSIN

PERSONNEL COMMISSION

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DUANE L. HARPSTER,
 Appellant,
 v.
 Secretary, DEPARTMENT OF
 NATURAL RESOURCES, and
 Secretary, DEPARTMENT OF
 EMPLOYMENT RELATIONS,
 Respondent.
 Case No. 83-0216-PC

* * * * *

DECISION
 AND
 ORDER

NATURE OF THE CASE

This is an appeal pursuant to §230.44(1)(b), Stats. of the denial of a request for reclassification from Natural Resources Patrol Officer 1 (NRPO 1) to Natural Resources Patrol Officer 2 (NRPO 2).

FINDINGS OF FACT

1. At all relevant times the appellant has been in the classified service employed by the Department of Natural Resources (DNR), as a NRPO 2.
2. The appellant's duties and responsibilities, in summary, include the following: Maintenance of forest visitor safety, security, and protection of resources by enforcing administrative codes and state laws pertaining to the protection of park, forest, fish and game resources and the regulation of human conduct on state forest and park properties; provision of information to forest visitors about forest regulations; inspection of forest facilities from a safety and signing standpoint to comply with Manual Code 2527.2; cooperation with other functions on the forest and in

the Woodruff area; and the provision of assistance to conservation wardens for not more than 30% of the time.

3. The appellant is not a lead worker "for all law enforcement activities in [one of] the largest parks." (See Respondents' Exhibit 2, NRPO 2 class specifications.)

4. The duties and responsibilities of appellant's position do not fall within the NRPO 2 class specifications (Respondents' Exhibit 2), and are better described by the NRPO 1 class specifications (Respondents' Exhibit 1).

CONCLUSIONS OF LAW

1. This matter is properly before the Commission pursuant to §230.44(1)(b), Stats.
2. The appellant has the burden of proof.
3. The appellant has not sustained his burden.
4. The respondents' decision to deny the request for reclassification from NRPO 1 to NRPO 2 was not incorrect.

OPINION

The NRPO 2 class specifications are very specific. In order to be classified at this level, employes must:

"... function as (1) lead workers for all law enforcement activities in the largest parks, or (2) perform a full range of law enforcement activities as assistants to conservation wardens." (Respondents' Exhibit 2)

Clearly, the appellant satisfies neither one of these criteria. Even though he disputed the accuracy of some of the data and information relied on by DNR in its review of his position, his activities assisting conservation wardens do not consume more than 30% of his time. In order to be reclassified, more than 50% of his work must be at the higher level. See, e.g., Bender v. DOA & DP, Wis. Pers. Commn., No. 80-210-PC (7/1/81).

What he apparently has attempted to do by his evidence is to show that the law enforcement and other related work he performs is at such a level that it should be evaluated for classification purposes at the same level as an assistant to a conservation warden, or even on the same level as a conservation warden.

The problem with this approach is that the NRPO 2 definition, as set forth in the class specifications, is both specific and explicit. It clearly states that there are only two bases upon which a position can be classified at the NRPO 2, and the appellant's position meets neither criterion. What the appellant is asking the Commission to do is to rewrite the class specifications so that the NRPO 2 definition would encompass his position. The Commission lacks the authority to do this, even if it believed that, in the abstract, the appellant's position deserved to be in a higher pay range. The appellant's position only can be reclassified to NRPO 2 if it meets the specific criteria set forth in the class specifications.

The Commission discussed this type of problem in Shepard v. DP, 80-234, 237, 239-PC (6/3/81):

"Class specifications and position standards are the framework for the state's classification system. Once they are approved by the Personnel Board [this body is entirely separate from the Personnel Commission], §230.09(1)(a), Stats., they provide an objective basis for assignment and reassignment of positions to classifications, §230.09(2)(a), Stats. The Board also approves the assignment and reassignment of classifications to pay ranges, §230.09(2)(b), Stats.

Thus, while the administrator [now Secretary, DER] has the authority to assign and reassign positions to classifications, the legislature by statute has imposed a system of checks and balances on this process. The classification process must be accomplished within the parameters of a classification structure, provided by the class specifications and position standards, which has been approved by the Personnel Board. Once the classification structure has been established, individual personnel transactions occur, subject to review by this Commission

pursuant to §230.44(1)(a) and (b), Stats. These individual reclassification decisions must be made in accordance with the established class specifications. Otherwise, the process circumvents the legislative mandate that the Personnel Board play a key role from a policy standpoint in the establishment of the classification structure, and classification transactions become ad hoc decisions by the administrator." pp. 7-8.

To the same effect, see Zhe v. DHSS & DP, Wis. Pers. Commn., No. 80-285-PC (11/19/81), affirmed, Dane County Circuit Court, No. 81CV6492 (11/82).

The appellant cites the language contained in the NRPO 2 class specifications (Respondents' Exhibit 2) following the "Examples of Work Performed":

"Other assigned work may include tasks not specifically enumerated above which are of a similar kind and level."

All that this sentence means is that the enumeration of examples which precedes it is not exhaustive; that assigned work also may include other tasks "of a similar kind and level." It would be unreasonable to interpret this sentence, found in the "Examples of Work Performed" section, and which by its terms applies to "examples of work performed," as an adjunct to the "Definition" section, which is what the appellant seems to be urging.

Furthermore, even the "Examples of Work Performed" section itself is broken down into two enumerated categories: "Leadworkers" and "Assistants to Conservation Wardens."

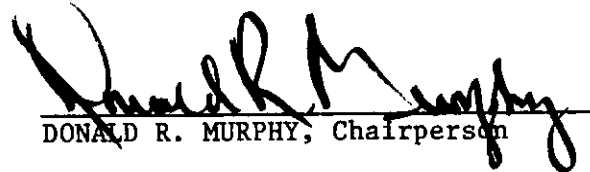
It appears to the Commission that there may be underlying this appeal a fundamental disagreement with the classification structure for law enforcement employes in DNR, particularly with respect to the distinctions between Wardens and Natural Resources Patrol Officers. Since the Commission can only hear appeals from specific classification decisions, and in so doing must adhere to the existing class specifications or position standards, it could not address this kind of contention. Such fundamental issues normally must be addressed by the conduct of a classification survey by the Secretary of the Department of Employment Relations, followed by the

development of revised class specifications or position standards, and their approval by the Personnel Board.

ORDER

The respondents' action denying the request for reclassification of the appellant's position from NRPO 1 to NRPO 2 is affirmed and this appeal is dismissed.

Dated: May 9, 1984 STATE PERSONNEL COMMISSION


DONALD R. MURPHY, Chairperson

AJT:jat


LAURIE R. MCCALLUM, Commissioner


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