

STATE OF WISCONSIN

PERSONNEL COMMISSION

* * * * *
 THOMAS MUGAN,
 Appellant,
 v.
 Secretary, DEPARTMENT OF
 NATURAL RESOURCES, and
 Secretary, DEPARTMENT OF
 EMPLOYMENT RELATIONS,
 Respondent.
 Case No. 84-0236-PC
 * * * * *

DECISION
 AND
 ORDER

This matter is before the Commission for consideration of a proposed decision and order issued by the hearing examiner. The Commission has considered the objections and arguments of the parties and consulted with the hearing examiner. The Commission adopts the attached proposed decision and order as its final disposition of this matter, with the following amendments.

For purposes of clarification, the Commission adds the following language to the proposed decision and order:

1. Finding of Fact 4 is amended to state (amendment emphasized):

4. As of June 14, 1984, the duties and responsibilities of appellant's position, as reflected in his position description, included: ...

2. The following Findings of Fact are added after Finding of Fact 7 in the proposed decision:

7d. The chart on page 13 of the proposed decision presents an accurate summary of the duties and responsibilities of the positions

of appellant, Thon, Kohl, and Hanson and an accurate comparison of the duties and responsibilities of such positions as reflected in the record.

7e. The operator-instructor, operation and maintenance, and assurance of data accuracy and validity duties and responsibilities of the appellant's, Kohl, Hanson, and Thon positions summarized in the main body of the above-referenced chart are comparable. The additional duties of appellant's position described on such chart are at least as advanced as the additional duties of the other 3 positions described on such chart. The duties and responsibilities of appellant's position are comparable to those of the Kohl, Hanson, and the Thon positions.

3. The following language is added to the Opinion section:

In its objections to the proposed decision, respondent makes several arguments which the Commission would like to address to clarify the bases for its final decision in this matter.

Respondent in its arguments describes duty B2 on appellant's position description (see Finding of Fact 4) as an operator-instructor duty. However, it is characterized as an operation and maintenance duty on appellant's position description and similar duties are characterized as operation and maintenance duties on the position descriptions of the Kohl, Hanson, and Thon positions.

Respondent further characterizes duties D1, D3, D4, and D5 on appellant's position description (See Finding of Fact 4) as operator-instructor duties. However, such duties are not characterized on appellant's position description or that of Thon, Hanson, or Kohl as operator-instructor duties but as ongoing laboratory review functions


not directly related to the training or certification of waterworks or wastewater personnel.

Respondent argues that appellant's quality assurance duties (see duty E of Finding of Fact 4) are equivalent to the quality assurance duties as described in the ES4 Water Resources Management Specialist representative position presented in the ES position standard. There is no evidence in the record from which to conclude that such duties are in fact equivalent or even similar, particularly given the different emphases of these 2 positions.


Dated: October 15, 1985 STATE PERSONNEL COMMISSION


DENNIS P. MCGILLIGAN, Chairperson

LRM:jmf
ID3/1


DONALD R. MURPHY, Commissioner

Attachment


LAURIE R. McCALLUM, Commissioner

Parties:

Thomas J. Mugan
DNR
3911 Fish Hatchery Rd.
Madison, WI 53711

Carroll Besadny
DNR, Secretary
P. O. Box 7921
Madison, WI 53707

Howard Fuller
DER, Secretary
P. O. Box 7855
Madison, WI 53707

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 Appellant,
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PROPOSED
 DECISION
 AND
 ORDER

NATURE OF THE CASE

This is an appeal, pursuant to §230.44(1)(b), Stats., of a decision to deny appellant's request for reclassification of his position. A hearing was held on March 14, 1985, before Laurie R. McCallum, Commissioner, and the briefing schedule was completed on August 8, 1985.

FINDINGS OF FACT

1. At all times relevant to this matter, appellant has been employed in the classified service in the Environmental Specialist series in respondent DNR's Southern District office.

2. Appellant's position has been classified as an Environmental Specialist 4 (ES4) since February, 1979. At that time, his duties and responsibilities included:

- 60% A. Training and Testing of Waterworks and Wastewater Operators
 - A1. Prepare and update the training course curriculum being offered to beginning waterworks and wastewater operators by the Department and other contractors.
- 15% A2. Conduct advanced grade operator training courses in water and wastewater to enable operators to advance to

higher certification levels and improve the operation of their plants.

- 10% A3. Conduct and grade operator certification examinations for all levels of water and wastewater operators.
- 30% A4. Conduct on-the-job performance testing for waterworks and wastewater operators to determine if they can perform the basic duties necessary for certification.
- 30% B. Assistance to Operators
 - B1. Provide assistance and advice to operators in purchasing the correct and necessary laboratory equipment to meet their testing requirements.
 - B2. Assist operators in setting up and calibrating laboratory equipment.
 - B3. Conduct individual and group training sessions on the proper laboratory techniques and testing procedures to see that laboratory testing is done properly.
 - B4. Conduct quality assurance testing of laboratories at waterworks and wastewater plants to see that their results are consistent with the correct values.
 - B5. Conduct specialized training on topics that will improve the skills and abilities of operators to run their facilities efficiently.
 - B6. Advise operators on techniques or changes necessary in their operations to solve problems and improve their plant's performance.
- 10% C. Performance of other duties necessary to the program.
 - C1. Recommend, in conjunction with District Engineers, outstanding operators for awards from various organizations.
 - C2. Participate in decisions on enforcement action against operators found falsifying reports or other actions which may result in their operator certificate being revoked.
 - C3. Attend training courses to improve your knowledge of waterworks and wastewater systems so that job performance and efficiency is increased.
 - C4. Prepare reports and other documents necessary to the operations of the Department.

3. On June 14, 1984, appellant requested a reclassification of his position from ES4 to ES5. Respondent DNR denied such request and appellant filed a timely appeal of the denial with the Personnel Commission.

4. As of June 14, 1984, the duties and responsibilities of appellant's position included:

- 40% A. Improve and maintain the qualifications of waterworks and wastewater works operations personnel.
 - A.1 Develop and revise instructional objectives and exams relating to knowledge and skills necessary for plant operators.
 - 10% A.2 Coordinate activities with primary training organizations to ensure quality and quantity of training opportunities.
 - A.3 Conduct training on subject matter relating to DNR rules and innovative topics. Occasionally act as classroom lecturer as needed.
- 15% A.4 Administer written and practical (on-site) examination process and evaluate experience needed for operator certification.
 - A.5 Evaluate training sessions and assign continuing education credits necessary for certificate renewal.
 - A.6 Induce compliance of certification rules (NR 114) and other rules pertaining to operator conduct by using primary enforcement and initiating further enforcement activities as appropriate.
- 15% B. Ensure that District waterworks and wastewater works are operated and maintained as effectively as possible.
 - B.1 Respond to requests for O&M assistance to improve plant operations at targeted and non-targeted plants.
 - B.2 Perform operational surveys as part of certification practical exams. Contact municipal officials and suggest corrective measures.
- 10% C. Promote professionalism among operators and increase public awareness of the Department's water and wastewater programs.
 - C.1 Assist and advise district operator groups to ensure effectiveness of technical presentations at meetings.
 - C.2 Work with the District Information and Education Specialist to prepare news releases to improve public awareness of operator activities.

- C.3 Maintain knowledge of and dispense information on training, certification, and technology to operators, potential operators and others in the water and wastewater fields.
- C.4 Communicate with municipal officials and community representatives to advise them of their responsibilities regarding plant operations.
- 20% D. Assure accuracy of laboratory data reported to DNR.
- 10% D.1 Review treatment plant plans and specifications, recommend changes if necessary, and determine grant eligibility of laboratory facilities and equipment to ensure that municipalities are properly equipped to produce valid analytical data.
- 10% D.2 Review treatment plant operation and maintenance manuals and recommend changes as necessary regarding laboratory procedures to see that municipalities are supplied with proper guidance for their water quality monitoring programs.
- D.3 Assist waterworks and wastewater works operators in the set-up and performance of water quality monitoring tests.
- D.4 Evaluate analytical methods for comparability with standard methods and disseminate information regarding methods and methods acceptability.
- D.5 Coordinate a program to evaluate facilities supplying analytical data to DNR, and report deficiencies and recommended corrective actions to affected facilities and Department staff.
- 10% E. Coordinate Southern District quality assurance program for Department monitoring activities to ensure that data generated is valid and defensible.
- E.1 Provide input for development and maintenance of a state quality assurance manual.
- E.2 Ensure that monitoring equipment and supplies are available and maintained in working condition for use by staff.
- E.3 Train staff in the use and care of monitoring equipment and supplies.
- 5% F. Participation in the Department's Employee Assistance Program as a Local Resource Coordinator.

F.1 Assess the need for help through effective listening for employees that have self-referred or were referred by a supervisor as a result of problems in job performance.

F.2 Assist employees in their efforts to find aid through one of many helping agencies.

F.3 Ensure that the helping process is kept confidential.

F.4 Attend periodic training sessions to improve effectiveness as a resource coordinator.

5. Appellant's position serves as a leadworker in the area of Quality Assurance for one permanent position which devotes 25% of its time to Quality Assurance.

6. Ten percent of appellant's time is devoted to work assignments not confined to the Southern District but having statewide impact. These have included:

a. Representing the DNR on the Water/Wastewater Advisory Committee of the Wisconsin Board of Vocational, Technical and Adult Education.

b. Preparing "The Certified Operator," an annual DNR publication for waterworks and wastewater treatment plant operators.

c. Serving on an ad hoc advisory committee established to review Ch. NR 114, Wis. Adm. Code (Certification Requirements for Waterworks and Wastewater Treatment Plant Operators), and to recommend revisions to this chapter.

d. Drafting a questionnaire to assess the training needs of water utility and wastewater personnel.

e. Presenting part of a program entitled "Water Supply and Wastewater Operator Education and Training in Wisconsin" sponsored jointly by the Wisconsin Board of Vocational Technical and Adult Education and the DNR.

f. Supervising the preparation by two LTEs of outlines for preventive maintenance courses to be presented to waterworks and wastewater treatment plant operators.

g. Preparing revisions to Waterworks Objectives for waterworks operators.

h. Serving as a session leader for Waterworks Operators' Seminars sponsored jointly by the University of Wisconsin-Extension, the American Waterworks Association and the DNR.

None of the other operator instructors assigned to DNR district offices has these or similar statewide responsibilities.

7. Appellant offered the three following positions classified as ES5s for comparison purposes:

a. James Kohl - the duties and responsibilities of this position include the following:

- 40% A. Provide direct assistance and participate in team efforts with regard to operation and maintenance recommendations at water and wastewater facilities.
- 40% B. Insure that waterworks and wastewater treatment plants are operated by qualified and certified individuals holding active certifications as issued and specified under the conditions pursuant to NR 114.
- 7% C. Insure accuracy of laboratory data reported to the DNR.
- 3% D. Review treatment plant specifications to insure that municipality's consultants obtain proper laboratory equipment.
- 10% E. Overview and act as a leadworker for personnel in operation and maintenance programs, operator certification and training programs, laboratory evaluation audit and quality assurance programs and sludge management programs.
 - 1. Hire LTE and intern personnel as program needs require.
 - 2. Supervise LTE and intern personnel within established goals and worker activities.

3. Develop job descriptions for LTE and intern positions.
4. Evaluate LTE and intern performance relative to established goals and work activities.
5. Develop position descriptions, goals and worker activities including list of knowledges required in certification, O&M, laboratory and sludge management programs as needed.
6. Assist personnel in O&M, certification, laboratory and sludge management programs with time sheets, expense vouchers, work planning and budgeting functions.

The distinctions drawn between appellant's position and the Kohl position by respondent's classification expert are:

1. 40% of the Kohl position's time is devoted to operation and maintenance activities while only 25% of appellant's position's time is devoted to such activities.
2. The Kohl position has lead work responsibilities.
3. The Kohl position has program responsibilities in the area of sludge management which the appellant's position does not have.
4. The Kohl position has responsibility for reviewing each section of wastewater treatment plant plans and specifications and operation and maintenance manuals while appellant's position has responsibility for reviewing only the laboratory sections of such documents (which comprise approximately 25% of such documents).

b. David Hanson - the duties and responsibilities of this position include:

- 20% A. Implementation on districtwide basis of the state's Operator Certification Program.
- 20% B. Coordination of the district's wastewater treatment plant operation and maintenance and assistance program.
- 20% C. Implementation on districtwide basis of the Operation and Maintenance Manual Review process.
- 20% D. Coordinate the district's Laboratory Evaluation program to validate WPDES self-monitoring data.
- 15% E. Coordination of districtwide waterworks and wastewater operator training program.

- 5% F. Implementation of treatment plans specifications review to insure that municipalities obtain the proper laboratory equipment.

The distinctions drawn between appellant's position and the Hanson position by respondent's classification expert are:

1. The Hanson position has responsibility for reviewing each section of wastewater treatment plant plans and specifications and operation and maintenance manuals while appellant's position has responsibility for reviewing only the laboratory sections of such documents which comprise approximately 25% of such documents.

2. The difference in percentages of time devoted to the various duties and responsibilities of the two positions.

c. Stephen Thon - the duties and responsibilities of this position include:

15% A. Enforcement of the requirements of NR 114.

30% B. Approval of operation and maintenance manuals and laboratory plans and specifications for wastewater facilities.

20% C. Determination and implementation of advanced training of waterworks and wastewater treatment plant operators and department staff.

20% D. Coordinate, advise, and review laboratory operations within the district.

15% E. Provision of operation and maintenance aid to operators.

F. Promotion of professionalism and continuing education among operators.

The distinctions drawn between appellant's position and the Thon position by respondent's classification expert are:

1. The differences in percentages of time devoted to the various duties and responsibilities of the two positions.

2. The greater percentage of time devoted by the Thon position to operation and maintenance duties and responsibilities.

3. The Thon position has responsibility for reviewing each section of wastewater treatment plant plans and specifications and operation and maintenance manuals while appellant's position has responsibility for reviewing only the laboratory sections of such documents (which comprise approximately 25% of such documents).

8. The ES4 classification specifications include the following:

Definition:

This is responsible environmental specialist work. Positions allocated to this class typically function as: 1) a specialist responsible for implementation of a major environmental program in a portion of a district where program decisions are delegated from the district office; 2) a specialist in a district responsible for implementation of a major environmental program in a significant portion of a district where, while the program has not been decentralized to an area, the program decisions have been delegated to the position; 3) a specialist in a district responsible for planning, coordinating, and implementing a specialized aspect of an environmental program; 4) a specialist in the central administrative office with specific subprogram responsibility in an environmental program; or 5) an environmental scientist position performing work of limited scope, impact and complexity and/or with limited discretion.

Representative Positions:

Positions Functioning Out of a District Office

Treatment Plant Operator Instructor: this position is responsible for planning, organizing, and conducting a districtwide program to train, evaluate, and assist all water and sewage treatment plant operators in the performance of their duties as required by State regulations; determining need for this instruction; organizing curricula to reflect instruction objectives; preparing necessary instructional materials; visiting treatment plants to assist operators with testing, reporting forms, lab set-ups and certifications, and operational problems; administering operator certification exams; and conferring with local plant operators to assist in resolving problems.

9. The ES5 classification specifications include the following:

Definition:

This is responsible environmental program coordinative work. Positions allocated to this class typically function as: 1) an

area program specialist responsible for implementing all phases of a major environmental protection program in a portion of a district where program decisions are delegated from the district office, or an equivalent combination of responsibilities; 2) a district specialist responsible for providing districtwide expertise and program coordination for a significant portion of a major environmental program, or an equivalent combination of responsibilities; 3) a central office specialist responsible for providing central office coordination and/or guidance for segments of an environmental program being implemented on a statewide basis; or 4) an environmental scientist performing a wide range of functions involving assessing unusual conditions; evaluating incomplete or conflicting data; choosing and adopting a variety of specific scientific principles and techniques in order to develop research conclusions; developing methods and standards; evaluating programs or proposals; planning projects; coordinating work with others; and handling conflicts or unusual situations independently. Work at this level is performed under general direction.

Representative Positions:

Positions Functioning Out of a District Office

Assistant Environmental Impact Coordinator: this position has been delegated major segments of the district environmental impact program with full authority for coordinating and certifying environmental assessments for district actions for compliance with Wisconsin Statutes, and independently conducting investigations and developing agency recommendations on assigned outside agency proposals and department environmental impact statement projects. There is a clear separation of duties with the district environmental impact coordinator and formal delegation of these responsibilities.

10. The ES position standard includes the following definition:

Major Programs

Major programs as described within this specification are in the Department of Natural Resources. As of August, 1983, these include solid waste, water supply, water resources management, water regulation and zoning, wastewater, air, and environmental impact. The extensiveness and scope of these programs varies between the districts and contributes to the complexity of the program coordination.

11. Appellant's position is better described by the ES5 class specifications than by the ES4 class specifications and appellant's position is more appropriately classified as an ES5.

CONCLUSIONS OF LAW

1. This matter is appropriately before the Commission pursuant to §230.44(1)(b), Stats.
2. The appellant has the burden of proving that respondents' decision denying the reclassification of appellant's position from ES4 to ES5 was incorrect.
3. The appellant has met that burden of proof.
4. Respondents' decision denying appellant's reclassification request was incorrect.

OPINION

Section ER-Pers 3.01(3), Wis. Adm. Code, states:

Reclassification means the assignment of a filled position to a different class by the administrator as provided in §230.09(2), Stats., based upon a logical and gradual change to the duties or responsibilities of a position or the attainment of specified education or experience by the incumbent.

It is obvious from a comparison of appellant's 1979 and 1984 position descriptions (see Findings of Fact 2 and 4) that both the nature of the duties of his position and the percentages of time devoted to such duties have undergone a logical change. It is also obvious from the record that this change has been gradual.

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 involve fall within the higher class, Kailin v. Weaver and Wettengel, 73-124-PC (11/28/75), particularly if those aspects constitute less than a majority of the total duties and

responsibilities of the position, Bender v. DOA & DP, Case No. 80-210-PC (7/1/81).

The ES4 and ES5 class specifications each list several possible allocations. The ES4 allocation which best describes the appellant's position is: (3) a specialist in a district responsible for planning, coordinating, and implementing a specialized aspect of an environmental program. The ES4 class specifications also include as a representative position that of Treatment Plant Operator Instructor which describes approximately 45 to 50% of the duties and responsibilities of appellant's position. If operator-instructor duties constituted a clear majority of the duties and responsibilities of appellant's position, a necessary conclusion would be that appellant's position was most appropriately classified at the ES4 level. However, this is no longer the case.

The ES5 allocation which best describes appellant's position is: (2) a district specialist responsible for providing districtwide expertise and program coordination for a significant portion of a major environmental program, or an equivalent combination of responsibilities (emphasis added).

Since the language of either the ES4 or ES5 class specifications could describe the majority of the duties and responsibilities of appellant's position, it is useful in this case to review the allocation pattern employed to assigned positions to classifications in the ES series. The record offers the Kohl, Hanson, and Thon positions (all classified at the ES5 level) for purposes of comparison. The following chart compares the nature of and the percentages of time assigned to the duties and responsibilities of each of the four positions:

<u>Description of Duty</u>	<u>Appellant</u>	<u>Kohl</u>	<u>Hanson</u>	<u>Thon</u>
Improve and maintain qualifications of operators	35-40%			35%
Promote professionalism among operators and increase public awareness of DNR's water program	10%			
Total Operator-Instructor Duties & Responsibilities	45-50%	40%	35%	35%
Operation & Maintenance Assistance	15-20%		20%	15%
Operation & Maintenance Manual Review	10%		20%	30%
Total Operation & Maintenance Duties & Responsibilities	25-30%	40%	40%	45%
Assure accuracy of lab data reported to DNR	10%		20%	
Quality assurance - ensure data valid	10%		5%	
Total - assurance of data accuracy & validity	20%	10%	25%	20%
Additional Duties	(a) employee assistance (5%) (b) statewide duties (see Finding of Fact 6) (10%) (c) lead worker	(a) sludge mgmt. (less than 10%) (b) review of entire Operation and Maintenance manual (appellant) reviews only lab section) (c) lead worker	review of entire Operation and Maintenance manual (appellant) reviews only lab section)	review of entire Operation and Maintenance manual (appellant) reviews only lab section)

Although the percentage of time assigned to the three major sets of duties varies somewhat among the four positions, the Commission concludes that this slight variation would not justify classification of appellant's position at a different level than the other three positions, particularly in view of the fact that the types of duties performed by the four positions under these three headings are nearly identical.

The remaining issue in this regard then is whether the additional duties (see above chart) justify classification of appellant's position at a lower level than the other three positions. It is important to note that appellant's position is the only one of the four to have duties which are not limited to the district to which he is assigned. Many of these statewide duties are continuing in nature and require the exercise of independent judgment. There is nothing in the record from which to conclude these statewide duties assigned to appellant's position are not at least as advanced as the additional duties assigned to the other three positions.

The Commission concludes that the duties and responsibilities of appellant's position are comparable to those of the ES5 positions offered in the record for comparison purposes and that appellant's position is more appropriately classified at the ES5 level.

ORDER

The action of respondent is reversed and this matter is remanded to respondents for action in accordance with this decision.

Dated; _____, 1985 STATE PERSONNEL COMMISSION

DENNIS P. MCGILLIGAN, Chairperson

LRM:jmf
ID9/2

DONALD R. MURPHY, Commissioner

LAURIE R. McCALLUM, Commissioner

Parties:

Thomas J. Mugan
DNR
3911 Fish Hatchery Rd.
Madison, WI 53711

Carroll Besadny
DNR, Secretary
P. O. Box 7921
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Howard Fuller
DER, Secretary
P. O. Box 7855
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