

STATE OF WISCONSIN

PERSONNEL COMMISSION

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 JAMES R. MILLER,
 Appellant,
 v.
 Secretary, DEPARTMENT OF
 EMPLOYMENT RELATIONS,
 Respondent.
 Case No. 85-0066-PC
 * * * * *

FINAL
ORDER

This matter is before the Commission following the issuance of a proposed decision. The Commission has considered the objections to the proposed decision and arguments in support thereof submitted by the respondent, and has consulted with the examiner. As and for its final decision, it adopts and incorporates by reference the attached proposed decision and order, with the addition of the following opinion and finding:

OPINION

As is pointed out in the proposed decision and order, the respondent argued that it could "not determine whether appellant's position meets the specifications in the second allocation because DNR has not developed criteria for measuring these specifications. In essence, respondent contends that allocation 2 of the NRS-8 class specifications cannot be used until DNR develops means to measure the qualifying terms in allocation 2." Proposed Decision and Order, p.6.

This point and its effect is illustrated by the following excerpt from the hearing tape involving testimony by respondent's expert witness:

Q. ... the second allocation for NRS 8 - Management, that particular allocation is not available for application to

any particular position irregardless of what kind of job, what kind of position it is? That is, it's just not available is it?

A. Right.

Q. Whether you have a complex and unique job or whether you don't have a complex and unique job, that particular allocation is just not available now?

A. Correct.

The Commission agrees with the examiner that the respondent erred in denying reallocation of appellant's position in this manner. Pursuant to the civil service code, the respondent is vested with the responsibility to correctly classify all positions in the classified civil service, §§230.09(1),(2)(a), Stats. By saying that it will not determine whether a position should be at a higher level because the employing agency has not developed a method of evaluating the difference between levels in the context of this allocation,¹ the respondent has in effect abdicated its classification responsibility.²

In the opinion of the Commission, the respondent should have either completed the necessary analysis to have determined whether appellant's position fit within the second allocation for NRS 8 - Management, or at

¹ "... as a district staff specialist responsible for planning, coordinating and monitoring a major resource management program that through its variety, scope, complexity, number and kinds of components, unique structure and/or organization is clearly distinguishable from positions at the Natural Resource Specialist 7 level...." NRS 8 - Management Definition, Respondent's Exhibit 3.

² Furthermore, as pointed out in the proposed decision, there is nothing in the second allocation for NRS 8 - Management, or for that matter, elsewhere in the position standard, that suggests that the use of the allocation was in any way dependent on the development of some kind of measurement device by DNR.

least deferred a decision on the proper classification of appellant's position³ until after DNR had supplied the information felt necessary.

The appellant attempted at the hearing to show his position met the second NRS 8 - Management allocation and should have been reallocated to that level, and the examiner concurred. The respondent presents several contentions in this connection.

Respondent argues there was not credible evidence comparing appellant's position to other NRS 7 - Fire Staff Specialist positions, and thus no basis to conclude that appellant's position was "clearly distinguishable from positions at the Natural Resource Specialist 7 level" as required by the second allocation for NRS 8 - Management.

However, the appellant presented unopposed, uncontradicted evidence through his own testimony that his position was unique, and varied from the other NRS7 - Fire Staff Specialist positions by virtue of its statewide responsibilities, specialized expertise, and split reporting relationship. The appellant certainly had a basis for knowledge of these other positions, if for no other reason than through his statewide fire responsibilities.

Mr. Landphier's testimony that he would have had to review the duties of the other specialists before responding to the question of whether the complainant's duties and responsibilities are more complex than that of any other district fire staff specialists is not inconsistent with the appellant's testimony, and it is hardly surprising given the fact that these other district fire staff specialists report at the district level, and do not report to Mr. Landphier at all.

³ Such action would have raised a question of proper effective date, a question the Commission does not address here.

The respondent also argues as follows:

The Commission in Kailin v. Weaver & Wettengel, Case No. 83-124-PC [sic] (11/28/75) said that a position is not entitled to reclassification because some aspects of the work involved falls within a higher class particularly if those duties constitute less than a majority of the total duties and responsibilities of the position. Even assuming that the 20% central office assignments are NRS 8 level duties, then the Appellant is not entitled to reclassification. Positions are classified based on a majority of duties performed.

In the opinion of the Commission, the language of the particular position standards at issue in this case does not support this argument. According to the NRS 8 definition, if a position is "clearly distinguishable" from other NRS 7 positions on the basis of "variety, scope, complexity, number and kinds of components, unique structure and/or organization," then it should be at the NRS 8 level. This second NRS 8 allocation is based solely on a relative comparison among nominal NRS 7 positions, and thus is a classification to which the respondent's argument cannot logically be applied. Positions are placed at the NRS 8 level in the second allocation not because they meet a description of specific duties and responsibilities but because of how they compare to other NRS 7 positions. The thrust of the appellant's case is not that the 20% of his job involved in central office, statewide work (Goal C, appellant's Exhibit 4) is work specifically identified at the NRS 8 level, but rather that it "clearly distinguishes" his position from other NRS 7 - Fire Staff Specialist positions pursuant to the second NRS 8 allocation.

In the Kailin case, cited by the respondent, the appellant had requested reclassification of his position from Photographer 2 to Photographer 3. The Board felt that the definition of the class specifications contained no meaningful distinction between the Photographer 2 and 3 levels. Therefore, the Board relied heavily on the fact that the appellant

performed only a limited part of the "examples of work performed" that were unique to the Photographer 3 level. Accordingly, even though some of the appellant's work was identified at the Photographer 3 level, the reclassification denial was upheld.

In the instant case, the question is not whether the appellant's duties and responsibilities involved in statewide, central office matters are enumerated or described by the NRS 8 position standard, in a manner comparable to the Kailin case, where the Photographer 3 class specifications specifically identified certain examples of work performed as being at that level. Rather, the question is whether the duties and responsibilities involved in statewide, central office matters, make appellant's position "clearly distinguishable from positions at the" NRS 7 level.

This does not mean there is no quantitative aspect to this allocation, but rather that it must be evaluated under the "clearly distinguishable" standard. For example, if a NRS 7 position were distinguishable from its peers on the basis of only 1% of its position description, this would likely be insufficient to make it "clearly distinguishable."

The respondent makes the further argument that the appellant's statewide, central office duties and responsibilities are specifically identified by an allocation at the NRS 7 level:

"as a resource scientist performing the most advanced work which is distinguished by the need for advanced professional scientific knowledge in one or more scientific disciplines applied to assignments such as developing new methodologies or theories, serving as an authoritative consultant to top management or the legislature or conducting innovative studies or projects using the latest scientific results and theories to develop new programs or policies; and the broad scope and impact of policies developed."

Respondent argues that:

In the area of railroad fire prevention, the appellant works with other state agencies and with federal agencies. He is generally self-educated in this area and has developed training courses concerning railroad fire prevention. The appellant is a recognized expert in fire prevention and is consulted by other states and governmental agencies in this area. When the record is examined concerning this specialty and compared with the language in allocation 5 of the NRS 7 class specification, it is clear that the appellant's central office assignment is described at the NRS 7 level.

The Commission cannot agree with this contention. While the appellant's work is advanced and technical, he simply is not a "resource scientist" whose work requires "advanced professional scientific knowledge." Furthermore, even if appellant's work did fit within this allocation, it certainly is not inconceivable that if a District Fire Staff Specialist position were unique in having an additional 20% responsibility for something that was identified in a separate allocation, it could be "clearly distinguishable" from other positions at the NRS 7 level, and should be classified at the NRS 8 level.^{FN}

Accordingly, the Commission adds the following finding:

8a. The appellant's position is the only NRS 7 District Fire Staff Specialist which, in addition to responsibility for the district fire control program, under district supervision, also performs highly specialized duties, which are statewide and beyond in scope, under central office supervision, as set forth in findings #6, 7 and 8 above.

^{FN} One example is found by comparing the first allocation listed at the NRS 7 (district staff specialist responsible for one major program) and NRS 8 (district staff specialist responsible for two major program) levels. Even though someone's responsibilities reflect 80% on major program A and 20% on major program B, s/he is still clearly entitled to classification at the NRS 8 level because s/he is responsible for two major programs.

ORDER

The respondent's action reallocating appellant's position to Natural Resource Specialist 7 - Management (PR 1-15) instead of Natural Resource Specialist 8 - Management (\$PR 1-16) is rejected, and this matter is remanded for action in accordance with this decision.

Dated: April 16, 1986 STATE PERSONNEL COMMISSION


DENNIS P. MCGILLIGAN, Chairperson


DONALD R. MURPHY, Commissioner


LAURIE R. MCCALLUM, Commissioner

AJT:jmf
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Attachment

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 Secretary, DEPARTMENT OF
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PROPOSED
 DECISION
 AND
 ORDER

In April, 1985 the Department of Employment Relations, respondent, concluded a year survey of positions in the Natural Resource Specialist series. James R. Miller, appellant, a Natural Resources Specialist 6, was reallocated by respondent to the Natural Resource Specialist 7 level. Miller appealed that allocation to the Personnel Commission alleging that his position should have been allocated to Natural Resource Specialist 8. The following findings, conclusions and decision are based upon a hearing held August 30, 1985 before Donald R. Murphy, Commissioner and a briefing schedule completed December 3, 1985.

FINDINGS OF FACT.

1. At all times relevant to this appeal, appellant has been employed in the classified civil service in the North Central District Office of the Department of Natural Resources. Appellant filed an appeal of respondent's reallocation decision in April 1985 of his position.

2. In April, 1984, during respondent's survey of positions in the Natural Resource Specialist series. Appellant's work activities and percentages spent on each activity were:

- 51% A. Coordinate fire management subprogram in the North Central District. Provide program direction to the line.
 - 8% B. Prepare the District fire control objectives and annual work plans and monitor their progress.
 - 20% C. Complete related work as directed or assigned by the Central Office or as determined to be needed by other areas or districts or agencies as it pertains to railroad fire prevention or enforcement of Chapter 26.20 of the Wisconsin Statutes.
 - 11% D. Coordinate fire management training in the North Central District and conduct fire management training as needed.
 - 10% E. Complete related work as directed or assigned by the Central Office or District Office.
3. The state position standard for the Natural Resource Specialist 7 (NRS-7) provides in pertinent part:

Definition

This is advanced resource management program coordinative work. Positions allocated to this class typically function in one of the following capacities: 1) as a district staff specialist responsible for planning, coordinating, and monitoring a major district resource management program; 2) as an area manager responsible for the implementation of two major resource management programs in a designated area of a DNR district; 3) as an area program manager responsible for a major resource management program where the extent and complexity easily distinguishes it from objective level managers at the Natural Resource Specialist 6 level; or 4) as a central office staff specialist responsible for developing and monitoring a statewide resource management program of major scope which has a significant impact on inter-state commitments and a large segment of the public. Central office positions at this level differ from those at lower levels by their responsibility for significant policy development initiatives and the widespread impact that program decisions have on the field operations as well as the state's resource in general; or 5) as a resource scientist performing the most advanced work which is distinguished by the need for advanced professional scientific knowledge in one or more scientific disciplines applied to assignments such as developing new methodologies or theories, serving as an authoritative consultant to top management or the legislature, or conducting innovative studies or projects using the latest scientific results and theories to develop new programs or policies; and the broad scope and impact of policies or standards developed. Positions within this allocation typically coordinate the work of assistants and consultants in developing broad policies or standards which control major resource management activities statewide. Work at this level is performed under very general direction.

4. The pertinent part of the state position standard for a Natural Resource Specialist 8 (NRS-8) is:

Definition

This is advanced program coordinative resource management work. Positions allocated to this class function in one of the following capacities: 1) as a district staff specialist responsible for planning, coordinating, and monitoring all aspects of two major multi-faceted resource management programs in the district; 2) as a district staff specialist responsible for planning, coordinating and monitoring a major resource management program that through its variety, scope, complexity, number and kinds of components, unique structure and/or organization is clearly distinguishable from positions at the Natural Resource Specialist 7 level; or 3) as a resource management specialist performing the most advanced work in a highly decentralized statewide resource management program, which is distinguished by the need for advanced scientific knowledge and management experience in one or more disciplines applied to assignments such as developing new methodologies or management concepts, serving as authoritative consultant to top management and the legislature on strategic direction of the agency, conflict resolution, or conducting innovative studies or projects utilizing the latest in scientific results and management theories to design, integrate and evaluate new programs or policies; and the broad scope and extensive public impact of policies or standards developed. Positions within this allocation typically coordinate and integrate the work of assistants, central office, district office, area staff, and outside consultants. In order for central office positions to be allocated to this level, it must be demonstrated that the factors used to justify identification at this level contribute significantly to the position's complexity. Work at this level requires substantial independent judgment and is performed under very general direction.

5. The position standard for Natural Resource Specialist 1-8 describes major programs as follows:

Major programs as described within this specification are in the Department of Natural Resources. As of March, 1985 these include fish management, fire control, forest management, parks and recreation, research, and wildlife.

6. Since 1981 the appellant has been responsible for the fire control program in his district. Beginning in April, 1982, these duties were expanded to include devoting 16% of his work time to central office assignments. The central office assignments included performing locomotive inspections and

developing a railroad fire prevention program. These duties extended beyond district boundaries and involved multiple agencies at local, state and federal levels of government.

7. By 1984 these central office assignments took 20% of appellant's work time. The following is a description of those duties as reported in appellant's 1984 position description:

- C.1 Coordinate enforcement of forest fire regulations toward railroads when the action involves more than one district - track patrols, right-of-way maintenance, special orders.
- C.2 Develop and maintain contacts with all railroads operating in Wisconsin for the purpose of promoting railroad fire prevention.
- C.3 Represent the Wisconsin DNR at all meetings or sessions of a state, national or international nature concerning railroad fires.
- C.4 Serve as chairman of the railroad fire prevention specialist committee.
- C.5 Inspect locomotives and other railroad equipment, rights-of-way or operations to ensure compliance with Wisconsin Statutes, codes or orders.
- C.6 Receive and analyze reports from the various areas concerning railroad caused fires. Prepare yearly summary of railroad fire activity for the annual fire report or other users as required.
- C.7 Serve as a member of the Railroad Fire Prevention Committee of the Northeast Forest Fire Supervisor's Association.
- C.8 Review five (5) technical journals for articles related to national railroad fire prevention effort. Provide copies of items of interest to 20 northeastern state fire supervisors and various other federal and state agencies.
- C.9 Chair a national task force appointed to develop a railroad fire prevention training program for use by all fire agencies in the United States or elsewhere.

8. The complexities of appellant's position require that he keep current in all phases of forest fire management, the development of locomotive design, fuel additives, brake shoes and various state and federal laws applicable or related to railroad safety which could impact upon fire prevention.

9. Appellant's position meets and fits the requirements of allocation 2, in the definition of the NRS-8 position standard.

CONCLUSIONS OF LAW

1. Appellant's appeal is appropriately before the Commission pursuant to §230.44(1)(b), Stats.
2. Appellant has the burden of proving that respondent's decision denying the reallocation of appellant's position to NRS-8 was incorrect.
3. Appellant has met that burden.
4. Respondent's decision denying reallocation of appellant's position to NRS-8 was incorrect.

OPINION

The facts in this controversy are essentially undisputed. Both parties agree appellant's duties as district fire control specialist are as described in finding 2, 6, 7 and 8 above. Also, both parties agree appellant's duties fail to meet the requirements of allocation 1, NRS-8 in the position standards because appellant is responsible for only one major resource management program, as defined in the standards. The issue is whether appellant's position fits allocation 2 or 3 of NRS-8 position standards. The specific language of allocation 2 is:

. . .as a district staff specialist responsible for planning, coordinating and monitoring a major resource management program that through variety, scope, complexity and number and kinds of components, unique structure is clearly distinguishable from positions at the Natural Resource Specialist 7 level.

Allocation 3 provides:

. . .3) as a resource management specialist performing the most advanced work in a highly decentralized statewide resource management program, which is distinguished by the need for advanced scientific knowledge and management experience in one or more disciplines applied to assignments such as developing new methodologies or management concepts, serving as authoritative consultant to top management and the legislature on strategic direction of the agency, conflict resolution, or conducting innovative studies or projects utilizing the latest in scientific results and management theories to design, integrate and evaluate new programs or policies; and the broad scope and extensive public impact of policies or standards developed. Positions within this allocation typically

coordinate and integrate the work of assistants, central office, district office, area staff, and outside consultants. In order for central office positions to be allocated to this level, it must be demonstrated that the factors used to justify identification at this level contribute significantly to the position's complexity. Work at this level requires substantial independent judgment and is performed under very general direction.

On this point respondent argues that it can not determine whether appellant's position meets the specifications in the second allocation because DNR has not developed criteria for measuring these specifications. In essence, respondent holds that allocation 2 of the NRS-8 class specification cannot be used until DNR develops means to measure the qualifying terms in allocation 2.

The Commission has consistently held that assignment of a position to a particular classification is governed by the language of the classification specifications. In Jones v. DNR & DER, Pers. Comm. Case No. 85-0127-PC V8/86, the Commission recognized the use of rating system, by other state agencies, as useful classification tools, but said they could not support or override classification specifications. Correlatively, application of a classification specification cannot be barred by the absence of an independent rating system.

There is no language in the classification specification for the NRS-8 position which indicates that allocation 2 can only be employed after DNR develops a rating system for such allocation.

In addition, no independent official document was presented as evidence showing that allocation 2 of NRS-8 classification specification are predicated upon the development of a rating system by DNR.

The Commission concludes, based upon the evidence in the record, allocation 2 of the NRS-8 classification specifications are applicable and appellant's position is more appropriately classified at the NRS-8 level.

ORDER

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

Dated: _____, 1986

STATE PERSONNEL COMMISSION

DENNIS P. MCGILLIGAN, Chairperson

DONALD R. MURPHY, Commissioner

LAURIE R. McCALLUM, Commissioner

DRM:vic
VIC02/2

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