

STATE OF WISCONSIN

PERSONNEL COMMISSION

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JAMES V. SMETANA,  
 Appellant,

v.

Secretary, DEPARTMENT OF NATURAL  
 RESOURCES, and Secretary,  
 DEPARTMENT OF EMPLOYMENT  
 RELATIONS,  
 Respondents.

Case Nos. 89-0055-PC

\* \* \* \* \*

FINAL  
ORDER

This matter is before the Commission following the promulgation of a proposed decision and order by a hearing examiner, a copy of which is attached. The Commission has considered the appellant's objections to the proposed decision and order, and concludes the proposed decision and order should be adopted as the final disposition of this matter.

Appellant objects that his position was not properly compared to that occupied by Michael Johnson. Respondent classified this position at the NRT 3 level, notwithstanding that it did not fit within an existing NRT 3 classification, because respondent concluded that it was comparable to the allocation for the director of a major fish hatchery. However, respondent concluded that appellant's position could not be compared favorably to Mr. Johnson's.

Appellant contends that respondent's conclusion that the Johnson position functions as a "second-in-command" was not based on his position description but constituted an opinion or conclusion of the DNR personnel specialist. However, there is nothing in the record to contradict her testimony

and appellant has the burden of proof in this regard. Appellant posits that since he reports to the Forest Superintendent, he can be considered second-in-command as to the recreational program. However, this is not the same as being second-in-command in a supervisory context.

Complainant further contends that:

"the appellant is responsible for the planning, implementation and coordination of fish, forest and game habitat improvement projects on the forest, except for the 3,700 acre Dike 17 waterfowl area which exists on the forest. These work activities follow very closely to the work activities described in the first NRT 3 allocation. . . ."

The difficulty with this argument is that this first NRT 3 allocation specifically calls for area-wide responsibilities, whereas appellant's responsibilities are sub-area in scope.

Appellant also points out that he has some lead work responsibilities for four Forest Fire Control Assistants, and that these are permanent employees. While appellant does have these lead work responsibilities plus some supervisory responsibilities, the facts remains that he supervises only one permanent employe versus Mr. Johnson's four, and that Mr. Johnson (like appellant) also supervises a number of non-permanent employes.

Finally, appellant contends his non-habitat technical work such as operating bulldozers in forest fire supervision should be equated to Mr. Johnson's technical wildlife responsibilities. Inasmuch as respondent compared Mr. Johnson's position to an allocation for the director of a major fish hatchery, the Commission can not conclude it was erroneous for respondent to have stressed technical wildlife responsibilities and to have concluded that those aspects of appellant's job that could be considered technical in nature did not compare for

classification purposes to Mr. Johnson's technical wildlife responsibilities.

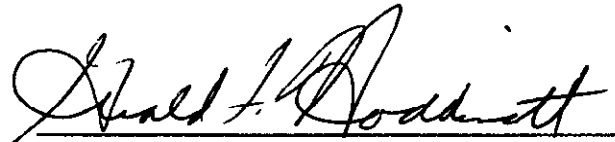
ORDER

The attached proposed decision and order is incorporated by reference and adopted as the Commission's final disposition of this matter, and this appeal is dismissed.

Dated: February 12, 1990      STATE PERSONNEL COMMISSION

  
LAURIE R. McCALLUM, Chairperson

AJT:gdt

  
GERALD F. HODDINOTT, Commissioner

Parties:

James V. Smetana  
DNR  
Black River Falls Office  
Route 4, Box 18  
Black River Falls, WI 54615-9204

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

Constance P. Beck  
Secretary, DER  
P.O. Box 7855  
Madison, WI 53707

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 JAMES V. SMETANA \*  
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                   Appellant, \*  
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 v. \*  
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 Secretary, DEPARTMENT OF \*  
 NATURAL RESOURCES, and \*  
 Secretary, DEPARTMENT OF \*  
 EMPLOYMENT RELATIONS, \*  
 \*  
                   Respondents. \*  
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 Case No. 89-0055-PC \*  
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 \* \* \* \* \*

PROPOSED  
 DECISION  
 AND  
 ORDER

NATURE OF CASE

This is an appeal pursuant to §230.44(1)(b), stats., of the denial of a request for reclassification of appellant's position from Natural Resource Technician 2 (NRT 2) to NRT 3.

FINDINGS OF FACT

1. At all relevant times appellant has been employed in the classified civil service by respondent Department of Natural Resources (DNR) at the Black River State Forest (BRSF) in a position most recently classified as NRT 2.

2. The duties and responsibilities of appellant's position, which has the working title of Maintenance Foreman, are summarized by the "Position Summary" on appellant's position description (PD) (Appellant's Exhibit 8) as follows:

"This position is responsible for the administration and supervision of all buildings and grounds maintenance and development activities on the Black River State Forest. This involves the supervision of one Natural Resources Technician 1, 2 LTE's, and 4 Green Thumb workers. This position is also the leadworker for up to 4 fire control assistants, and approximately 1500 man hours per year."

3. The duties and responsibilities of appellant's position can be described more specifically as follows:

a) 47% Maintenance of recreational use areas, forest roads and buildings. This activity involves a substantial, but on this record unquantifiable, percentage of time on renovation and maintenance projects which are so large-scale as to be equivalent in scope and impact to the "development" projects for which appellant is responsible as set forth in his PD (Appellant's Exhibit 8) at paragraphs D. and E.

b) 17% Administration and supervision. This includes record-keeping and personnel management.

c) 11% Implementation of land management projects. This includes road construction, tree planting projects, etc.

d) 15% Implementation of capital improvements and development projects. This includes construction of trails, parking lots, canoe landings, etc.

e) 6% Cooperation with other functions. This includes assisting with wildlife management, deer registration, and fire suppression.

4. Appellant's position has undergone some changes in recent years, including increased supervisory and personnel management duties with respect to both BRSF and outside personnel; increased responsibility with respect to the development and maintenance of BRSF properties, which is related at least in part to the increased size of BRSF programs; and greater independence with respect to the scope of supervision received.

5. Appellant reports to the BRSF Superintendent, a Natural Resources Supervisor 3 (Edward F. Vlach).

6. The BRSF is within a single county and therefore is classified by DNR as a sub-area. However, BRSF consists of about 66,000 acres and is much larger than any combination of fish or game properties, which usually consist of small acreages in different counties. For example, in the entire Western District, which consists of the Black River Falls, LaCrosse and Eau Claire areas, there are approximately 10,530 acres of Fish Management lands and 41,785 acres of Game Management lands, which combined constitute less acreage than the 66,000 acres in the BRSF.

7. The class specification for NRT 2 contains the following definition and examples of work performed:

NATURAL RESOURCES TECHNICIAN 2

Class Description

Definition:

This is responsible technical work in the areas of fish, forest and game. Employees in this class (1) have specific sub-area program responsibility with minimal professional supervision available, (2) are responsible for planning, implementing and directing all district field crews on district fish, forest and game habitat improvement projects, (3) function as crew chiefs of a large rearing station, or (4) function as an assistant in a major fish hatchery or rough fish station. Work is performed under the general guidance and direction of a Natural Resources Operation Supervisor or Natural Resource Specialist.

Examples of Work Performed:

May assist in forest fire control and law enforcement activities.

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

Program Assistant:

Independently coordinates, schedules and implements the specific sub-area program.

Maintains the sub-area grounds, facilities and equipment.

Directs crews in carrying out the sub-area programs.

Assist the area professional in planning the sub-area program.

Crew Chief:

Plans, implements and directs the work on district construction and fish, forest and game habitat improvement projects.

Plans, schedules and assigns manpower and equipment needed to implement projects.

Prepares project activity and progress reports.

Prepares monthly payroll, time sheet and expense records.

Fish Operations:

As crew chief of a large rearing station:

Directs crews on fish rearing operations.

Directs crews on fish rescue and forage operations.

Directs crews performing maintenance and repair on all rearing station buildings, grounds and equipment.

Maintains records concerning rearing station operation.

Prepares the rearing station budget.

8. The class specification for NRT 3 contains the following definition and examples of work performed:

NATURAL RESOURCES TECHNICIAN 3

Class Description:

Definition:

This is responsible technical work in the areas of fish, forest and game. Employees in this class: (1) direct the operations at an area habitat management station, (2) function as the primary district crew chief reporting directly to the district operations coordinator, (3) function as the chief para-professional with independent responsibilities for coordinating statewide projects, or (4) directs a major fish hatchery, (St. Croix Falls) under minimal supervision. General supervision is received from a Natural Resources Operations Supervisor.

Examples of work Performed:

May assist in forest fire control and law enforcement activities.

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

Area Habitat Management Station Director:

Plans, implements and coordinates all fish, forest and game habitat improvement projects in an area.

Schedules, assigns and review the work of crews working on area habitat management station projects.

Directs habitat management station crews in equipment maintenance and repair activities.

Inspects, as the Department of Natural Resources' representative, private power and pipeline construction projects that cross state-owned property.

Prepares the habitat management station work activity and progress reports.

Prepares, records and maintains the habitat management station monthly payroll, time sheets, and expenses and vehicle records.

Crew Chief:

Plans, implements and directs the work on district construction and fish, forest and game habitat improvement projects.

Plans, schedules and assigns manpower and equipment needed to implement projects.

Prepares project activity and progress reports.

Prepares monthly payroll, time sheet and expense records.

Fish Operations:

As chief of a major fish hatchery, guides crews that are spawning, hatching and rearing fish; schedules and coordinates hatchery stocking operation; guides crews performing maintenance and repair on all hatchery building, grounds and equipment; orders hatchery fish food, supplies and materials; maintain records concerning hatchery operation; and prepares the hatchery budget.

9. With respect to the foregoing position example of Area Habitat Management Station Director, there are no such positions currently within DNR. The current NRT class specifications were written in 1973.

10. Another position which respondent DNR reclassified to NRT 3 was the Crew Chief position at the Glacial Lake Grantsburg Work Unit occupied by Michael R. Johnson. This position is summarized as follows on its PD (Appellant's Exhibit 14):

"The Natural Resource Technician 2 position, under supervision of the Unit Manager, has responsibility for supervising work crews including 1 NR Tech I, 2 NR Asst. II, 1 Mechanic, Y.C.C. crews, work study and intern students in development and maintenance projects on the 48,000 acre Glacial Lake Grantsburg Work Unit consisting of Crex Meadows, Fish Lake, Amsterdam Sloughs, and Danbury Wildlife Acres; and



in supervising general wildlife management work west of Highway 35 in Burnett County."

This position's responsibilities are within a single county.

11. Although the foregoing position is not explicitly described in any of the NRT 3 allocations set forth in the NRT 3 class specifications above, respondent DNR determined it was at that level because it considers the NRT 3 class specification somewhat outmoded and it compared the Johnson position to the allocation for the director of a major fish hatchery. Respondent determined that the position is comparable to this allocation based largely on its supervisory and very technical wildlife management functions. There was no evidence to contradict this comparison, and the Commission therefore finds that it is a valid comparison.

12. Respondent determined that appellant's position cannot be compared favorably to Mr. Johnson's inasmuch as appellant only supervises one permanent employe and does not do any highly technical wildlife or comparable management functions. Since appellant has not on this record established that these conclusions are erroneous, the Commission therefore finds that appellant's position is not comparable to Mr. Johnson's position from a classification standpoint.

13. By memo dated April 21, 1989, respondent DNR determined to deny District Director Lissack's request to reclassify appellant's position from NRT 2 to NRT 3.

14. Appellant's position is more appropriately classified as NRT 2 rather than NRT 3.

#### CONCLUSIONS OF LAW

1. This case is appropriately before the Commission pursuant to §230.44(1)(b), stats.

2. Appellant has the burden of proof to establish by a preponderance of the evidence that respondent DNR erred in denying the request for reclassification of his position from NRT 2 to NRT 3.

3. Appellant having failed to sustain his burden, it is concluded that respondent's decision to deny reclassification of appellant's position from NRT 2 to NRT 3 was not incorrect.

#### DISCUSSION

Appellant's position fits squarely within the NRT 2 definition:

"...specific sub-area program responsibility with minimal professional supervision available..." and examples:

"Independently coordinates, schedules and implements the specific sub-area program.

Maintains the sub-area grounds, facilities and equipment.

Directs crews in carrying out the subarea programs.

Assist the area professional in planning the sub-area program."

On the other hand, appellant's position does not fit within any of the four allocations contained in the NRT 3 definition. The first three involve area-wide, district-wide, and state-wide responsibilities, whereas appellant's position functions in a sub-area. The fourth allocation involves direction of a major fish hatchery, which appellant obviously does not do. Appellant makes a number of contentions in support of his appeal which attempt to deal with these problems.

Appellant has pointed out that the NRT class specifications, drafted in 1973, are somewhat out of date with regard to the current DNR structure. He particularly takes exception with the fact that in her memo denying the reclass request (Respondent's Exhibit 5), DNR personnel specialist Sue Steinmetz stated:

The first [NRT 3] allocation relates to positions which are responsible for planning, implementing, and coordinating all fish, forest and game habitat improvement projects in an area. We are unable to use this allocation to classify Mr. Smetana's position since it does not

have responsibility for all habitat project in the Forest, nor is the Forest equivalent to an area. Rather, the responsibilities of this position lie more towards the maintenance of building and grounds within the Forest.

Appellant points out that there currently are no positions in DNR that fall within the first NRT 3 allocation:

"Area Habitat Management Station Director

Plans, implements and coordinates all fish, forest and game habitat improvement projects in an area."

He makes the following argument in his post-hearing brief:

"...Sue Steinmetz admitted that there is no longer an "area Habitat Management Station Director" position in the Department of Natural Resources. How then could the duties of this position be used to judge Mr. Smetana's duties and responsibilities?"

However, respondent basically agreed that the class specifications were somewhat outdated. Since appellant's position obviously does not fit within any of the four explicit NRT 3 allocations, and respondent admits it has been going outside the allocation pattern (i.e., as to the Johnson position), the Commission cannot attach much significance one way or another to the fact that Ms. Steinmetz pointed out that appellant's position does not fit within an allocation for which there currently is no position within DNR.

Appellant also contends that the distinction between sub-area and larger spheres of responsibility relied on by the class specifications is not valid. He cites the fact that fish or game properties typically involve land in several counties which in aggregate constitute much less acreage than BRSF, albeit the latter is in one county and therefore is considered a sub-area while the former are considered area-wide responsibilities. The primary difficulty with this argument is that there is no reason to think that respondents were not aware of this when the class specifications were developed. The Commission normally is required

to apply the class specifications as written, see Zhe v. DHSS, No. 80-285-PC (11/19/81), affirmed, Dane Co. Cir. Ct., 81CV6492(11/2/82). To equate appellant's responsibilities within a county to area responsibilities encompassing parts of several counties would be essentially to rewrite the class specifications because of a difference of opinion as to the concept underlying the distinction between area and sub-area responsibilities.

Furthermore, the Commission does not find this argument intrinsically persuasive. A program's responsibility for more acreage in one property in one county might be more significant than another program's responsibility for fewer acres contained in several properties in several counties. However, on this record, it is not more than a conclusion or opinion which does not appear to be self-evident and which is counterbalanced by the contrary conclusion or opinion reflected in the class specifications.

Appellant also contends that much of the work that is reflected in his position description as "maintenance" (47%) involves work of such size and scope as to be equivalent to project or development work. In addition to the testimony of appellant and his supervisor in support of this proposition, appellant submitted in evidence a number of photographs of work in progress or accomplished. The Commission agrees that there is significantly more project or development work (as opposed to maintenance) than is reflected in appellant's position description. When renovation, alteration or expansion of an existing property or edifice reaches a certain dimension of size or scope, there is no reason to distinguish it from a development project that involves no more planning and resources to effectuate. While respondent argues that complainant's position description refers to development work outside of Sec. A (the part which refers to maintenance)

this does not substantially undermine appellant's argument because it is a matter of semantics or definition whether part of the tasks in Sec. A. are considerable enough in scope so as to be considered development work. The fact that appellant filled out his PD in this manner should not foreclose him at the hearing stage from arguing that some of this activity which had been denominated as maintenance was of sufficient scope that it should be equated with development for classification purposes. This is not a case, for example, where appellant is trying to turn maintenance activities into law enforcement.

Even though on this record appellant has made out a case for viewing his position as having more substantial development responsibility than originally characterized, the position still does not fit into any of the NRT 3 allocations. Appellant's position remains at a sub-area level of responsibility. However, appellant also relies on the fact that DNR equated the Johnson position to the fourth allocation (director of a major fish hatchery) to support its NRT 3 classification. Appellant contends that his position can be equated to Johnson's position.

Respondent made the determination that Johnson's position was comparable to positions that supervise major fish hatcheries because it acted as second-in-command in the work unit, supervised several relatively high-level permanent positions, and was responsible for rather technical wildlife management work. Appellant states in his reply brief that:

"...Ms. Steinmetz does not credit Mr. Smetana for the supervision and lead worker responsibilities of two LTE's, project personnel, four Green Thumb and four F.F.C.A.'s. Not all of the positions are Department of Natural Resources positions, but the supervision and lead worker responsibilities are the same.

The respondent's brief states that Mr. Smetana has no non-habitat/technical responsibility within and without the forest. No credit is given to Item E, Appellant's Exhibit 8 [appellant's PD].

Mr. Smetana performs fire suppression duties inside and outside the Black River Falls Area as well as assisting wildlife management."

With respect to supervision, it is noted that the Johnson position is responsible for non-permanent employes such as YCC crews and students as well as a Natural Resource Technician 1, two Natural Resource Assistants 2, and one Mechanic, so he has non-permanent employes as well as more permanent employes. Furthermore, supervision of permanent and non-permanent employes cannot be strictly equated for classification purposes. It is axiomatic that permanent employes have more rights and their supervision entails more responsibility.

As to the technical responsibilities, Ms. Steinmetz testified that Mr. Johnson had greater technical wildlife responsibilities. Mr. Johnson's PD contains such items as the following:

"D1: Assists and organizes work crew to assist unit manager and interpretive biologist in surveying the status of wildlife on Glacial Lake properties and in western Burnett County including: duck and goose banding; endangered, threatened and watch species studies; deer surveys; prairie grouse and hunter use surveys, disease surveys; vegetation analysis and other work as required."

On the other hand, appellant's PD, Section E, which he cites in his reply brief, contains the following:

E1. Operate bulldozers such as John Deere 450's and 350 widepad in fire suppression.

E2. Assign men and equipment to assist wildlife management in repairing dikes, flowages, and roads. Assist in deer registration during the deer gun season."

Based on this record, the Commission cannot equate the technical responsibilities of the two positions.

In conclusion, while both the programs at BRSF and the duties and responsibilities of appellant's position have increased over the years, the Commission cannot conclude that respondent DNR erred when it denied a NRT 3 classification. It is clear that the position does not fit within any of

the NRT 3 allocations contained in the class specifications, and the appellant has not shown that his position compares favorably to any other NRT 3 position.

ORDER

Respondents' decision denying reclassification of appellant's position to NRT 3 is affirmed and this appeal is dismissed.

Dated: \_\_\_\_\_, 1989 STATE PERSONNEL COMMISSION

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LAURIE R. McCALLUM, Chairperson

AJT:gdt  
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DONALD R. MURPHY, Commissioner

\_\_\_\_\_  
GERALD F. HODDINOTT, Commissioner

Parties:

James V. Smetana  
DNR  
Black River Falls Office  
Route 4, Box 18  
Black River Falls, WI 54615-9204

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

Constance P. Beck  
Secretary, DER  
P.O. Box 7855  
Madison, WI 53707