

STATE OF WISCONSIN

PERSONNEL COMMISSION

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JAMES MOORE,

Appellant,

v.

Secretary, DEPARTMENT OF
EMPLOYMENT RELATIONS,

Respondent.

Case No. 90-0142-PC

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FINAL
DECISION
AND
ORDER

This is before the Commission following the promulgation of a proposed decision and order. The Commission has considered the parties objections and arguments with respect to the proposed decision and order, and now adopts it as its final disposition of this matter.

Appellant argues there were a number of shortcomings in the study that preceded the reclassification that were not mentioned in the proposed decision. He points out there were admitted errors in the description of the changes in his position contained in respondent's Reclassification Request/Report, and that a summary he had prepared of his position's responsibilities and changes therein (Appellant's Exhibit 4) had not been considered by the DNR evaluation committee that participated in the study. These points must be considered in light of the fact that the hearing in this matter is considered "de novo" — i.e., the Commission is not simply reviewing the process that was followed in connection with the reclassification, but generally speaking considers whatever relevant evidence the parties present at the hearing, regardless of whether it entered into the decision process at the time of the reclassification. The proposed decision considered appellant's evidence and concurred with some of his contentions. For example, see page 11:

Much of appellant's specific case consisted of a statistical or quantitative analysis. This showed that his sphere of responsibility is a good deal larger in terms of land, budget and personnel in comparison to the other district program managers.

This conclusion was based on the evidence about appellant's position that was presented at the hearing. The fact that the study committee did not have some

of this evidence before it or that respondent's Reclassification Request/Report wrongly stated that appellant's position had been affected by treaty rights activities is of little probative value in assessing the evidence concerning the position that was presented at the hearing.

In assessing the proper class level for this position, it is necessary to consider all the classification factors set forth in the NRA position standard. While appellant was successful in bringing out the quantitative aspects of his position, this quantitative showing did not address many of the classification factors necessary to compare his position to the other program managers. Therefore, the Commission is unable to conclude that appellant's position should be considered at a higher level in terms of such things as "availability and applicability of established guidelines, legal interpretations . . . degree of internal and external coordination required to accomplish objectives," etc.

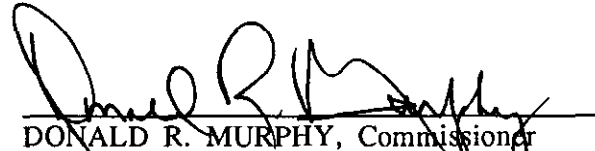
ORDER

The proposed decision and order, a copy of which is attached and incorporated by reference as if fully set forth, is adopted as the Commission's final resolution of this matter, respondent's action is affirmed and this appeal is dismissed.

Dated: January 24, 1991 STATE PERSONNEL COMMISSION


LAURIE R. McCALLUM, Chairperson

AJT:gdt/2


DONALD R. MURPHY, Commissioner


GERALD F. HODDINOTT, Commissioner

Parties:

James Moore
DNR
Lake Michigan Dist. Hdqs.
P.O. Box 10448
Green Bay, WI 54307-0448

Jon E. Litscher
Secretary, DER
137 East Wilson Street
P.O. Box 7855
Madison, WI 53707

STATE OF WISCONSIN

PERSONNEL COMMISSION

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JAMES D. MOORE,

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Case No. 90-0142-PC

* * * * *

PROPOSED
DECISION
AND
ORDER

NATURE OF THE CASE

This is an appeal pursuant to §230.44(1)(b), Stats., of the reclassification of appellant's position from Natural Resources Supervisor 5 (NRS 5) - Management (PR 01-16) to Natural Resources Administrator 2 (NRA 2) (PR 01-17). Appellant maintains his position should have been reclassified to the NRA 3 level.

FINDINGS OF FACT

1. Appellant at all relevant times has been employed in the classified civil service by the Department of Natural Resources (DNR) in a position in the Lake Michigan district classified as Natural Resources Supervisor 5 (NRS 5) - Management (PR 01-16) until its reclassification to Natural Resources Administrator 2 (NRA 2) (PR 01-17) effective December 31, 1989.

2. The foregoing reclassification occurred following a study conducted by the Department of Employment Relations (DER) and DNR to determine the classification impact of a DNR reorganization that involved the removal of the Area Director positions, which had "line responsibility for planning, coordinating and implementing all DNR programs in a designated

area," Natural Resource Administrator 1-5 Position Standard, Respondent's Exhibit 1.

3. The removal of the Area Director positions had the effect of changing appellant's position from basically a staff specialist for the district director regarding management activities and supervisor of the district fisheries operations program to assuming the direct supervision of the entire fisheries program in the district. Appellant retained responsibility for the supervision of the district field operation crews, and assumed responsibility for the area management program in the three areas. The supervisory sphere of appellant's position increased as he became responsible for all area and field station personnel. The number of employees appellant supervised grew from 36 (23 permanent + 13 LTE's) to 108 (56 permanent + 52 LTE's).

4. The removal of the Area Director positions also had the effect of increasing the number of individual projects for which appellant was responsible, from 23 to 108. Each project must be budgeted for separately, and its budget must be tracked separately.

5. Another result of the change involved matters that were approved and directed through the Area Director and now became appellant's responsibility, including the tracking of fisheries management activities that took place within the area, more decisions on land acquisition, land management, and Great Lakes fish management.

6. The Great Lakes fish management program is very significant and complex. It involves management with respect to both sport and commercial fishing, which is more complicated than just sport fishing which is characteristic of the inland fish management programs due to the competing interests, demands, and pressures exerted by the two groups, and interaction with other states, organizations, and the federal government.

7. The position of the forestry program supervisor in the district was reclassified to NRA 3 as a result of the survey because it supervised two programs, Forest Management and Fire Control, that are characterized as major programs by the NRA position standard, Respondent's Exhibit 1. As part of the study that preceded these reclassifications, a committee composed of three district directors, two division administrators, and one assistant division administrator evaluated the positions included in the study on the basis of criteria in the NRA position standard and made the determination that positions with two major programs, such as the forestry program supervisor, should be at a higher classification level than positions with one major program, such as appellant's fish management program. The managers at the division level represented divisions with field staff.

8. Appellant contends that as far as fisheries are concerned, operations and management are essentially two different programs, to the same extent that forest management and fire control are separate programs. Appellant bases this contention in part on the fact that for a number of years DNR has had the goal of integrating forest management and fire control activities into one operation, and has moved to some extent in that direction.

9. The Lake Michigan District forestry program supervisor (Michael D. Lanquist, incumbent) which is classified at the NRA 3 level, directly supervises four permanent employes, two Natural Resources Supervisor 4's, one Natural Resources Supervisor 3, and one Natural Resources Specialist 6 (Management), and has a total of 46 permanent employes in that program. Appellant directly supervises five permanent employes, three Natural Resources Supervisor 3's, one Natural Resources Supervisor 4, and one Natural Resources Supervisor 6, and has a total of 56 permanent employes and 52 limited-term employes in his program. The district supervisor for water

management and environmental impact coordinator, classified at the NRA 3 level, has a total of five permanent employees in that program.

10. Appellant's annual budget is in excess of \$3,000,000, compared to approximately \$1.5 million for Mr. Lanquist's Forestry Management program. Appellant's budget operation includes a number of segregated accounts and federal funds that carry additional complexities.

11. Appellant is involved in an extensive land acquisition program. There are 79 separate properties under fish management supervision, including 19,245 acres owned in fee title and 853 acres in easements, for a total of 20,098 acres, amounting to about two-thirds of their land acquisition goal. The value of the land when purchased was \$5,939,814.

12. The fish management program has 60 buildings to maintain, with an insured value of \$2,223,000. The district fish management program has 21,291.47 acres under supervision. The district forestry program has 9,146.5 acres under its supervision.

13. Appellant's position is involved in extensive, complex, and controversial rule-making activities. Appellant's position is the most extensively involved in the rule-making process of the Lake Michigan District program managers.

14. Appellant's position is responsible for the largest and most complex fish hatchery in the state, raising both cold-water and warm-water fish.

15. As a result of the reorganization and study, respondent also reclassified the five other district fish managers to NRA 2, see, e.g., Respondent's Exhibits 6 and 7. All of these positions are basically similar to appellant's position.

16. In the opinion of the Director of the Bureau of Fish Management, and the Commission finds, the fish management program is very complex compared to some of the other DNR programs, based on the fact that propagation is a very complex program in itself, fish move across boundaries and due to the location of fish habitat there is interstate involvement to determine regional policy. Also the fisheries program is often called on by other programs to provide assistance with respect to how these other programs are impacting on the fish management program, whereas it is rare that fisheries have to call on other programs for assistance in a similar manner. Fisheries often interact with law enforcement because that program enforces the law drafted by the fisheries program, and provides input in regard to that function. Also, water resource management is constantly asking fisheries for assistance in determining the efficacy of their programs.

17. Since the phaseout of the Area Director positions, the district fish supervisors have been the sole source of fisheries' expertise in the districts, often interacting directly with the bureau and having significant input into decisions made at the bureau level. There has been an increasing emphasis on decentralization, with the district fish supervisors being responsible for more data gathering and report preparation that in the past had been performed at the bureau level. Commercial fishing licensing also has been decentralized to the Lake Michigan district level.

18. The Director of the Bureau of Fish Management rated the Lake Michigan district fisheries as a "very complex" program, and "if not at the top, close to it" in terms of level of diversity of resources and total responsibility, among all the district fish programs, although he also expressed the opinion that all of the district fish management programs had unique characteristics,

and the Commission so finds. The Director also testified that in his opinion that all these supervisors should be treated alike and should be at the NRA 3 level.

19. The fisheries budget is the most complicated of the programs in the Lake Michigan district in terms of the number of budgetary subunits, source of fundings, and numerosity and complexity of financial transactions.

20. The fisheries personnel management program in the Lake Michigan district is substantially larger than that associated with the forestry program.

21. In terms of equipment purchasing, the Lake Michigan District fisheries and forestry programs are comparable. However, the fisheries program supervisor is much more involved in the purchase, acquisition, and disposal of vehicles than the forest program supervisor because much of the latter's vehicles are purchased outside the district, while the fisheries' vehicles are purchased through the district with the direct involvement of the fisheries' supervisor. Other district program have much less equipment than the forestry and fisheries programs.

22. The Director of the Bureau of Fish Management is classified at the NRA 4 level while the Director of the Bureau of Forestry is classified at the NRA 5 level, due to the fact that respondent considers the latter position to be responsible for two major programs (Forest Management and Fire Control). While DNR has been moving on a day-to-day basis toward merging of Forest Management and Fire Control, it still considers the programs to be separate major programs.

23. In the southern district, the positions in charge of the Forest Management and the Fire Control programs are each classified at the NRA 2 level.

24. The NRA position standard (Respondent's Exhibit 1) includes the following:

Classification Factors

Because of the variety of resource management and environmental protection programs and their varying degrees of complexity, individual position allocations have and will be based upon general classification factors such as those listed below:

- A. The organizational status as it relates to level of responsibility and/or implementation;
- B. The availability and applicability of established guidelines, procedures, precedents, and legal interpretations;
- C. The potential impact of policy and/or program decisions on the public, other governmental entities, and the State's natural resources and/or environment;
- D. The degree of internal and external coordination required to accomplish objectives;
- E. The availability of other nonsubordinate staff whose authority it is to make the most difficult and unprecedented program decisions or interpretations;
- F. The scope, variety, and complexity of decisions considering the number and nature of the variables that are relevant to the specific decisions; and
- G. The extent and frequency with which problems or tasks of varying types occur.

Organizational Considerations

Class definitions contained in this standard are based upon the current (March, 1985) organizational structure of DNR's central and field operations. Therefore, it is possible that a modification of this organization could have a significant impact on the interpretation of the class definitions contained in this standard. Consequently, application of this standard should consider the class concepts in the same context in which they were written.

Major Programs

Major programs as described within this specification are in the Department of Natural Resources. As of March, 1985 these include Solid Waste, Water Supply, Water Resources Management, Water Regulation and Zoning, Wastewater, Air, Environmental Analysis and Review, Fish Management, Wildlife Management, Forest Management, Fire Control,

Parks, Research, and Resource Management and Environmental Protection Law Enforcement.

II. CLASS DEFINITIONS AND REPRESENTATIVE POSITIONS

The following definitions of duties and responsibilities and listings of representative positions provide examples and patterns for both present and future position allocations. Many different programs and subprograms currently exist within the operating divisions of DNR. This position standard does not attempt to cover every eventuality or combination of duties and responsibilities either as they currently exist or may exist in the future. Additionally, this position standard is not intended to restrict the allocation of representative positions to a specific class level if the functions of these positions change significantly in level of complexity and/or responsibility. It is intended, rather, to be a framework within which classifications can be applied equitably to the present program and adjusted to equitably meet future personnel relationships and patterns that develop as a result of changing programs, organizations, and emphasis.

* * *

NATURAL RESOURCE ADMINISTRATOR 2 (PR 1-17)

Definition:

Positions allocated to this class typically function in one of the following capacities: 1) as an area director responsible for planning, organizing and implementing DNR programs in significant portions of a DNR district; 2) as a chief of a multi-faceted program section in a DNR district office with responsibility for planning and directing the implementation of departmental policies districtwide; 3) as the line deputy to a bureau director meeting the criteria for the Natural Resource Administrator 3 level; 4) as the assistant director of a bureau which has no line deputy but whose director meets the criteria for the Natural Resource Administrator 4 level. This includes responsibility for planning and directing the development and administration of a portion of the total bureau program which is greater than that of other section chiefs in the bureau as well as having an influential role in the development of all bureau programs; or 5) as a section chief responsible for a significant statewide program within a major bureau including planning, directing, implementing and monitoring of department policies statewide. These positions interface with and are impacted by broad external mandates within which they exercise responsibility in the development of comprehensive, multi-faceted program policies to implement program administration statewide. Positions at this level are distinguished from positions at the lower level by the scope,

variety, and complexity of decisions made and their greater impact on the state's population.

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NATURAL RESOURCE ADMINISTRATOR 3 (PR 1-18)

Definition:

Positions allocated to this class typically function in one of the following capacities: 1) as the assistant district director of a DNR district with responsibility for planning and directing the implementation of all resource management or environmental protection programs in the district where the components of the departmental program are fully developed and operational in the district; 2) as the assistant district director for air management in the Southeast District; 3) as the line deputy to a bureau director meeting the criteria for the Natural Resource Administrator 4 level; 4) as the director of a bureau with responsibility for planning and directing the development of policies for the administration of a departmental program which is narrow in scope, highly specialized in relation to the impact that results on the state's resources as a whole and which involves a lesser degree of policy development, and interaction with the legislature in establishing support for the program than exists at higher levels; 5) as the assistant director of a bureau which has no line deputy but whose director meets the criteria for the Natural Resource Administrator 5 level. This includes responsibility for planning and directing the development and administration of a portion of the total bureau program which is greater than that of other section chiefs in the bureau and includes the authority to set policies and commit employer resources; or 6) as the chief of a major departmental program in a bureau consisting of two major departmental programs whose director is classified at the Natural Resource Administrator 5.

CONCLUSIONS OF LAW

1. This matter is properly before the Commission pursuant to §230.44(1)(b), Stats.
2. Appellant has the burden of establishing by a preponderance of the evidence that respondent's decision to reclassify appellant's position from NRS 5 to NRA 2 instead of NRA 3 was incorrect.
3. The appellant having failed to satisfy his burden, it is concluded that respondent's decision to reclassify appellant's position from NRS 5 to

NRA 2 instead of NRA 3 was not incorrect.

DISCUSSION

The NRA 3 definition contained in the NRA position standard does not define these classifications from a conceptual standpoint. Rather, it states:

"[p]ositions allocated to this class typically function in one of the following capacities...."

In addition to this enumeration of capacities in which the NRA 3 class typically functions, the position standard contains several representative positions. It is clear from the hearing record that due at least in part to changes that have occurred since the position standard was adopted in 1985, these examples of NRA 3 positions are of limited materiality to the issue in this case. Respondent made the point that appellant's position is identified specifically by a "typical" NRA 2 position ("chief of a multi-faceted program section in a DNR district office with responsibility for planning and directing the implementation of departmental policies districtwide") but is not mentioned in the NRA 3 definition. While this is correct, it also is true of the district forestry supervisor position, which nonetheless was reclassified to the NRA 3 level. This reclassification was based on the position's responsibility for two major program areas (forest management and fire control). This criterion is not mentioned in the NRA 3 definition in the position standard, but was utilized by personnel as a means of dealing with agency circumstances which were not apparent at the time the position standard was effectuated. Therefore, it must be concluded that the NRA definitions are of little use in resolving this classification issue, and the Commission must focus on the general classification factors contained in the position standard as well as on position comparisons.

The main thrust of appellant's case was to attempt to show that his district fish management program is so large and complex that his position compares favorably to other program managers whose positions were reclassified to the NRA 3 level on the basis of being responsible for two major programs, as defined in the position standard. In the same vein, he contends that the operations and management aspects of his responsibilities could be considered equivalent to two separate and distinct major programs. Respondent's case relied on the evaluations or rankings of positions performed by the management committee as part of the overall study, see Finding 7, and the defensive position that notwithstanding the specific points made by appellant, he failed to satisfy his burden of establishing that his position was incorrectly reclassified to the NRA 2 level.

Much of appellant's specific case consisted of a statistical or quantitative analysis. This showed that his sphere of responsibility is a good deal larger in terms of land, budget, and personnel in comparison to the other district program managers. In terms of equipment, his program is somewhat larger overall than the forestry program, but has substantially more involvement in vehicle procurement. With respect to budget, not only does appellant have a substantially larger budget than the other programs, but also his budget is more complex due to its breakdown into numerous subunits corresponding to various separate projects.

In addition to this quantitative showing, appellant presented evidence concerning the level of complexity of his position. The Director of the Bureau of Fish Management testified without contradiction that fish management is a very complex, diverse program with substantial responsibilities for interaction with entities both within DNR as well as on an interstate and international level. He emphasized the particular significance and complexity of

dealing with commercial fishing, which is unique to the Lake Michigan district. He also testified that the Lake Michigan district fish program was "at or near the top" among the district fish programs in terms of overall complexity and diversity of resources, but he also said that each district had its unique features and tradeoffs, and that in his opinion all of the district fish managers should be at the NRA 3 level. Appellant also testified on his own behalf in support of the complexity of his program.

Based on this record, it can be concluded that appellant is responsible for a very complex program that is larger than the other district programs in terms of such aspects as the land, budget, personnel and equipment involved. These quantitative comparisons are a positive factor in the classification analysis involved in this case, because presumably the size of a program has a bearing on its scope, complexity, and level of responsibility. However, when one turns to the class factors contained in the position standards, many of these are not addressed by the quantitative comparisons. See Respondent's Exhibit 1, p. 3:

- A. The organizational status as it relates to level of responsibility and/or implementation;
- B. The availability and applicability of established guidelines, procedures, precedents, and legal interpretations;
- C. The potential impact of policy and/or program decisions on the public, other governmental entities, and the State's natural resources and/or environment;
- D. The degree of internal and external coordination required to accomplish objectives;
- E. The availability of other nonsubordinate staff whose authority it is to make the most difficult and unprecedented program decisions or interpretations;
- F. The scope, variety, and complexity of decisions considering the number and nature of the variables that are relevant to the specific decisions; and

- G. The extent and frequency with which problems or tasks of varying types occur.

Some of appellant's other evidence addressed various of these class factors. For example, there was testimony that appellant's responsibilities included a good deal of coordination with other entities such as other agency programs and the federal government. There also was evidence appellant's involvement in the rule-making process was the most extensive in the district. However, overall there was little direct comparison with the other positions in question except for the quantitative factors. So, for example, while it can be concluded that appellant's position involves a good deal of "internal and external coordination required to accomplish objectives," the record does not contain any information or or specific comparison with the other positions with respect to this factor. The Director of the Bureau of Fish Management testified that appellant's position is very complex compared to "some" of the other DNR programs. For the most part, he did not draw specific comparisons with specific positions. In short, appellant's case is supported by a good deal of evidence, and suggests that it is probable that appellant's position is superior to the other district program managers from a classification standpoint, appellant fell short of producing enough evidence to sustain his burden of proof, particularly in the area of direct comparisons to those positions with respect to the specific class factors.

Appellant also has pointed out that DNR's orientation has been toward merging Forest Management and Fire Control. However, the fact remains that this has not occurred yet, and there are a number of positions whose classifications still rest on this distinction. Furthermore, it does not necessarily follow that the organizational merger of these programs would obviate all of the classification significance of responsibility for both programs.

In conclusion, while appellant has presented a good deal of evidence in support of his contention that his position should have been reclassified to the NRA 3 level, there is not enough evidence on this record to satisfy his burden of proof.

ORDER

Respondent's action reclassifying appellant's position to NRA 2 is affirmed and this appeal is dismissed.

Dated: _____, 1990 STATE PERSONNEL COMMISSION

LAURIE R. McCALLUM, Chairperson

AJT:rcr

DONALD R. MURPHY, Commissioner

GERALD F. HODDINOTT, Commissioner

Parties:

James D. Moore
DNR
P.O. Box 10448
Green Bay, WI 54307-0448

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