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DAVID E. PFLUG,
DANIEL R HELF,
MICHAEL MICHAELSEN,
TIMOTHY J. COUGHLIN,
RONALD F. CURTIS,

Appellants,

v.

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

Respondents.

Case Nos. 90-0414, 0415, 0418,
0420, and 0422-PC

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"INTERIM"*
DECISION
AND
ORDER

Nature of the Case

This is an appeal of the effective date of certain reclassification actions. A hearing was held before Laurie R. McCallum, Chairperson, on June 3, 1991, and the briefing schedule was completed on August 12, 1991.

Findings of Fact

1. At all time relevant to these appeals, appellants have been employed by respondent DNR in positions which function as District Environmental Enforcement Specialists.

2. At various times during April of 1990, appellants submitted to respondent's Bureau of Personnel and Human Resources requests for the reclassification of their positions from Environmental Specialist 6 (ES 6) to Environmental Specialist 8 (ES 8). Appellants' positions were first classified at the ES 6 level during 1985.

3. In a memo dated July 18, 1990, Debra Martinelli, Director of DNR's Bureau of Personnel and Human Resources, advised DNR's District Directors that a mini-review of the classifications of certain positions, including the

* This decision and order is being issued as an "interim" decision to allow appellants the opportunity to apply for costs pursuant to §227.485, stats.

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District Environmental Enforcement Specialist positions, would be commenced in August and completed in October of 1990.

4. During the last week of November, 1990, appellants were advised that a reclassification of their positions to the ES 7 level had been approved effective November 4, 1990, based on the following analysis:

Assigned Duties

. . . The assigned duties include providing formal administrative environmental law enforcement actions in all environmental programs within the district; serving as the department's liaison to the Attorney General's Office or the District Attorney's Office in the resolution of the district's referred cases; providing enforcement guidance on compliance, surveillance, and investigation activities; investigating civil and criminal cases; and participating in the development of work plans, program objectives and district priorities. The current position description dated March 30, 1990 provides further details.

Specification Analysis

Within the Environmental Specialist 6 classification specification, the District Environmental Enforcement Specialist is identified as a specific allocation as well as a representative position. During the last few months, the department has conducted a review of all District Enforcement Specialists, which included audits of all positions and a reanalysis of the positions against the classification factors within the specification. Based on this completed analysis, it has been determined that a change in the classification of these positions is supportable. Therefore, as of November 4, 1990, we have determined that given the change in the allocation pattern which is a result of our completed analysis, positions can be reclassified to the Environmental Specialist 7 level. Reclassification of this position prior to this date is inappropriate since the only means to reclassify the position short of a classification survey is the completed analysis and a change in the allocation patterns.

Classification at the Environmental Specialist 7 level is warranted based on expansion of the following factors:

- 1) Increased scope and impact as evidenced by the expansion of the programs which the enforcement specialists provides expertise, as well as the decision impact.

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2) Increased discretion and accountability as evidenced by the level of decision making as it relates to cases and the development of forfeiture recommendations.

3) Personal contacts and their purposes have also increased due to their expanded roles.

5. The parties have stipulated that the changes in appellant's positions upon which the subject reclassification was based occurred logically and gradually prior to November of 1989.

6. The relevant position standard for the Environmental Specialist series was created in 1985 and the language of this position standard has not changed since then. This position standard provides as follows, in pertinent part:

Classification Factors

Because of the variety of 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:

Factor 1 - Scope and Impact of Work

- a. Scope (range or extent) of the goals and accomplishments; and
- b. Impact of the work both internal and external to the work unit.

Factor 2 - Complexity of Work:

- a. Difficulty in deciding what needs to be done; and
- b. Difficulty in performing the work.

Factor 3 - Discretion and Accountability:

- a. Extent to which the work is structured or defined; and
- b. Extent to which one is responsible to other authorities for actions taken or decisions made.

Factor 4 - Knowledge and Skills Required:

Breadth (variety) of knowledge normally required and used in completing acceptable work, and depth (degree of detailed understanding) of knowledge normally required and used in completing acceptable work.

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Factor 5 - Personal Contacts and Their Purpose:

- a. Nature of the contacts; and
- b. Purpose of the contacts.

Factor 6 - Work Environment:

Level and frequency of risks and discomforts in employees' normal physical surroundings.

Factor 7 - Physical Effort:

Level and frequency of physical effort required of employees by normal work assignments.

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 environmental programs and subprograms currently exist. 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 classification 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 programs and adjusted to meet the future personnel relationships and patterns that develop as a result of changing programs, organization, or emphasis.

ENVIRONMENTAL SPECIALIST 6 (PR 15-06)

ENVIRONMENTAL SPECIALIST 6 - MANAGEMENT (PR 1-14)

Definition:

This is very responsible professional environmental program coordinative work. Positions allocated to this class typically function as:... 3) a district specialist responsible for an environmental enforcement program which provides support to other district environmental programs;...

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Representative Positions:

Positions Functioning Out of a District Office

Environmental Enforcement Specialist: This position is responsible for the administration of environmental enforcement activities in a defined geographic area through performance of line and staff duties with responsibility for planning, coordinating and implementing enforcement programs for wastewater, solid waste, air and water supply. Provides guidance to field staff; coordinates with attorney general's office; investigates civil and criminal violations; performs audits to insure proper guidelines and procedures are being consistently applied by varied environmental program staff.

ENVIRONMENTAL SPECIALIST 7 (PR 15-07)

ENVIRONMENTAL SPECIALIST 7 - MANAGEMENT (PR 1-15)

Definition:

This is advanced environmental program coordinative work. Positions allocated to this class typically function as: 1) a district staff specialist responsible for planning, coordinating, and implementing all aspects of a major environmental program in the district;

7. During 1990, the Department of Employment Relations did not approve any changes in the Environmental Specialist position standard.
8. Appellants did not receive written denials of the requests for reclassification of their positions which they filed in April of 1990.
9. Appellants filed timely appeals with the Commission of the effective dates of the subject reclassification actions.

Conclusions of Law

1. This matter is appropriately before the Commission pursuant to §230.44(1)(b), Stats.
2. Appellants have the burden to show that respondent's decision to establish November 4, 1990, as the effective date for the subject reclassification actions was not correct.
3. Appellants have sustained this burden.

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4. The operative date for establishing the effective date of the subject reclassification actions is the date that appellants filed their requests for reclassification in April of 1990.

Opinion

The parties agreed that the following issues would govern these appeals.

Whether the decision by respondent establishing November 4, 1990, as the effective date for the reclassification of appellants' positions to the Environmental Specialist 7 (ES 7) level was correct.

Subissue: If not, what is the correct effective date.

Respondents' basic argument is that, due to changes that respondent DNR effected in the ES 6/ES 7 allocation pattern in November of 1990, appellants' position were appropriately classified at the ES 6 level in April of 1990 and at the ES 7 level in November of 1990. In order to assess the merits of this argument, it is necessary to dissect and examine the reclassification actions under consideration here.

A position is a grouping of duties and responsibilities. It must be presumed that, in 1985, when the Environmental Specialist position standard was promulgated, respondent DER decided that the grouping of duties and responsibilities which constituted the District Environmental Enforcement Specialist positions at that time was most appropriately classified at the ES 6 level based upon the application of the general classification factors enunciated in the new ES position standard. In its review of appellants' positions in 1990, respondent DNR conceded that this grouping of duties and responsibilities had undergone a logical and gradual change since 1985. In fact, respondent DNR conceded that this new grouping of duties and responsibilities was so different in 1990 than it was in 1985 that classification at the ES 6 level was no longer appropriate based upon the application of the general classification factors enunciated in the ES position standard. Respondent DNR has attempted to characterize this change as a change in the position standard's allocation pattern. The Commission disagrees. What has changed here is not the position

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standard but the duties and responsibilities of appellants' positions. If, for example, a new position were to be created which had duties and responsibilities identical to those of appellants' positions in 1985, that new position presumably would be classified at the ES 6 level, not the ES 7 level. The flexibility which would allow such changes in the classifications of representative positions was acknowledged and anticipated by the authors of the positions standard through the following language in Section II of the standard: "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 classification level if the functions of these positions change significantly in level of complexity and/or responsibility." Such language clearly contemplates that the classification of positions designated as representative positions shall not be restricted by such designation if the duties and responsibilities of such positions undergo significant change. Such language also clearly contemplates that such a change does not require or effect a change in the position standard itself. It should also be noted in this regard that only the Department of Employment Relations (DER) has the authority to effect a change in a position standard and the record does not show that any such change to the ES position standard was effected by DER in 1990.

Respondents argue that respondent DNR should have denied the April, 1990, reclassification requests and reallocated appellants' positions in November of 1990 based on the new allocation pattern. This is a curious argument since, not only was this not done in April or November of 1990, but it has not been done since then either. In addition, such a course of action would be inconsistent with the Commission's conclusion that the change which occurred was a logical and gradual change in the duties and responsibilities of appellants' positions, the type of change recognized by a reclassification; not a change in the concept of the ES 6 or ES 7 classifications or ES series, a creation of a new classification, the abolishment of an existing classification, a change in the pay range of a classification, the correction of an error in the previous assignment of appellants positions to the ES 6 classification, a logical but not

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gradual change in the duties and responsibilities of appellants' positions, or a change in the level of accountability of appellants' positions, the type of change recognized by a reallocation. See §ER 3.01, Wis. Adm. Code.

Respondents also attempt to draw a parallel between the instant appeals and the fact situations underlying the Commission decisions in Farrar v. DNR and DER, Case No. 84-0127-PC (1/17/85); and Crary v. DNR and DER, Case No. 89-0133-PC (6/1/90). In Farrar, the appellant had filed a request for the reclassification of his position. Respondents, relying on the language of an existing position standard and the content of an existing allocation pattern, denied appellant's request. Subsequently, a new position standard was approved by DER and appellant's position reallocated based on the language of this new standard. This fact situation does not parallel the instant one, i.e., the record in the instant appeals does not reflect that DER created a new position standard or approved any change in the existing ES position standard. In Crary, the existing position standard clearly stated that a position could only be classified at the higher level (SK 2) if it had leadworker responsibilities. There was some evidence in the record that DER, beginning in December of 1989, had classified some positions which were not leadworker positions at this higher level but the record did not indicate what DER's basis for these classification decisions had been. The Commission's decision stated that, if the classification decision under consideration, "had been based on an interpretation of some arguably ambiguous language in the SK 2 class specification, the Commission would not quarrel with the notion of considering an interpretation or construction of that language by DER issued after the reclassification denial but before the hearing." The Commission went on to state, "Here, however, there is absolutely nothing ambiguous about the leadwork requirements in the SK 2 class specification, while the basis for what DER began doing in December 1989 is completely undeveloped on this record. This is an insufficient basis for the use of the DER actions to overturn a decision that manifestly was dictated by clear language in the class specification." In the instant appeals, we are not dealing with the clear identification of a general classification factor such as leadwork but with the clear identification of a particular position at a classification level within a series. A general classification factor, such as the one under

consideration in Crary, involves a particular duty or responsibility which a position must possess in order to be classified at a certain level within a series. A representative position, on the other hand, is a grouping of duties and responsibilities which, as long as they remain substantially unchanged, represent a position appropriately classified at a certain level within a series. A general classification factor does not change unless DER takes action to make such a change. A representative position, however, may change substantially as duties and responsibilities are added, deleted, or modified by the appointing authority such that, by applying the general classification factors of the series to this new grouping of duties and responsibilities, the classification of the position may change while the title of the position stays the same. The instant case, as opposed to Crary, does not involve the application of a specific classification criterion contained in the position standard (i.e., lead work responsibility), which a position clearly either has or does not have. Rather, it involves the application of classification criteria which appellants' positions satisfy in part because they have evolved beyond the representative, or typical positions which are identified as such in the position standard, but which the position standard notes may evolve to reach a different classification level.*

The Commission concludes on the basis of the foregoing that the changes which resulted in the reclassification of appellants' positions were the changes in the duties and responsibilities of appellants' positions, not changes in the ES position standard; that such changes in the duties and responsibilities of appellants' positions occurred prior to November of 1989; and that the operative date for determining the effective date of the reclassification of appellant's positions should have been the date the request for reclassification was filed in April of 1990.

* This language has been altered slightly from that contained in the proposed decision to express more clearly the distinction between this case and Crary.

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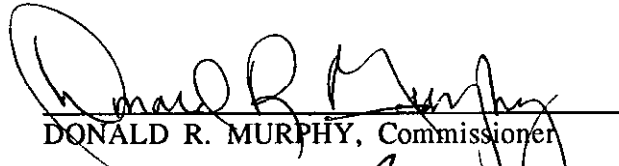
Order


The action of respondents is rejected and this matter is remanded for action in accordance with this decision.

Dated: November 6, 1991 STATE PERSONNEL COMMISSION


LAURIE R. McCALLUM, Chairperson

LRM:lrn:gdt/2


DONALD R. MURPHY, Commissioner


GERALD F. HODDINOTT, Commissioner

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