

STATE OF WISCONSIN

PERSONNEL COMMISSION

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DAVID ASLAKSON, MICHAEL RIES,
and DANIEL ROGERS,

Appellants,

v.

Secretary, DEPARTMENT OF
EMPLOYMENT RELATIONS,

Respondent.

Case Nos. 91-0135, 0146, 0174-PC

* * * * *

FINAL
DECISION
AND
ORDER

A proposed decision was issued in these matters on April 23, 1996. Oral arguments were held and the Commission has consulted with the hearing examiner. After analyzing the record and considering the arguments of the parties, the Commission rejects the conclusion reached in the proposed decision and issues the following decision and order.

These appeals arise from the respondent's reallocation decisions. During a prehearing conference, the parties agreed to the following issue for hearing: "Whether respondent's decision to reallocate appellants' positions to Landscape Architect Senior instead of Landscape Architect Advanced I [was] correct?"

During the time period relevant to these appeals, the appellants served as landscape architects in various districts of the Department of Natural Resources (DNR). Appellant Aslakson worked out of the Southern District, Appellant Ries out of the Western District (although he also was assigned the projects in the Northwest District for a period of time), and Appellant Rogers out of the Lake Michigan District. Susan Oshman was a landscape architect in the Southeast district and served as leadworker for two other landscape architects in that district.

The Landscape Architect (LA) classification specification, effective June 17, 1990, establishes Entry, Developmental, Journey, Senior, Advanced 1 and Advanced 2 levels. The relevant portions of the specifications read as follows:

B. Inclusions

This series encompasses professional landscape architectural positions which prepare, implement and direct landscape development and grounds improvement feasibility studies, master plans, landscape designs, project cost estimates, project specifications and bidding documents for department owned and managed office buildings around the state, including the State Capitol and Executive Residence.

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D. Entrance and Progression Through This Series

Employees typically enter this classification series by competitive examination for entry-level positions. Individuals with exceptional qualifications such as that gained from advanced education or prior relevant engineering [sic] experience may enter this classification series by competitive examination or lateral transfer for advanced entry-level positions. Progression through the series to the Advanced 1 level will normally occur through reclassification. Movement to the Advanced 2 level may occur through reclassification or competitive examination depending upon the particular situation.

E. Classification Factors

Individual position allocations are based upon the general classification factors from the Wisconsin Quantitative Evaluation System (WQES) described below:

1. KNOWLEDGE REQUIRED....
2. JOB COMPLEXITY....
3. CONSEQUENCE OF ERROR....
4. EFFECT OF ACTIONS....
5. AMOUNT OF DISCRETION....
6. PHYSICAL EFFORT....
7. SURROUNDINGS....
8. HAZARDS....
9. PERSONAL CONTACTS....
10. SUPERVISORY RESPONSIBILITIES: This factor measures the degree to which a position a) has responsibility for carrying out leadwork/supervisory functions such as hiring, directing, evaluating performance and administering discipline; b) the

number of people the position is responsible for leading/supervising; and c) the degree to which supervisory authority is shared with positions at higher levels in the organizational hierarchy.

F. How to Use This Classification Specification

This classification specification is used to classify professional positions as described under Section I.B. In most instances, positions included in this series will be clearly identified by one of the classification definitions which follow below in Section II of this classification specification. However, a position may evolve or may be created that is not specifically defined by one of the classification definitions. In classifying these positions, it would be necessary to compare them to the classification factor definitions described in Section I.E. of this specification and use the Wisconsin Quantitative Evaluation System (WQES), developed for this purpose by the Department of Employment Relations to determine the appropriate level of the job.

* * *

Landscape Architect - Journey

This is journey level landscape architectural work providing a wide variety of journey level landscape architectural assignments. Positions at this level differ from positions in lower levels in that many work assignments are generally long-term and are stated in broad general terms; assignments are completed without specific direction; and the supervisor reviews the work after it is completed to determine completeness and adherence to policy. Positions at this level may be involved in meeting with agency management or vendors on projects assigned, or other comparable areas with the supervisor and may assist in coordinating projects which cross program lines. Positions at this level continually make more sensitive decisions and recommendations and function under limited to general supervision.

REPRESENTATIVE POSITIONS

Department of Administration

Landscape Architect - Division of Buildings and Grounds. Responsibilities include serving as project leader and program specialist in landscape design and construction. Prepare master plans, landscape designs and coordinate major construction projects at the Capitol and other DOA administered buildings. Direct the purchase of supplies and services necessary to implement and maintain landscape, office and interior design plans.

Department of Transportation

Landscape Architect - Division of Highways and Transportation Services. Responsible for managing roadside vegetation. Supervise the planning, design, construction and enhancement of roadside improvements. Supervise the maintenance of roadside improvements such as rest areas, waysides, scenic overlooks, historical marker sites, table sites, parking areas and boat landings. Perform maintenance activities such as assisting the regional engineer in developing, implementing and monitoring policies and guidelines for special maintenance programs for roadsides and roadside development.

Landscape Architect - Senior

This is senior level landscape architectural work providing complex technical assignments. Positions at this level differ from lower level positions in that most work objectives are long-term and broadly defined in relation to the position's total assignment; positions develop and work on major work products with little or no specific direction or review; and the supervisor reviews only the most technically complex work. Positions at this level work with contractors, consultants and other agency staff as needed. Positions at this level function under general supervision.

REPRESENTATIVE POSITION

Department of Natural Resources

Landscape Architect - Serve as the Southeast District's Lead Landscape Architect devoting the majority of responsibilities to performing landscape architect duties districtwide. This will involve working with the public, other agencies, and department bureaus and districts to plan and design diverse phases of development of state parks, forests and other recreational lands; incorporate acquisition and management into planning and design; produce feasibility studies, master plans, site plans, planting plans, development plans, environmental impact statements and assessments; perform field work and drafting as needed; and provide oversight for other park planners.

Landscape Architect - Advanced 1

This is advanced level landscape architectural work performing very complex design, project management, troubleshooting, specification development and consultation involving landscape architecture. Positions at this level differ from lower level positions in that the range of assignments is broader, more complex, the level of decision-making is broader allowing positions to

make decisions on allocating funds for projects, and the level of direction given to the employee is general policy direction. Work is performed under general supervision.

Landscape Architect - Advanced 2

This is the most advanced level landscape architectural work performing the most complex assignments in architecture for a statewide program. Positions at this level are involved in policy, standards and procedure development, evaluation and administration for a speciality area. Employees at this level function as the specialists or technical consultants to other architects, engineers, managers and supervisors on assigned projects. Work is performed under general policy direction with the authority to make final statewide decisions on major technical/professional matters, including allocating resources for major projects.

The LA specifications were developed as part of a survey that included engineer, architect and landscape architect positions in state service. The survey relied on scoring of various benchmark positions by a rating panel. The benchmark positions included engineer, architect and landscape architect positions. The panel concluded that there were no landscape architect positions which were as complex as certain engineer positions or certain architect positions. The rating panel relied on information available at that time to score the various benchmark landscape architect positions. This included Job Content Questionnaires reflecting the appellants' positions (Resp. Exh. 9) and a separate composite for the Oshman leadworker position in the Southeast district (Resp. Exh. 10). The panel's scoring served as the basis for assigning the benchmark positions to LA classification levels, even though no specifications existed at that time. The panel allocated the benchmark representing the appellants' positions to the Journey level and Ms. Oshman's leadworker position to the Senior level. The panel's allocations were then provided to the employing agencies. Personnel staff of the employing agency relied upon the panel's allocations to assign the positions to a classification level, even though no class specifications existed at that time. DER told the coordinators to be very conservative when applying the allocations to individual positions. It wasn't until after the employing agencies made their decisions that the class specifications were written.

Based upon the information available at the time, DNR personnel decided the appellants' positions as DNR district planners should be classified at

the LA - Journey level. Respondent DER notified the appellants of this conclusion.

The original allocations for LA positions statewide resulted in one position assigned to the Senior level classification with the other positions classified at the Journey level or below. No positions were initially reallocated to the Advanced 1 or Advanced 2 levels. The appellants and other individuals pursued informal appeals of the reallocation decisions. Those persons who asked to be placed at the Advanced 2 level had their informal appeal materials reviewed by another rating panel. The panel scored the information and DER notified the employees of the results. Those persons, including the appellants, who did not request placement at the Advanced 2 level had their informal appeal materials reviewed by Judy Burke, the DER employe who coordinated the engineering survey.

As a consequence of the informal appeals, the appellants' positions were moved from the Journey to the Senior level. One of three positions identified as a representative position (Department of Administration, Division of Buildings and Grounds) in the LA series received ratings which moved it to the next higher class level. At least one of the two remaining representative positions (the Lead Landscape Architect position in DNR's Southeast District filled by Ms. Oshman) did not file an informal appeal, so no review was conducted of that position.

DNR is organized on a decentralized basis, with six field districts and with the district directors at the same level as the administrators of the various divisions which exist in the central office. The district directors and the administrators report directly to the department secretary. While the line of supervision for district employes runs to the district director, they are assigned to program areas which have a corresponding organizational structure in the central office. During all times relevant to these proceedings, the appellants worked in the Parks and Recreation program area. Until July of 1991, the corresponding central office structure was the Bureau of Parks and Recreation. However, early in 1989, a reorganization was approved which created the Bureau of Property Management. This new bureau included two existing bureaus, the Bureau of Real Estate and Bureau of Engineering, and also picked up responsibility for the planning responsibilities for all DNR properties. The planning function had previously been split between the DNR programs. In

July of 1991, after the effective date of the reallocation decisions that are the subject of these appeals, the appellants were assigned to the Property Management program area.

Before the effective date of the reallocation decisions that are the subject of these appeals, the appellants' positions were all classified at the Landscape Architect 3 level.

Jody Les was reassigned from a central office position in the Bureau of Parks and Recreation to the Bureau of Property Management, Land Management Section, on July 1, 1989. The Les position was also classified at the Landscape Architect 3 level prior to the effective date of the survey. The section chief for Land Management section, Doug Fendry, was hired effective December of 1989. Mr. Fendry is not a landscape architect. The Les position was initially reallocated by the classification survey to the LA-Journey level. Mr. Les filed an informal appeal requesting the LA Advanced 2 level. The rating panel determined his position should be classified at the LA-Advanced 1 level and respondent adopted this conclusion. A focus of the appellants' cases before the Commission is that they perform landscape architecture work that is at least as complex as that performed by Mr. Les and that Mr. Les actually performed work other than that with which he was credited.

DNR properties include parks, forests, riverways, wildlife areas, fisheries, natural areas and trails. During the relevant time period, the Bureau of Parks and Recreation was never responsible for the full range of these properties.

One of the reasons for the creation of the Bureau of Property Management was to place all DNR properties (totalling 1.1 million acres) under the direct or indirect management of one unit rather than having the properties split between the various programs. Until the reorganization was fully implemented (after the effective date of the reallocation decisions), the Bureau of Parks and Recreation held and managed approximately 80,000 acres, the Bureau of Fish Management 85,000 acres, the Bureau of Forestry 490,000 acres, the Bureau of Endangered Resources 20,000 acres and the Bureau of Wildlife Management 455,000 acres.

Planning

During the relevant time period, the appellants' positions, associated with the Parks and Recreation program area, had a variety of planning responsibilities.¹

The planning area has three main components: feasibility studies (which reach a recommendation as to whether or not there should be a project/purchase of property); master plans (which describe how a project, e.g. a park, is to be acquired, developed and managed); and site plans (which implement a master plan).

Feasibility studies are written pursuant to a request, and must follow a prescribed format. They typically do not require the assembly of a panel of experts for input.

The landscape architect serves as the chairperson of a *master planning* task force assembled for each master plan covering a Parks and Recreation project. The plan itself is prepared according to the "Master Planning Handbook" which specifies plan content and describes citizen involvement. The Handbook includes the following description of the purposes of master plans:

1. To set the long-range goals for the conservation and use of Department properties (fee, lease, and easement) and public waters.
2. To give the general public, local community, special interest groups, and regional planning commission involvement in the planning of Department properties.
3. To schedule in an orderly manner the specific acquisitions, development, and operations-maintenance necessary to meet the individual property goal.
4. To manage the resources on Department properties according to land use capabilities, consistent with the long-term protection and use of these resources.
5. To provide a sound basis for decision-making by Department staff, administrators, and the Natural Resources Board consistent with the Wisconsin Environmental Policy Act.

¹ This paragraph has been modified because of the changes in the organization of subsequent portions of the proposed decision.

6. To provide consistency in the management of individual properties without loss of continuity due to personnel change.
7. To relate program input (money, staff, acquisition, development, etc.) to program output (resource protected or recreation opportunities provided). This is necessary at all levels of planning.
8. To provide the preliminary estimates and justification in the budget process to ensure that funding is provided to implement the Master Plan.

The Handbook goes on to describe the master plan task force as follows:

Master plans are prepared by a task force of Department employees. For each property master plan, the task force is appointed by the district director. To promote integrated management, the task force should have representation of all disciplines necessary to contribute to the development of the plan.

The chairperson should be someone who can devote the necessary time to the process so that deadlines are met and integrated management and consensus achieved.

Throughout the plan process, the chairperson works with the implied authority of the district director, determining timetables, delegating work assignments, and preparing the text master plan.

* * *

Task Force Conflicts

If disagreement cannot be resolved within the task force, the district director shall resolve the disagreement....

Master plans are supposed to be reviewed every 10 years, but actual revisions of the plans occur at less frequent intervals. The Handbook itself was prepared by a committee which included appellant Ries as chairperson. The committee, as a whole, prepared the handbook which was then reviewed and approved by both the DNR Secretary and Natural Resources (NR) Board. Someone who is not a landscape architect has more recently chaired this committee.

Master plans are submitted to James Treichel, chief of planning for the Bureau of Parks and Recreation in the central office. Mr. Treichel reviews them in terms of whether the required procedures have been followed and

whether the design standards are met as well as in terms of whether the plan is consistent with Parks and Recreation program goals.² The draft master plan is also reviewed by central office representatives of all the other program areas to make sure the plan is consistent with their program goals. It is Mr. Treichel who subsequently places the plan before the Natural Resources Board for formal approval. Mr. Treichel was unable to identify any problems with any of the plans that had been submitted by the appellants. Mr. Treichel holds a bachelor's degree in landscape architecture.

Site plans may be developed by the district landscape architect or may be prepared by a consultant under contract. In either event, the plan is prepared with close cooperation of the manager/superintendent³ for the park that is the subject of the plan. If the district landscape architect is doing the site plan, s/he may rely on consultants for specific portions of the plan, such as for building design. The site plan includes specifications for the project including such items as road width and roof color. For a site plan prepared by an outside consultant, the district landscape architect will review and discuss it during the planning process. Site plans should comply with the provisions of the "Park Design and Standards Handbook," App. Exh. 116. This handbook includes 42 pages of standards, including such information as the maximum distance from drinking water to a picnic table in picnic areas, the recommended slope for swimming beaches, the maximum percentage of campsites in open areas as compared to campsites in a forest setting, internal campground road width, minimum number of toilets and approved picnic table designs to accommodate handicapped patrons. While the handbook does establish some very specific requirements, it also permits significant discretion in other areas:⁴

² The Commission has modified this sentence to better reflect the record.

³ DNR also employs a park superintendent or park managers (hereafter referred to simply as park superintendent) for each property it operates as state park. The park superintendent is responsible for the day to day operations of the park and, on projects, is included in the relationship between the project manager and a construction contractor. The park superintendent also represents the interests of the park owner in that relationship. The superintendent is to manage the park in a manner consistent with the master plan for that property. However, not all policy issues can be resolved by referring to the master plan.

⁴ The Commission has added this sentence and quoted portions from App. Exh. 116 to better reflect the contents of the handbook.

Shelters

Shelters are recommended in picnic areas with a use density of at least 36 persons per acre and with a capacity of at least 180 persons. Design, size and number of shelters depend on local weather conditions and local needs. [page 10-10]

* * *

Participation in Other Activities

There is a strong relationship between picnicking and swimming; therefore, these two activities should be located in close proximity to each other.... According to these guidelines, hiking trails should be connected to the beach, and shoreline fishing opportunities should be provided within a few hundred feet of the beach if fishing potential exists. A link to a boater/beach/mooring area should also be provided. [20-10]

* * *

Stony Soil Barriers

Where necessary, a barrier should be constructed to keep material from the stony soil layer from eroding onto the swimming area, either grass or sand portion, and into the water portion of the beach. This type of barrier may require special construction depending upon location and depth of this particular layer or soil zone. [20-12]

* * *

Capacity

About 75-150 sites is an economically feasible size for a unitized campground, taking development costs, land value, maintenance, operation efficiency and revenue production into consideration. [40-10]

* * *

Building Facade

Modern Camps are often state-of-the-art designed with energy efficient measures. The modern camp would use contemporary building materials such as glass, wood, brick or stone. Rustic camps would tend to be simple and plain in design and/or rough textured with use of log or wood material. [50-11]

* * *

General

Modern camps would be more landscaped, more team type associated recreational activities (ball diamond, basketball court, etc.), and more regional in use.

It is recommended that both modern and rustic camps be landscaped with native and wild species. Landscape planning and management should emphasize educational potential and aesthetic values. Natural barriers and screenings should be used where possible.

Placement of structures should consider protection from wind, slope, energy saving measures, and scenic view. [50-12]

The planning work carried out by the appellants varies in complexity according to the specific project. Factors influencing relative complexity include proximity to an urban area (which affects the number of users); the number of landowners or immediate neighbors for those projects where land acquisition is contemplated (with resultant effect on the level of controversy); the number of different user groups for the property (with resultant effect on the level of controversy); whether the project would cause a significant change from previous land use; the amount of money necessary for developing the property; and the physical characteristics of the property.

The LA Advanced 1 class definition identifies a variety of responsibilities to be performed by a position classified at that level: "very complex design, project management, troubleshooting, specification development and consultation involving landscape architecture.... allowing positions to make decisions on allocating funds for projects." Respondent's witness, Judy Burke, who served as the classification survey coordinator, testified that design, project management, troubleshooting, specification development and consultation can all be elements of working up a plan for a state park from start to finish. Each area is described separately, below.⁵

Design

Interrelated to the appellants' planning responsibilities are their design responsibilities. This work is described in Mr. Aslakson's position description (Resp. Exh. 6) as follows: "Design site plans, planting plans, and working drawings of park and other state resource and recreation lands, and facilities essential to bid letting and construction." This includes reviewing engineering plans and specifications prepared by others. In their design work, the appellants are required to follow the design handbook mentioned above.

⁵ This paragraph has been modified in order to change the organization of the proposed decision.

Project management

Appellant Ries' project management responsibilities are described in App. Exh. 229, as follows:

1. Coordinate and direct the property superintendents and contractors (engineers, architects, etc.) progress on both force account (DNR labor and equipment), and contracted development projects.
2. Reevaluate and modify construction details and specifications that may be required as the project progresses.
3. Conduct monthly review of park development project status, to keep projects on schedule and within budget. Negotiate solutions and oversee change orders needed to accomplish the previously stated objectives.

In his testimony, Appellant Ries described his project management responsibilities in terms of both larger projects and smaller projects. On the larger projects, an employe of the Department of Administration's Division of State Facility Management (DFSM)⁶ has responsibility for the checkbook and the oversight of the contractors and Mr. Ries serves as the owner representative. In other words, if Mr. Ries questions something going on at the construction site he calls the DFSM employe who may propose a solution to the contractor and ask Mr. Ries if it is acceptable to DNR. Mr. Ries also gave an example of a smaller project (Chippewa River Trail surfacing) in which he described his role as that of the project manager, i.e. working directly with the contractor. His testimony is paraphrased as follows:

Occasionally the DNR engineer, assigned to the project would call and ask how it was going. I would say "fine" or "not good -- You've got to get up here because the contractor is putting down material that doesn't meet spec."

Mr. Ries' supervisor, Michael Warden, testified that certain approvals are required from DOA for projects over \$30,000 and for projects over \$100,000, DOA will actually have someone on-site.

Mr. Aslakson testified that the selection of specifications is part of the site plan and that he creates the specifications and gives the overall look and

⁶ Nothing in the record suggests that the DFSM employes are classified in the Landscape Architect series rather than some other series.

character to the park property in terms of roof color, road width, etc. Daniel Wagner testified that appellant Rogers developed the specifications for the landscape architect work on the Whitefish Dunes project, although Rogers did not do the specifications for the building which was designed by an outside architectural firm. Mr. Rogers testified that he developed the specifications for the work on the Rock Island lighthouse restoration. For example, he required the contractor/bidder to sample existing mortar for color and consistency match, which were then to be incorporated into the bid documents.

To the extent specification development includes the development of the contents of the design standards handbook, Mr. Ries testified it is the district landscape architects who are primarily responsible for developing those standards. ⁷

All of the appellants served on various committees during the time period relevant to these appeals. In some cases the appellants served as the chairperson of the committee, in others they were members. One committee example is the Design Standards Committee, which is responsible for updating the "Park Design and Standards Handbook" described above. All district planners are members of this committee as is Mr. Treichel. Mr. Treichel does not have an oversight responsibility for the committee. The standards prepared by the committee are reviewed by a representative of the Parks and Recreation program and by one reviewing district director. The standards incorporate or exceed any federal and DILHR standards that may cover the same subjects.

There are approximately 10 standing committees in the Parks and Recreation program area.

Troubleshooting

Infrequently, the appellants are required to apply their expertise in response to natural disasters such as flooding. This qualifies as troubleshooting. However, simply functioning as the leader of a master planning task force does not fall within the concept of "troubleshooting."

Aslakson's examples of troubleshooting included 1) responding to a natural disaster which could include working with FEMA, 2) serving as the plan-

⁷ The Commission has added this and the previous paragraph to better reflect the record.

ner for the Lower Wisconsin project, and 3) handling projects (such as the Rock River feasibility study and the Horicon Marsh headquarters study) which are wildlife driven or otherwise outside of the Parks and Recreation program.

Ries' examples included 1) working with adjacent property owners and with DOT once the planning task force decided to re-route a recreation trail, 2) finding a disposal site for dredge residue from a state park, 3) any site planning work or work in a district specialty area and 4) maintenance needs and outside funded projects.

Rogers' examples included 1) taking advantage of available federal funds for restoration of a lighthouse, and 2) resolving problems relating to very complex HVAC, lighting and other issues regarding the district headquarters building.⁸

Consultation

Appellant Ries has special expertise on the topic of accessibility of facilities to persons with disabilities. Because of this expertise, Mr. Ries may provide consultation statewide on this topic. Resp. Exh. 2, Activity A5. Mr. Ries has also provided landscape architecture services for properties owned by entities other than the Department of Natural Resources. He provided services to the Department of Transportation when DOT developed a highway rest area which included an environmental interpretation component. He represented the interests of DNR in a project undertaken by the Army Corps of Engineers to develop a master plan for a lake area, and worked with Northern States Power when it was required, as part of the dam licensing procedure, to analyze recreational and aesthetic considerations for a flowage.

Mr. Aslakson served as a specialist/technical consultant to other managers in DNR during the relevant time period and provided consultation to 1) DNR regarding the land on which District HQ is located, 2) DOT regarding highway projects, 3) local governments and communities regarding state trails, local parks and park aids, and 4) legislators (for example, regarding DNR projects and interaction with highways).

With some regularity, Mr. Rogers consulted for people outside the district on landscape architecture matters. Rogers' own testimony indicated he served as something of a consultant to the people who did the restoration work

⁸ The Commission has added this and the previous two paragraphs to better reflect the record.

at Heritage Hill Park in Green Bay. That park is on state land leased to a foundation and Mr. Rogers is the state liaison. He provided consultation regarding aesthetical considerations involved in the siting/restoration of buildings moved to the park.⁹

Allocating funds

Master plans typically include estimates of development costs, i.e. estimates of the costs associated with specific development projects such as putting in a road, signage, or fences, developing campsites, or constructing an interpretive center. Appellants, as the head of the master planning task force, have an important role in developing these estimates and may seek specific information from architects and civil engineers when calculating the estimates.

The appellants also have a role in the budget process. The district planner as well as individual park superintendents may propose certain park development projects for inclusion in the district's budget. The appellants recommend a priority among the projects. A proposed list of projects is developed with the appellants' supervisors. After approval by the district director, the proposed development budgets are submitted to the central office where priorities are established on a statewide basis. After the program budget is approved in the central office and, ultimately, through legislation, the funds are passed back through the central office programs to the districts. Once in the district, funds may be reallocated between the various authorized projects.

The appellants do not have the authority to actually allocate funds. They make recommendations on which others must sign off. The appellants' role is a significant but not final one. Development budgets for Mr. Ries' projects were approximately \$5 million for the 1989-91 biennium. (App. Exh. 246, page 9) Daniel Wagner, Mr. Rogers' supervisor, testified Mr. Rogers would occasionally write funding requests.¹⁰

Comparisons between appellants

The appellants had very similar job assignments. There was variation between them due to the particular projects/properties that were being worked on at any given time. However, the record does not support a distinc-

⁹ The Commission has added this and the previous paragraph to better reflect the record.

¹⁰ The Commission has added the paragraph to better reflect the record.

tion between the various districts (and, therefore, between the appellants) in terms of the inherent complexity of the landscape architecture work performed in their district.

OPINION¹¹

A great deal of attention has been devoted by the parties to the work of the first and second rating panels. The record shows that the work of the first rating panel was relied upon by respondent in its writing and approval of the LA classification specifications, and that these specifications were in place prior to the convening of the second rating panel. The record does not show, however, that the second rating panel relied upon these specifications in making their classification decisions. In view of the fact that the rating panels did not rely on the relevant classification specifications as written and approved by respondent, the classification decisions reached by these panels have limited utility here as far as providing guidance on the proper interpretation of the specification language or the proper classification of appellants' positions. What is clear here and in all classification appeals is that the basic authority for classifying positions is the classification specifications as they are written and approved by respondent DER, and actions taken by DER which are inconsistent with the classification specification are not binding on the Commission.

The question presented to the Commission by these appeals is whether the appellants have met their burden of establishing they perform very complex landscape architect work as that term is described in the classification specifications for LA Advanced 1. Appellants have not met their burden.

Mr. Treichel offered the opinion that the appellants' planning work was "very complex." In addition, Mr. Aslakson testified that he did the most complex landscape architect work, public or private, in the state, or even regionally or nationally.¹² Rather than relying simply on these very general

¹¹ The "Analysis" portion of the proposed decision has been redesignated as the "Opinion" section and has been modified to reflect the Commission's analysis of this matter.

¹² In addition to these two references to testimony, the Commission supplements the proposed decision by noting other references in the record which relate to the same language. Mr. Treichel made several other comments regarding the complexity of the appellant's work. At one point he said that the appellants' work is "complex to very complex." Then he testified that the

statements, it is appropriate to consider the more specific language of the specifications as well as to consider how the available comparison positions fit into those specifications.

Judy Burke testified that the words "very complex" in the Advanced 1 specifications modify all of the activities found after it. For example, in order to be at the Advanced 1 level, a position must perform very complex specifications development work rather than just any type of specifications work. This reading of the specifications is consistent with the use of "and" in the definition: "... very complex design, project management, troubleshooting, specification development *and* consultation." Ms. Burke also testified that design, project management, troubleshooting, specification development and consultation can all be elements of working up a plan for a state park from start to finish.

The definitions of the individual factors should also be considered.

Judy Burke defined project management as being responsible for a project, where "project" may include developing rules or policy as well as developing physical facilities. Mr. Aslakson uses the term interchangeably with "project leader." Therefore, he considers himself to have been the project manager for the Lower Wisconsin Riverway as well as for any other project that is in the sequence of feasibility study, master plan and site plan. If "project management" is limited to a narrower understanding of the term, i.e. oversight of construction projects with final authority to tell contractors what must be done, then the appellants do not meet the "very complex" standard because of the role of DOA employees in the larger projects. However, given the broader definition proposed by both Burke and Aslakson, the appellants clearly perform some very complex project management because their planning work includes the full range of project planning, including the very complex projects. Ms. Burke also defined "troubleshooting" as dealing with

people who do the master plans and the ongoing work of developing the park system perform "very complex" landscape architect work. The record also includes testimony by appellant Ries that he performed "very complex" landscape architect work during 1988 through 1990 and that it was "as complex as any landscape architect work in the state by a state Landscape Architect in that period." Finally, James Huntoon and James March, District Director and Assistant Director of the Southern District, respectively, testified there were no state planning projects that were more complex than the landscape architect work done by the district landscape architects.

problems that come up in the performance of job duties. Based on this broad definition, there again can be no question that appellants perform troubleshooting and because some of the appellants' planning projects are very complex, they perform some very complex troubleshooting as that term is defined by Ms. Burke.

Ms. Burke defines "specification development" to mean developing criteria or parameters of a project the employe is assigned. Again, she defined "project" broadly to include both a physical construction project (where the specifications would indicate, for example, the specific type of window or strength of concrete used in a building) as well as something like the development of rules, policies or guidelines or a manual (presumably such as the design handbook) which specifies the minimum requirements in the district.

The appellants do not have the authority to "make decisions on allocating funds for projects." They make recommendations on which others must sign off. Although the appellants' role is significant, it is not final.

While, with respect to some of their projects, the appellants perform very complex troubleshooting, project management, specification development and consultation, the specifications must be interpreted as requiring the appellants to spend the majority of their time on the "very complex" duties, i.e. the very complex planning projects, rather than on the run-of-the-mill projects that arise within the district. The appellants have the burden of establishing that they spent the majority of their time¹³ on such projects during the period immediately preceding June of 1990. The appellants have not met this burden. There was relatively little evidence which directly related to the question of the percentage of time spent on "very complex" duties. However, Daniel Wagner testified that Mr. Rogers' duties fell within a wide range of complexity, from relatively simple issues to very complex issues. He stated that *some* of Mr. Rogers' duties were very complex but he could not break it down in terms of whether it was more than 50% of the time. The master planning work on the Lower Wisconsin Riverway, which was generally accepted as representing the top end of the planning work in terms of complexity, was com-

¹³ In deciding between one of two class levels for a position, the decision usually will turn on the level at which the majority of the duties and responsibilities of the position can be identified. Miller v. DHSS & DER, 92-0840-PC, 1/25/94.

pleted well before the date of the survey.¹⁴ There was relatively little master planning going on by the time the survey finally became effective in June of 1990.¹⁵ Because the appellants have failed to establish that they spent the majority of their time, during the relevant time period, on very complex landscape architect work, their positions do not meet the LA-Advanced 1 specification and the respondent's reallocation decisions must be affirmed.

Respondent's decisions to classify appellants' positions at the Senior level are also not inconsistent with the classification levels assigned to other positions. When making classification decisions, it is also appropriate to consider comparisons to other positions. A comparison to other positions also does not support the conclusion that the appellants' positions are best described at the LA-Advanced 1 level.

Susan Oshman is employed as DNR's Southeast district planner. Her position is a representative position¹⁶ identified at the Senior level in the LA class specifications. With the exception of serving as leadworker over "two Assistant District Park Planners and occasional LTE staff," Ms. Oshman performs work that is substantially identical to the appellants. In their post-hearing arguments, appellants contend that Ms. Oshman's position was initially classified one level above the appellants because because Ms. Oshman had leadworker responsibilities. This is consistent with the evidence which indicated the initial panel reviewed a composite for the appellants' positions and a separate composite for the Oshman position and placed the appellants at the Journey level and Ms. Oshman at the Senior level. Leadwork is specifically mentioned in the WQES factor of "Supervisory Responsibilities." However, respondent subsequently concluded that the mere addition of leadwork responsibilities did not justify a differentiation in class level and reallocated the appellants' positions to the same level (Senior) as Ms. Oshman.

It is noteworthy that Ms. Oshman's position description (Resp. Exh. 30) lists her as receiving "limited" rather than "general" supervision. In contrast,

¹⁴ The Environmental Impact Statement for this project is dated August of 1988. However, implementation planning for the Lower Wisconsin continued through the relevant time period.

¹⁵ Mr. Fendry testified there had been a freeze placed on master planning beginning in approximately 1987 and that master plans since that date were limited to a handful of ongoing plans and to new major plans such as the Lower Wisconsin Riverway.

¹⁶ See page 4 of this decision.

the position descriptions for all three appellants list "general" supervision. The definition statements in the LA specifications specify "limited to general supervision" for the *Journey* level, and "general supervision" for both the Senior and Advanced 1 levels. The distinction in the level of supervision between the Oshman position and the positions of the appellants should justify a one class level difference. Such an argument is consistent with Judy Burke's testimony that the mere listing of functions in the LA Advanced 1 definition is not all inclusive and that an Entry level position could perform the full range of those activities except they would be performed under close supervision. However, the fact that the Oshman position receives "limited" rather than "general" supervision suggests that the position is over-classified at the Senior level and belongs at the Journey level. It does not suggest that the appellants' positions are incorrectly classified at the Senior level.

The value of comparing the appellants' positions to the Oshman position is limited by the fact that the Oshman allocation decision was made by the the initial rating panel, the limitations of which have previously been noted. The value of a comparison to the Oshman position would also be limited by the rationale adopted by the Commission in Moran & Kaeske v. DER, 90-0372, 0382-PC, 1/11/94. In that case, arising from the initial decision to reallocate a group of positions to a particular class level and where the class specifications directed an analysis based upon the application of specified allocation factors which were to be applied to similar positions, the Commission concluded it was inappropriate to decide the proper classification of the appellants' positions solely by comparing them to the positions of their co-workers who chose not to appeal the reallocation decision.

A more telling comparison for the appellants' positions is to the Jody Les position.

The record contains at least five different position descriptions for this position. The first two (App. Exh. 101 and 102) were signed in 1978 and 1987 and reflect duties when Mr. Les was in a different position than the one covered by the classification survey. The third (App. Exh. 103) is dated April of 1990. This is the position description used by respondent when it made its initial reallocation decision.¹⁷ This 1990 position description lists appellants

¹⁷ Doug Fendry, Chief of the Land Management Section since December of 1989 and Mr. Les' supervisor, testified that App. Exh. 103 reflected duties performed

Rogers, Aslakson and Ries as employes all "performing similar duties" and it lists worker goals that are all consistent with the appellants' responsibilities: Preparing master plans (25%); preparing feasibility studies (20%); designing and drafting site plans (15%); coordinating construction (10%); preparing information to allow plans to serve as environmental impact statements (10%); coordinating plan-related budgeting, bidding and public contact (10%); and coordinating special studies and research needs (10%).

Les' fourth position description (part of Resp. Exh. 17) is dated January of 1991. It is attached to a job content questionnaire and it is this position description and questionnaire which were reviewed by the second rating panel and resulted in the decision by the panel to place the Les position at the Advanced 1 level. The 1991 position description includes the following summary:

This position directs land conservation/open-space planning for the Bureau of Property Management, which provides services to all programs in the DNR Division of Resource Management as well as several programs in other divisions. Primary responsibilities of the position are the direction of complex multi-disciplinary planning efforts that guide the acquisition, development, and management of public lands and natural resources, integration of DNR's land planning through coordination of district planners, consultation in the technical areas of land conservation and recreational development planning, design of specific large-scale recreational and environmental educational facilities, as well as implementation of projects through budgeting and work coordination. Work is performed statewide across the various program and district functions. (emphasis added)

Judy Burke notified Mr Les of the reallocation decision by letter dated July 18, 1991. (App. Exh. 319) The key distinction between the 1991 position description and the later (March of 1992) version relates to Goal C which is described in the 1991 position description as follows:

- 20% C. Coordination of DNR district planners statewide
 - C.1. Develop an integrated team approach and support network to expedite land and natural resource planning work within DNR.

by Mr. Les as of 1987 when Les was in his previous position in the Parks program, but this testimony is clearly mistaken.

C.2. Establish priority workload for district planners to accomplish agency objectives

C.3. Develop budget for district planners and planning projects.

C.4. Establish and maintain an information network with city, state, regional and federal planning units.

Mr. Aslakson testified that he disagreed with the accuracy of Activities C1, C2 and C3 of Resp. Exh. 17, and there is no evidence (other than general testimony that the position description was accurate) that Mr. Les actually performed these activities.

After Ms. Burke notified Les in July of 1991 that his position had been reallocated to the Advanced 1 level, there was a series of written communications regarding the duties performed by Mr. Les as reflected in his January 1991 PD. In a memo dated January of 1992, Mr. Fendry wrote Sue Steinmetz "to answer question you and Judy Burke... have raised regarding Jody Les' duties.... because of the concerns raised by some of the District Landscape Architects." (Resp. Exh. 27) Mr. Fendry states, in part:

When I started in the Property Management program in December, 1989, Jody was already working nearly full-time on the planning for the \$250 million Stewardship Program... [P]art of the intent of Jody's reallocation was for Jody to serve as the Central Office manager for a resource management planning program. This program, which we are calling the Land Resource Planning Program, is administered at the Central Office, and implemented in the Districts (by the District Landscape Architects).

Mr. Fendry also wrote a memo (App. Exh. 318) to Judy Burke dated August of 1992 in response to a request for "written information showing [Les'] responsibilities in the Land Management Section." Mr. Fendry acknowledged that he "did not find much information." He then referenced a November of 1988 memo from DNR Secretary Besadny to Department of Administration Secretary Klauser regarding the reorganization which created Property Management. He also made the following comments regarding Les' Stewardship responsibilities:

When I first started in December, 19[89], Jody worked almost exclusively on planning for the implementation of this \$250 million program.

The excerpted comments by Mr. Fendry in both of these memos indicate that the January 1991 position description was inaccurate, at least to the extent that it failed to reflect that the vast majority of Mr. Les' time was being spent on Stewardship responsibilities. The 1991 position description merely referenced this work as one activity (B.3.) among five activities comprising a goal which was only supposed to constitute 20% of his time.

As noted above, the district planners objected to the language found in Goal C of the Les 1991 position description. As a consequence of these concerns, another position description, dated March of 1992 (Resp. Exh. 16) was prepared. According to Mr. Fendry, the 1992 position description does not reflect a change of duties, but was merely a rewording of existing responsibilities. It is this last position description that respondent now contends most accurately described Les' duties as of June of 1990. Goal C of the 1992 position description was reworded to read:

- 20% C Coordination of The Land Resource Planning Program
- C.1. Development of an integrated team approach and support network to expedite land and natural resource planning work within the Department.
 - C.2. Coordinate the development of workload analysis, workload priorities, planning support needs and other documents necessary for work planning and budget preparation for the implementing the Department's land resource planning program.
 - C.3. Provide technical guidance to the districts on Department planning policies.
 - C.4. Establish and maintain an information network with city, state, regional and federal planning units.
 - C.5. Participate in District program audits for land resource planning programs.

This change in wording to Goal C does nothing to bring the document in line with writings by Mr. Fendry which describe Mr. Les' actual time allocation as of December of 1989, shortly before the effective date of the survey. As discussed below, it appears that Mr. Les continued to spend substantial portions of his time on the Stewardship project through the June 1990 survey date.

There is other evidence which indicates that Mr. Fendry's duties were other than as reflected on his 1992 position description.

The key time period is the 11 months from when Mr. Les started in the position in July of 1989 until the June 1990 effective date of the survey. Stan Druckenmiller, the Director of the Bureau of Property Management, served as Les' direct supervisor for the first 7 months or so until Mr. Fendry came on board in December of 1989. Evidence at hearing indicated that Mr. Les spent his time in three areas identified below:

1. Planning

Mr. Les was assigned the planning for the Chippewa Flowage, located in the Northwest District. There was no landscape architect assigned to the Northwest District. This project was sizable in terms of both acreage and dollar amount but was not particularly complex because there was no change in the use of the property from its prior status.

Mr. Les carried out the feasibility study for the Turtle-Flambeau Flowage (Resp. Exh. 22) which was also located in the Northwest District. The study was requested by the Office of the Governor and called for the purchase of approximately 14,000 acres of land and water owned by the Chippewa-Flambeau Improvement Company, an entity associated with Northern States Power. The estimated acquisition price was \$9.1 million and the initial capital investment for managing and upgrading the property was \$173,000 (for adding wells, toilet facilities, boat docks and fire rings). The cost of annual operations was estimated at \$37,000 per year for personnel costs and the budget also reflected an initial \$35,000 for supplies.

Mr. Les also assisted and advised the Southeast District on preparation of the master plan for both the Northern and Southern Units of the Kettle Moraine State Forest.

2. Stewardship

Stewardship was a program adopted in 1989 (as part of the budget bill) for the acquisition of additional properties as well as property development. The total dollar amount of the program was \$250 million spread over 10 years and it combined monies from certain existing programs, added new funding and expanded the types of acquisitions that were possible. Mr. Les "coordinated the development" of administrative rules

for implementing the program. Other employees actually wrote the rules. Mr. Les kept the rulemaking process on track, identified problem areas regarding the rules, recommended resolutions, organized the public hearing, and assembled the requisite notices and reports associated with the rulemaking process. This effort was ongoing through the date of the survey. The draft rules were submitted to the NR Board at its June 1990 meeting for approval. (App. Exh. 130B) Mr. Les prepared the June 4, 1990, "Background Memo" and the March 28, 1990, "Environmental Assessment" memo that accompanied the draft rules. These documents also show that public hearings were held on April 24, 26, and 27, 1990. After the NR Board approved the rules, they were submitted to the legislature by document dated July 16, 1990. That document, also prepared by Mr. Les, included 3 pages of analysis along with the approximately 50 pages of rules. Mr. Les also had a role in informing DNR staff about the Stewardship program. In the latter capacity and with input from others, Mr. Les developed an attendee list for a 2 day briefing in October of 1990 regarding Stewardship and developed an agenda. He introduced the speakers at the conference and served on one of the panels. Les' actual duties on the Stewardship program were narrower than was suggested by activity B3 in the 1991 and 1992 position descriptions which indicated his role was to "investigate and prepare policy recommendations" and to "draft administrative rules and program guidance." The record fairly clearly indicates that Mr. Les' work during the relevant time period did not require a background as a LA, nor was it truly landscape architect work although it also was not an illogical extension for someone who had landscape experience.

3. Other work

The only other work example of note for Mr. Les during this period is a 4 page memo entitled "Land Classification and Mining Issues," dated September of 1989. The memo has several pages of background information, including a lengthy list of DNR-owned properties. The memo does refer to the master planning classification system but it does not appear to be an extensive analysis relating to landscape architecture.

Sue Steinmetz testified that she relied upon the accuracy of the 1991 Les position description when she compared the Les position to the positions occupied by the appellants. Judy Burke appeared to be under a misapprehension of Les' actual duties. For example, in the turn down letter for the appellants' reallocation requests, she concluded that Les "is project manager over landscape architect planning for the state." She also testified that Les was responsible for presenting (all) master planning projects to the NR board, an activity which required him to scrutinize each project and make sure it was technically correct. She testified that if Les was found *not* to be doing the duties identified in the position description which served as the basis for his Advanced 1 classification, then the fact that the appellants were later found to be performing

similar work as Mr. Les would not move them up in classification, it would move Mr. Les down.

In its post-hearing brief, respondent contends that Les' duties were as described in the 1992 PD (Resp. Exh. 16) and that it had to be accepted as a given that Les (along with Mr. Treichel) was properly classified at the Advanced 1 level.

The record supports the conclusion that as of the effective date of the survey, Les' duties were other than as represented in the 1991 and 1992 position descriptions and that his actual duties, which were predominantly related to the Stewardship program, did not justify classification at the LA-Advanced 1 level. However, nothing in the record suggests that respondent should be viewed as having effectively stipulated that if Les' duties were other than as reflected on his position description, his position should still be classified at the Advanced 1 level. No one contended that the Les position description justified classification at a level above that of Advanced 1. He did not meet the Advanced 2 level requirement that his position have "authority to make *final* statewide decisions on... allocating resources for major projects." (emphasis added) If Mr. Les' position does not meet the Advanced 2 specification language, his position can properly be classified no higher than the Advanced 1 level. When a comparison is made between the duties performed by the appellants and the assignments reflected in the relevant position descriptions for Mr. Les, a one class level distinction is apparent.

The 1992 Les position description (Resp. Exh. 16) indicates several key distinctions with the three appellants. The first is that Mr. Les was to work on projects which were other than run-of-the-mill. The position summary says Mr. Les' projects

"are typically large (e.g. hundreds of miles of river, 100,000's acres of land and water), of regional importance... involve millions of dollars in state land acquisition, development, and long-term operational costs [and] are often highly visible and usually involve controversial policy and political issues.... Because of the complexity and advanced nature of this work, the incumbent focuses on the agency's *major policy issues and projects* related to land conservation and recreational development." [emphasis added]

In contrast, the appellants are assigned to any project arising from their district, regardless of size or complexity.

Mr. Les' projects are located throughout the state, rather than being limited to a certain district.

Mr. Les also is listed as being responsible for drafting administrative rules and program guidance as well as developing policy, and preparing documents for presentation to the NR Board. These responsibilities all extend beyond those assigned to the appellants.

Finally, Mr. Les coordinates the "Land Resource Planning Program" which appears to include the planning carried out by the appellants. In his coordinative capacity, Mr. Les develops "an integrated team approach" to expedite DNR planning and he provides "technical guidance to the districts" regarding planning policies. These activities reflect a higher level of authority than is given to the appellants in their roles which are focused on carrying out the planning.

These distinctions are tied to the relative complexity of the work being performed by the appellants versus the work described in the Les position description. Given that Judy Burke uses expansive definitions of specification development, project management and troubleshooting, it is easy to distinguish the positions in terms of those factors as well as consultation.

All of the above distinctions support classification of those duties described in the Les position description to a level higher than the duties performed by the appellants.

The Les position description was written with the new LA specifications in mind. The position description specifically references troubleshooting and consultation. The references to preparation of bid specifications and overseeing completion of work to design standards also tie in to "specification development" and "project management."

Other comparisons

A. Dennis Kulhanek (DNR) LA-Senior

Another position which was discussed to a limited extent was the position filled by Dennis Kulhanek, with the working title of Trail Landscape Planner. This position also was not initially covered by the classification survey, but was reallocated to the Senior level as a consequence of an informal appeal. This decision was premised upon a position description (Resp. Exh. 28) containing a position summary with the following language:

This position under general supervision provides *program responsibility for the coordination, monitoring and completion of all trail and other parks/recreation planning actions* for the Bureau of Parks and Recreation and the State Park and Recreation program. It includes coordinating the preparation of trail master plans, site plans, feasibility studies, and environmental reports with the Districts and Bureau, and other bureaus such as Real Estate, Environmental Analysis and Review, Wildlife Management, Fish Management, and Endangered Resources. (emphasis added)

Individual worker activities reflect responsibilities for both the coordination of the planning effort as well as conducting the planning for specifically assigned trail properties. The activities also make it clear that responsibilities relate solely to trails rather than other properties. The position description indicates Mr. Kulhanek had performed "most work" since 1979. Other than this position description, the record contains very little information regarding the duties performed by Mr. Kulhanek. Appellant Aslakson testified his contact with Mr. Kulhanek was very limited but that Mr. Kulhanek was asked to develop the master plan for the Glacial Drumlin Trail project, which he did, subject to Mr. Aslakson's oversight. Mr. Kulhanek does not hold a degree in landscape architecture.

Mr. Kulhanek's role has certain similarities to Mr. Treichel's duties. In fact, it is difficult to square Mr. Kulhanek's position description with the duties and activities reflected in the Les and Treichel position descriptions which do not appear to segregate state trails from other state properties. It is clear that Mr. Kulhanek also does not have the same percentage of hands-on planning responsibilities as are carried out by the appellants.

Unless you can say that, as a group, trails are less complex than other types of projects, (and there is no testimony to that effect) you have to say that Kulhanek is at a higher level, in terms of review, than appellants.

B. Michael Stark (DOA, Division of Buildings & Grounds) LA-Senior

The Stark position is listed as the first of the two representative positions at the Journey level. As a consequence of an informal appeal lodged by Mr. Stark, it was moved to the Senior level.

The description of this position set forth in the class specifications is taken directly from the position description (Resp. Exh. 32). In addition to

servicing as the landscape architect for the State Capitol, Executive Residence and 23 buildings owned by DOA statewide, this position spent 25% of the time on space management responsibilities for the DOA-owned buildings. The latter responsibility included developing standards, directing floor plan design, analyzing plans in terms of code requirements and preparing drawings and bid specifications for space remodeling projects.

Because Mr. Stark does not share responsibility for policy development as to his program area, a somewhat higher class level is supported than otherwise might be indicated given the relatively narrow program areas that are involved. The appellants do not have a comparable policy making responsibility although their program area is broader. Classification of Mr. Stark and the appellants at the same class level is justifiable under these circumstances.

C. *James Ritzer (DOT, Division of Highways) LA-Advanced 1*

This position is responsible for managing and reviewing all of DOT's landscape development programs statewide. The position summary in the applicable position description (Resp. Exh. 31) reads as follows:

Under direction of Chief Utilities and Roadsides Engineer manage and supervise all Department of Transportation landscape development programs statewide, which include landscape aesthetic assessments for project development; integration of landscape architectural principles into highway design; guidance of the planning, programming, design and implementation of projects for landscaping, roadside improvement and roadside facility site development; develop programs, policies, manual entries, specifications, guidelines and articles for or pertaining to landscaping and roadside development; develop, manage and supervise landscape architects; assist districts and other agencies in landscaping and roadside-related matters and coordinate contacts with the general public, other government agencies and private industry.

Despite the reference to supervising other landscape architects, there is express language elsewhere in the position description indicating Mr. Ritzer is not a supervisor. Mr. Ritzer is responsible for conducting aesthetic assessments of projects for highway and roadside facility development and improvement, reviewing design proposals and plans and formulating policies for the statewide roadside vegetation development program.

DOT employs two other landscape architects who split the state between them and have responsibility for managing roadside vegetation, as well as

overseeing the planning, design, construction, maintenance and enhancement of roadside improvements. These are the positions which are identified as representative positions at the Journey level.

Mr. Ritzer has more policy making responsibilities than the appellants. The appellants are also at a lower level organizationally than Mr. Ritzer, although the appellants' projects would have a significantly higher level of complexity than the responsibilities of the two DOT positions described as LA-Journey representative positions. Mr. Ritzer establishes the policy in the roadside vegetation program and the two LA-Journey positions implement that policy. However, the roadside vegetation program would seem to be a much less complex program than park planning.

D. James Treichel position (DNR, Bureau of Parks and Recreation)

This position also was not initially covered by the classification survey, but was subsequently reallocated to the Advanced 1-Management level as a consequence of an informal appeal. Prior to the reallocation, Mr. Treichel's position had been classified in the Natural Resources Administrator series.

Mr. Treichel's role in the master planning process has already been described. The position summary for his position description (Resp. Exh. 14) reads as follows:

Direct the Planning Function for the Park and Recreation Program (Bureau of Parks and Recreation) statewide. Responsible for the development, coordination and supervision of the Planning program and successful achievements of the program objectives. Organize and administer a comprehensive program for all planning including Long Range; Strategic; Master Planning for properties; Site Planning for Development; Land acquisition Plan and new property reviews, studies and establishment. Represent the Department in these matters with the Natural Resources Board, Legislative Councils, official state councils and with private groups, legislators, at public meetings and other agency meetings. Direct preparation of Policies and Procedures' designs and standards related to the planning functions of the Park and Recreation Program. The public, other government entities and the Parks program natural resources are impacted by the policies, program decisions and actions. Direct the work of other Department programs and functions and other agencies that perform work for the Parks program planning function. Offer and implement recreational planning in other DNR Bureaus under department integration directives.

Planning includes the Bureau of Forestry in all site planning, standards, planning needs and program reviews associated with the planning function.

Mr. Treichel has served as the chief of planning for the Bureau of Parks and Recreation since 1970 when planning was a central office responsibility. Landscape architecture planning was decentralized in stages between 1976 and 1982 and the appellants were assigned to individual districts. In contrast to the appellants, Mr. Treichel's position is serving in the capacity of a manager, and is not primarily responsible for performing hands on planning.¹⁸ Therefore, there is no basis on which to compare this position to the appellants'.

The appellants were unable to identify positions classified at the Advanced 1 level that performed substantially similar work to their own.


Because the appellants did not sustain their burden of showing they spend the majority of their time performing Advanced 1 level responsibilities, they were unable to establish that respondent's decisions classifying their positions at the LA-Senior level were incorrect.

¹⁸ Judy Burke testified she did not know whether Mr. Treichel's position would still be classified at the Advanced 1 level if his management responsibilities were removed.


ORDER¹⁹

Respondent's decisions reallocating the appellants' positions to the Landscape Architect-Senior classification are affirmed and these matters are dismissed.

Dated: October 22, 1996 STATE PERSONNEL COMMISSION


LAURIE R. MCCALLUM, Chairperson

KMS:kms
K:D:Merits-reall (Aslakson Final)


JUDY M. ROGERS, Commissioner

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NOTICE
OF RIGHT OF PARTIES TO PETITION FOR REHEARING AND JUDICIAL REVIEW
OF AN ADVERSE DECISION BY THE PERSONNEL COMMISSION

Petition for Rehearing. Any person aggrieved by a final order (except an order arising from an arbitration conducted pursuant to §230.44(4)(bm), Wis. Stats.) may, within 20 days after service of the order, file a written petition with the Commission for rehearing. Unless the Commission's order was served personally, service occurred on the date of mailing as set forth in the attached affidavit of mailing. The petition for rehearing must specify the grounds for the relief sought and supporting authorities. Copies shall be served on all parties of record. See §227.49, Wis. Stats., for procedural details regarding petitions for rehearing.

¹⁹ The Order is modified from the language of the proposed decision as a consequence of the foregoing analysis.

Petition for Judicial Review. Any person aggrieved by a decision is entitled to judicial review thereof. The petition for judicial review must be filed in the appropriate circuit court as provided in §227.53(1)(a)3, Wis. Stats., and a copy of the petition must be served on the Commission pursuant to §227.53(1)(a)1, Wis. Stats. The petition must identify the Wisconsin Personnel Commission as respondent. The petition for judicial review must be served and filed within 30 days after the service of the commission's decision except that if a rehearing is requested, any party desiring judicial review must serve and file a petition for review within 30 days after the service of the Commission's order finally disposing of the application for rehearing, or within 30 days after the final disposition by operation of law of any such application for rehearing. Unless the Commission's decision was served personally, service of the decision occurred on the date of mailing as set forth in the attached affidavit of mailing. Not later than 30 days after the petition has been filed in circuit court, the petitioner must also serve a copy of the petition on all parties who appeared in the proceeding before the Commission (who are identified immediately above as "parties") or upon the party's attorney of record. See §227.53, Wis. Stats., for procedural details regarding petitions for judicial review.

It is the responsibility of the petitioning party to arrange for the preparation of the necessary legal documents because neither the commission nor its staff may assist in such preparation.

Pursuant to 1993 Wis. Act 16, effective August 12, 1993, there are certain additional procedures which apply if the Commission's decision is rendered in an appeal of a classification-related decision made by the Secretary of the Department of Employment Relations (DER) or delegated by DER to another agency. The additional procedures for such decisions are as follows:

1. If the Commission's decision was issued after a contested case hearing, the Commission has 90 days after receipt of notice that a petition for judicial review has been filed in which to issue written findings of fact and conclusions of law. (§3020, 1993 Wis. Act 16, creating §227.47(2), Wis. Stats.)

2. The record of the hearing or arbitration before the Commission is transcribed at the expense of the party petitioning for judicial review. (§3012, 1993 Wis. Act 16, amending §227.44(8), Wis. Stats.)

2/3/95