

The appellant's duties are substantially identical to those of David Brum, whose position was also reallocated to the FMT 4 level. Mr. Brum is the assistant to the fisheries biologist in Forest County, which is also part of the Woodruff Area.

The class specifications include the following language:

FISHERIES MANAGEMENT TECHNICIAN 4 - Positions at this level perform the full range of fisheries management technician duties to include both the development and implementation of a wide variety of fisheries management functions under the general supervision of the Fisheries Biologist.

Representative Positions

Fisheries Management Technician - Under the direction of the Fisheries Biologist, performs a wide variety of fisheries management activities including conducting lake and stream surveys, aging fish, tabulating data and writing up fishery survey reports. Perform or assist in the design and planning of stream and lake habitat development projects and implement or oversee their implementation by guiding assigned staff. Conduct property development and maintenance activities; construct, operate and maintain fisheries equipment; provide information and education to the public; and assist supervisor in developing project proposals, project budgets and work plans.

Fisheries Management Investigation Technician - Under the direction of a Fisheries Biologist, conducts fish management investigations on Lake Michigan and related inland waters. Monitors and assess the Lake Michigan commercial fishery....

FISHERIES MANAGEMENT TECHNICIAN 5 - This is advanced level fish management technician work. Positions at this level perform the most complex and broad scope fish management activities with significant delegation from professional or supervisory level positions. Work is distinguished from lower level fisheries management work by the amount of complex fisheries management work assigned; the assigned responsibility for the design, development and implementation of fisheries management projects; and the high degree of autonomy delegated the position due to the individual's recognized experience and expertise.

Representative Positions

Boundary Waters Technician - Under the direction of the LaCross[e] Fisheries Biologist, collects information on fish populations, species composition, stocking success, movement patterns, harvest levels, exploitation and mortality rates and fish-

eries habitat; tabulates and analyses fisheries and limnological data including creel surveys; prepares information for and assists in writing technical and scientific management reports; and performs public relations and education activities. As required direct other staff in completion of projects.

Dodgeville Area Fisheries Technician - Plans, designs, directs and implements annual or ongoing fish management activities carried out in the Dodgeville area. Projects encompass waters and properties throughout the entire five county area. Work activities include: development and maintenance of fisheries enhancement projects; development and maintenance of biennial workplans and budgets; direction of lake and stream surveys; development and implementation of warm and cold water fish stocking program; development and maintenance of Dodgeville Area Fishery Properties; and provide information to the public and other interested parties.

Lake Michigan Fisheries Technician - Develops and conducts surveys to assess and summarize information on the sport and commercial fisheries and the surface water resources off Lake Michigan and Door and Kewaunee counties. Assists project leader writing progress reports and assessment plans. Assist with or independently collects and analyzes data and prepares graphs, tables and reports. Develops techniques and equipment for research investigations. Operates specialized navigation equipment such as Loran C, depth sounders and marine radio.

The appellant acknowledged that he performed all of the duties and responsibilities described in the Fisheries Management Technician representative position at the 4 level. In the evidence presented at hearing, the appellant identified only one project since 1988 (the small mouth bass project conducted over the period of approximately one year in 1990-91) for which he had the responsibility for design, development and implementation, from start to finish. That project was completed in less than 100 hours. Appellant admitted that he was somewhat unclear if he had been permanently assigned responsibility for design, development and implementation of projects. Lloyd Andrews, who had served as the Fisheries Supervisor for the Woodruff Area, testified that it was *possible* that appellant *might* be required to perform additional independent work in the future. However, such work is not identified in the revised position description which appellant presented as being accurate at hearing. The appellant's position description only references a responsibility to *assist* in the design, development and implementation of projects. The Commission concludes that the appellant's permanently assigned re-

sponsibility is to assist the biologist to develop and implement the project, rather than to have that responsibility himself.

The FMT 5 level is differentiated from the 4 level on three bases: the amount of complex work that is assigned, the assigned responsibility for the "design, development and implementation" of projects, and the degree of autonomy granted.

In terms of the identified comparables at the FMT 5 level, the appellant's position can be distinguished on one or more of these bases. For example, there are two 5 level positions (filled by Timothy Kroeff and Kenneth Royseck) in the Lake Michigan District which correspond to the representative position in the specifications. Respondent's personnel specialist testified that in that district, there are five FMTs reporting to a professional staff which is limited to one Fisheries Biologist and one other professional level position. In contrast, the appellant is the sole technician under the Fisheries Biologist for Vilas County. Because the appellant is the only technician for his geographic region, it is not reasonable to conclude that his position is performing predominantly the "most complex" fish management duties. As a general matter, he works on *all* of the fish management responsibilities in his assigned region. Even though the appellant has LTE and YCC work crews to supervise, this is not any different than other comparison FMT 4 level positions.¹ Also, the respondent's personnel specialist testified that the Royseck position has responsibility for all activities regarding the Lake Whitefish and Yellow Perch species in Lake Michigan, and has responsibility for designing the projects and for writing the reports. In contrast, the appellant's permanently assigned duties only include assisting in project design and report writing.

The second representative position identified at the 5 level, that of the Dodgeville Area Fisheries Technician, filled by Michael Duerst. This position appears to be the strongest position classified at the 5 level, and appellant's own witness, Mr. Andrews, testified that Mr. Duerst has greater responsibilities and that his duties are dissimilar to appellant's in terms of how the job is carried out. There is a separate operations crew which operates out of the district doing the hands-on work which means that Mr. Duerst does much more of the

¹ The language of the proposed decision and order has been modified to better reflect the record.

design development and budget work than would normally be expected for a Technician.

Clearly the best comparable to the appellant's position for classification purposes is the Brum position, which is indistinguishable from appellant's according to Mr. Andrews. The Brum position is classified at the FMT 4 level.

At the same time, there is another FMT 4 position which is not as strong, from a classification standpoint, as the appellant. The Lund position does not appear to get beyond data compilation, into analysis and report writing. Also, the Lund position's responsibilities for assisting in the design and planning of projects is limited to stream and lake habitat projects, and not data collection projects, while the appellant has responsibilities for assisting with design and planning in both areas.

Another FMT 4 position does not support classifying appellant's position at the 5 level. The Marron position's Goal A (40%) is to "Monitor the commercial fishery of the Upper Mississippi River." The reference to "*plan* and conduct the monitoring" is the aspect of the position that respondent's personnel specialist said would justify the 5 level if done independently and with a full range of work. However, the work is not performed independently, because the PD lists "*limited*" (instead of "*general*") supervision. This clearly does not meet the autonomous element necessary to be at the FMT 5 level. Even so, in contrast to the Marron position, the appellant merely assists in the development, planning and implementation of projects. This distinction does not support classification of appellant's position at the higher level.

While this is a relatively close case, the appellant has not sustained his burden of showing that the decision not to classify his position at the FMT 5 level was incorrect. There are distinctions with the higher level comparison positions which do not justify classification of appellant's position at the FMT 5 level.

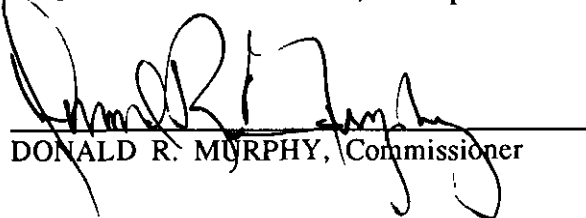
ORDER

Respondent's reallocation decision is affirmed and this appeal is dismissed.

Dated: March 9, 1994 STATE PERSONNEL COMMISSION


LAURIE R. MCCALLUM, Chairperson

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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 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.

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.)