



STATE OF WISCONSIN

PERSONNEL COMMISSION

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ALLEN E. BLUHM,

Appellant,

v.

Secretary, DEPARTMENT OF
EMPLOYMENT RELATIONS,

Respondent.

Case No. 92-0303-PC

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DECISION
AND
ORDER

This case involves an appeal pursuant to §230.44(1)(b), Stats., of the reallocation of appellant's position from Natural Resource Technician 1 to Fisheries Management Technician 3 (FMT 3) rather than the FMT 4 level which appellant seeks.

The duties and responsibilities of appellant's position are generally accurately described in his 1991 position description¹ (PD) (Respondent's Exhibit 2) which includes the following position summary:

The focus of this position is the technician who, working for an area fisheries biologist, on a very wide and diverse range of activities. The duties of this position support the broad scope of duties of a biologist and/or activities that support district operations. Assist with lake and stream surveys to gather data on cold and warm water fishery populations. Tabulate fish data. Assist supervisors in the design and planning of stream and lake habitat development projects and implement them. Conduct property development and maintenance activities. Construct, operate and maintain fisheries equipment. Direct permanent, seasonal, and LTE employees, and coordinate cooperative fishery projects with volunteers. Provide information and education to the public. Participate in beaver control activities. Assist with the district's propagation program. Antigo area has more fisheries

¹ Appellant contends that his PD is constrained by arbitrary length restrictions imposed by area management. This kind of hearing is considered de novo in nature -- i.e., the Commission is not limited to review of the information that was before respondent when the reallocation decision was made or re-evaluated, but considers all admissible relevant evidence at the hearing regardless of whether it had been available to respondent at the time of the initial decisional process. See e.g., Ratchman v. UW-Oshkosh & DER, 86-0219-PC (11/18/87). Therefore, the 1991 PD, while entitled to some weight, is not conclusive, and the Commission has considered appellant's additional evidence concerning his position.

management lands than any other in the state; 20% of state and 70% of NCD lands.

Appellant is supervised by the area Fisheries Biologist, Max Johnson, and works under the direction of a lead worker, Pete Segerson, an FMT 5. The general worker activities of appellant's position are broken down as follows: 35%, facility and property acquisition, development and maintenance; 30%, implementation and field direction of stream and lake habitat development projects; 15%, assist in and collect information on fish populations, species composition, stocking success, movement patterns, harvest levels, exploitation and mortality rates, and habitat utilization; 15%, administrative duties; and 5%, maintenance of area fishery equipment. (Additional aspects of appellant's duties and responsibilities will be discussed below in the context of the FMT 4 criteria.)

The FMT class specification contains the following definitions and representative positions for FMT 3 and FMT 4:

FISHERIES MANAGEMENT TECHNICIAN 3 - Positions at this level 1) perform fisheries management functions which are broad in scope and where the emphasis is more on implementation rather than the planning and development of such functions, 2) perform fisheries management functions which are narrow in scope and include both the development and implementation, 3) perform a broad variety of development and implementation tasks as an assistant to a Fisheries Management Technician 4 or 4) perform work in a developmental capacity where the objective level is identified at the Fisheries Management Technician 4 level.

Representative Positions

Fisheries Management Technician - Implements stream and lake habitat development projects by collecting and tabulating data, conducting fish habitat improvement techniques (chemical eradication, mechanical or electrical fish barriers, etc.), operating tractors, boats and hand held tools; collecting information on fish populations, species composition, stocking success, movement patterns, harvest levels, exploitation and mortality rates, and habitat utilization; assist in facility and property acquisition, development and maintenance; as requested may assist higher level technical and professional staff in the planning and development of projects; and maintenance of equipment.

Treaty Technician - Under the guidance of the Treaty Assessment Biologist/Supervisor assist in planning, conducting and coordinating fishery surveys, including creel surveys. Operates, maintains and repairs fish sampling equipment; oversees creel survey clerks; and summarizes treaty assessment fishery aging data.

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 [sic] the Lake Michigan commercial fishery to aid in management of the fishery including collection of data and establishment and tracking of commercial fishery quotas. Develops and conducts fisheries management surveys, research studies and surveillance. Maintains equipment, facilities and properties and provides information and education to the public.

After this appeal was filed, Sue Steinmetz of the DNR Bureau of Personnel and Human Resources conducted a re-evaluation of the class level of appellant's position, and reached the conclusion that it was correctly classified at the FMT 3 level. This re-evaluation was set forth in an April 30, 1993, memo (Respondent's Exhibit 3) to Mr. Bluhm. DNR's conclusion that FMT 3 is the correct class level can be summarized as follows:

1) While appellant's job is involved in a "wide and diverse range of activities the vast majority of [your] work activities involve the implementation of fisheries projects; rather than involvement in the planning and development of these projects."

2) "[W]hile you perform your work independently, you do receive guidance and direction from the Antigo Fisheries Technician Lead Worker."

3) "[P]ositions classified at the Fisheries Management Technician 4 level have responsibility for a wider variety of functions

than assigned to your position. While your position does perform some activities which can be designated at the Fisheries Management 4 level (i.e., survey boundary), it does not perform duties at this level for the majority of the time. The majority of activities assigned to your position are in implementing the fisheries management program under the direction of a Fisheries Management Technician."

With respect to the issue of whether appellant's position "perform[s] the full range of fisheries management technician duties" required by the FMT 4 definition, a term not defined in the FMT class specification, Ms. Steinmetz testified at the hearing that this referred to the full range of activities that a biologist would want done, and involvement in all aspects of the fisheries program, including involvement in conducting surveys, analyzing data, drafting reports, fisheries data collection, obtaining permits, planning projects, scheduling, property maintenance, and equipment responsibility. She further testified that while appellant was involved in some of these activities, it fell short of the "full range" required at the FMT 4 level. On the other hand, Mr. Segerson testified that appellant did perform the full range of duties required at the FMT 4 level. Mr. Johnson testified that in comparison to the other FMT 3 PD's in the record, appellant's position was broader in scope (as well as having more involvement in planning and development). Other evidence in the record relevant to this issue includes the PD for an FMT 4 position at Spooner occupied by Gary Lund (Respondent's Exhibit 2). Compared to the duties and responsibilities of appellant's position, the Lund PD reflects about the same range. While Mr. Lund's PD reflects a 5% activity primarily involving eradication of undesirable fish species, his property responsibilities do not reflect appellant's extensive involvement in the land surveying program. Based on this record, appellant has satisfied his burden of proof on this issue.

With respect to the FMT 4 definition's criterion of having responsibility for "both the development and implementation of a wide variety of fisheries management functions" (emphasis added), the record establishes that appellant does have some responsibilities that fit within this category² -- the question is whether these constitute a majority. On the basis of the testimony

² Some of his work is also at the FMT 5 level.

and documentary evidence in this record, it must be concluded that appellant has not satisfied his burden of proof³ on this issue.

Appellant asked Mr. Segerson whether he agreed with Ms. Steinmetz's statement in her memo containing her re-evaluation (Respondent's Exhibit 3) that "[t]his position description reflects that the vast majority of work activities involve the implementation of fisheries projects; rather than involvement in the planning and development of these projects." Mr. Segerson then asked, "does it say vast majority?" After appellant confirmed that it did, Mr. Segerson said, "No, I don't agree with that -- the statement 'vast majority.'" It is reasonable to infer from this testimony that Mr. Segerson disagreed with the use of the word "vast," and did not disagree that the majority of appellant's duties and responsibilities involve the implementation of projects.

Appellant contends in his posthearing brief that nowhere in his PD (Respondent's Exhibit 2) "does it state or show that my position has more emphasis on implementation rather than the planning and development of fisheries management functions." The PD has very little on it that directly addresses this point one way or the other. Most of the descriptions of activities are on their face more consistent with the concept of implementation rather than development. For example, there was a good deal of testimony at the hearing concerning appellant's activities involving survey projects.⁴ Mr. Johnson testified that this activity was primarily reflected in activity A4, which on its face⁵ does not indicate the kind of planning and development to which the witnesses testified. As noted above, appellant has the burden of proof. While his PD may not establish that his job primarily involves implementation, it adds little, if anything, to help establish that the majority of his job involves development (as opposed to implementation) activities. When the PD and the testimony concerning appellant's development activities are

³ Appellant has the burden of proof and must establish the necessary facts by a preponderance of the evidence, see, e.g., Tiser v. DNR & DER, 83-0217-PC (10/10/84).

⁴ Ms. Steinmetz had agreed in her written re-evaluation that this work was at the FMT 4 level.

⁵ "Support land acquisition activities in the area such as maintaining ownership maps, compile landowner lists from courthouse records. Arrange and assist in boundary surveys including presurvey searches of deeds and corner records. Write and set-up computer programs for producing files, reports, and forms."

put together, there is not enough information to come up with a majority of development activities. For example, testimony supports a conclusion that a significant part of Goal A would be considered project development work, but it cannot be concluded from this record what percentage of the 35% allotted to Goal A that this would constitute. There also was testimony about various projects that fall under other goals delegated to appellant, but there is no way to reach any conclusions about the total percentages involved.


With respect to the fact that he has a leadworker, appellant correctly points out that this is not a disqualifying factor in the FMT 4 class specification. However, while it is not a classification criterion per se, this relationship does detract from appellant's case. The classification of Mr. Segerson's position was changed to FMT 5 based in part on his leadwork role and the related activities of planning and developing projects. Since he and appellant to a large degree are working on the same body of projects, this lessens the likelihood that they both are primarily engaged in development activities, as opposed to implementation.

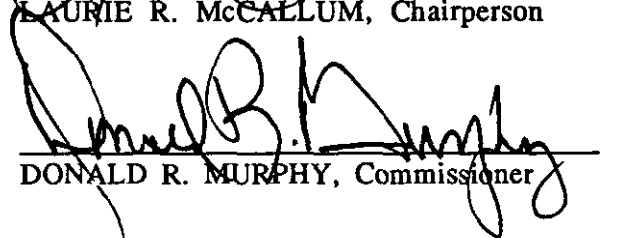
In conclusion, appellant has established that some of his work is at the FMT 4 level or higher, but he has not satisfied his burden of proof of establishing that he is involved in development a majority of the time.

ORDER

Respondent's action reallocating appellant's position to FMT 3 rather than FMT 4 is affirmed and this appeal is dismissed.

Dated: June 21, 1994 STATE PERSONNEL COMMISSION


LAURIE R. McCALLUM, Chairperson


DONALD R. MURPHY, Commissioner

AJT:rcr

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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 per-

sonally, 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.)