

STATE OF WISCONSIN

PERSONNEL COMMISSION

* * * * *

CHARLES J. FITZGERALD,

Appellant,

v.

Secretary, DEPARTMENT OF
EMPLOYMENT RELATIONS,

Respondent.

Case No. 92-0308-PC

* * * * *

DECISION
AND
ORDER

These matters are before the Commission for review of respondent's decisions to reallocate the appellant's position to the Water Supply Specialist - Senior level rather than to the Water Supply Specialist - Advanced level.

Appellant is employed in the Department of Natural Resources North Central District. His position description includes the following summary:

Coordinate the District's private water program, including evaluations of water supplies, along with surveillance of well drillers and pumper installers to determine compliance with Chapter 162, 144, Wis. Stats., and NR 112 and NR 146. Evaluate variance requests and issue variances under the provisions of NR 112.04. Provide assistance to the public on water quality issues. Coordinate District program for issuance of health advisories as specified by Chapter 160, Wis. Stats., NR 140, U.S. EPA, SDWA, and Wisconsin Division of Health recommendations. Provide assistance to the public and other state agencies on water chemistry, toxicology and significance of water supply contamination. Coordinate the District's OTM [Other Than Municipal] Program to determine compliance with NR 108, NR 109, and NR 111. Participate in the Woodruff Area's non-community water supply program. Coordinate the District's county delegation program, NR 145, and the District's Well Compensation Program, NR 123. Act as project manager and/or team member on groundwater contamination investigations, remedial actions and spill response as assigned. Perform special studies related to hydrogeology, water chemistry and water supply contamination as assigned.

The North Central District is one of several DNR districts in the state.

The class specifications for the Water Supply Specialist - Senior classification include the following language:

Positions at this level have extensive authority in carrying out their assigned responsibilities and have developed an expertise in the field. This involves independently implementing the assigned duties. The work performed at this level requires a high degree of interpretation and creativity in exercising independent scientific judgment. The Water Supply Specialist at this level may be considered an expert in a segment of the program. Positions at this level typically function as... (2) a senior district water supply specialist responsible for developing, administering and evaluating a major portion of the water supply program being implemented districtwide....

Representative Position

District/Area Water Supply Specialist - Manage, coordinate, and maintain a quality control and surveillance program over public and/or private water supply systems in an assigned geographic area. Positions ensure that those systems are operated and maintained in compliance with federal and state regulations, and that the systems provide safe, clean drinking water to the general public and private well owners, using the best technology available based on proven scientific principles and practices. Positions function independently, and are responsible for implementing a work schedule to achieve district work plan goals using independent judgement and experience to prioritize tasks on a daily basis. Positions must singularly communicate the complexities and goals of the water supply program to a variety of persons.

The class specifications for the Water Supply Specialist - Advanced classification include the following language:

Positions *typically* serve as a: (1) department expert for a significant segment of the water supply program; or (2) a districtwide expert with multi-faceted responsibilities (providing districtwide expertise and coordination for multiple and significant segments of the water supply program). The area of responsibility will normally cross program boundaries, require continually high level and complex contacts with a wide variety of government entities, business, industry, and private citizens regarding highly sensitive and complex water supply issues and have significant programwide policy impact. The area of expertise will represent an important aspect of the program, involve a significant portion of the position's time and require continuing expertise. The knowledge required at this level includes a broader combination than that found at the Water Supply Specialist-Senior level. Positions at this level develop and follow broadly defined work objectives with the review of work being limited to broad administrative review. Positions have extensive authority to deal with top officials, both within and outside the department, especially in highly sensitive and complex statewide, interstate

and/or national issues. *These positions are responsible for developing, implementing, monitoring and evaluating statewide policies and programs* and function under general supervision, work independently, *and are considered to be the statewide expert in their assigned program area.* (emphasis added)

The sole representative position listed at the Advanced level describes a position with statewide responsibility for the noncommunity water system portion of the State Safe Drinking Water program.

The issue raised by this appeal is whether the appellant's position, which is a district position that does not meet the terms of the last sentence in the Advanced level specification, can nevertheless be classified at that higher level. One of the two "typical" allocations describes a district level position. However, a position in a district is typically not going to be responsible for "developing, implementing, monitoring and evaluating *statewide* policies and programs" and is not going to be considered to be "*the* statewide expert in their assigned program area." Appellant's position is no exception. There was testimony that when the specifications were developed, there were no district positions which met Advanced specification. Only central office positions are allocated to that level, currently. The Commission declines to ignore the very clear requirements set forth in the last sentence of the definition statement. Those requirements must be applied to all positions which are to be allocated to the Advanced level. Because the appellant's position is not the statewide expert in any of the assigned program areas of private water supply, OTM, Non-Community Water Supply, County Delegation, and Well Compensation, he does not fall within the scope of the Advanced level definition. It may be that a district position will evolve that meets both the "typical" allocation of a districtwide expert and the general requirement of the statewide expert.

The Commission recognizes that the North Central District has organized its Water Supply program somewhat differently than the other districts but that does not translate into statewide responsibilities for the appellant.

The appellant's position does meet the more general language of the Senior level definition, falls within the scope of the second allocation listed there and is not excluded by any language at that level. It is also comparable, for classification purposes, to the described representative position at that level.

ORDER

Respondent's decision reallocating the appellant's position to the Water Supply Specialist - Senior level is affirmed and this matter is dismissed.

Dated: January 11, 1994 STATE PERSONNEL COMMISSION


LAURIE R. MCCALLUM, Chairperson

KMS:kms
K:D:Merits-reall (Fitzgerald)


DONALD R. MURPHY, Commissioner

Parties:

Charles Fitzgerald
7297 Mildred Parkway
Rhineland, WI 54501-9762

Jon Litscher
Secretary, DER
P.O. Box 7855
Madison, WI 53707-7855

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.)