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KENNETH R. HUJANEN,

Appellant,

v.

Secretary, DEPARTMENT OF  
EMPLOYMENT RELATIONS,

Respondent.

Case No. 92-0314-PC

\* \* \* \* \*

DECISION  
AND  
ORDER

After having carefully considered the various arguments raised by the appellant in his objections to the proposed decision and in the oral arguments held on October 26, 1994, and after having consulted with the hearing examiner, the Commission adopts the attached Proposed Decision and Order as the final Decision and Order in the above matter, and adds the following to the discussion section:

In both his objections to the proposed decision and in his oral arguments, the appellant made various factual statements which were not reflected in either the testimony or the exhibits admitted during the hearing in this matter. The Commission cannot rely on these statements, including those which seek to establish the various responsibilities performed by the individuals under the appellant's supervision.<sup>1</sup>

The attached proposed decision identifies several points in support of the conclusion that, in terms of the appellant's position, the "program" should be considered the Forest Tax program, rather than considering each of the three forest tax laws (Forest Crop Law, Woodland Tax Law and Managed Forest Law) as constituting individual programs. In addition, the Commission notes that the reference to the "Forest Tax Law Field Specialist" position as a repre-

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<sup>1</sup>On page 5 of the proposed decision, the Commission notes that "there are no individuals who have responsibility for just one of [the Forest Tax law] statutes." There was no evidence tending to show that the responsibilities for each law were performed by different individuals within the Forest Tax unit. The burden to establish such a differentiation of responsibilities rested with the appellant, and by failing to offer any evidence of such a differentiation, the Commission inferred that there was no differentiation.

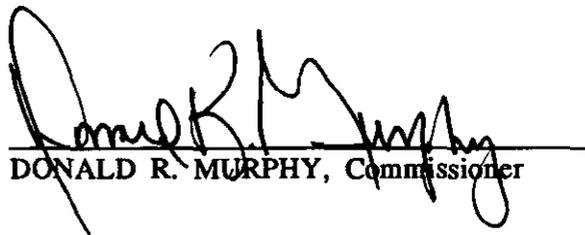
representative position at the Senior level is consistent with identifying Forest Tax as the "program" for purposes of the specifications. Even though the description of the representative position references two of the individual forest tax statutes, the position is entitled as the "Forest Tax Law Field Specialist." Also, the appellant, in Resp. Exh. 11 (answers to respondent's interrogatories) makes numerous references to the Tax Law "program" and then goes on to summarize his responsibilities for the various laws that comprise that program.

The Commission rejects appellant's contentions that his supervisory and records management responsibilities support the classification of his position at the Advanced level. Neither of these responsibilities is identified at the Advanced level and the respondent offered evidence at hearing that the individual who has the records management responsibility for all of DNR is classified at a pay range one level below that assigned to the Forester-Senior classification.

Dated: December 5, 1994 STATE PERSONNEL COMMISSION

  
LAURIE R. MCCALLUM, Chairperson

KMS:kms  
K:D:temp-12/94

  
DONALD R. MURPHY, Commissioner

  
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 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.)

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PROPOSED  
DECISION  
AND  
ORDER

This matter is before the Commission as an appeal from a reallocation decision. The parties agreed to the following issue for hearing:

Whether respondent's decision to reallocate appellant's position to Forester-Senior-Management instead of Forester-Advanced-Management was correct.

The appellant has been employed since October of 1990 as the Assistant Supervisor for the Forest Tax Unit in the Private Lands, Urban Forestry and Public Awareness Section in the Department of Natural Resources' Bureau of Forestry. During the relevant time period, the appellant's supervisor was Paul Pingrey, the Forest Tax Unit Supervisor.

The forest tax program is one of approximately 15 major programs in the Bureau of Forestry. The program includes three separate statutes and has been summarized as follows:

To encourage forestry and provide other public benefits, Wisconsin passed the Forest Crop Law (FCL) in 1927. By deferring some of a landowner's property tax on forest land until the owner harvested timber crops, the law encouraged private landowners to reforest their lands and manage for timber production. Other benefits of the FCL included the public's right to hunt and fish on the lands.

In 1954, Wisconsin passed the Woodland Tax Law (WTL). It extended property tax incentives to woodland owners with small tracts. It also allowed owners to restrict public access.

In 1985, Wisconsin repealed the Forest Crop Law and the Woodland Tax Law, replacing them with the Managed Forest Law.

This is the law currently available to landowners wanting to take advantage of tax benefits.

Woodland owners who have existing contracts under the two older laws will continue the contracts in force until they expire. Lands in FCL or WTL are *not* directly transferable to the Managed Forest Law program. Owners in either program may elect early withdrawal, with penalty, and apply for the Managed Forest Law program. (App. Exh. 11, emphasis in original)

The appellant's function is in the operations area of the program. He is not involved in all aspects of the forest tax program. As to his specific areas of responsibility, the appellant works independently, with oversight. Those areas include processing transfer orders, collecting severance taxes and yield taxes, dealing with townships and dealing with the Department of Revenue on correction orders. Appellant develops procedures in those areas. Depending on the degree of their impact on the program, these procedures would be substantively reviewed by Mr. Pingrey. (Thompson testimony)

Mr. Pingrey has responsibility for the full forest tax program. However, there are certain areas within the program where other persons have expertise. Mr. Pingrey's position summary (Resp. Exh. 6) includes the following language: "Establish, evaluate and administer policy, guidelines, and procedures for the Managed Forest Law, Forest Crop Law, and the Woodland Tax Law. Develop and analyze administrative rules and other legislative proposals."

The relevant class specifications include the following language:

#### FORESTER, SENIOR

This is senior level professional forestry work. Positions at this level develop and follow broadly defined work objectives with extensive authority in carrying out the assigned responsibilities. This involves independently implementing the assigned duties and may have area/program-wide expertise. The work performed at this level requires a high degree of interpretation and creativity in exercising independent forestry expertise in performing the complete range of responsibilities. Positions allocated to this level typically function as:... (3) a senior central office forester responsible for serving as the assistant to a higher-level forester/supervisor having responsibilities for a major aspect of a program; or (4) as a program specialist responsible for the implementation of a program which is smaller in scope and complexity and does not have the interaction and policy development that is found at higher levels.

Representative Positions

\* \* \*

Forest Tax Law Field Specialist - On paper company, sawtimber industry, and other large ownership parcels enrolled under Wisconsin's forest tax laws, insure the lands are being properly managed according to the Department's policy on sound forestry. Audit logging operations and timber accounting methods for collection of harvest taxes. Negotiate solutions to forest management problems and initiate law enforcement action if needed. Review eligibility of large ownership lands for entry under the Managed Forest Law.

Settle disagreements between foresters and landowners over forestry practices on Forest Croplands. Regulate forestry practices on about one million (1,000,000) acres of industrial land enrolled in Wisconsin's forest tax laws. Ensure that state and local governments receive their "just" tax revenue from large industrial forest tax lands. Enforce compliance with forest tax law reporting procedures, public access requirements, and eligibility provisions on large ownerships. Evaluate Managed Forest Law *Petitions for designation from large industrial ownerships*. Mediate disagreements between local foresters and landowners over application of sound forestry on forest croplands, and serve as an intermediary between the department and representatives of large industrial ownerships.

The specifications for the Forester-Advanced level include the following language:

**FORESTER, ADVANCED**

This is advanced professional forestry work. Positions typically serve as the: (1) department expert for a significant segment of the forestry program or (2) a districtwide expert with multifaceted responsibilities (providing districtwide expertise and coordination for multiple and significant segments of the forestry 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 forestry management issues and have significant 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 include a broader combination than that found at the Forester-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. In order to be designated at this level, the position must be easily distinguishable from positions at the senior level by the scope and complexity of the responsibilities.

#### Representative Positions

District Forestry Staff Specialist - Administer the district's private forestry program, fire management program, urban forestry program, new computer applications and assess computer needs. Analyze and administer training needs for the district's forestry program. Provide district liaison and technical assistance. Function under the general supervision of the District Forestry Program Manager.

Tree Improvement Specialist - Administer, plan coordinate, evaluate, direct and develop policy and legislation for three major statewide programs in the forestry--Wisconsin's Tree Improvement and Genetics Program, Wisconsin State Forest Nurseries, and Wisconsin's Reforestation Program. Provide expertise to department management, legislators, the Natural Resources Board.

Forest Fire Prevention and Forestry Law Enforcement Specialist - Administer, evaluate and establish policy for the statewide forest fire prevention program. Administer, evaluate and establish policy for the statewide forestry law enforcement program including forest fires investigation, arson investigation, forest tax law enforcement and state forest law enforcement. Establish policy for the statewide forestry communication system and physical fitness program. Serve as liaison to local, state and federal agencies regarding forest fire prevention and forestry law enforcement matters. Participate as member of program review teams and fire review teams.

Respondent stipulated that the appellant met certain elements of the Advanced level specification. Respondent agreed: a) the position required continuing expertise, b) that it developed and followed broadly defined work objectives, with the review being limited to broad administrative review, c) that it had extensive authority to deal with top officials within and outside of the department, especially in highly sensitive and complex statewide, interstate, and/or national issues, d) the appellant functioned under general supervision, e) the

appellant worked independently, and f) the position required high level and complex contacts with a wide variety of government entities, business, industry and private citizens regarding highly sensitive and complex forestry management issues.

The class specifications include the following definition of "program":

An ongoing set of coordinated activities carried out by a number of people, aimed at providing a specific service or benefit to a specific group, organization, or group of organizations. A program typically has a unique set of policies, regulations, or procedures, a unique set of activities to be performed in providing the service or achieving the program's goals, and a unique set of persons specializing in carrying these out. A program involves a variety of specific projects or functions coordinated to achieve program objectives.

Mr. Thompson, section chief for the Private Lands, Urban Forestry and Public Awareness Section, identified the forest tax program as one of 15 major programs in forestry. There are three separate statutes (Forest Crop Law, Woodland Tax Law and Managed Forest Law) which comprise the Forest Tax Law program. Each law has separate eligibility requirements and procedures,<sup>1</sup> and, as a consequence, there are unique activities which are carried out, depending on the specific law that has been invoked. However, all three statutes have similar goals, there are certain common procedures/forms, and there are no individuals who have responsibility for just one of these statutes. The entire forest tax unit has responsibilities which include all three of the statutes. Therefore, while "Forest Tax Law" meets the definition of a program, the individual laws do not.

The respondent contends that the appellant's position fits within allocation (3) at the senior level. That allocation refers to positions which function as "a senior central office forester responsible for serving as the assistant to a higher-level forester/supervisor having responsibilities for a major aspect of a program." The appellant does serve as a central office forester, and assists a higher-level forester supervisor, Mr. Pingrey.

The last phrase in the allocation (3) refers to "having responsibilities for a major aspect of a program." Upon initial reading of the allocation, it would seem that this phrase modifies the "higher-level forester/supervisor"

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<sup>1</sup>These are set forth in the Forest Tax Law Handbook, App. Exh. 16.

position, i.e. Mr. Pingrey, rather than "senior central office forester" position. However, this literal reading of the allocation does not stand up when the allocation is read in conjunction with the Advanced level allocations. In order to meet allocation (3) at the Senior level, the central office position must be the assistant to a *higher-level forester/supervisor*. The Advanced level identifies two allocations, only the first of which could be a central office position. That allocation refers to serving as the "department expert for a significant segment of the forestry program." A forester who is merely responsible for "a major aspect of a program" could not be said to meet the requirement of being the "expert for a significant segment of *the forestry program*." In one case, the forester must be expert for a segment of the entire forestry program. In the other, the forester only has to be responsible for one (major) aspect of one of the approximately 15 programs which fall within the ambit of the Bureau of Forestry.

A similar interpretation of the allocation in question is supported when the last two allocations at the Senior level are read together. The final allocation describes "a program specialist responsible for the implementation of a program which is smaller in scope and complexity and does not have the interaction and policy development that is found at higher levels." This last allocation clearly identifies a position responsible for implementing a program, albeit without significant policy development responsibility. If the third allocation were interpreted so that it is the position of the supervisor which is to be responsible for a "major aspect of a program," the assistant at the Senior level would be one level below that suggested by allocation (4).

When the Forester classification specification is viewed in its entirety, it is apparent that the intent of the drafters was to have the final phrase in Senior allocation (3) refer to the Senior level position rather than to the supervisory position above it. The Commission interprets this allocation as follows: "A senior central office forester responsible for serving as the assistant to a higher-level forester/supervisor [and] having responsibilities for a major aspect of a program."

Given this interpretation, the appellant's duties clearly fall within the language of the allocation. Appellant's operational responsibilities represent a "major aspect" of the forest tax law program.

In contrast, Mr. Pingrey had responsibility for the entire program as reflected in the following summary from his position description:

Establish, evaluate and administer policy, guidelines, and procedures for the Managed Forest Law, Forest Crop Law, and the Woodland Tax Law.

Develop and analyze administrative rules and other legislative proposals.

Serve as Bureau of Forestry liaison to legislators, agency representatives, town and county officials, and private interests on all forest tax law activities including the collection and distribution [of] shared revenue and aid payments.

Review program procedures. Issue orders on the entry, withdrawal, transfer of Forest Tax Law lands with the authority to sign for the Secretary.

Supervise the Forest Tax program operations and staff.

Based upon the above analysis, the appellant's position falls within allocation (3) at the Senior level, and is not described by either allocation at the Advanced level.

The Commission recognizes that there are certain aspects of this case which would support the classification of the appellant's position at the higher level.

The appellant has policy-making responsibilities in his role as liaison with the Department of Revenue for the correction of errors/discrepancies between those two agencies involving taxes for lands enrolled in the forest tax program. This includes contacts with both DOR central office personnel and DOR county personnel and represents approximately 15% of the appellant's total time. Respondent acknowledged that this represents an Advanced level responsibility.

Appellant acknowledged that his interaction with policy issues was mostly in terms of monitoring policies which had been set by his predecessor in the Assistant position, Mr. Pingrey. As the same time, the section chief, Mr. Thompson, testified that the appellant's responsibilities for developing policy were comparable in terms of the other Advanced-level positions within the Bureau of Forestry. Mr. Hensley, the Forest Tax Law Field Specialist, testified that the Forest Tax Law Handbook was primarily the work of the Assistant. The

main revision of the handbook is dated December of 1990, just two months after the appellant began in the Assistant position. The previous incumbent, Mr. Pingrey, had promoted out of the Assistant position in July of 1990 to take the position of Forest Tax Unit Supervisor. Given both the timing of complainant's hire into the Assistant position and the reference in Mr. Pingrey's position description as Supervisor to being responsible for establishing policy, guidelines and procedures for the three forest tax laws, Mr. Pingrey has to be given the credit for the development of policy as reflected in the handbook.

The appellant's position description does refer to preparing or revising procedures (activity A-4), preparing the handbook (activity A-7),<sup>2</sup> drafting and analyzing proposals for changes in the statutes and administrative code provisions (activity A-8), participating in legal and policy interpretations and decisions (activity A-9).

The class specifications also include the following definition of "policy":

A broad guideline or framework within which decisions are made regarding the distribution of program resources or benefits. Policy controls the conceptual nature of program outputs by defining what will be done, for whom it will be done, and the priorities to be applied to specific program objectives.

The examples that the appellant provided at hearing of his responsibilities relating to "policy" development typically do not meet this definition. The two representative positions describing positions within allocation (1) at the Advanced level specify positions which "develop policy" in one instance, and "establish policy" in the other. The language in the definition at the Advanced level also refers to positions which are "responsible for developing, implementing, monitoring, and evaluating statewide policies and programs." The record also includes position descriptions for positions classified at the Advanced level which do *not* identify responsibility for policy development. For example, the position of "Public Forests Specialist/County Liaison" filled by Robert Mather (App. Exh. 15) refers to the responsibility to "evaluate and recommend policy to direct and administer the planned development and management of the 2.3 million acres of the 28 County Forests." Mr. Mather's PD

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<sup>2</sup>Mr. Pingrey's position description, Resp. Exh. 5, also specifically references, in activity B.3., "Develop and update the Forest Tax Law Handbook detailing administrative instructions and policy."

indicates that he administers, evaluates and directs the overall program, but rather than developing policies himself, his PD (activity A.1.c.) indicates he has responsibility to "recommend new policies for the administration of the County Forest program for the Bureau Director and/or Division Administrator." Nevertheless, Mr. Mather's responsibilities extend to an entire program and he reports directly to a section chief, thereby providing some basis for distinguishing the appellant's position.

The Forest Tax Law program does interact with other DNR programs, although that interaction is primarily in terms of the actual land management plans, and the appellant is not directly involved in those plans. The appellant's primary interaction with other programs is with respect to DOR.

There are no Forester-Advanced level positions which report to a supervisor below the level of section chief. The respondent offered testimony that absent the supervisory responsibilities, Mr. Pingrey's position would have been classified at the Advanced level. From an organizational standpoint, the appellant's responsibilities are narrower than those of the Advanced level positions found in the Bureau of Forestry as reflected on the Bureau's organization chart, Resp. Exh. 4. The Advanced level positions all report directly to a section chief. All of the Senior level positions shown on that chart report to a level below that of section chief. The specifications do not provide an explicit definition of what is meant by the term "significant segment of the forestry program" as it is used in allocation (1) at the Advanced level. However, allocation (2) at that level uses similar language ("multiple and significant segments of the forestry program") in describing the duties of the District Forestry Staff Specialist, which is a representative position. The summary of duties in the District Forestry Staff Specialist representative position refers to the "private forestry program, fire management program, urban forestry program," which can be interpreted as examples of "significant segments of the forestry program." Forest tax law is a comparable *segment* of the forestry program, but the appellant cannot be viewed as being "the" expert as to that program, because his supervisor has overall responsibility for the program and the Tax Law Field Specialist position has the expertise relating to industrial landowners. Therefore, the respondent's contention that the appellant is not *the* expert for a "significant segment of the forestry program" is not incorrect.

Even though the appellant meets many of the particular provisions set forth in the Advanced level definition, his position cannot be said to be better described at the Advanced level than the Senior level, primarily because it falls within the scope of one of the Senior-level allocations, but does not fall within either of the two Advanced level allocations.

ORDER

The respondent's decision is affirmed and this appeal is dismissed.

Dated: \_\_\_\_\_, 1994      STATE PERSONNEL COMMISSION

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LAURIE R. MCCALLUM, Chairperson

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

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DONALD R. MURPHY, Commissioner

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JUDY M. ROGERS, Commissioner

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