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JOHN A. BERNIER,

Appellant,

v.

Secretary, DEPARTMENT OF
EMPLOYMENT RELATIONS,

Respondent.

Case No. 92-0342-PC

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DECISION
AND
ORDER

On February 9, 1992, after completing a class survey of the Department of Natural Resources (DNR) technicians, respondent reallocated appellant's position from Forest Fire Control Assistant 2 (FFCA 2) to Forestry Technician 4 (FT 4). Appellant timely appealed the reallocation decision to the Commission asserting that he should have been reallocated to FT 5 rather than FT 4.

The issue set for hearing was: Whether respondent's decision to reallocate appellant's position to Forestry Technician 4 instead of Forestry Technician 5 was correct. A hearing was held on this appeal and the parties filed posthearing briefs.

The Wisconsin Classification Specification for Forestry Technicians 4 and 5 provide:

FORESTRY TECHNICIAN 4 - Positions allocated to this level perform: 1) objective level full range forestry management duties; 2) objective level full range of forest fire control duties which in most positions would typically include some forest management duties or comparable advanced level activities in fire administration such as training; or 3) function as the Field Foreman at a major nursery.

Forest Fire Control Technician - Performs a full range of forest fire control activities to include presuppression, suppression, and prevention. This includes such activities as the operation and maintenance of complex fire fighting equipment; directing fire operations as the Incident Commander in the absence of the Forester/Ranger; coordinating and completing Fire Action Plans, Fire Program Plans and Red Flag Alert Programs; managing subarea Emergency Fire Warden Programs; conducting inspections of properties, recreation areas, industrial sites, field operations, railroad

right-of-way and other hazard areas for fire management purposes; and other related activities. May also provide private forest management and tax law administration and public lands forest management. Forestry duties include providing forester with technical assistance in tax law compliance including project inspections and evaluations, management plans, file updating; contacting landowners to determine compliance; answering questions from public regarding forest management practices, tax laws, cost sharing opportunities, insect and disease problems; checking aerial photos of less complex tax law entities to determine property location, boundaries, and timber types; independently collect and calculate field data for less complex properties and assist with data collection for complex properties; develop maps delineating timber types, topographic features, roads and other pertinent information; conduct independent timber cruising of less complex timber stands and assist in cruising more complex stands; and independently select and mark timber for harvesting.

FOREST TECHNICIAN 5 - This is advanced technical level forest management work. Positions at this level perform, a majority of time, the most complex forest management work including planning, coordinating and implementing with significant delegation from professional or supervisory level positions. Work is distinguished from lower level forest management work by the amount of complex forest management work assigned; the assigned responsibility for developing, coordinating and implementing the forest management plan; and the high degree of autonomy delegated the position due to the individual's recognized experience and expertise.

Representative Positions

Forestry Technician - Plan, coordinate, recommend and implement forest management procedures and programs on private and county forests under the supervision of the Black River Falls Forester. This includes setting up both routine and complex timber sales by cruising timber, marking timber, marking sale boundaries, mapping sale areas, locating access roads, preparing timber sale forms and keeping timber sale records and summaries; conduct routine and complex field inspections for compartment reconnaissance compiling statistics and preparing timber type maps and forms; implementing reforestation projects by compiling planting sites, designating planting site boundaries, traversing and mapping planted areas; setting up cultural projects by marking TSI for pruning, release or thinning, assisting with aerial herbicide applications, traversing and mapping completed practices and keeping records and forms; providing technical forestry assistance to private landowners by collecting data during field inspections of both routine and complex private woodlands, preparing cover-type maps and determining site-index for management recommendations; investigate tax law applications; investigate tree farm applications; compile data and complete fiscal year, monthly and annual reports, surveys and questionnaires; provide technical forestry assistance to local, state and federal agencies and prepare and present

public presentations through the news media. Work is performed under general supervision with significant delegation to independently perform complex forestry activities normally performed by the forester.

The position description (PD) of appellant's position, submitted by him and reviewed by the DNR Classification Coordinator during the reallocation process was developed and signed by appellant on February 3, 1992. This PD shows that appellant's duties are composed of seven general work activity categories. They are:

A.) Forest Management on State, County and Private Lands (35%); B.) Suppression of all forest fires in sub-area and other areas of the state as directed (20%); C.) Maintenance of Fire Control Buildings and Grounds (15%); D.) Implementation of presuppression activities in Sub-Area (10%); E.) Law Enforcement (10%); F.) Implementation of the Forest Fire Prevention Program (5%); G.) Other DNR and Non-DNR Related Work (5%).

Appellant asserts that his position should be at the Technician 5 level, because eighty-five percent of his duties are in practical forestry activities, which he defines as technical forestry and/or fire administration. Appellant also argues that because Work Activity A - Forest Management - is the largest of the work activities and therefore his position qualifies as a FT 5.

In support, appellant submitted documentary evidence showing that he uses forestry time report codes to report his work activities and stated that fire duties are forestry budget expenses.

The Commission has addressed the question of the interpretation of the term "majority of time" used in some various classification specifications to further define position work functions and has consistently said that this term means that more than fifty percent of a position's functions must be at the level of the classification.

Appellant's PD, written by him, shows that he spends thirty-five percent of his time performing forest management duties. Appellant testified that his PD was accurate and under cross-examination confirmed the percentage of time indicated on the PD for forest management work activities. Positions at the FT 5 classification level, under the state class specifications are required to: perform, a majority of time, the most complex forest management work. Clearly the record presented does not support that conclusion here.

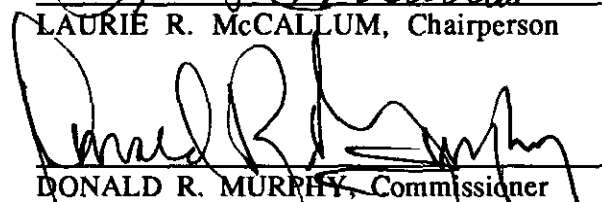
ORDER

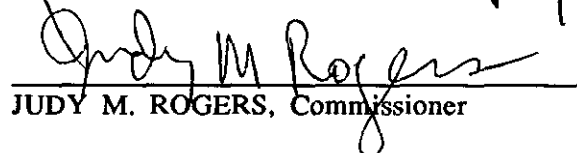
Respondent's decision reallocating appellant's position to Forestry Technician 4 rather than Forestry Technician 5 is affirmed and appellant's appeal is dismissed.

Dated: April 19, 1994 STATE PERSONNEL COMMISSION


LAURIE R. McCALLUM, Chairperson

DRM:jah


DONALD R. MURPHY, Commissioner


JUDY M. ROGERS, Commissioner

Parties:

John A. Bernier
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Mercer, WI 54547

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Secretary, DER
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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.)