

STATE OF WISCONSIN

PERSONNEL COMMISSION

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ROBERT J. WHITE,

Appellant,

v.

Secretary, DEPARTMENT OF
EMPLOYMENT RELATIONS,

Respondent.

Case No. 92-0371-PC

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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 Forestry Technician 4 instead of Forestry Technician 5 was correct.

FINDINGS OF FACT

1. At all times relevant to this proceeding, the appellant has been employed out of the Ladysmith Ranger Station of the Department of Natural Resources.

2. Appellant's position description reflects the following goals:

- 20% A. Suppression of forest fires.
- 20% B. Maintenance of forest fire management equipment and presuppression
- 10% C. Prevention of forest fires.
- 30% D. Forest management of privately owned property.
- 10% E. Maintenance of buildings, grounds and fire towers.
- 5% F. Administration and supervision.
- 5% G. Cooperate with other Department programs, activities and outside agencies.

3. The Forestry Technician class specifications reflect the following:

II. DEFINITIONS AND TERMS USED

TERMS USED

Forest Fire Control (Administration) - Forest fire control activities 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.

Forest Management - These activities include providing customers 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.

DEFINITIONS

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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.

Representative Positions

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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 sub-area 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.

* * *

FORESTRY 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.

4. The appellant's position is very similar, from a classification standpoint, to the position held by Norman A. Regnier which is classified at the FT 4 level. The Regnier position description lists the following goals: Suppression of all Forest Fires in the Sub-area, area, and other areas of the state (20%), Implementation of Presuppression Activities in Sub-Area (20%), Implementation of the Forest Fire Prevention Program (10%), Maintenance of Forestry Buildings and Grounds (10%), Forest Management on Private, County

and other Public Lands (33%), and Cooperation with Other Functions and Governmental Agencies (7%).

5. The appellant's position is distinct, from a classification standpoint, from the position held by Keith Lindner which is classified at the FT 5 level. The Lindner position performs 40% "Fire Control Activities" and 5% "Equipment Maintenance" but also spends 52% on "Forest Management."

CONCLUSIONS OF LAW

1. This matter is properly before the Commission pursuant to §230.44(1)(b), Stats.

2. Appellant has the burden of proving by a preponderance of the evidence that respondents erred by reallocating the appellant's position to the Forestry Technician 4 level rather than the Forestry Technician 5 level.

3. Appellant has not sustained his burden of proof and the Commission concludes that respondent did not err in allocating the appellant's position to the Forestry Technician 4 level.

OPINION

The appellant offered a more general definition of forestry management that was broad enough to include fire control activities. However, it is the classification specification which serves as the basis on which the Commission must make this classification decision. Those class specifications include definitions of both "forest fire control" and "forest management" which make it clear that, for purposes of the Forestry Technician specifications, forest fire control is not a subset of forest management. The definition statements and representative positions clearly describe the appellant's position at the FT 4 level in that he performs forest fire control duties at the objective level as well as some forest management duties. Only if the appellant could show that the majority¹ of his time was spent performing the "most

¹ During the hearing, the appellant contended that the "majority of time means the majority of time spent in performing the primary assignment." Nothing the the class specifications suggests looking only at the "primary assignment" to calculating whether there is a majority. In the context of a reclassification appeal, the Commission has noted that "normally, the majority of [a position's] duties and responsibilities must be at the higher

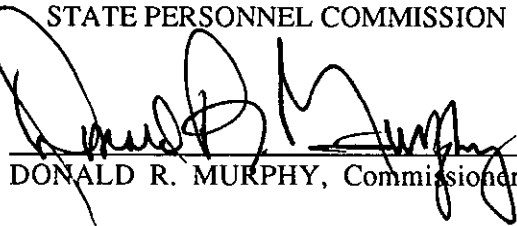
complex forest management work" would he be entitled to classification at the FT 5 level. Mr. Lindner spends 52% of his time on such activities, thereby meeting the "majority" requirement. In contrast, Mr. Regnier and the appellant spend 30% and 33% of their time in the area of "forest management" so they do not meet the majority requirement.²

The Commission also notes that documents which relate to prior versions of the FT specifications do not provide a basis on which to ignore the language of the specifications which were ultimately generated and which must be applied to the present case.

ORDER

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

Dated: August 11, 1993, STATE PERSONNEL COMMISSION


DONALD R. MURPHY, Commissioner

KMS:kms


JUDY M. ROGERS, Commissioner

Parties:

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level." Bender v. DOA & DP, 80-210-PC, 7/1/81. It is appropriate to look at all of the duties and responsibilities of a position when calculating the majority.

² The Commission does not reach the issue of whether the 30% forest management responsibilities performed by the appellant fall within the "most complex" category. However, the Commission does note that the FT 5 definition refers to "most complex." During the hearing in this matter, the appellant incorrectly suggested that merely "complex" forest management duties met the FT 5 requirement.

**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.