

STATE OF WISCONSIN

PERSONNEL COMMISSION

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CARL HENSLEY,

Appellant,

v.

Secretary, DEPARTMENT OF
EMPLOYMENT RELATIONS,

Respondent.

Case No. 92-0377-PC

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DECISION
AND
ORDER

This matter is before the Commission as an appeal of the decision to reallocate the appellant's position to the Forester-Senior level rather than to the Forester-Advanced level.

The appellant's position is designated as the Forest Tax Law Field Specialist. The purpose of the forest tax law program is to protect forest resources from destructive or premature cutting and to produce commercial crops of forest products. Property tax incentives are offered to participating landowners. The appellant's responsibilities relate to the large, i.e. industrial landowners in the forest tax law program. Those lands represent approximately one-half of the 2.5 million forest tax law acres. The appellant works out of DNR's Tomahawk office and reports to Peter Pingrey, Forest Tax Unit Supervisor in Madison. Mr. Pingrey in turn reports to Don Thompson, chief of the Private Lands, Urban Forestry and Public Awareness Section in the Bureau of Forestry.

The appellant's duties are specifically and accurately described in the class specifications as a representative position at the Forester-Senior level:

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 allo-

cated to this level typically function as:... (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

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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.

The appellant's expertise is only as to the industrial landowners in the forest tax law program. As to that group, the appellant is the department expert. However, 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.

5. 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. This distinction ties into the reference in the last sentence of the Advanced definition which states that positions at the higher level must be "casily distinguishable" from the senior level "by the *scope* and complexity of the responsibilities." (emphasis added)

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 as reflected by the organization chart, but the appellant's responsibilities only relate to the aspect of that significant segment which involves 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.

Another key to the instant appeal is that the appellant reports to a unit supervisor, Mr. Pingrey, who is responsible for developing program policy for the forest tax law program which the appellant implements.¹ The appellant typically has *input* into those policies which affect his industrial landowners. However, Mr. Pingrey expects to be involved with situations which extend beyond a particular landowner, or may generate complaints. The appellant does not have the level of policy development which is identified at the Advanced level, in both the definitional language and in the two representative positions (Tree Improvement Specialist, Forest Fire Prevention and Forestry Law Enforcement Specialist) which are examples of the first allocation listed at that level.

¹Mr. 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 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.

The appellant contends that he is responsible for the *Industrial Tax Law Program*. This is not a program within the meaning of the specifications. The program is the Forest Tax Law Program, and the industrial landowners represent a particular group of landowners within that program. The appellant has expertise as to an important aspect of the Forest Tax Law Program, but he is not considered *the* expert for the entire program.

The Zastrow position (Resp. Exh. 8) is another position classified at the Advanced level. The Zastrow position is located in Madison. In contrast to the appellant, Mr. Zastrow, whose working title is Forest Ecologist/Silviculturist, reports to a section chief. The position description for the section chief, Mr. Vande Hei, does not show any responsibility for developing the policies of Mr. Zastrow's programs. (Steinmetz testimony) The Zastrow position description reflects substantial time (Goal C, 25%) spent on integrated resource management. This goal, by definition, involves DNR bureaus other than Forestry, thereby meeting the reference in the Forester-Senior definition to "interaction." The appellant's interactions are typically focused within the Bureau of Forestry. However, activity A1., which is one of four activities listed under the 25% time allocation for goal A, refers to "integrated forest benefits":

Review industrial forest management policies. Direct industrial and tribal landowners in silvicultural methods to enhance and protect integrated forest benefits such as timber, wildlife habitat, recreational opportunities, aesthetics, endangered and threatened resources, and protection from soil erosion.

The Commission recognizes that a second Advanced level Forest Ecologist/Silviculturist position, this one located in Tomahawk, clouds the issue

somewhat. Respondent's primary analyst, Ms. Steinmetz, testified she had not been aware of the existence of this second position. The record does not include a complete position description for the Tomahawk Silviculturist position, and there is nothing to indicate its reporting relationship. The portion of the position description in the record indicates that the position does spend significant time on "integrated resource management" responsibilities which, again, mean crossing program boundaries into other DNR programs outside of Forestry.

The monthly memos prepared by the appellant which summarize his activities during the previous month, App. Exh. 10 through 22, indicate that his responsibilities focus on implementing the forest tax law relative to industrial landowners, rather than developing the policies in that area. Based upon the duties performed by the appellant and the language of the class specifications, he has not met his burden of establishing that the decision to reallocate his position to the Senior level was incorrect.

ORDER

Respondent's decision reallocating the appellant's position is affirmed and this appeal is dismissed.

Dated: September 21, 1994 STATE PERSONNEL COMMISSION


LAURIE R. MCCALLUM, Chairperson

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


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.)