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TIM RASMAN,

Appellant,

v.

Secretary, DEPARTMENT OF  
EMPLOYMENT RELATIONS,

Respondent.

Case No. 92-0435-PC

\* \* \* \* \*

DECISION  
AND  
ORDER

This case involves an appeal pursuant to §230.44(1)(c), Stats., of the reallocation of appellant's position to Water Resource Management Specialist (WRMS) - Senior. The issue for hearing is whether this decision was correct or whether appellant's position should have been reallocated to WRMS - Advanced.

Appellant's position is located in the DNR Lake Michigan District (LMD), headquartered in Green Bay. The duties and responsibilities of his position are essentially accurately summarized in his PD (position description) (Appellant's Exhibit C) which contains the following "position summary":

Develop and implement the nonpoint source, point source and surface water biological, chemical, and physical water quality monitoring programs of lakes and streams in the District. Inspect, sample, analyze, interpret, issue permits, report orally and in writing to the public and officials and other related activities resulting from the most recent State and Federal water quality legislation. Coordinate District SCUBA diving activities as outlined in MC 9187.7 LMD.

The WRMS class specification (Respondent's Exhibit 1) contains the following definitions of the classification here at issue:

**WATER RESOURCES MANAGEMENT SPECIALIST, SENIOR**

Positions allocated to this level include senior level Water Resources Management Specialists. Positions at this level differ from lower level positions in that the specialist develops and follows broadly defined work objectives and the review of the work is limited to administrative evaluation by the supervisor.

Positions at this level have extensive authority in carrying out their assigned responsibilities. This involves independently implementing

the assigned duties and having developed an expertise in the field. The work performed at this level requires a high degree of interpretation and creativity in exercising independent scientific judgment. The Water Resources Management Specialist at this level may be considered an expert in a segment of the program. Positions at this level typically function as: (1) a senior area/district water resources management specialist responsible for developing, administering and evaluating the water resources management program in the assigned geographic area; or (2) a senior district water resources specialist responsible for developing, administering and evaluating a major portion of the water resources program being implemented districtwide; (3) a senior central office water resources management specialist responsible for serving as the assistant to a higher-level water resources management specialist/supervisor having responsibilities for a major aspect of the 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. In order to be designated at this level positions must be differentiated from the objective level by their depth and extent of program involvement, the number and complexity of the program(s) managed, and the complexity and uniqueness of the program in the assigned area.

#### WATER RESOURCES MANAGEMENT SPECIALIST, ADVANCED

Positions allocated to this level include advanced Water Resources Management Specialists. Positions typically serve as the: (1) department expert for a significant segment of the water resources management program or (2) a districtwide expert with multi-faceted responsibilities (providing districtwide expertise and coordination for multiple and significant segments of the water resources 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 resources management 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 Resources Management 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. 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.

Appellant's position fits within at least the basic parameters of the WRMS-Senior definition as "(2) a senior district water resources specialist responsible for developing, administering and evaluating a major portion of the water resources program being implemented districtwide." It is arguable whether the level of his work exceeds the WRMS-Senior definition in terms of its scope and complexity, but even if appellant's position were to appear to be at a higher level in certain respects, it cannot be classified at the WRMS-Advanced level unless it meets all the criteria for that classification found in the class specification. The WRMS-Advanced definition includes this language: "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 the assigned program area." The Commission recently held in Fitzgerald v. DER, 92-0308-PC (1/11/94), as follows:

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 [next to 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.

This holding by the Commission constitutes binding precedent and is controlling with respect to this appeal.

There are only three bases upon which appellant could even arguably claim to meet the WRMS-Advanced statewide requirement: (1) his work on various committees that are involved with matters of a statewide nature, (2) his

testimony that the central office position involved with aquatic plants has been vacant for approximately three years, which has resulted in the district positions having more statewide ramifications in this area, and (3) his somewhat related comment in his closing statement that the districts often have difficulty contacting central office experts, and often ask other offices for input on difficult subjects in lieu of going to central office. That a district position has some input into statewide policies as a member of a committee, or sometimes provides advice that would otherwise normally come from a central office expert, falls a good deal short of meeting the WRMS-Advanced requirement of being: "responsible for developing, implementing, monitoring and evaluating statewide policies and programs and ... considered to be the statewide expert in their assigned program area."

Since appellant's position does not meet an essential criterion for classification at the WRMS-Advanced level, there is no point in addressing whether it satisfies some of the more general language in the WRMS-Advanced definition -- e.g., "knowledge required at this level includes a broader combination than that found at the Water Resources Management Specialist - Senior level." It appears that appellant's concerns about the classification level of his position run to a fundamental disagreement concerning what he perceives as a lack of recognition of the WRMS district positions as reflected in the class specification. These concerns have to be addressed through the survey and/or collective bargaining processes, as this Commission is required to apply the class specifications that are developed by DER pursuant to that agency's statutory authority, see §230.09(2)(am), Stats.; Zhe v. DHSS & DP, 80-0285-PC (11/81); affd., Dane Co. Cir. Ct., Zhe v. Pers. Comm., 81CV6492 (11/82).


ORDER

Respondent's action reallocating appellant's position to WRMS-Senior instead of WRMS-Advanced is affirmed, and this appeal is dismissed.

Dated: June 21, 1994 STATE PERSONNEL COMMISSION

  
LAURIE R. McCALLUM, Chairperson

AJT:rcr

  
DONALD R. MURPHY, 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<sup>b</sup> 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.)