

STATE OF WISCONSIN

PERSONNEL COMMISSION

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THOMAS W. ROBERTS and
 JOHN C. DeLaMATER,

Appellants,

v.

Secretary, DEPARTMENT OF
 EMPLOYMENT RELATIONS,

Respondent.

Case Nos. 92-0481, 0638-PC

* * * * *

DECISION
AND
ORDER

A prehearing conference was held in the above-noted cases on June 22, 1993, at which a hearing date was established and the hearing issue was defined as follows:

Whether respondent's decisions reallocating the appellants' positions to the Forestry Manager classification rather than the Natural Resources Manager 2 classification were correct.

Respondent later submitted a Motion for Summary Judgment. The parties indicated that relevant facts were undisputed and, therefore, agreed to proceed based on written arguments in lieu of hearing. Thus this decision is issued based on the merits of the case as presented by the parties' written arguments. The last brief was submitted on January 11, 1994.

Some background facts are summarized first below, followed by a more detailed discussion of the record and arguments raised by the parties.

Respondent conducted a survey of science positions to determine what allocation patterns existed as of April 19, 1992. Appellants' positions were included in the survey. Class specifications were created based on the survey findings. After the survey, respondent placed appellants' positions at the Forestry Manager classification. Appellants feel their positions should have been placed at the Natural Resources Manager 2 classification.

The relevant time period in these cases is determined by the effective date of the survey, April 19, 1992. The duties performed on, and perhaps

somewhat before, the effective date control the outcome of these cases. Unless specifically stated to the contrary, the facts summarized below existed during the relevant time period.

Mr. DeLaMater worked for the DNR in its Western District. He functioned as the district Forestry Program Manager. The district Director was Donald Winter and the Deputy Director was Scott Humrickhouse. Mr. DeLaMater reported to Deputy Director Humrickhouse.¹ The parties agree that the survey PD in the record as Appellants' Exhibit 6, accurately describes Mr. DeLaMater's job duties at the time relevant to the survey.

Mr. Roberts worked for the DNR in its North Central (NC) District. He functioned as the district Forestry Program Manager. The district Director was Dale Urso and the Deputy Director was Mark Stokstad. Mr. Roberts reported to Deputy Director Stokstad.² The parties agree that the survey PD in the record as Appellants' Exhibit 5, accurately describes Mr. Roberts' job duties at the time relevant to the survey.

The class specifications for Natural Resource Manager 2, provide as shown on the following page:

¹ It was Mr. DeLaMater's burden to prove that he reported directly to district Director Winter and he failed to meet this burden. His survey PD indicates the direct reporting relationship to Winter. However, the supervisory analysis form for Deputy Director Humrickhouse (Appellants' Exhibit A4) shows Mr. DeLaMater reporting to the Deputy Director. Furthermore, the affidavit of Director Winter (Appellants' Exhibit A11) does not resolve the conflict because it merely states that Mr. Winter is "currently" the immediate supervisor of Mr. DeLaMater. The affidavit was signed on 11/30/93, and therefore does not contain any representation about the reporting relationship which existed on April 19, 1992.

² It was Mr. Roberts' burden to prove that he reported directly to district Director Urso and this he failed to meet this burden. His survey PD indicates he reported to district Deputy Director Stokstad and such information does not appear to be contrary to the supervisory analysis form for the Deputy Director (Appellants' Exhibit A3). Furthermore, the affidavit of Director Urso to the contrary was insufficient to dispell the previous-mentioned information in the record. The affidavit was signed by Director Urso on 11/29/93, and merely represents that he is the "current" immediate supervisor for Mr. Roberts. The affidavit does not say what the reporting relationship was at the time of survey.

Positions allocated to this class typically function as: (1) an Assistant District Director within a DNR District; (2) Deputy District Directors; or (3) Bureau Directors. Positions at this level have responsibility for planning and directing the development of policies for the administration of a departmental program on a statewide basis; or for serving as the deputy district director with responsibility for the administration of significant portions of the district's program and in the absence of the Director, functioning in that capacity.

Both Deputy Directors Stokstad and Humrickhouse were classified at the Natural Resource Manager 2 level after the survey. Their classifications are consistent with the class specification because they are Deputy District Directors (allocation #2 above), are responsible for the administration of significant portions of the districts' programs and function as the Director when he is absent. Mr. Roberts and Mr. DeLaMater are not deputy directors and, therefore, do not meet the same class specification requirements which were met by Mr. Stokstad and Mr. Humrickhouse.

Mr. Roberts and Mr. DeLaMater feel the number of program elements a program manager is responsible for, as well as the number of subordinates supervised should be given more consideration in the class specifications. For example, they suggest that the number of program elements and subordinates should be considered in determining whether any particular district position is comparable to the complexity and difficulties faced by the district deputy position. The appellants and others may support these deviations from the class specifications. However, the Commission cannot effectuate the requested deviation because the Commission lacks authority to rewrite the class specifications. See Zhe et. al. v. DHSS & DP, 80-285, 286, 292, 296-PC, 11/18/81; aff'd by Dane County Circuit Court, Zhe et. al. v. Pers. Comm., 81-CV-6492 (11/82).

Mr. Roberts and Mr. DeLaMater argued that their positions are comparable to the position held by Mr. Wolfgang H. Klassen which respondent placed at the Natural Resources Manager 2 level after the science survey. Mr. Klassen's duties are as noted in his PD which is in the record as Appellants' Exhibit A2. He works for DNR in its southeastern district and is responsible for the district's Air Management Program. This is similar from an organizational standpoint as appellants' district work, with one difference being that Mr.

Klassen's responsibilities are with the air management program whereas appellants' responsibilities are with the forestry program.

The working title of each appellant's position is district Forestry Program Manager. Mr. Klassen's working title is not district Air Management Program Manager. Rather, Mr. Klassen's working title is "Assistant District Director". The record is inadequate to explain this difference.

Respondent noted that the working title of Assistant District Director is the first allocation pattern specifically mentioned in the class specifications for Natural Resources Manager 2. Respondent argued that the difference between classifications for appellants and Mr. Klassen was justified on that basis. Problems exist with respondent's argument.

The class specifications for Natural Resource Manager contain a special section of definitions, starting on page 4 of Appellants' Exhibit A1. A specific definition exists on that page for the term "Assistant District Director", as follows:

Assistant District Director: A position reporting directly to the District Director with responsibility for either [a] the resource management, law enforcement and community assistance, and/or [b] the environmental protection, environmental enforcement, and environmental loans programs portion of the district's **total program responsibility**. [In addition] [t]his position is totally responsible for the assigned program **and** has full authority to act in the absence of the District Director. (Emphasis added. The information in brackets also was added.)

Mr. Klassen's position does not meet the definition of assistant district director based on the record established here.³ This record indicates that he does report directly to the district Director. He also may be responsible for administering resource management for the Air Management Program, but not for law enforcement and community assistance. Nor does he meet the alternative of having responsibility for administering environmental protection, environmental enforcement and the environmental loan

³ It could be that Mr. Klassen's post-survey classification is correct based upon additional information which is not part of the record here. The question of Mr. Klassen's correct classification is not an issue for the Commission to act upon in the appeals filed by Mr. Roberts and Mr. DeLaMater.

programs portion of the district's total program responsibility. Furthermore, while he may have total responsibility for his assigned program, his authority to act in the Director's absence is limited to his program area. It is unclear from the record whether singular program responsibility meets the definitional requirement of "full authority" to act in the absence of the district Director.

The Commission considered whether the positions held by Mr. Roberts and/or Mr. DeLaMater might meet the class specification definition of "Assistant District Directors" despite their contrary working titles. The Commission concludes, however, that they do not.

Mr. Roberts does not meet the definition for an Assistant District Director for the following reasons: 1) He reports to the deputy director rather than the director. 2) He might be considered as responsible for resource management in the Forestry program but not as being responsible for law enforcement or community assistance. 3) He might be considered as being responsible for environmental protection in the Forestry program, but not as being responsible for environmental enforcement or the environmental loans programs portion of the district's total program responsibility. Furthermore, Mr. Roberts may have total responsibility for his assigned program but his authority to act in absence of the Director is limited to that program.

Mr. DeLaMater does not meet the definition for an Assistant District Director for the following reasons: 1) He reports to the deputy director rather than the director. 2) He might be considered as being responsible for resource management of the Forestry program and he is responsible for community assistance. However, he is not responsible for law enforcement. 2) He might be considered as being responsible for environmental protection in the Forestry program, but not as being responsible for environmental enforcement or the environmental loans programs portion of the district's total program responsibility. Furthermore, Mr. DeLaMater may have total responsibility for his assigned program, but his authority to act in absence of the Director is limited to his program area.

The positions held by Mr. DeLaMater and Mr. Roberts are best fit by the class specifications for Forestry Manager, which provides as follows:

Under the general supervision of a higher level administrative supervisor, positions at this level typically function as: (1) a District Forestry Program Manager with responsibility for planning, directing and supervising all elements of the forestry program within the district, or (2) a Forestry Section Chief responsible for planning and directing one or more significant elements of the program on a statewide basis, supervising section staff and maintaining effective liaison and coordination with the districts to ensure adequate and consistent administration of the respective program element(s) statewide. Work at this level is distinguished from that at the [lower] supervisory level in that [Forest Manager] positions have management responsibility for all components of the forestry program, including planning, coordinating, and guiding field personnel on forestry management program planning; or maintaining liaisons with district(s) and/or other management and staff in the central office to assure that the forestry management program is carried out in a uniform manner and meets the standards and goals of the program statewide; assuring that forestry management and fire control functions are met and carried out in an appropriate manner; recommending improvements in the program and overseeing the budget for all subprogram components.

This decision leaves the classifications of the positions held by Mr. Roberts, Mr. DeLaMater and Mr. Klassen as they were before these appeals. This may appear unfair to the appellants because the Commission also concluded that this record does not support Mr. Klassen's position at the higher level either. The Commission, however, will not compound any error which might exist in the classification of Mr. Klassen's position by granting appellants' requests for the higher classification when their positions also do not meet the class specification requirements for the higher classification. Augustine & Brown v. DATCP & DER, 84-0036, 0037-PC, 9/12/84, McCord v. DER, 85-0147-PC, 3/13/86, Danielski et al. v. DER, 85-0196-PC, 9/17/86, Lulling & Arneson v. DER, 88-0136, 0137-PC, 9/13/89.

ORDER

Respondents' actions of reallocating appellants' positions to the Forestry Manager classification are affirmed, and these appeals are dismissed.

Dated: March 9, 1994 STATE PERSONNEL COMMISSION


LAURIE R. McCALLUM, Chairperson

JMR


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.)