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STATE OF WISCONSIN

PERSONNEL COMMISSION

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FRANK J. KOSHERE,

Appellant,

v.

Secretary, DEPARTMENT OF
EMPLOYMENT RELATIONS,

Respondent.

Case No. 92-0531-PC

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DECISION
AND
ORDER

This matter is before the Commission on appeal of a decision by the respondent, the Department of Employment Relations (DER), to reallocate the position of appellant, Frank Koshere, to Water Resource Management Specialist (WRMS) - Senior. The following discussion and conclusions are based on evidence presented at a hearing on the issue of whether respondent's decision to reallocate appellant's position to WRMS - Senior rather than WRMS - Advanced was correct.

The position of Frank Koshere is located in the Department of Natural Resources, Northwest District (NWD) headquarters, at Spooner, Wisconsin. The duties and responsibilities of Koshere's position as a District Water Quality Biologist at the time relevant to reallocation provided:

POSITION SUMMARY

This position is responsible for: development and implementation of statewide policy on the aquatic plant management program; implementation of district program on aquatic plant management; district coordination of the management of exotic aquatic plants and other organisms; lead implementation of district surface water monitoring; implementation of district water quality quality standards activities; coordination of district quality assurance activities for environmental quality programs.

In addition to the above listed lead responsibilities, this position will contribute to other Water Resource Management Unit functions as needs exist. The position reports to the Water Resources Management Supervisor and advises the District Director and Water Resources Management Bureau Director on matters regarding areas of primary responsibility.

<u>Time%</u>	<u>GOALS AND WORKER ACTIVITIES</u>
40%	<p>A. Implement all aspects of District-wide surface water quality monitoring program.</p> <p>A1. Identify and determine priority of surface water monitoring needs.</p> <p>A2. Direct complex field investigation studies including point source impact studies, in-place pollutant studies, biomonitoring studies, lake and impoundment monitoring and evaluation, and water quality standards determination.</p> <p>A3. Direct surface and ground water monitoring activities providing data to WRM programs including basin assessment, lakes, nonpoint source, water quality planning, and toxics monitoring programs.</p> <p>A4. Approve the work of monitoring staff and evaluate and analyze chemical, physical, biological, and habitat data.</p> <p>A5. Interpret the significance and impact of study findings, and write and review technical reports documenting water quality, and develop management recommendations.</p> <p>A6. Develop and implement water quality management plan elements.</p> <p>A7. Coordinate and maintain the WRM unit's capability to collect chemical, physical, and biological data on surface water using appropriate monitoring technology.</p>
30%	<p>B. Implement statewide and District Aquatic Plant Management Program.</p> <p>B1. In a decentralized role, assume statewide responsibility to develop policy and administrative rule procedures for a comprehensive plant management program meeting lake-use management, water quality, and fish and wildlife management program needs.</p> <p>B2. Represent this agency, on a statewide level, as technical expert with individuals, organizations, businesses, other agencies, and the media on aquatic plant management.</p> <p>B3. Coordinate multiprogram interests in permit decisions; make a final permit decision.</p>

- B4. Lead a multiprogram district team to establish protected sensitive habitat sites.
 - B5. Develop and implement Aquatic Plant Management components of lake management plans.
 - B6. Supervise on-site treatment supervisor, administer program budget, and evaluate program needs.
 - B7. Investigate and coordinate enforcement of illegal chemical use.
- 20% C. Implement surface water standards activities in NWD.
- C1. Interpret and apply surface water standards in NWD.
 - C2. Review major resource development projects including mining, transportation, hydro-power, and wetlands projects for compliance and protection of water quality standards.
 - C3. Develop and recommend site specific water quality standards to be included in NR 102 and NR 104. Establish Non-Point Source goals for water bodies.
 - C4. Determine surface classifications, water use potential, trophic status, and hydrologic character.
 - C5. Coordinate water resources management and area resource management staff concerns to establish a district classification recommendation.
- 8% D. Represent NWD as a water quality expert and technical consultant.
- D1. Provide water quality information and consultation to other department programs.
 - D2. Provide water quality information, consultation, and education to the public, other agencies, industries, media and others.
 - D3. Develop new professional skills through training, professional meetings, and other available methods.

- D4. Develop and implement Department and District quality assurance procedures.
- 2% E. Accomplishment of activities related to program development and management, and district operation.
 - E1. Accomplish work planning, narrative reporting and other activities.
 - E2. Cooperate with other department programs as needed.

The state classification specification for WRMS and WRMS - Management positions include the following definitions of the classification in 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.

Representative Positions

Water Resources Management Specialist (district office) - This position is responsible for planning, implementing, and conducting physical, chemical, and biological studies and analyses; conducting waste assimilation studies to determine effects of waste discharges on stream quality; preparing river basin survey reports; identifying and evaluating biological samples to determine the effect of pollutants on the biota; coordinating activities for specific lake planning grants; coordinating the aquatic plant management program in a district by reviewing applications and preparing environmental assessments; acting as the expert witness at hearings which are held on permit denials; providing assistance to interested groups regarding lake protection and rehabilitation; and performing water pollution surveys as necessary.

* * *

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. (emphasis added)

The appellant, Frank Koshere, argues that his position does not fit the WRMS - Senior classification specification definition because, unlike other

Senior-district positions, his position has district lead role and statewide responsibilities. Koshere also argues that his position is unique, unlike other district positions classified at the Senior level, and contains all of the elements of the WRMS - Advanced classification.

The record shows that in 1988 or 1989 Koshere was assigned by the Bureau of Water Resource Management to lead in rewriting Chapter NR 107, Wis. Adm. Code. The Bureau also formed an advisory group to assist Koshere. Subsequently, the new NR 107 passed through the Bureau, was approved by the DNR Board and became effective March 1, 1989, after being passed by the legislature.

As indicated by his position description (PD), Koshere, at the time of reallocation, spent the majority of his time implementing the surface water quality monitoring program in the Northwest District. Also as his PD shows, Koshere implemented the Aquatic Plant Management (APM) program for NWD.

However, contrary to the Koshere PD (Goal B), there is insufficient evidence to establish that Koshere implements the APM function statewide and functions as the DNR technical expert on APM matters. While the evidence shows that subsequent to the legislature's passage of NR 107, Koshere participated in hearings, conducted training sessions and was consulted about NR 107, there is insufficient evidence to conclude that Koshere functioned as the DNR expert on Aquatic Plant Management. However, Koshere did perform this function for NWD.

The record shows that APM is a component of the Lake program, and the WRM Bureau's Lake Program Section Chief has overall responsibility for the APM program. This program was decentralized. Each district independently implemented the program, but the district aquatic plant managers met with the Lake Program Section Chief to discuss APM as a statewide program. The section chief considered Koshere the expert on NR 107, for having developed it and seeing it through the process, but recognized a number of staff members as experts on aquatic plants. The WRM Bureau never designated nor considered Koshere the DNR expert for the APM program. That responsibility remained with the Lake Program Section Chief.

As evidenced by the classification specification, a WRMS - Advanced position contains the responsibility of statewide expert in an assigned

program area.¹ The evidence presented does not support a conclusion that Koshere's position has that responsibility.

Regarding the WRMS - Senior classification, Koshere does not deny he performs the duties of the representative position described. Also, Koshere's immediate supervisor, who testified in support of the Advanced level classification, acknowledged that Koshere performed most, if not, all the duties described in the specifications as Senior level functions and specified in the representative position for a WRMS (district office).

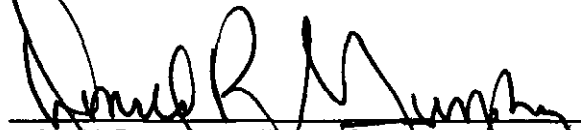
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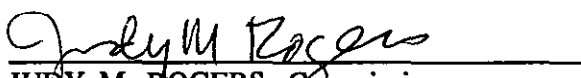
Respondent's action reallocating appellant's position to WRMS - Senior is affirmed, and appellant's appeal is dismissed.

Dated: December 7, 1995 STATE PERSONNEL COMMISSION


LAURIE R. McCALLUM, Chairperson

DRM:rcr


DONALD R. MURPHY, Commissioner


JUDY M. ROGERS, Commissioner

Parties:

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NOTICE
OF RIGHT OF PARTIES TO PETITION FOR REHEARING AND JUDICIAL REVIEW
OF AN ADVERSE DECISION BY THE PERSONNEL COMMISSION

¹ This is true even though the specification lists two allocations, one of which is at the district level. Fitzgerald v. DER, 92-0308-PC, 1/11/94.

Petition for Rehearing. Any person aggrieved by a final order (except an order arising from an arbitration conducted pursuant to §230.44(4)(bm), Wis. Stats.) 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.)

2/3/95