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DEBORAH ROSZAK and
DARRYL E. GERLAT,

Appellants,

v.

Secretary, DEPARTMENT OF
EMPLOYMENT RELATIONS,

Respondent.

Case Nos. 92-0540-PC
92-0541-PC

* * * * *

FINAL
DECISION
AND
ORDER


After consulting with the hearing examiner, the Commission adopts the attached Proposed Decision and Order as the Final Decision and Order in the above matter, with the following modifications:

1. After the last sentence in paragraph 2, page 4 of the Proposed Decision and Order add:

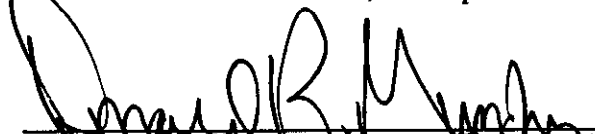
Neither is the department expert for a significant segment of the environmental enforcement program. That position is located in the DNR central office.

Dated: September 9, 1994

STATE PERSONNEL COMMISSION


LAURIE R. McCALLUM, Chairperson

DRM:rcr


DONALD R. MURPHY, Commissioner


JUDY M. ROGERS, Commissioner

Parties:

Deborah Roszak
127 W. Henry Clay
Whitefish Bay, WI 53217

Darryl Gerlat
826 North 14th Street, #201
Milwaukee, WI 53233

Jon Litscher
Secretary, DER
P.O. Box 7855
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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.)

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92-0541-PC

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PROPOSED
DECISION
AND
ORDER

In May 1992, as a result of a Science Survey conducted by the respondent, Department of Employment Relations (DER), appellants, Deborah Roszak and Darryl Gerlat, received notification that their positions were reallocated to the new classification of Environmental Enforcement Specialists - Senior, effective April 19, 1992. On June 4, 1992, the appellants filed a timely appeal of respondent's reallocation decision. A hearing was held October 11, 1993, before Donald R. Murphy, Commissioner, and the post-hearing briefing schedule was completed December 20, 1993.

Appellants, who are currently classified as Environmental Enforcement Specialists - Senior at the Department of Natural Resources, allege their positions were incorrectly reallocated by respondent and the correct reallocation level, effective April 19, 1992, should have been Environmental Enforcement Specialist - Advanced.

The state classification specifications for the position levels at issue provide:

ENVIRONMENTAL ENFORCEMENT SPECIALIST, SENIOR

Positions allocated to this level include senior Environmental Enforcement Specialists. Positions at this level perform all the duties of the lower levels but are differentiated in that the senior 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 secondary enforcement actions across Environmental Quality program lines. This involves independently reviewing enforcement cases,

deciding which action is appropriate, initiating the appropriate enforcement action(s), involving other district and central office staff necessary to follow through with a completed complex civil case and preparing civil cases under the parallel proceedings format. The work performed at this level requires a high degree of interpretation and creativity in exercising independent judgment, e.g., in evaluating cases for consistency with statutes and rules.

Positions at this level function as (1) a senior district Environmental Enforcement Specialist responsible for developing, administering and evaluating a major portion of the environmental enforcement program being implemented districtwide; or (2) a central office specialist responsible for planning, coordinating and implementing specific aspects of the program as well as directing investigations. Senior Environmental Enforcement Specialists can serve as a district focus for enforcement operations and decisions, provide statute and code interpretation guidance and an enforcement training resource for district and area field staff.

Representative Positions

Enforcement Specialist - Implement the district's environmental enforcement program to bring regulated entities into compliance with environmental statutory and rule requirements through the selection and application of formal administrative secondary enforcement measures. Review case histories and consult with staff to determine enforceability of a violation and appropriate enforcement response. Determine if a case should be investigated as a civil or criminal violation. Initiate, develop and follow formal enforcement actions through to resolution. Monitor entity's response to enforcement and initiate follow-up. Prepare and issue consent and enforcement orders. Ensure that enforcement actions are in accordance with department codes, guidelines and handbooks and review enforcement actions to ensure consistency. Serve as administrative liaison with the Attorney General, District Attorney and US EPA offices in the resolution of referred cases. Provide enforcement assistance to compliance/surveillance/investigation activities. Provide briefings and recommendations on enforcement matters.

ENVIRONMENTAL ENFORCEMENT SPECIALIST, ADVANCED

This is advanced environmental specialist work. Positions at this level: (1) serve as the department expert for a significant, segment of the environmental enforcement program; or (2) serve as the lead district environmental enforcement specialist responsible for directing other environmental enforcement staff and providing districtwide coordination and expertise. These positions make casework or project assignments to other Environmental Enforcement staff to balance workload, develop and ensure compliance with district and department enforcement goals and ensures interdistrict and intradistrict uniformity of enforcement actions. In addition, these positions are responsible for the administration and development of work planning and budgeting

for the district Environmental Enforcement Program. Positions at this level work at the general level of supervision. 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 Environmental Enforcement Lead Worker - Administer the district's environmental enforcement program. Develop work plans, program objectives and district priorities. Direct assigned permanent staff. Prioritize enforcement efforts. Direct implementation and enforcement tracking of secondary enforcement actions. Coordinate the structured formal interdisciplinary enforcement actions involving review, analysis, and implementation of enforcement activities in departmental programs which include wastewater management, air management, water supply, nonpoint source pollution, solid waste, hazardous waste, waste tires, and environmental repair programs with the overall goal of enhancing protection of the environment through quality environmental law enforcement decision-making that considers protection, deterrence, and equity in the process. Provide formal administrative environmental law enforcement actions in all environmental programs. Serve as the department's administrative liaison with the Attorney General's office or the District Attorney's office in the resolution of district referred cases. Provide enforcement guidance on compliance/surveillance/investigation activities. Investigate civil and criminal cases.

The appellants work in the DNR, Southeast District offices in Milwaukee, Wisconsin, and are supervised by Charles Verhoeven, an Environmental Program Supervisor - 4. Their position descriptions at the time of the reallocation were the same and provided:

Time %	Goals and Worker Activities
45%	A. For the 8 County District provide formal administration [secondary] enforcement actions in Air Management, Solid Waste, Environmental Repair, Hazardous Waste, Wastewater Management and Water Supply programs.
35%	B. Serve as administrative liaison with the Attorney General, District Attorney and US EPA offices in the resolution of the district's referred cases.
15%	C. Provide enforcement guidance for compliance/surveillance/investigation activities.
5%	D. Serve as support staff for Assistant Director for Environmental Quality.

Roszak argues she is the primary S.E. District enforcement specialist in the Leaking Underground Storage (LUST) program. Gerlat argues he is the district's primary enforcement specialist in the Water Supply program. Both claim to be the DNR expert in areas of environmental enforcement. Both Roszak and Gerlat argue their positions are comparable to those of Michael V. Michaelson, EES - Advanced, DNR, Northwest District, and Darrell A. Solberg, EES - Advanced, DNR, Western District, but acknowledge, unlike those positions, theirs do not have leadwork responsibilities.

The evidence presented shows that Charles R. Verhoeven, appellants' supervisor, similar to the Michaelson and Solberg positions, is responsible for administering the District's Environmental Enforcement program. Verhoeven reports to an Assistant District Director, while Michaelson and Solberg report to the District Director. The appellants under Verhoeven's supervision share in the district's environmental enforcement duties.

Based on the evidence presented, the Commission can only conclude that appellants' positions were properly reallocated to the Environmental Enforcement Specialist - Senior level, positions responsible for developing, administering and evaluating a major portion of the environmental enforcement program being implemented districtwide, as defined in allocation pattern one of this class.

ORDER

The decision of respondent is affirmed and appellants' appeals are dismissed.

Dated: _____, 1994 STATE PERSONNEL COMMISSION

LAURIE R. McCALLUM, Chairperson

DRM:rcr

DONALD R. MURPHY, Commissioner

JUDY M. ROGERS, Commissioner

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