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DUANE J. LAHTI,

Appellant,

v.

Secretary, DEPARTMENT OF
EMPLOYMENT RELATIONS,

Respondent.

Case No. 92-0556-PC

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DECISION
AND
ORDER

This is an appeal of a reallocation decision. A hearing was held on December 2, 1993, before Laurie R. McCallum, Chairperson. The parties were permitted to file briefs and the briefing schedule was completed on April 25, 1994.

Pursuant to a personnel management survey of science-related positions, appellant's position was reallocated to the Water Regulation and Zoning Specialist (WRZ-Spec)-Senior level. Appellant filed a timely appeal of this reallocation, contending that his position was more appropriately classified at the WRZ-Spec-Advanced level.

The duties and responsibilities of appellant's Area Water Management Specialist position during the time period relevant to the survey were accurately described in a position description originally signed by appellant on March 20, 1991, and may be summarized as follows:

35% Administer permit and approval program for all WEPA Type III and IV actions, and process applications for permits and approval for all WEPA Type II actions in the four-county Brule Area within the Northwest District. These actions relate to protection of wetlands and surface waters.

15% Improve public awareness and understanding of water and shoreland regulations by responding to public inquiries, conducting educational meetings, working with public and private groups in the planning and development of projects affecting surface waters, and coordinating Area response to federal public notices under the Clean Water Act and the Rivers and Harbor Act.

15% Serving as the area floodplain/shoreland coordinator, including providing assistance to county and municipal officials relating to the adoption and administration of shoreland, shoreland-wetland and floodplain ordinances and related zoning ordinances; reviewing such ordinances for compliance with applicable administrative rule and statutory requirements.

10% Enforcement of Chapters 30 and 31, Wis. Stats., including assisting the local DNR warden in investigating water law violations; recommending to the court or hearing examiner appropriate restoration and/or abatement of water law violations; maintaining a program of surveillance over projects involving surface water to assure compliance with permit conditions; conducting dam safety inspections and issuing orders.

5% Coordinating the area water regulation program with other agencies and organizations involved in the development, management and protection of surface waters and wetlands.

5% Implementation of technical studies, including making field surveys to determine navigability and ordinary highwater marks, monitoring lake levels and stream flows and maintaining records, observing public use patterns of area lakes and streams and adjacent shorelines to assure protection of public and private rights when administering water laws, and documenting flood events to establish base data.

5% Coordinating federal, state, and local activities for consistency with the Coastal Zone Management Program, including assisting coastal communities in development or improvement of recreational and commercial boat harbors and related facilities; assisting in the development, implementation, and review of projects involving maintenance of federal navigational channels and alternative methods of disposal and reuse of dredge material; providing technical assistance to the public and local officials on coastal erosion processes and methods of control.

5% Special projects, including serving on the Technical Advisory Committee for the development of the St. Louis River Remedial Action Plan; serving on the District FERC Hydro Relicensing Team for dams in the Brule Area; serving on the District Monitoring Team for oil and gas exploration on Brule Area County Forest lands; serving on the technical advisory committee for the Superior Special Area Management Plan on evaluation of wetlands; serving on the Turtle-Flambeau Flowage Master Plan Committee; serving on the Brule River State Forest Master Plan Committee; and serving on the District Employee Recognition Committee.

5% Leadworker responsibilities.

There are two other Area Water Management Specialists assigned to the Northwest District. Each is assigned to a particular geographical area and the general duties and responsibilities assigned to these two positions parallel those assigned to appellant's position. The water management issues relating to Lake Superior, the public trust doctrine issues relating to Lake Superior, the Lake Superior coastal zone program, and the red clay soils wetlands issues for which appellant's position is responsible are generally more complex than the water management issues assigned to these two other area manager positions. One of these other area manager positions is classified as a WRZ-Spec-Objective and the other as a WRZ-Spec-Developmental. In ascending order, the classifications within the WRZ-Spec series are entry, developmental, objective, senior, advanced.

There are also Area Water Management Specialists assigned to the Lake Michigan District which are assigned responsibility for the Lake Michigan coastal zone program, the public trust doctrine issues relating to Lake Michigan, and wetlands and water management issues relating to Lake Michigan and its environs. The record shows that these issues are not significantly less complex than those parallel issues for which appellant's position is responsible; and that these positions are classified in the WRZ-Spec series but at a level below the Advanced level.

Two other Area Water Management Specialist positions have unique areas of specialization/expertise comparable to appellant's: Mitchell Zmuda who is assigned to the Antigo Area and is responsible for nonmetallic mining issues; and Tom Smith who is assigned to the Wisconsin Rapids Area and is responsible for issues relating to the cranberry industry. Both of these positions were classified at the WRZ-Spec-Senior level as the result of the subject survey.

WRZ-Spec-Advanced positions offered for comparison purposes in the hearing record include:

Byron Simon--Chief Biologist, Water Regulation Section--this position has statewide responsibility for integrating the use of scientific principles into the development of draft statutory language, draft administrative rules, and draft department and program policies in the area of surface water, including wetlands; coordinating the integrated, multi-disciplinary review of extremely complex projects requiring water regulatory permits or approvals; developing and directing the use of state-

of-the-art scientific evaluation methodologies to assess project impacts and their significance; serving as the department expert in determining navigability of lakes and streams, in establishing location of the ordinary high water mark, in establishing location of wetland boundaries; providing consultation and guidance to district and area staff in the administration of the water regulation permit program; coordinating inter-department review of complex policies and procedures; supervising a project ecologist position which has responsibility for evaluating, reviewing and recommending ecological clean-up and restoration projects for highly contaminated hazardous waste sites located in and adjacent to surface waters of the state including wetlands.

Lois Stoerzer - Wisconsin Wetland Inventory Coordinator - this position functions out of the central office as the statewide expert with sole responsibility for administering all phases of the Wisconsin Wetland Inventory Program which is considered a significant segment of the Water Regulation and Zoning Program.

The classification specification for the Water Regulation and Zoning Specialist series states as follows, in pertinent part:

WATER REGULATION AND ZONING SPECIALIST, SENIOR

Positions allocated to this level include senior Water Regulation and Zoning 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 in evaluating permits for consistency with statutes and rules. The Water Regulation and Zoning Specialist at this level may be considered an expert in a segment of the program. Positions at this level typically function as: (1) an area/district water regulation and zoning specialist responsible for developing, administering and evaluating the water regulation and zoning program in the assigned geographic area; (2) a district water regulation and zoning specialist responsible for developing, administering and evaluating a major portion of the water regulation and zoning program being implemented districtwide; (3) a central office water regulation and zoning specialist responsible for serving as the assistant to a higher-level water regulation and zoning specialist/supervisor having responsibility 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 Position

Area Water Management Specialist - Responsible for administering the water regulation and zoning program in order to protect public rights in surface waters and ensure reasonable use of floodplain, shoreland, and wetland areas; reviewing and approving/denying permits; providing surveillance; assisting with investigations and the prosecution of violations; and providing technical assistance to counties and municipalities in the administration of zoning ordinances.

WATER REGULATION AND ZONING SPECIALIST, ADVANCED

Positions allocated to this level include advanced Water Regulation and Zoning Specialists. Positions typically serve as the (1) department expert for a significant segment of the water regulation and zoning program or (2) a districtwide expert with multi-faceted responsibilities (providing districtwide expertise and coordination for multiple and significant segments of the water regulation and zoning program). The area of responsibility will normally cross program boundaries, require continually high level and complex contacts with a wide variety of government entities and private citizens regarding highly sensitive and complex scientific reviews 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 Regulation and Zoning 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.

It is common for DNR staff at many levels to serve on issue/policy committees, such as those on which appellant has served. Program policies and standards are developed at the Bureau level and the area manager positions, including appellant's, are responsible for implementing these policies and standards. "Significant segments" of the water regulation and zoning program would include permitting, coastal and floodplain zoning, wetlands inventory, wetlands zoning, and dam safety.

Appellant's position does not satisfy the requirements of either of the allocations of the Advanced classification. First, appellant's position does not serve as the department expert for a significant segment of the water regulation and zoning program. The location and particular physical characteristics of the area to which he is assigned result in his serving as the department expert relating to Lake Superior issues, just as certain other area managers serve as department experts relating to Lake Michigan issues, to wetlands issues regarding the cranberry industry, to Mississippi River issues, etc. This type of location-specific issue is not comparable to "a significant segment of the water regulation and zoning program." As found above, such segments consist of broad issues, not dependent on location within the state, such as the permit process, coastal and floodplain zoning, wetlands inventory, wetlands zoning, and dam safety. This is exemplified by the Lois Stoerzer Advanced position described above which serves as the department expert for wetlands inventory statewide, not in a limited geographical area. The fact that these Lake Superior-related issues are more complex than the issues unique to other geographical areas renders appellant's position stronger from a classification standpoint than certain other area manager positions but does not raise appellant's position to the level of an Advanced position.

The second Advanced allocation requires that a position serve as the districtwide expert with multi-faceted responsibilities providing districtwide expertise and coordination for multiple and significant segments of the water regulation and zoning program. In this regard, appellant's position has area-wide, not districtwide, responsibilities. If, for example, appellant's position was responsible for the district's wetlands inventory and wetlands zoning program, this would be the type of responsibility obviously contemplated by this allocation. And again, as discussed above, the complexity of appellant's area-specific responsibilities make his position a stronger Senior position

than those of certain other area managers but do not transform his area-wide responsibilities into district-wide responsibilities.

Although the duties and responsibilities of appellant's position cross program boundaries, require certain high level contacts, and satisfy other elements of the language of the Advanced classification specification, they do not satisfy one of the two allocations and do not satisfy other definitional language such as that requiring responsibility for developing, implementing, monitoring and evaluating statewide policies and programs. Appellant's position has input into the development and evaluation of certain policies and programs, but his primary focus, parallel with that of other area managers, is in the implementation of policies and programs which are developed at a higher organizational level. This is well illustrated by the Byron Simon Advanced position which functions out of the central office and has statewide responsibility for developing, administering, monitoring, and evaluating policies and programs in broad areas of the water regulation and zoning program.

In contrast, the duties and responsibilities of appellant's position are well-described by the language of the first allocation of the Senior classification specification and by the Senior representative position. It should be further noted that the uniqueness and complexity of the issues for which appellant's position is responsible are recognized by his classification at the Senior level in contrast to the lower classifications assigned to other area manager positions.

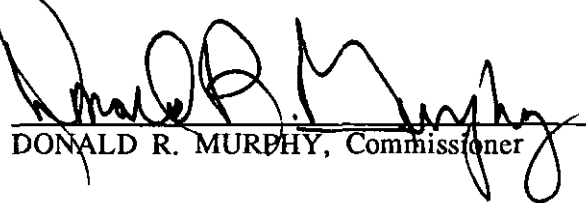
ORDER

The action of respondent is affirmed and this appeal is dismissed.

Dated: June 21, 1994 STATE PERSONNEL COMMISSION


LAURIE R. McCALLUM, Chairperson

LRM:lrn


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 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.)