

were discussions during the survey with some supervisors of affected positions, in addition to reliance on the PD's, and that all positions identified by appellant are under classification review.

In a related vein, appellant makes the following request, in the event the Commission should not rule in his favor:

I respectfully request that the final ruling be held in abeyance until DER proves that the non-statewide positions allocated to the advanced level were done so by mistake and they are all declassified, including any forester positions that match the representative position of District Forester. In addition, a review needs to be conducted to determine how many other non-statewide district experts exist at the advanced level. These positions must also be dealt with fully.

Assuming, arguendo, that the Commission has this kind of authority, the actions requested conflict with the interest of administrative finality. Adjudicative hearings of his nature normally deal with historical facts -- e.g., as in this case, whether respondent's decision regarding the reallocation of appellant's position was correct, based on the duties and responsibilities assigned to the position as of the date of the survey. In some cases, subsequent events may have probative value with respect to historical events.

In this case, appellant in effect is requesting that the hearing record be reopened and then held open until the occurrence of a number of personnel transactions. As noted above, the preponderance of the evidence that was presented at the hearing supports a finding that respondent's current intent is to change the classification downward of all positions which do not have statewide elements. Therefore, it has to be considered more likely than not that this scenario would indeed ensue, and these events then would have no effect on the classification of appellant's position. Assuming for the sake of discussion that events occurred differently, this could also set in motion other events (e.g., appeals) which also conceivably could impact on this case, and create further possibilities of uncertainty and delay. Under all the circumstances, appellant's request to hold this matter in abeyance will be denied.


The Commission also notes that if events occur as appellant suggests, he may be able to obtain further review of the classification level of his position. That is, if DER decides not to change the classification of positions which may be found to lack statewide elements, appellant may be able to pursue a classification change for his own position based on what presumably would

then amount to a change in DER's approach to the interpretation and application of the Water Supply Specialist class specification.


ORDER

The attached proposed decision and order, as augmented by the foregoing discussion, is adopted as the Commission's final disposition of this matter. Appellant's request to hold this matter in abeyance as set forth on page five of his objections to the proposed decision and order is denied.

Dated: October 24, 1994 STATE PERSONNEL COMMISSION


LAURIE R. McCALLUM, Chairperson

AJT: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

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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KEITH F. HUTCHISON,
 Appellant,

v.

Secretary, DEPARTMENT OF
 EMPLOYMENT RELATIONS,
 Respondent.

Case No. 92-0577-PC

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PROPOSED
 DECISION
 AND
 ORDER

This matter is an appeal pursuant to §230.44(1)(b), Stats., of the reallocation of appellant's position from Environmental Specialist 6 to Water Supply Specialist - Senior rather than Water Supply Specialist - Advanced. At the commencement of the hearing, the parties stipulated that the only contested issue in the case is whether appellant's position satisfies the following underscored language from the Advanced definition found in the Water Supply Specialist class specification, or whether this language is inapplicable to his position:

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

Appellant's position is in a district and would fit into the second rather than the first allocation. It is clear that his position does not satisfy the requirements of statewide responsibilities and statewide expertise set forth in the underscored language in the advanced definition. While he has some input into statewide matters, these are ultimately the responsibility of other positions, and he admits he is not the statewide expert in his assigned program area. Therefore, the only way that appellant's position could be at the advanced level would be if the Advanced level definition were interpreted as not requiring the statewide elements for the second allocation (districtwide expert).

In Fitzgerald v. DER, 92-0308-PC (1/11/94), the Commission held that the statewide elements "must be applied to all positions which are to be allocated to the Advanced level." p. 3. Notwithstanding appellant's contentions to the contrary, there is no reason why the Commission should overrule this precedent.

Appellant argues that if the Advanced definition is interpreted to require statewide elements for both allocations -- the departmental experts and the districtwide experts -- this effectively nullifies the second allocation, because a districtwide expert cannot be expected to have the statewide elements. However, as the Commission noted in Fitzgerald, it cannot "ignore the very clear requirements set forth in the last sentence of the definition statement." p. 3. Furthermore, the Commission also noted that "[i]t may be that a position may evolve that meets the 'typical' allocation of a districtwide expert and the general requirement of the statewide expert," id., and the record in this case reflects that such positions have now evolved.¹

Appellant also introduced evidence that several positions in closely related series, with virtually identical definitions of the advanced level, are at the advanced level with no indication in their position descriptions of any responsibility for the statewide elements.

¹ The record reflects that the advanced level as originally conceived included only central office positions, but that DNR did not want district level experts excluded from potential classification at the advanced level. Therefore, DER added the second (districtwide expert) allocation, but retained the concept of statewide responsibilities and expertise. As noted above, some district positions have evolved that have the statewide elements.

(2)

According to respondent, there were approximately 1400 positions reallocated as a result of this survey, and it was indicated that the positions identified by appellant may have been reallocated to the advanced level in error. Respondent further asserts that all of these positions are under classification review, and those that lack statewide elements will be reallocated down to the senior level. Based on this record, this is not a situation where a series of classification decisions reflecting a departure from the literal language of a class definition suggests that DER in its interpretation and application of the class specification has effectively abandoned that literal language, compare Smith v. DER, 91-0162-PC (11/29/93). Rather, this case falls into the line of cases exemplified by Augustine & Brown v. DATCP, 84-0036-PC, 84-0037-PC (9/12/84), where the Commission held that: "[t]o reclassify a position simply because another comparable position is inappropriately classified would compound an error."

In a related vein, appellant also points out that in the Forester series there is a representative position described at the Advanced level with no apparent statewide elements. While this fact does lend support to appellant's case, it is not ultimately persuasive. The Commission held in Eagon v. DER, 90-0398-PC (3/23/92), that it is not bound by the identification of a position as a representative position in the class specification if the record establishes that, on the basis of the class definition, the position should be at a higher level. Similarly, in this case the class definition, which is unambiguous and requires that advanced-level positions have certain statewide elements, is controlling. Furthermore, the fact that the description in a class specification of a representative position does not reflect every aspect of the definition may simply reflect an abbreviated approach to describing a position.

ORDER

Respondent's action reallocating appellant's position to Water Supply Specialist - Advanced is affirmed and this appeal is dismissed.

Dated: _____, 1994 STATE PERSONNEL COMMISSION

LAURIE R. McCALLUM, Chairperson

AJT:rcr

DONALD R. MURPHY, Commissioner

JUDY M. ROGERS, Commissioner

Parties:

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