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STATE OF WISCONSIN

PERSONNEL COMMISSION

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RALPH C. HEWETT,

Appellant,

v.

Secretary, DEPARTMENT OF  
EMPLOYMENT RELATIONS,

Respondent.

Case No. 92-0594-PC

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DECISION  
AND  
ORDER

This case involves an appeal of the reallocation of appellant's position from Natural Resources Supervisor 2 (NRS 2) to Forestry Supervisor 1, as opposed to Forestry Supervisor 2.

Appellant's position in the Northern Highland - American Legion (NH-AL) State Forest has the working title of Forest Management Specialist. The official position description (PD) used for the reallocation (Appellant's Exhibit 2) is an essentially accurate summary of appellant's position. This PD contains the following position summary:

This position plans, coordinates, and supervises subordinate professional and paraprofessional positions in the management of all forestry programs on the Northern Highland-American Legion State Forest, which lies in three counties (220,000 acres) and is 37% of the state-owned property in the State of Wisconsin. The position implements all forestry functions and coordinates all pilot projects and forestry research projects involved with the above state-owned land. Responsibilities include program planning, budget control, developing and coordinating timber sales establishment, timber sales administration, reforestation, timber stand improvement, insect and disease control, and public relations.

Appellant's supervisor is the NH-AL Superintendent, Dennis Lieth, whose position was reallocated as a result of the survey from NRS 4 to Park Manager 4 (PM 4). There are two other supervisors also reporting to Mr. Lieth -- the Recreation and Land Control Supervisors. Mr. Lieth is supervised by Tom Roberts, the North Central District Forestry Supervisor.

The issue in this case involves the question of whether respondent's decision to reallocate appellant's position to FS 1 rather than FS 2 was correct. The FS 1 and FS 2 definitions are as follows:

### **FORESTRY SUPERVISOR 1**

Under the general supervision of a higher level Forestry Supervisor/ Manager or higher level administrative supervisor, positions at this level typically function as (1) a forestry work unit supervisor responsible for planning, coordinating, and implementing all forestry programs within the assigned forestry area or (2) a forest superintendent of a medium sized State forest. Positions function under general supervision.

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### **FORESTRY SUPERVISOR 2**

Under the general supervision of a Forestry Manager, positions at this level typically function as (1) an Area Forestry Supervisor, (2) a Forest Superintendent of a large State forest, or (3) a Forestry Unit Leader within the Bureau of Forestry.

Duties include: effectively recommending the hiring, transfer, suspension, layoff, recall, promotion, discharge, assignment, evaluation, discipline, and adjustment of grievances of subordinate employes; supervising, coordinating, and reviewing the work of professional foresters and others to assure conformance with established policy, procedures, and standards; planning and conducting training and orientation for foresters, forestry technicians, and other forestry-related staff and instructing/training them in the appropriate methods of forestry management techniques; directing the preparation of materials for presentation to the appropriate department, state, or local personnel for further follow-up, analysis or remedial action; analyzing forestry management and related programs and assisting in the development and implementation of improved forestry related analyses, evaluation, and regulatory techniques and procedures; recommending needed changes to applicable laws, rules, regulations, policies, procedures to higher level supervisors and program administrators; participating in or responsible for the performance of special project activities relating to the development of new forestry regulations and/or the revisions of existing ones; giving expert testimony in court; maintaining liaison and working contacts with federal, state, and local natural resources, environmental and/or other forestry related agencies, other regulatory agencies, and other pertinent persons and/or organizations; coordinating joint scientific investigations or related activities as required with other agencies or regulatory bodies; and conducting informational activities relative to the interpretation and application of the objectives and requirements of forestry related programs.

Respondent's central contention with respect to the reallocation of appellant's position to FS 1 rather than FS 2 is that his position does not meet any of the three FS 2 allocation patterns -- i.e., it is neither an Area Forestry

Supervisor, a Forest Superintendent of a large state forest, nor a Forestry Unit Leader within the Bureau of Forestry. In addition to not fitting any of these allocation patterns, appellant's position is not "[u]nder the general supervision of a Forestry Manager," as set forth in the FS 2 definition. Respondent further contends that appellant's position fits within the first allocation at the FS 1 level -- "a forestry work unit supervisor responsible for planning, coordinating, and implementing all forestry programs within the assigned forestry area." In addition, respondent contends that, with respect to its supervision, appellant's position falls within the FS 1 definition's description of the supervisory relationship: "[u]nder the general supervision of a higher level Forestry Supervisor/Manager or higher level administrative supervisor."

Appellant concedes that his position does not fit into either any of the FS 2 allocation patterns or the FS 2 supervisory relationship. The basic thrust of his case is that his position also does not fit within the literal language of the FS 1 definition, and that that classification is ill-suited to a position such as his due to the unique attributes of his position. This uniqueness relates particularly to the NH-AL, which surpasses in size and complexity the other forests in the state. He also contends that his position has certain state-wide responsibilities, and that respondent has allowed exceptions to the supervisory relationship set forth in the classification specification. Essentially, appellant contends that due to the inappropriateness of the classification structure involved in this case to deal with the peculiar features of NH-AL, his class level must be determined by more general classification concepts and position comparisons, rather than the constrictions of the specific language in the FS 2 allocation patterns.

Respondent has characterized appellant's case as an attack on the FS class specifications per se. There are elements of that in appellant's case, and to that extent that aspect of appellant's case is outside the Commission's jurisdiction to consider. The Commission has to apply the class specifications as written, and has no authority to consider an employee's disagreement with their content, *see e.g., Zhe v. DHSS & DP*, 80-285-PC (11/19/81); affirmed, Dane Co. Cir. Court, *Zhe v. PC*, 81CV6492 (11/2/82).

However, as noted above, the main thrust of appellant's case is that the class specifications as written are not really applicable to his position at NH-AL and they must be interpreted and applied on the basis of the more general

classification principles they reflect. This would be consistent with the following language found in §I.A. of the FS classification specification:

This classification specification will not specifically identify every eventuality or combination of duties and responsibilities that currently exist, or those that result from changing program emphasis in the future. Rather, it is designed to serve as a framework for classification decision-making in this occupational area.

Also, compare Smith v. DER, 91-0162-PC (11/29/93), pp. 2-3.

The Commission agrees with appellant that the fact his position does not satisfy any of the three allocations contained in the FS 2 definition does not per se prevent his position from being classified at this level. As noted above, the FS class specification acknowledges that it may not encompass all current positions in this area. It is undisputed that NH-AL is a unique property and the only forest in the "major" size category. Appellant's supervisor's position accordingly was not classified in the FS series at all, at least in part because the FS classification has no provisions for forest superintendents beyond large forests.

Also, appellant's position does not fit clearly into the FS 1 definition. Respondent contends that appellant's position meets the definition of the first FS 1 allocation: "a forestry work unit supervisor responsible for planning, coordinating, and implementing all forestry programs within the assigned forestry area."

However, it is somewhat questionable whether appellant's position should be considered a "forestry work unit supervisor." (emphasis added) While there was no definition as such of work unit on this record, this term appears to be most consistent with the concept of a subarea of an area. The representative position for this allocation supports this conclusion, because it describes a position which "[u]nder the direction of the Area Forestry Supervisor, supervise the management of all forestry programs within an assigned area." (emphasis added) It goes on to describe a full range of forestry programs, including timber sales, reforestation, forest reconnaissance, and fire control. However, appellant has no responsibility for fire control. Appellant also is not responsible for a part of the total land area for which his supervisor is responsible, but rather is responsible for all forestry functions in NH-AL, the area for which the forest supervisor is

responsible. Appellant's position certainly is not clearly described by this allocation.

While appellant has established the foundation for an argument that his position can be considered for an FS 2 classification notwithstanding that it does not meet either the FS 2 supervisory criterion or the allocations set forth in the FS 2 definition, respondent presented other evidence in support of its decision, in addition to the contention that appellant's position did not meet the requirements of the FS 2 definition. Appellant has the burden of proof and must establish by a preponderance of the evidence that respondent's decision was incorrect. In the Commission's opinion, appellant has not satisfied this burden.

For example, respondent compared appellant's position to the FS 2 position occupied by Kenneth Sloan (see Respondent's Exhibit 11). This position has a higher level reporting relationship, a more substantial supervisory component, and a broader range of forestry programmatic areas. While appellant contends in a general sense that the unique complexities of NH-AL counterbalance the multiple programmatic areas in positions such as Sloan's, the net result is that on this record the Commission must conclude that appellant has not satisfied his burden of proof with respect to this position comparison. While there is evidence in the record concerning the unique complexities of NH-AL, there is little else beyond the conclusory opinions expressed by appellant upon which to base a finding as to the relative complexity of this factor as compared with Mr. Sloan's multiple programmatic areas. For example, Mr. Lieth testified about the complex nature of appellant's position, but he did not express an opinion as to whether it is more complex than Mr. Sloan's.

Appellant's case is not materially aided by his contention that he satisfies the duties enumerated by the class specification for the FS 2 level. These duties appear to be relatively generic in nature. Clearly, many would be common to any supervisor. This point is reinforced by the fact that forest supervisors are found at both FS levels, distinguished by the size of the forests supervised.

It could be that there is a classification outside the FS series that would be more appropriate for appellant's position. However, on this appeal the Commission is limited to consideration of FS 1 and FS 2. Since appellant has not

satisfied his burden of proof to establish that respondent's decision to reallocate appellant's position to FS 1 rather than FS 2 was incorrect, respondent's decision must be sustained.

ORDER

The decision of respondent to reallocate appellant's position from NRS 2 to FS 1 rather than FS 2 is affirmed and this appeal is dismissed.

Dated: September 21, 1994 STATE PERSONNEL COMMISSION

  
LAURIE R. McCALLUM, Chairperson

AJT:rcr

  
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.)