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LINDA K. VOGEN, *

Appellant, *

v. *

Secretary, DEPARTMENT OF *

EMPLOYMENT RELATIONS, *

Respondent. *

Case No. 92-0601-PC *

* * * * *

DECISION
AND
ORDER

This is an appeal of a decision by respondent to reallocate appellant's position to Wastewater Management Specialist-Senior (WMS-Senior) rather than WMS-Advanced as the result of a survey of science-related positions. A hearing was held on February 28, 1994, before Laurie R. McCallum, Chairperson. The parties were permitted to file post-hearing briefs and the briefing schedule was completed on May 9, 1994.

The duties and responsibilities assigned to appellant's position during the time period relevant to the subject survey may be accurately summarized as follows:

42% Coordination and implementation, on a district-wide basis for the Lake Michigan District of the Department of Natural Resources, of the WPDES permit program, including issuance, reissuance, and modification of major and minor municipal, non-complex industrial, and general wastewater permits. One of the components of this responsibility is to determine the disinfection needs of municipal wastewater treatment plants. The final permits prepared by this position are subject to the review and approval of the District Wastewater Supervisor and Assistant District Director--Environmental Standards.

37% For the Lake Michigan District, audit industrial, municipal, and commercial laboratories to determine whether their laboratory methods and techniques, equipment, quality assurance and statistical evaluation procedures, and record-keeping, as related to water quality testing, comply with applicable DNR administrative code requirements; follow up on compliance problems to determine changes necessary to achieve

compliance, and provide technical information and training to assist laboratories in achieving compliance; review and approve laboratory equipment for new or upgraded wastewater treatment plants; evaluate and upgrade laboratory operator exams; and train district and central office staff to conduct audits.

12% For the Lake Michigan District, coordinate and identify need for toxic substance data generation and evaluation, including reviewing water quality data submitted by wastewater facility or laboratory for adequacy and completeness; providing technical assistance to facilities and labs on testing methods, sample types and collection, limits of detection and quantitation, and interpretation of analytical results; assisting in establishing priorities for effluent limit determinations; and reviewing effluent limit calculations to assure all available data was used and limit determinations are complete.

9% Edit Discharge Monitoring reports and perform other duties as assigned, including serving as wastewater representative on District Pollution Prevention Committee, serving on advisory committee for the Food and Environmental Technician Program of the technical college, and participating on statewide committees developing program policies and budgets.

The classification specification for the Wastewater Management Specialist classification states as follows, in pertinent part:

WASTEWATER MANAGEMENT SPECIALIST, SENIOR

Positions allocated to this level include senior Wastewater 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 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 wastewater management specialist responsible for developing, administering and evaluating the wastewater management program in the assigned geographic area; (2) a senior wastewater district specialist responsible for developing, administering and evaluating a major portion of the wastewater program being implemented districtwide; (3) a senior central office wastewater management specialist responsible for serving as the assistant to a higher-level wastewater management specialist/supervisor having responsibilities for a major aspect of the program; or (4) as a wastewater 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, e.g., a wastewater specialist responsible for the wastewater program on the doctoral UW campuses. 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

District Permit and Laboratory Specialist - On a districtwide basis, the position is responsible for the following activities: Coordinate and implement the WPDES permit program including issuance, reissuance, and modification of major and minor municipal, non-complex industrial and general permits. Implement the laboratory certification and registration program. Coordinate and identify needs for toxic substance data generation and evaluation. Conduct laboratory evaluations and provide assistance. Determine disinfection needs. Approve laboratory equipment for new or upgraded wastewater treatment plants.

* * * * *

WASTEWATER MANAGEMENT SPECIALIST, ADVANCED

Positions allocated to this level include advanced Wastewater Management Specialists. Positions typically serve as the: (1) department expert for a significant segment of the wastewater management program; or (2) a districtwide expert with multi-faceted responsibilities (providing districtwide expertise and coordination for multiple and significant segments of the wastewater program); or (3) the wastewater program specialist having responsibilities for a multi-regulatory wastewater program state- or UW-System-wide. 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 wastewater 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 Wastewater 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.

Representative Position

Stormwater Program Specialist - Develop the stormwater pollutant abatement program meeting the requirements of the Clean Water Act and state laws and policies. Determine appropriate stormwater treatment technologies and site management and pollution prevention practices for reducing pollutants. Coordinate the permit program on an inter-bureau level with department district and central office staff. Determine permit effluent limitations. Develop and implement a permit program for municipal large scale land disposal systems that employ drainfields that assures compliance with administrative code.

Positions offered for comparison purposes in the hearing record include:

a. Kathy Bartilson - WMS-Senior - DNR Northwest District - this position is responsible for administering the WPDES permit program district-wide (75%); administering and implementing the district municipal and industrial sludge management program (15%); developing informational and educational materials including a district wastewater newsletter and news releases (8%); and miscellaneous wastewater activities, including providing input into the preparation of administrative rules (2%).

b. Susan Watson - WMS-Senior - DNR North Central District - this position is responsible for coordinating all WPDES permit issuance, re-issuance, and modification activities for all municipal and de-centralized industrial wastewater dischargers in North Central District (65%); serving as district expert on WPDES process, including serving on statewide committees to develop bureau strategies and budgets, and assisting in the development of program policies and procedures (20%); and receiving and processing public comments relating to district WPDES process (15%).

c. Anne Mauel - WMS-Advanced - DNR Bureau of Wastewater Management - this position is assigned responsibility for developing a statewide stormwater pollutant abatement program meeting the requirements of the Clean Water Act and state laws and policies, including chairing statewide technical and advisory committees, developing relevant state policies, drafting relevant statutes and administrative rules, determining permit effluent limitations, determining required best management practices, determining effluent monitoring requirements, developing and

implementing an information and training program for permittees and DNR staff; and determining appropriate stormwater treatment technologies and site management and pollution prevention practices (90%); developing and implementing a permit program for municipal large scale land disposal systems that employ drainfields that assures compliance with applicable administrative rule requirements (7%); performing other water quality-related duties as assigned (3%).

Consistent with the language of the Advanced classification, a position must not only satisfy one of the three listed allocations but must also be assigned responsibility for "developing, implementing, monitoring and evaluating statewide policies and programs." Even if it were concluded that appellant's position serves as a districtwide expert with multi-faceted responsibilities consistent with the second Advanced allocation, the record does not show that appellant's position has sufficient responsibility for developing, implementing, monitoring, and evaluating statewide policies and programs.¹ Although appellant did show that she had certain statewide training responsibilities and input into department program and policy development through her membership on department committees, these responsibilities consume only a small percentage of appellant's position's time and do not involve the scope or level of program and policy responsibility envisioned by the language of the Advanced specification. This type of statewide program and policy responsibility is illustrated by the duties and authority assigned to the Mauel position described above, i.e., this position is responsible for developing a statewide program, including developing program policies and relevant statutes and administrative rules. In contrast, appellant's position's primary program and policy development activities are limited to the Lake Michigan District and the primary emphasis of appellant's position is not program and policy development but program implementation.

The duties and responsibilities of appellant's position are well-described by the second allocation of the Senior classification and the Senior specification lists appellant's position as a representative position at that level.

¹ The Commission has modified the corresponding sentence in the proposed decision, and has withdrawn certain language because, given the facts of this case, it is unnecessary to address the issue of whether responsibilities "for developing, implementing, monitoring, and evaluating statewide policies and programs" must be performed a majority of the time. Here it is clear that the appellant's statewide responsibilities are peripheral, as noted elsewhere in the decision.


In addition, the duties and responsibilities of appellant's position are more closely comparable to those of the Senior positions offered for comparison purposes than the Advanced Mauel position. In particular, the Bartilson position, with its responsibility for both the district WPDES permit program and the district sludge management program, appears to parallel appellant's position with its corresponding responsibility for two district programs, i.e., the WPDES permit program and the laboratory program.

Appellant argues that the Mauel position should not be offered as a comparison position because the incumbent of that position has not performed all of the duties specified in the position description. However, it should be noted here that this position was a newly created and vacant position when it was first classified at the Advanced level, and that the Advanced classification was based on the duties and responsibilities set forth in a position description which was obviously prepared and approved prior to recruitment. Consequently, the duties and responsibilities actually performed by the successful candidate for this position could not have affected the classification decision which is cited here for comparison purposes and would not be relevant to this discussion.

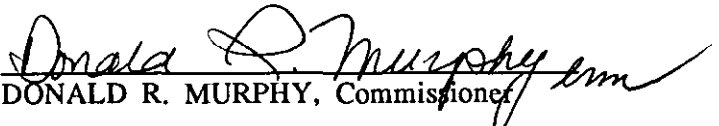
ORDER

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

Dated: June 23, 1994 STATE PERSONNEL COMMISSION


LAURIE R. McCALLUM, Chairperson

LRM:lrn


DONALD R. MURPHY, Commissioner


JUDY M. ROGERS, Commissioner

Linda K. Vogen
DNR Lake Michigan District
1125 N. Military Avenue
P.O. Box 10448
Green Bay, WI 54307

Jon Litscher
Secretary, DER
P.O. Box 7855
Madison, WI 53707-7855

**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.)