

STATE OF WISCONSIN

PERSONNEL COMMISSION

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JAMES A. TROCHTA
WILLIAM A. RITTER
DAVID ESTANO

Appellants,

v.

Secretary, DEPARTMENT OF
EMPLOYMENT RELATIONS,

Respondent.

Case Nos. 92-0616-PC
92-0626-PC
92-0689-PC

* * * * *

DECISION
AND
ORDER

These are appeals of the reallocations of appellants' positions to the Air Management Specialist-Senior classification rather than the Air Management Specialist-Advanced classification. A hearing was held on March 10, 1994, before Laurie R. McCallum, Chairperson.

The duties and responsibilities of the Estano position are accurately described in a position description signed by appellant Estano on February 24, 1992, and may be summarized as follows:

This position is responsible for establishing and maintaining operation of the Department of Natural Resource's (DNR's) environmental monitoring operations (including air, water, and atmospheric deposition monitoring) throughout northeastern Wisconsin, including the entire Fox River Valley. This responsibility entails establishing, operating, and assuring the timely collection of air, water, and atmospheric deposition data from stations throughout his assigned network (70%); supervising operation of the Great Lakes Atmospheric Deposition (GLAD) network in Wisconsin (including both wet and toxics deposition) (20%); serving as DNR Liaison with industries involved in self-monitoring activities and performing audits of industrial and DNR monitoring stations throughout Wisconsin (10%). This position has also been assigned to serve as a member of a four-person DNR ozone advisory committee.

The duties and responsibilities of the Trochta position are accurately described in a position description signed by appellant Trochta in or around February of 1992, and are essentially identical to those of the Estano position except that the Trochta position is not responsible for the GLAD network but instead is responsible for supervising operation of the National Atmospheric Deposition Program (NADP) in Wisconsin (wet deposition sampling), for supervising Wisconsin dry deposition monitoring operations in northern Wisconsin, and for serving as DNR liaison with the Indian tribes in northeastern Wisconsin in relation to environmental monitoring. Although appellant Trochta has not been assigned to serve on the ozone advisory committee, he has been assigned to serve on other DNR committees. This is a common assignment for DNR program specialists.

The duties and responsibilities of the Ritter position are accurately described in a position description signed by appellant Ritter in or around February of 1992, and are essentially identical to those of the Trochta position except that the Ritter position performs these duties in western, central, and northern Wisconsin; and performs environmental monitoring functions for air, atmospheric deposition, and solid and hazardous waste. Appellant Ritter has been assigned to serve on DNR committees.

The appellants' positions are assigned to the central office of the DNR's Bureau of Air Management, Monitoring Section.

Air Monitoring Specialist positions offered for comparison purposes include the following:

a. Daniel Nickolie--Senior--The duties and responsibilities of this position are essentially identical to those of the Trochta position except that the Nickolie position performs these duties in southern Wisconsin; and performs environmental monitoring functions for air, visibility, toxics, and atmospheric deposition.

b. Lawrence Weix--Senior--This position is assigned to the Lake Michigan District and is responsible for conducting inspections of facilities to determine compliance with DNR rules, statutes, permit provisions, and court orders relating to air pollution; processing air pollution permit applications and making recommendations on the issuance of permits; coordinating and implementing the district asbestos control program for renovation/demolition projects; participating in enforcement activities; investigating citizen complaints regarding air pollution; performing and witnessing testing of industrial stacks; conducting investigations to determine causes of violations of national ambient air quality standards.

c. John Meier--Senior--This position has statewide responsibility for conducting technical evaluations of ambient air quality through the use of air quality dispersion models; reviewing, processing, and recommending action on indirect source permit applications; and preparing emission inventories for use in air quality models.

d. Lloyd Eagan--Advanced--This position has statewide responsibility for directing implementation of Wisconsin's requirements under the 1990 Clean Air Act amendments, including developing statutory language, interstate institutional alternatives papers, administrative rules, and program policies and strategies; implement the air management provisions of the Recycling Law and the Refrigerants Law, including developing draft administrative rules and program policies and chairing citizen advisory group; and serving as Acting Bureau Director in the absence of unavailability of the Director of the Bureau of Air Management.

e. Eric Mosher--Advanced--This position has statewide responsibility for developing and recommending policies and regulatory options for reducing emission of global warming gases and acid rain control in Wisconsin; and for coordinating and completing special studies of toxic air pollutants, criteria air pollutants, global warming gases, and electric utility power plant siting and combustion technologies.

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

AIR MANAGEMENT SPECIALIST, OBJECTIVE

Representative Position

Air Quality Data Specialist - This position is responsible for the acquisition, maintenance, storage, review, and reporting of air quality monitoring data; the evaluation of continuous air quality monitoring data in compliance with quality assurance procedures and standards; and managing the air quality standard exceedance tracking and reporting system.

AIR MANAGEMENT SPECIALIST, SENIOR

. . . Positions at this level have extensive authority in carrying out their assigned responsibilities. This involves independent implementation of assigned duties and recognition of having developed specialized knowledge in a specific program area, or requiring coordination of diverse segments of the program to accomplish program specific objectives such as administrative rule development. . . . Positions at this level typically function as: (1) a senior area/district air management specialist responsible

for developing, administering and evaluating the air management program in the assigned geographic area; (2) a senior district air management specialist responsible for developing, administering and evaluating a major portion of the air management program being implemented districtwide; (3) a senior central office air management specialist responsible for serving as the assistant to a higher-level air management specialist/supervisor having responsibilities 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 Positions

District Air Specialist - Perform inspections and develop necessary information to determine source compliance with department rules, state statutes, permit provisions and court orders concerning air pollution. Process air pollution permit applications for existing sources in accordance with established procedures. Coordinate and implement the asbestos control program for renovation/demolition projects within the district. Participate in enforcement activities. Investigate citizen complaints regarding air pollution. Conduct investigations to determine courses of violations of air quality standards.

Environmental Monitoring Liaison Specialist - Establish and maintain operation for the department's environmental monitoring operations (includes air, water, and atmospheric deposition monitoring) within the assigned geographical area. Provide environmental monitoring services for department programs to ensure continuous monitoring networks. Coordinate site establishment, routine operation, and reporting for a statewide network of atmospheric deposition monitoring stations. Complete performance and systems audits of industrial and DNR monitoring stations.

AIR MANAGEMENT SPECIALIST, ADVANCED

. . . Positions typically serve as the (1) department expert for a significant segment of the air management program or (2) a district-wide expert with multi-faceted responsibilities (providing districtwide expertise and coordination for multiple and significant segments of the air management program). The area of responsibility includes a significant segment of the air management program and 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 air management issues and have significant regulatory and 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 is both more in-depth and of a wider range than that found at the Air Management Specialist-Senior level.

. . . 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 Positions

Photochemical Modeling Specialist (Central Office) - This position independently conducts research on the atmospheric phenomena associated with ambient ozone violations; develops ozone control strategies; evaluates and runs advanced photochemical, meteorological, and emissions models; acts as Bureau Ozone Forecasting Coordinator.

Special Assistant to Bureau Director - Direct the implementation of Wisconsin's requirements under the 1990 Clean Air Act Amendments in consultation with the Bureau Director and effectively implement the Air Management Program elements of the Recycling and Refrigerants Law. Direct program staff, serve as legislative contact, coordinate air management activities with other programs and agencies. Act as the department representative including serving as resource and liaison to the regulated community, the legislature, the public, other agencies and the department in these program areas. Estimate fiscal needs and other resources to implement these laws. Provide advice to the Bureau Director.

Although each of the three positions under review here is assigned to the central office of the DNR and has certain statewide program responsibilities (i.e., Estano = GLAD; Trochta = NADP, mercury monitoring network, dry deposition network, environmental monitoring liaison with Indian tribes; Ritter = certifying Superfund monitoring equipment, particulate monitoring program quality assurance), these statewide responsibilities represent only a narrow segment of the state's environmental/air quality management program; and consume significantly

less than a majority of appellants' positions' time. The primary focus of each of appellants' positions is the implementation of part of the DNR's environmental/air quality monitoring program in an assigned geographical area. None of these positions includes a significant statewide policy and program development and evaluation component, and the program segments to which appellants' positions are primarily assigned represent relatively narrow segments of the DNR's environmental/air quality management program. As a result, the duties and responsibilities of appellants' positions do not satisfy the requirements for classification at the Advanced level. This conclusion is further supported by a comparison of the duties and responsibilities of appellants' positions to those of the Advanced positions offered for comparison purposes, i.e., each of these Advanced positions has a significant program and policy development and evaluation component, and is assigned to a broader segment of the environmental/air quality management program than appellants' positions.

In contrast, the language of the fourth allocation of the Senior classification specification describes the primary focus of each of the three positions; the description of the duties and responsibilities assigned to one of the representative Senior positions, i.e., the Environmental Monitoring Liaison Specialist, parallels the primary duties and responsibilities assigned to appellants' positions and was obviously intended to identify these positions; and the duties and responsibilities assigned to the Senior positions offered for comparison purposes in the hearing record are more closely comparable to those assigned to appellants' positions than those assigned to the Advanced positions offered for comparison purposes.


ORDER

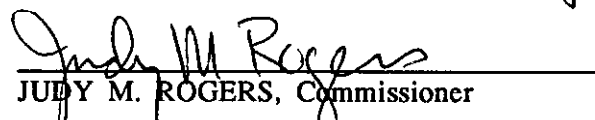
The actions of respondent are affirmed and these appeals are dismissed.

Dated: May 2, 1994 STATE PERSONNEL COMMISSION


LAURIE R. McCALLUM, Chairperson

LRM:irm


DONALD R. MURPHY, Commissioner


JUDY M. ROGERS, Commissioner

Parties:

James Trochta
10360 Big Eddy Lane
Suring, WI 54174

Jon Litscher
Secretary, DER
PO Box 7855
Madison, WI 53707-7855

William Ritter
PO Box 1301
La Crosse, WI 54602

David Estano
1500 South Ridge Road
Green Bay, WI 54304

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 delgated 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 a written findings of fact and conclusions of law. (§3020, 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, (§3020, 1993, Wis. Act 16, amending §227.44(8), Wis. Stats.)