

STATE OF WISCONSIN

PERSONNEL COMMISSION

\* \* \* \* \*

WILLARD KIEFER,

Appellant,

v.

Secretary, DEPARTMENT OF  
EMPLOYMENT RELATIONS,

Respondent.

Case No. 92-0634-PC

\* \* \* \* \*

RULING ON MOTION TO BE  
ADMITTED AS A PARTY  
AND  
JURISDICTIONAL OBJECTION

This matter is before the Commission on the respondent's jurisdictional objection and on respondent's objection to the request by James J. Rau to be admitted as a party pursuant to §227.44(2m), Stats. The following facts appear to be undisputed.

1. The position of Brule Area Forestry Staff Specialist (BAFSS) was reallocated by respondent to the Forester-Senior-Management classification effective April 19, 1992. Appellant Willard Kiefer was the position incumbent as of that date.

2. Mr. Kiefer vacated the position in the middle of May of 1992.

3. On June 10, 1992, Mr. Kiefer filed an appeal of the reallocation decision with the Personnel Commission which was assigned Case No. 92-0634-PC.

4. On July 12, 1992, James Rau transferred into the BAFSS position vacated by Mr. Kiefer.

5. Mr. Rau filed an appeal with the Commission (Case No. 92-0732-PC) on July 21, 1992, of the decision which reallocated the position formerly held by Mr. Kiefer. In later correspondence, Mr. Rau also asked to be admitted as a party in the Kiefer appeal pursuant to §227.44(2m), Stats.

6. In an order dated October 1, 1992, the Commission dismissed Case No. 92-0732-PC as untimely based upon Mr. Rau's admission that he failed to file his appeal within the 30 day period required by §230.44(3), Stats. Pursuant to that order, Mr. Rau was also notified of a prehearing conference in the Kiefer appeal.

7. During the prehearing conference held on December 16, 1993, Mr. Rau requested to be admitted as a party pursuant to §227.44(2m), Stats., and respondent objected.

8. Also during the conference, Mr. Kiefer stated that his contention in this matter was that the classification specifications for the Forester-Senior and Advanced levels are flawed and he admitted that his position was assigned to the proper classification level (Forester-Senior-Management) based upon the class specifications as they were adopted.

9. Mr. Rau's position description was signed by DNR's personnel manager on April 27, 1992, and includes certain different responsibilities from those on Mr. Kiefer's position description.

#### DISCUSSION

Pursuant to §227.44(2m), Stats:

Any person whose substantial interest may be affected by the decision following the hearing shall, upon the person's request, be admitted as a party.

Respondent contends that Mr. Rau should not be permitted to appeal the reallocation decision because he transferred into the position at the Forester-Senior-Management class level, and that he would not have been able to transfer if the position had been classified at a higher level. Respondent notes that if the Commission concludes that the position belonged at the higher level, "the position may have to be opened up to competition without regard to Mr. Rau's incumbency."

The only question to be answered under §227.44(2m), Stats., is whether Mr. Rau's "substantial interest may be affected" by a decision on the merits in this matter. Respondent's argument clearly shows that to be the case; if reallocation is granted, Mr. Rau may have to compete for the position he currently holds. Mr. Rau clearly has a substantial interest in terms of the proper classification of the BAFSS position as of April 19, 1992.

In light of Mr. Rau's request, he is admitted as a party to this matter.

The second item before the Commission is respondent's jurisdictional objection to Mr. Kiefer's contention that the specifications are flawed. As a general matter, the Commission agrees that its role in reviewing reallocation

decisions is to apply the existing class specifications to the particular duties assigned to a position, and the Commission does not have the authority to revise the specifications in response to a claim that they need to be rewritten. Zhe, et al. v. DHSS & DP, 80-285-PC, 11/18/91; *aff'd* by Dane County Cir. Ct., Zhe, et al. v. PC, 81-CV-6492, 11/1/82. Therefore, in a reallocation appeal, the appellant must identify an alternative classification which s/he feels better describes the position than the class level assigned by the respondent.

As noted in finding 8, Mr. Kiefer admitted during the prehearing conference that his position was assigned to the proper classification based upon the class specifications as they were adopted. In his brief, Mr. Kiefer stated that the Forester-Senior-Management class was "the only category allowed by the then present class specification." Mr. Kiefer then goes on to suggest that additional duties and responsibilities reflected in Mr. Rau's position description signed on April 27, 1992, "exceed the criteria of the Forestry Staff Specialist as defined in the Forester-Senior class specs."

The basis for the Commission's review of a reallocation decision is the duties and responsibilities assigned to a position as of the effective date of that decision. To the extent the April 27th position description reflected additional duties beyond those assigned to Mr. Kiefer as of April 19, 1992, it is irrelevant to the appeal before the Commission. Mr. Kiefer does not appear to be contending that he performed the duties on the April 27th position description and that, as a consequence, the BAFSS position, as of April 19th, was more accurately described in the new class specifications at some level other than Forester-Senior-Management. Because Mr. Kiefer has not identified an alternative (existing) classification which better describes his April 19th responsibilities, his claim must be dismissed.

Mr. Rau, because of his status as a party in this matter, will now be provided an opportunity to identify an alternative classification. Such a classification would have to have been in existence as of the April 19th effective date. The Commission notes that this case remains an appeal of the decision reallocating the BAFSS position as of April 19th, rather than an appeal of a decision setting the class level for the position filled by Mr. Rau on July 12, 1992.<sup>1</sup>

---

<sup>1</sup>In his brief, Mr. Rau also referenced the duties which he apparently was assigned when he began to fill the BAFSS position on July 12, 1992. The

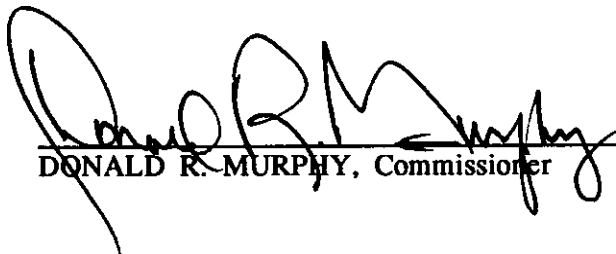
ORDER

Mr. Rau is added as an appellant in this matter. Mr. Kiefer's claim is dismissed. This case will hereafter be referred to as Rau v. DER, and Mr. Rau is provided 20 days from the date this ruling is issued in which to identify an alternative classification which he feels better describes the classification of Mr. Kiefer's position as of April 19, 1992.

Dated: May 2, 1994 STATE PERSONNEL COMMISSION

  
LAURIE R. MCCALLUM, Chairperson

KMS:kms  
K:D:temp-5/94 Kiefer

  
DONALD R. MURPHY, Commissioner

  
JUDY M. ROGERS, Commissioner

Parties:

Willard Kiefer  
7784 South County Rd. S  
Lake Nebagamon, WI 54849

James J. Rau  
DNR  
P.O. Box 125  
Brule, WI 54820

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

Commission has already noted that this position description is irrelevant to the extent it reflects duties beyond those assigned to Mr. Kiefer as of April 19th.

**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.)