

* * * * *

JEFFERY A. THOMAS,

Appellant,

v.

Secretary, DEPARTMENT OF
EMPLOYMENT RELATIONS,

Respondent.

Case No. 94-0070-PC

* * * * *

INTERIM
DECISION
AND
ORDER

A proposed decision and order was issued on October 12, 1994. Both parties filed written arguments, the final argument having been received by the Commission on November 18, 1994. The hearing tapes were reviewed and the Commission consulted with the hearing examiner.

The Commission amends the proposed decision to better conform with the record and, as amended, adopts the proposed decision as its final decision. DER's main arguments which were not already discussed in the proposed decision are addressed below, followed by a listing of amendments made to the proposed decision and order.

Additional Arguments Raised by DER

DER's written arguments recognize that the examiner believed Mr. Thomas' testimony regarding the time estimates provided for tasks he performed. DER felt the record showed that "the appellant cannot possibly be performing gardening work a majority of the time".

No testimony based on first-hand knowledge of the tasks performed by Mr. Thomas' position existed to refute Mr. Thomas' time estimates, which were supported by testimony from one of his supervisors.¹ The Commission realizes

¹ Ms. Nuttal presented testimony to challenge Mr. Thomas' time estimates, but her knowledge was based upon second-hand sources such as his PD and information given to her at the audit of his position. The audit may have given her some limited opportunity for direct observation of the tasks he

it is not obliged to accept Mr. Thomas' testimony as true even under these circumstances. A statement of the pertinent analysis is found in 29A Am Jur 2d, Evidence, s. 1445, Uncontroverted testimony, the text of which is shown below in part (footnotes omitted):

The trier of fact is not compelled to accept even uncontroverted testimony when it doubts the credibility of a witness, and may consider reasonable inferences from circumstances tending to weaken the evidence. Thus, the trier of fact will generally disregard as being without evidentiary value uncontroverted testimony of a witness that --

- is incredible.
- is inherently impossible and unbelievable.
- is so opposed to all reasonable probabilities as to be manifestly false.
- does not amount to substantial evidence of facts testified to or accepted as a basis of liability.
- runs counter to human experience.

DER's arguments challenge Mr. Thomas' credibility on the basis that his testimony was either "inherently impossible and unbelievable" or was "so opposed to all reasonable probabilities as to be manifestly false," within the meaning of the AmJur section cited above. Two post-hearing arguments of this nature were addressed in the proposed decision on page 9 under the title: "What if Mr. Thomas' PD was drafted incorrectly?", and on p. 10 under the title: "Concrete Argument". DER raised additional arguments of this nature to the full Commission in its brief filed on November 14, 1994, which are discussed in the following paragraphs.

DER states in its brief that the record establishes the period of time in which Mr. Thomas could perform planting duties (hereafter, *Planting Season*) as starting in May and continuing through mid-October which is 54% of the 12-month year. DER compares that 54% figure with the examiner's finding that 53% of Mr. Thomas' duties involve Gardener work (page 7, proposed decision). DER asserts that the 53% estimate is improbable or impossible because it leaves only 1% of his time to perform groundskeeping work. The comparison made by DER is faulty and the conclusion drawn is incorrect.

performed, but not to a sufficient degree to provide annual time estimates based upon her own observations.

Even if DER were correct with its 54% estimate², this is a ratio of the number of months out of a year (X months/12 months) during which Mr. Thomas could perform planting duties. The 53% figure DER refers to is an estimate of the percentage of Gardener duties performed by Mr. Thomas' position on an annual basis (X hours/total hours for the year). He did not testify that 53 of the 54% Planting Season involved Gardener tasks. Therefore, DER is incorrect in concluding that his testimony left only 1% of time during the Planting Season to perform groundskeeper work.

The Planting Season estimate given by DER's own witness would allow Mr. Thomas to spend up to 13% of his time during the Planting Season on groundskeeper work, while still maintaining a majority of his annual work time on Gardener tasks. This maximum estimate is a mathematical certainty. (A seven month maximum Planting Season represents 58% of the months in a year. If 87% of the Planting Season were spent on Gardener tasks the calculation would be $58\% \times .87 = 50.46\%$, of the work hours in a year spent on Gardener tasks.)

The Commission, in summary, agrees with the examiner. The record provides insufficient reason to reject the credible testimony from Mr. Thomas.

Amendments to the Proposed Decision

1. In the first paragraph of the BACKGROUND portion of the proposed decision (on p. 1 of the proposed decision), delete the second sentence and add the following information.

The duties of Mr. Thomas' position vary with Wisconsin's weather. The planting duties of his position are performed in 3 seasons; spring, summer and fall. DER's classification expert estimated that Mr. Thomas' planting duties start in or about April or May and continue through October; which is 6-7 out of 12 months, or 50-58% of 12 months. His planting duties include preparing the beds for planting, working with a landscape architect on plans for the outdoor plantings, caring and maintaining outdoor and

² The 54% figure may be a short-hand reference used in DER's written arguments. Ms. Nuttall's testimony was that the off season would probably be from November through April, or perhaps May. Ms. Nuttall's testimony suggests that appellant performs planting duties from April through October, a period of 7 months or 58% of the 12-month year; or from May through October, a period of 6 months or 50% of the 12-month year.

indoor plantings; as well as grounds maintenance duties. Grounds maintenance duties in good weather include such items as keeping drives and sidewalks free of dirt, raising the flag daily, picking up litter every morning and removing trash from underground parking areas. In the season where Wisconsin weather is incompatible with plantings (hereafter, the Off Season), Mr. Thomas' position is responsible for snow removal coordination at the GEF complexes, and for craft and/or maintenance work on an as-needed basis.

2. In the third paragraph of the BACKGROUND portion of the proposed decision (on page 2 of the proposed decision), amend the fourth sentence as shown below:

Each agency also identified benchmark positions, meaning positions which were typical of that agency's gardening/groundskeeping work.

3. In the BACKGROUND portion of the proposed decision, under the section entitled "The Inclusions, Exclusions and Definition Sections of the Class Specs", amend the first full paragraph after the chart (on p. 3 of the proposed decision) as shown below:

Ms. Nuttall said the Class Spec for Gardener is intended to include positions with "specialized work related to ornamental gardening" for a majority of the position's time, whereas the Class Spec for Groundskeeper is intended to include positions performing generalized groundskeeping work a majority of the time.

4. In the BACKGROUND portion of the proposed decision, in the first paragraph of the section entitled "Mr. Thomas' Job Duties" (page 5 of the proposed decision), delete the fifth sentence and replace it with the following two sentences:

More detail is provided for section A of his PD which includes all of his Gardener tasks. Ms. Nuttall said tasks in s. B of his PD which relate to tool/equipment maintenance, could be considered as related to ornamental gardening but do not meet the Gardener Class Spec requirement of "specialized work" related to ornamental gardening.

5. In the DISCUSSION portion of the proposed decision, in the section entitled "Percentage of time Mr. Thomas performs examples listed in Groundskeeper Class Specs" (p. 9 of the proposed decision), delete the final two sentences of the sole paragraph therein and replace them with the following sentence:

Accordingly, meeting 51% of the examples of work listed in the Groundskeeper Class Spec does not eliminate the potential of meeting 51% of the examples of work listed in the Gardener Class Spec.


ORDER


The proposed decision is adopted as the final decision and order in this matter, as amended and discussed above.

Dated December 22, 1994.

STATE PERSONNEL COMMISSION


LAURIE R. McCALLUM, Chairperson


DONALD R. MURPHY, Commissioner


JUDY M. ROGERS, Commissioner

cc: J. Thomas
M. Wild

* * * * *

JEFFREY A. THOMAS,

Appellant,

v.

Secretary, DEPARTMENT OF
EMPLOYMENT RELATIONS,

Respondent.

Case No. 94-0070-PC

* * * * *

PROPOSED
DECISION
AND
ORDER

A hearing was held in the above-noted case on August 8, 1994. Pursuant to respondent's request, both parties submitted written arguments. The last brief was received by the Commission on September 26, 1994.

The issue for hearing was agreed to by the parties at a prehearing conference held on June 16, 1994, as follows:

Was the respondent's decision to reallocate the appellant's position from Groundskeeper to Groundskeeper correct, or should the appellant's position have been reallocated to Gardener or Grounds Crew Chief?

The appellant conceded during hearing that it would be incorrect to classify his position as a Grounds Crew Chief because he does not lead permanently assigned groundskeepers a majority of his time, as required by the class specifications (Exh. R3). Appellant's concession eliminated the Grounds Crew Chief classification from further consideration by the hearing examiner.

BACKGROUND

Mr. Thomas is employed by the Department of Administration (DOA) with year-round duties relating to the grounds of the GEF buildings in Madison, Wisconsin. Generally, these duties include indoor and outdoor plantings, as well as snow removal in the winter months.

The Department of Employment Relations (DER) undertook a survey of gardening-related positions which included classifications of gardener, groundskeeper, laborer and others which performed gardening work. In 1992, DER assigned the survey coordinator function to Susan Nuttall, a class analyst at DER.

Ms. Nuttall first identified the agencies which used gardening-related classifications. She then contacted the agencies to tell them about the survey and to ask them to identify affected positions in their agency. Each agency indicated whether recruitment and/or retention problems existed with the affected classifications. Each agency also identified benchmark positions, meaning positions which were typical of that agency's gardening work. The agencies involved included DOA, the Department of Veterans Affairs, the Department of Health and Social Services, Department of Corrections and the University (including the campuses).

Ms. Nuttall visited each involved agency and audited all benchmark positions, including Mr. Thomas'. She then drafted new class specifications (Class Specs) which she shared with all affected agencies for review and comment. The agencies updated the position description (PD) for each affected position and made a classification recommendation to DER based on the new Class Specs. DER reviewed the recommendations and made the final classification decision. The affected positions were reallocated under the new Class Specs effective April 17, 1994.

DOA recommended that Mr. Thomas' position be classified as a Groundskeeper under the new Class Specs. DER agreed. Mr. Thomas was notified of the decision and timely appealed the same. Mr. Thomas believes his position should have been reallocated to the Gardener classification.

The Inclusions, Exclusions and Definition Sections of the Class Specs

The record contains the Class Spec for Groundskeeper (Exh. R-1) and for Gardener (Exh. R-2). The "Inclusions", "Exclusions" and "Definition" sections are compared below (in relevant part).

Groundskeeper Class Specs

Inclusions: This classification encompasses positions which, for a majority of the time, perform groundskeeping work at a state facility.

Exclusions: Excluded from this classification are the following types of positions:

* * *

2. Positions which perform lawn maintenance, ornamental gardening, or tree and shrubbery maintenance a majority of the time, and are identified by the Lawn Care Worker, Gardener, and Tree Pruner classification specifications, respectively.

3. Positions which do not perform groundskeeping work a majority of the time.

* * *

DEFINITION: This is semi-skilled work related to groundskeeping. Positions allocated to this classification perform a variety of groundskeeping activities throughout the year to maintain and improve the grounds of a state facility. Work is performed under the general supervision of a Grounds Supervisor.

Gardener Class Specs

Inclusions: This classification encompasses positions which, for the majority of the time, perform gardening work at a state facility.

Exclusions: Excluded from this classification are the following types of positions:

* * *

3. Positions which do not perform gardening work a majority of the time.

4. All other positions which are more appropriately identified by other classification specifications.

DEFINITION: This is specialized work related to ornamental gardening. Positions allocated to this classification are primarily responsible for the cultivation & maintenance of ornamental plants located on the grounds of a state facility. Positions also perform other groundskeeping work to support the overall groundskeeping operation of a state facility. Work is performed under general supervision.

Ms. Nuttall said the Class Spec for Gardener is intended to include positions with "specialized work related to ornamental gardening" for a majority of the position's time, whereas the Class Spec for Groundskeeper is intended to include positions performing generalized gardening work a majority of time.

The Class Spec for Gardener does not contain a definition of "ornamental gardening". Ms. Nuttall defined "ornamental gardening" as plantings which

beautify the grounds. She considers all plantings performed by Mr. Thomas to be "ornamental gardening".

The Examples of Work Performed in the Class Specs

Each Class Spec lists examples of work performed. Some examples listed in the Groundskeeper Class Spec also are listed in the Gardener Class Spec. Some examples are unique to one or the other Class Spec. The examples are compared below. An asterik (*) flags the unique examples. The examples given in the Class Specs have been numbered here for convenience. A "YES" indicates Mr. Thomas performs the work described.

Groundskeeper Work Examples

- * **1-Yes** Mow, trim, rake, edge, aerate, and water lawns.
- 2-Yes** Pick up and dispose of litter and other debris from assigned grounds area.
- * **3-Yes** Topdress, seed, and sod lawns.
- 4-Yes** Weed, till, edge, and mulch shrubbery beds.
- 5-Yes** Plant and prune trees and shrubs.
- 6-Yes** Plant and maintain flower beds.
- * **7-Yes** Apply fertilizers, herbicides, insecticides, and/or fungicides, as directed.
- * **8-Yes** Install and maintain irrigation systems.
- 9-Yes** Plow, brush, and shovel snow from roads, walks, steps, and parking lots, & spread sand and salt, as required.
- 10-Yes** Use and operate a variety of groundskeeping equipment, such as riding and push mowers, rakes, edging tools, shears, manual and power saws, snowblowers, front-end loaders, and dump and pickup trucks.
- 11-Yes** Operate equipment and tools

Gardener Work Examples

- * **1-No** Prepare soil and germinate or propagate plants in hotbed or greenhouse.
- * **2-No** Maintain appropriate light, moisture, temperature & nutrition levels in greenhouse growing environ.
- 3-Yes** Plant seeds, seedlings, bulbs and/or potted plants in indoor or outdoor growing area, according to wk. plan.
- 4-Yes** Fertilize, water, weed and thin plants in growing areas.
- * **5-Yes** Diagnose plant problems & implement appropriate chemical or cultural practices to remedy condition.
- 6-Yes** Attend display beds to maintain beauty of display, including removing & replacing dead or diseased plants, applying mulch to inhibit growth of weeds, & picking up & disposing of litter & other debris.
- * **7-Yes** Care for interior foliage plants.
- 8-Yes** Plant & maintain ornamental herbaceous & woody plants.
- 9-Yes** Remove annual floral displays after frost, dig

- according to safety guidelines.
- 12-Yes** Inspect, clean, and perform routine maintenance on groundskeeping equipment.
- 13-Yes** Keep records of groundskeeping activities.
- *14-Yes** Assist with other projects, such as installing & repairing signs, fences, and bike racks; laying blacktop & concrete & moving furniture & equipment.
- 15-Yes** Assist other groundskeeping staff, as needed.
- 16-Yes** Perform other duties as assigned by Grounds Supervisor or Grounds Crew Chief.
- 17-Yes** May direct limited term employes, student workers, inmates, and/or other workers assisting with groundskeeping work.
- & store tubers & bulbs, & mulch perennials.
- * 10-No** Perform routine maintenance on hotbed, greenhouse, and/or cold frame structures & equipment.
- * 11-Yes** Assist in the design of &/or design selected flower beds.
- * 12-Yes** Assist Grounds Supv. in the selection of plants & gardening equipment & supplies.
- 13-Yes** Use & operate a variety of gardening equipment, such as spades, trowels, edging tools, chemical sprayers & cultivators.
- 14-Yes** Inspect, clean & perform routine maintenance on gardening equipment.
- 15-Yes** Keep records of gardening activities.
- 16-Yes** Assist other groundskeeping staff with snow removal & other groundskeeping projects, as requested.
- 17-Yes** Perform other duties as assigned by Grounds Supv.
- 18-Yes** May direct limited term employes, student workers, inmates, &/or other wkrs assisting with gardening activities.

Mr. Thomas' Job Duties

Mr. Thomas' job duties generally are as described in his PD (Exh. R-4). He provided further details at hearing which the examiner found credible and credited in the prior section of this decision. His job duties are shown below using the organization of his PD. The time percentages for each section were included on the PD. More detail is provided for section A of his PD which includes most Gardener tasks, although Ms. Nuttal said his equipment work related to gardening tasks in s. B, also could count under the Gardener Class Specs. The time percentages shown for each task within section A is based upon Mr. Thomas' credible hearing testimony.

Time Sec. Duties Shown in Mr. Thomas' PD

- 70% A. Under the general supervision of the Superintendent of Buildings & Grounds, be responsible for maintaining grounds at the GEF Complex.
- (51%) A1. Maintain shrubbery, flower beds and lawns; including planting, cultivating, moving hoeing, pruning, fertilizing, mulching and watering.
- (3%) A2. Plant and replace shrubs and trees.
- (2%) A3. Control plant insects and disease through use of herbicides, insecticides, fungicides and other treatment required.
- (8%) A4. Prepare flower beds for planting & set-up flower arrangements.
- (1%) A5. Remove and trim dead and storm damaged trees.
- (3%) A6. Clean drives and walks of dirt, debris and snow. This includes hand shoveling and the use of motorized equipment including driving truck with snowplow.
- (1%) A7. Act as the GEF Complex's snow removal coordinator. Contact Capitol Police for existing weather conditions to help determine the need to call in additional snow removal assistance to insure all ice and snow has melted or been removed from sidewalks and entries not later than 6:30 a.m.
- (1%) A8. Keep records and make reports. Keep all equipment services lists up to date, inform all involved parties of service being done and show them how to use the records.
- 20% B. Equipment Maintenance/Upkeep and New Equipment Requests. Includes machines/tools related to gardening tasks and snow removal tasks.
- 10% C. Other Duties. As assigned, will also perform work with craft and maintenance personnel, assist with furniture moves and other duties.

Percentage of Time Mr. Thomas Performs Gardener Level Duties

The chart below is based on the testimony of Ms. Nuttall as to which tasks in section A of Mr. Thomas' PD could qualify for the higher Gardener classification. The time percentages are based on testimony from Mr. Thomas.

<u>Task</u>	<u>Potentially included under Gardener Class Specs?</u>	<u>% Total Time</u>	<u>Gardener Portion</u>	<u>Groundskeeper Portion</u>
A1	Yes, except lawn work.	51%	41%	10%
A2	Yes, except tree work.	3%	2%	1%
A3	Yes, all.	2%	2%	0%
A4	Yes, all.	8%	8%	0%
A5.	No, none.	1%	0%	1%
A6.	No, none.	3%	0%	3%
A7.	No, none.	1%	0%	1%
A8.	No.	<u>1%</u>	<u>0%</u>	<u>1%</u>
TOTALS		70%	53%	17%

Comparable Positions

Respondent offered the PD of Myron Turk (Exh. R-7) as illustrative of the Gardener classification. His duties are summarized below, using the organization of his PD.

<u>Time (%)</u>	<u>Goals and Worker Activities.</u>
50%	<u>A. Propagation and maintenance of greenhouse environment.</u> Duties here include using knowledge to grow plants indoors from cuttings or seeds, to multiple plants from roots and tuber, to control pests and diseases by chemical or other measures, to design and implement feeding program for all greenhouse plants, and to ensure growth by maintaining proper light and water levels for a variety of plants. Duties here also include (without a separate time estimate) helping with the greenhouse inventory, as well as maintenance and cleaning of the greenhouse.
40%	<u>B. Design and layout floral beds and select new or appropriate cultivars as needed.</u> Duties here include the design, layout, preparation, maintenance and end-of-season removal of outdoor planting areas. These tasks involve disease/pest control and plant feeding; as well as pruning and mulching. Duties also include maintaining grass areas and hedges. He also serves as gardening consultant to the general public and garden visitors.
10%	<u>C. Performance of miscellaneous tasks.</u> Ice and snow removal is performed but only when other workers are absent. The operation and/or maintenance of equipment is included here too. He also plans and implements plant decorations for UW commencement and other special functions.

Mr. Thomas credibly testified that he performed many of the duties listed in Mr. Turk's PD. He performed most tasks in section A of Mr. Turk's PD except not in a greenhouse setting. For example, he uses supplies to care for plants, but cannot claim to use "greenhouse supplies". Mr. Thomas performed all tasks in section B of Mr. Turk's PD except Mr. Thomas does not serve as a gardening consultant to the general public and to visitors (B12).

Conclusion

Ms. Nuttall audited Mr. Thomas' position as a benchmark position during the survey. She did not ask him to estimate the amount of time he spent performing each task in section A of his PD. Instead, she assumed each task

contributed equally to the 70% total. If her assumption had been true, each task listed in section A of his PD would account for slightly less than 9% of his total duties and the tasks she identified at hearing as Gardener work (A1-A4) would not account for more than half of his position. Mr. Thomas' credible hearing testimony, however, did not support the assumption made by Ms. Nuttall.

Mr. Thomas' credible hearing testimony shows he performs the tasks identified by DER's expert as gardener-level duties a majority of his time. Therefore, the Gardener classification is appropriate for his position.

DISCUSSION

Respondent raised several arguments in its post-hearing brief. Each is addressed below.

Performance of duties in a greenhouse

Ms. Nuttall also stated that Gardeners perform duties in greenhouses. DER argued in post-hearing briefs that work in a greenhouse was required for classification as a Gardener. The Commission disagrees because greenhouse work is not treated in the Gardener Class Spec as a pre-requisite. Rather, the Class Spec lists such work as one example of tasks performed by a Gardener.

The one Gardener PD offered by DER is for the position held by Mr. Turk who does work in a greenhouse for a portion of his time. Under some circumstances, this PD could be offered to show that DER interprets the Gardener Class Specs as requiring greenhouse work, but not here for several reasons. First, the Gardener Class Spec does not state that greenhouse work is a pre-requisite. Second, Mr. Turk's PD could be considered as meeting the Gardener Class Spec by the nature of the work performed as matching the examples given in the Gardener Class Specs, rather than by an interpretation contrary to the plain language of the Class Specs which would establish greenhouse work as a prerequisite. Third, Mr. Turk's PD standing alone is insufficient to refute the plain language of the Gardener Class Spec. Fourth, the interpretation urged by DER is contrary to ER 2.04(3), Wis. Admin. Code, which says there is no implication that all work examples listed in Class Specs must be performed to warrant the classification described in the Class Specs.

Percentage of time Mr. Thomas performs examples listed in Groundskeeper Class Specs

Mr. Thomas indicated at hearing that he performs all the example tasks listed in the Groundskeeper Class Spec and that the performance of such tasks comprised 51% of his position. DER argued in post-hearing briefs that this was an admission on Mr. Thomas' part which supports DER's decision to classify his position as a Groundskeeper. The Commission disagrees because many of the example tasks in the Groundskeeper Class Spec also would count under the Gardener Class Spec. The most reliable evidence is Mr. Thomas' time estimates for tasks which DER's expert said fit under the Gardener Class Specs. The more reliable evidence shows he performed Gardener duties a majority of the time.

What if Mr. Thomas' PD was drafted incorrectly?

Ms. Nuttall testified that if Mr. Thomas' testimony is correct, then his PD was drafted incorrectly. Specifically, she would expect task A-1 of his PD to be a separate section if he spent 51% of his time on the task. It may be that his PD was drafted incorrectly. However, DER did not show Mr. Thomas should have been aware that the items listed in section A of his PD would be assumed to require equal time or should have been written differently if the times were not equal. In short, it would not be fair to hold a poorly-drafted PD against Mr. Thomas to such extent as to override contrary credible hearing testimony.

Monk and Badsha de-minimus holding

DER also argued in its post-hearing brief that even if the tasks listed in Mr. Thomas' PD showed gardener duties for 41% in A-1 and 8% in A-2, this is insufficient to establish that Mr. Thomas performed Gardener tasks for a majority of time because the additional Gardener tasks at A2 (2%) and A3 (2%) are "negligible from a classification standpoint". DER cited the following Commission cases in support of this argument: Monk v. DP, 81-0118-PC (6/4/86) and Badsha v. DP, 81-135-PC (5/29/86). The Commission rejects this argument because the proposition DER cites them for does not hold up in context of the entire decision.

Both the Badsha and Monk cases involved library employes who felt they should be classified at the Librarian 1 level, rather than the Library

Associate 2 level. At issue were the Class Specs for Librarian 1, which required the employe to provide professional library services in at least two specialized program or subject areas. Badsha had one specialty in cataloging and Monk had one specialty in acquisitions. Both employes claimed a second specialty in reference work but all tasks qualifying for such specialty amounted to about 2.5%, which the Commission held was insufficient to establish a second specialty area under the Librarian Class Specs.

The Commission did not hold in Badsha and Monk that it would consider only reference tasks if performed more than a minimal amount of time. Rather all reference tasks were considered but in total were found insufficient.

Concrete Argument

DER argued that Mr. Thomas could not spend more than half his time on gardening because the GEF complexes are 80% concrete. Ms. Nuttall echoed this sentiment at hearing, yet she also acknowledged Mr. Thomas' responsibility for a "large number" of planting beds. While this argument of DER's may appeal on an intuitive level, it was insufficient to rebut the contrary credible evidence presented by Mr. Thomas.

Mr. Thomas' first-line supervisor did not testify.

In its post-hearing brief, DER also faulted Mr. Thomas for failing to have his supervisor testify. Mr. Thomas had Mr. Mitchell testify in place of his supervisor. Mr. Mitchell was Mr. Thomas' third-level supervisor. He was familiar with Mr. Thomas' work but, as DER pointed out, likely not as familiar as the first-line supervisor would have been. DER also faults Mr. Mitchell's testimony on the ground that he was not a classification specialist. Such lack of classification expertise most likely would have existed with Mr. Thomas' first-level supervisor as well. In any event, the decision here relies upon Mr. Thomas' and Ms. Nuttall's testimony; not the testimony of Mr. Mitchell.

Werlein and Barney PDs

DER's final argument pertains to the Groundskeeper PDs offered by DER as comparison to Mr. Thomas' position. It is true that Mr. Thomas' PD as written bears resemblance to the Groundskeeper PD for Mr. Werlein and, to a lesser

extent, to the Groundskeeper PD for Mr. Barney. However, Mr. Thomas' hearing testimony clarified his job duties and provided time percentage break downs for each relevant task. His testimony distinguished his PD from Mr. Werlein's and Mr. Barney's PDs.

ORDER

DER's decision reallocating Mr. Thomas' position at the Groundskeeper level rather than at the Gardener level is rejected and this case is remanded to DER for action in accord with this decision.

Dated _____, 1994.

STATE PERSONNEL COMMISSION

LAURIE R. McCALLUM, Chairperson

DONALD R. MURPHY, Commissioner

JUDY M. ROGERS, Commissioner

cc: J. Thomas
M. Wild