

STATE OF WISCONSIN

PERSONNEL COMMISSION

**ALLEN A. NORDSTROM**  
*Appellant,*

v.

**Secretary, DEPARTMENT OF  
EMPLOYMENT RELATIONS,**  
*Respondent.*

DECISION AND ORDER

Case No. 95-0061-PC

A proposed decision and order (PDO) was mailed to the parties on November 19, 1996. Written objections were filed on behalf of appellant to which respondent filed a reply on January 16, 1997. The Commission considered the arguments of the parties, consulted with the hearing examiner and decided to adopt the PDO as the Commission's final disposition of this case, as supplemented by the following discussion.

This case was combined for hearing with companion appeals filed by Kirby D. Foss (95-0048-PC), Alexander T. J. Olson (95-0062-PC), Richard J. Ostrowski (95-0049-PC) and Kenneth C. Lane (95-0064-PC). The objections filed by appellants (hereafter referred to as "Appellants' Brief") include arguments pertinent to all cases (pp. 2-6), as well as arguments specific to each appellant. Objections regarding appellant Nordstrom are contained on p. 7-8 of Appellants' Brief. The objections specific to appellant Nordstrom will be discussed below first, followed by a discussion of the arguments pertinent to all appellants.

#### Objections Specific to Appellant Nordstrom

The objections filed on behalf of appellant Nordstrom are shown below, with the Commission's response.

Appellant Nordstrom first contends:

The Commission excludes duties A5 and A11 from actual law enforcement, which relate to purchasing and budgeting. Nordstrom Proposed Decision, at 5. Yet both tasks involve records and reports related to law enforcement. The class specs specifically include "[d]eveloping reports related to law enforcement" as a part of actual law enforcement.

Purchasing and budgeting are not functions recognized in the Class Spec as actual LE activities and, accordingly, reports related to such tasks should not be construed as meeting the Class Spec definition.

Appellant Nordstrom next contends:

The Commission excludes both tasks C3-C8 (relating to posting and repairing signage, maintaining trails and campsites) and D3-D4 (stickers and sticker accounting). Nordstrom Proposed Decision, at 5-6. As noted previously in [Appellants' Brief], such duties are clearly within the DNR's definition of preventative law enforcement (App. Ex. 4) and also within the class specs, which include

. . . Enforcing laws, rules and regulations. Issuing verbal and written warnings and/or citations to visitors to achieve compliance with laws and regulations.

The reasons for rejecting tasks C3-C8 are provided in the PDO (first paragraph on p. 6). While appellant's above-noted argument disagrees with the conclusions drawn, it provides no specific arguments to invalidate the reasons stated in the PDO for a contrary conclusion. Accordingly, the Commission rejects this contention of appellant Nordstrom.

#### Point of Clarification

The time sheet information recited on p. 7 of the PDO pertains to the time code created and used by the Department of Natural Resources (DNR), appellant's employing agency, prior to the survey (old time codes); which were changed after the survey (new time codes). The new time codes are shown on page 7-8 of the PDO. The old time codes are shown in Exh. A-3, but the text is incomplete and neither party had a copy of the complete text. Appellants contend that the new time codes included more tasks as LE work than the old codes and such contention appears to be supported by the portion of the old time codes contained in Exh. A-3.

The credibility note starting on the bottom of p. 8 of the PDO, pertains to DNR's new time codes. Specifically, the parties stipulated that appellant Nordstrom would testify that a larger amount of his work was reported as LE work on his time sheets under the new time codes than was reported under the old time codes. Such stipulation, however, is insufficient to conclude that the time percentages used in the official PD signed by appellant Nordstrom are inaccurate because the new time codes

are broadly stated and result in inclusion of tasks which do not meet the Class Spec definition of actual LE activities.

#### Arguments Relating to All Appellants

The Class Spec definition of Ranger 2 (as shown on page 2 of the PDO) includes positions responsible for performing actual LE activities for at least 60% of the position's time. Actual LE activities is a defined term in the Class Spec as shown below (also shown on p. 2 of the PDO).

For the purpose of classifying positions within this series, actual law enforcement activities are defined as follows:

1. Random patrols on state land and water.
2. Enforcing laws, rules and regulations.
3. Issuing verbal and written warnings and/or citations to visitors to achieve compliance with laws and regulations.
4. Responding to LE related complaints.
5. Directing the activities of permanent and limited term employment LE personnel.
6. Seizing, holding and disposing of evidence for court.
7. Testifying in court.
8. Checking licenses, tags, permits and registrations.
9. Reviewing citations for completeness & accuracy.
10. Developing reports related to LE activities within the park/forest.
11. Conducting investigations of accidents, fires and incidents on state lands.
12. Acting as Court Officer.
13. Monitoring chain of evidence for all items seized and conducting proper disposition of items.
14. Attending and presenting LE training.
15. Serving as a district armorer.
16. Providing LE assistance to LE officers outside of normal park/forest LE duties.
17. Working with Conservation Wardens.

Appellants contend (pp. 2-5, Appellants' Brief) that the examiner's interpretation of the Class Spec "disregards" rules of construction. The relevant portion of appellants' argument (pp. 2-3, Appellants' Brief) is shown below:

The Commission concludes that "the record supports the conclusion that DER intended the narrower definition" of actual law enforcement as compared to that applied by the DNR. See e.g. Nordstrom Proposed Decision, at 11. The Commission also asserts that the DNR's definition of law enforcement is "broader" than the definition of law enforcement in the class specs. Id., at 9. It is respectfully submitted that these

conclusions contravene settled rules of construction and leads the Commission to the wrong result.

. . . The class specs are unambiguous in including all activities related to “[e]nforcing laws, rules and regulations.” Resp. Ex. 1. Thus, the Commission should apply the class specs as written as the best indicia of DER’s intent, rather than relying upon extrinsic explanations of intent by Troy Hamblin after the fact. If the Commission is true to the principle that it is bound by the terms of the class specs, it must accept the broadly inclusive language used by DER in these particular specs. (citation omitted) All activities related to “[e]nforcing laws, rules and regulations” (Resp. Ex. 1) constitute actual law enforcement under the specs, and they must be implemented as written. Yet the Commission has excluded a large variety of these activities from actual law enforcement in its proposed decision.

One problem with appellants’ above-noted argument is that it acknowledges that the Commission’s comments were related to the Class Spec definition of actual LE activities, yet the appellants base their contradicting arguments on the phrase “enforcing laws, rules and regulations”, which is just the second of 17 activities listed in the Class Spec definition of actual LE activities.

The more serious problem with appellants’ argument is that it reads into the second factor the phrase “all activities related to” enforcing laws, rules and regulations. The plain language used in the Class Spec indicates that actual LE activities are defined to include “enforcing laws, rules and regulations”. Each appellant’s enforcement of laws, rules and regulations is credited in the PDO. Appellants do not specifically state which activities they felt the PDO failed to include if the words “all activities related to” were inserted in the second factor which makes it difficult for the Commission to formulate a more detailed response. Suffice it to say here that the second factor in the Class Spec does not state inclusion of “all activities related to” enforcing laws, rules and regulations and, accordingly, is insufficient to include maintenance activities such as repairing a squad car, installing fences, posting signs, etc.; or the administrative duties related to maintenance such as keeping reports on vehicle maintenance.

The appellants’ argument quoted above incorrectly contends that the examiner relied upon extrinsic evidence to achieve a narrow reading of the second factor of the Class Spec definition of actual LE activities. As noted above, such narrow reading was based upon the Class Spec language itself. The examiner resorted to extrinsic evidence, to wit: Troy Hamblin’s testimony regarding the intent of the Class Spec; only to determine if the extrinsic evidence would support the broader reading of the Class

Spec language urged by appellants. The Commission agrees with the examiner's conclusion that it does not.

Appellants also argue as noted below (p. 3, Appellants' Brief):

Second, in the event of any ambiguity, the Commission is bound to attempt to harmonize the class specs with DNR policy. . . (Citations omitted.)

In other words, appellants argue that the Commission must read into the Class Specs the DNR's definition of LE work used for time keeping. Such argument was rejected by the hearing examiner and is rejected by the full Commission as being defective in many ways, three of which are discussed here. One defect is there is no record evidence that the Department of Employment Relations (DER) intended to create a Class Spec with the same definition for LE work as used by DNR for timekeeping purposes. A second defect is it is impossible that the Class Spec somehow intended to include DNR's timekeeping definitions which did not exist at the time the Class Spec was written. Another defect is there is no legal relationship between the Class Spec and DNR's timekeeping system. The Secretary of DER has the statutory responsibility to develop classifications, pursuant to s. 230.09, Stats., and the factors stated therein. The DNR timekeeping system is developed by DNR (not by DER) and is not governed by Ch. 230, Stats., nor is DNR's timekeeping system a factor listed in s. 230.09, Stats., for DER to consider when developing classification levels. Furthermore, neither the Class Spec nor DNR timekeeping definitions for LE work have the force and effect of any statute or administrative rule.

Appellants argue that the DNR timekeeping definitions should be used to interpret the Class Spec on equitable grounds. (pp. 4-5, Appellants' Brief) Specifically, appellants note that Troy Hamblin "conceded" at hearing that he relied upon DNR's timekeeping definitions to make his initial classification decisions under the Class Spec. This argument is incorrect and misleading. Mr. Hamblin testified that he made the initial classification decision based on each park ranger's PD. Resort to time sheets occurred sometime thereafter. Specifically, Mr. Hamblin contacted DNR to obtain a summary of each ranger's time records for fiscal year 1993-94, to verify some rangers' contentions that the time sheets would establish a higher rate of LE work than reflected in their PDs. He then compared the PD time percentages for LE work with the time sheet summary compiled by DNR (Exh. A-81). He found that most PDs did not differ drastically in the percent of LE work listed from the percentages listed on

the DNR compilation. Where a discrepancy existed, he called the pertinent supervisor and requested an explanation which lead to a rewriting of PDs in appropriate situations where the PD failed to reflect the higher amount of LE work performed. Based on the foregoing, appellants' equity argument lacks merit. Furthermore, the Commission previously has held that equitable considerations do not prevail over the Class Spec requirements (*see, e.g., Domel v. DER*, 94-0146-PC, 5/18/95); rather, the Class Spec requirements are binding (*see, e.g., Edwards v. DER*, 92-0423-PC, 11/29/93, and *Zhe et al. v. DHSS & DP*, 80-285, 286, 292, 296-PC, 11/18/81, *aff'd* by Dane County Circuit Court, *Zhe et al. v. Pers. Comm.*, 81-CV-6492, 11/82).

Appellants contend that the PDO "fails to consider comparable positions". (pp. 5-6 of Appellants' Brief). It is true that comparable positions are not discussed in the PDO, but they were considered by the hearing examiner in reaching her decision. A discussion of those positions follows.

Appellants' statement regarding witness Steven J. Thomas is incorrect and misleading. The excerpt below is from Appellants' Brief, p. 5:

. . . At the hearing the Rangers relied upon testimony of Steve Thomas, and his position description (App. Ex. 44), to demonstrate that Rangers with less than 60% actual law enforcement on their position descriptions were nonetheless made Ranger 2's by DER.

Mr. Thomas testified that his position was reallocated to the Ranger 1 level, a decision over which he filed an appeal. According to Mr. Thomas, he informed DER that specific events had occurred on his job which he coded for DNR timekeeping purposes as work other than LE work, but that such events met the definition of actual LE activities in the Class Spec. He also opined that even without including the special events, he worked 60% of his time performing actual LE activities when corrections were made for duties which he coded as non-LE work on his DNR time sheets. Ultimately, he persuaded DER that an adjustment for these factors would result in his position performing actual LE activities for at least 60% of his position's time. His appeal was settled thereafter.

Appellants also contend that PDs of other ranger positions support their contention that DER classified some positions at the two level even though actual LE activities were performed for less than 60% of the position's time. (Appellant's Brief, pp. 5-6) This contention is incorrect.

DER used Ms. Hopper's PD (Exh. A-33) to determine that the position spent less than 60% of the time performing actual LE activities and, accordingly, the position

was reallocated to the Ranger 1 level. Ms. Hopper felt she performed actual LE activities for more than 60% of her time. She had her PD officially revised to show performance of actual LE activities for 66% of the time. DER reallocated her to the Ranger 2 level based upon her contentions as verified by the revised official PD.

DER classified the Morgan position at the Ranger 2 level based on Ms. Morgan's PD. (Exh. A-31) While it is true that section A of the Morgan PD details most of the position's actual LE activities amounting to 57%, Mr. Hamblin credited actual LE activities in other sections of the PD which lead him to conclude that the Morgan position met the 60% cutoff.

The position occupied by Kurt Dreger was reallocated to the Ranger 2 level based on his PD. Specifically, Mr. Hamblin determined that actual LE activities met the 60% cutoff using Goals A and C of the PD (50%), and part of Goal B (20%) in which it appears that half of the tasks meet the Class Spec definition resulting in a conclusion that 60% of the Dreger position's time was spent performing actual LE activities. Mr. Hamblin noted that his conclusion was supported by DNR's compilation (Exh. A-81) which shows the position performing LE work for 61% of the position's time.

The position held by Chad Slaby was reallocated to the Ranger 2 level based on his PD. Mr. Hamblin testified that he included as actual LE activities Goals A and B of the Slaby PD (58% of the position's time), as well as parts of Goal C (such as C3 "collect and process evidence"). He also noted that DNR's compilation showed Mr. Slaby performing LE work for 69% of his time. In short, Mr. Hamblin was persuaded that the Slaby position met the 60% cutoff required in the Class Spec.

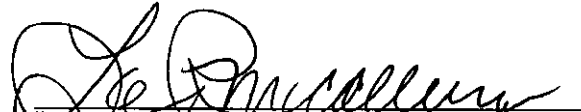

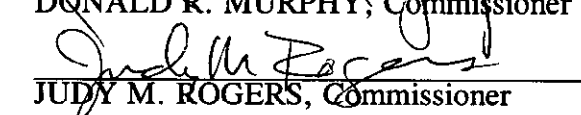
Mr. Hamblin's explanation for the Ranger 2 reallocation of John Hasse's position was less clear than for the other comparable positions discussed above. However, the examiner concluded from Mr. Hamblin's testimony that he attempted to review all PDs under the same set of criteria and to place the positions at the Ranger 2 level which he felt met the 60% cutoff. Even if he erred in his analysis of Mr. Hasse's position, the Commission cannot compound the potential error by placing the appellants at the Ranger 2 level even though their positions do not meet the 60% cutoff in the Class Spec. See, for e.g., *Lulling & Arneson v. DER*, 88-0136, 0137-PC, 9/13/89; and *Augustine & Brown v. DATCP & DER*, 84-0036, 0037-PC, 9/12/84.

ORDER

The PDO is adopted as the Commission's final decision, as supplemented by the discussion in this document.

Dated: February 10, 1997.

STATE PERSONNEL COMMISSION

  
LAURIE R. McCALLUM, Chairperson  
  
DONALD R. MURPHY, Commissioner  
  
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JMR  
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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 (except an order arising from an arbitration conducted pursuant to §230.44(4)(bm), Wis. Stats.) 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.)

2/3/95

STATE OF WISCONSIN

PERSONNEL COMMISSION

ALLEN A. NORDSTROM,

*Appellant,*

v.

Secretary, DEPARTMENT OF EMPLOYMENT  
RELATIONS,

*Respondent.*

Case No. 95-0061-PC

PROPOSED DECISION & ORDER

A hearing was held in this matter on April 11-12, 1996, and June 17, 1996.<sup>1</sup> The parties requested and were provided an opportunity to file written arguments, with the final submission received by the Commission on October 4, 1996.

The hearing issue was agreed to by the parties, as shown below. (See Commission letter dated February 6, 1995.)

Whether respondent's decision to reallocate the appellant's position to Ranger 1, rather than Ranger 2 was correct.

The Department of Employment Relations (DER) undertook a survey of law enforcement (LE) and related positions. The purpose of the survey was to improve recruitment and retention problems with police and state trooper positions. Park ranger positions were included in the survey because DER included all positions which were required to have LE credentials and which had arrest authority. Mr. Nordstrom's position was reallocated to Ranger 1, effective January 22, 1995.

The classification specification (Class Spec) for Ranger positions is in the record as Resp. Exh. 1. Two classification levels were created as shown below (with emphasis as it appears in the original document):

**RANGER 1:** Positions at this level have responsibility for performing actual LE activities in state parks, forests and recreation properties within the DNR for less than 60% of the assigned duties. Additional responsibilities of these positions may include a wide variety of maintenance & development activities, serving as the Assistant to the Park Manager within the property, and performing related administrative duties. Positions at this level function under the general direction of a Park Manager.

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<sup>1</sup> This appeal was combined for hearing with the following appeals: Foss v. DER, 95-0048-PC, Ostrowski v. DER, 95-0049-PC, Olson v. DER, 95-0062-PC and Lane v. DER, 95-0064-PC. Appellants requested that the examiner issue a separate decision for each appeal.

**3RANGER 2:** Positions at this level are responsible for performing actual LE activities within the assigned State Park, Forest or Recreational Area for at least 60% of the position's time. These positions function primarily within the Department's largest parks and State Forests. Additional responsibilities of these positions may include a wide variety of maintenance and development activities, serving as the Assistant to the Park Manager within the property, and performing related administrative duties. Positions at this level function under the general direction of a Park Manager.

The Class Spec defines LE activities as shown with the format changed to add a numbering system for each factor mentioned, as a reference aid in subsequent paragraphs. The emphasis shown is the same as in the original document.

For the purpose of classifying positions within this series, actual law enforcement activities are defined as follows:

1. Random patrols on state land and water.
2. Enforcing laws, rules and regulations.
3. Issuing verbal and written warnings and/or citations to visitors to achieve compliance with laws and regulations.
4. Responding to LE related complaints.
5. Directing the activities of permanent and limited term employment (LTE) LE personnel.
6. Seizing, holding and disposing of evidence for court.
7. Testifying in court.
8. Checking licenses, tags, permits and registrations.
9. Reviewing citations for completeness & accuracy.
10. Developing reports related to LE activities within the park/forest.
11. Conducting investigations of accidents, fires and incidents on state lands.
12. Acting as Court Officer.
13. Monitoring chain of evidence for all items seized and conducting proper disposition of items.
14. Attending and presenting LE training.
15. Serving as a district armorer.
16. Providing LE assistance to LE officers outside of normal park/forest LE duties.
17. Working with Conservation Wardens.

Mr. Nordstrom works for the Department of Natural Resources (DNR) Rib Mountain State Park. The position description (PD) for his job is in the record as Resp. Exh. 2d, and is summarized below. Tasks which both parties agree meet the Class Spec definition of actual LE activities are denoted in bold type as "undisputed," while disputed tasks bear a contrary notation.

<u>Time %</u>	<u>Goals and Worker Activities</u>
35%	<p><u>A. Performance of Administrative Duties..</u></p> <p>A1. Plan the work of &amp; material needs for the 5-7 person limited term employe (LTE) crew, seasonal facility repair worker, non-DNR funded work program participants &amp; volunteers. <b>Disputed.</b></p> <p>A2. Assumes the duties of the park superintendent in his/her absence.</p> <p>A3. Meet with the park superintendent on a regular basis to discuss work plans &amp; suggest necessary work to be accomplished.</p> <p>A4. Assist the program assistant-1, at the Wausau office, in administering the sticker &amp; camping receipt accounts. Issue &amp; account for sales of the LTE staff &amp; remit monies according to manual code.</p> <p>A5. Purchase services &amp; supplies for the park. Determine if items needed are on state contract. Obtain price quotes, prepare field requisitions &amp; purchase advice slips. <b>Disputed.</b></p> <p>A6. Assist the park superintendent in planning &amp; scheduling park development &amp; maintenance projects.</p> <p>A7. Complete monthly reports &amp; other short &amp; long term reports as directed by the park superintendent.</p> <p>A8. As park safety officer, train staff in safe equipment operation procedures &amp; assure that equipment &amp; facilities conform to regulations.</p> <p>A9. Participate in the process of recruiting, interviewing &amp; recommending for hire, the LTE staff. <b>Disputed.</b></p> <p>A10. Conduct the annual inventory.</p> <p>A11. Assist the park superintendent in the preparation of the biennial budget. <b>Disputed.</b></p>
34%	<p><u>B. Visitor Protection</u></p> <p>B1. Enforce provisions of Wis. administrative code 45 &amp; statutes related to the protection of the park, forest, game resources &amp; the regulation of human conduct on the property. <b>Undisputed.</b></p> <p>B2. Cooperate &amp; work with Marathon County conservation wardens during peak enforcement seasons. <b>Undisputed.</b></p> <p>B3. Patrol park in vehicles &amp; on foot to locate problem areas &amp; individuals. Take necessary enforcement action to resolve. <b>Undisputed.</b></p> <p>B4. Respond to visitor complaints &amp; take enforcement action as deemed necessary. <b>Undisputed.</b></p> <p>B5. Conduct search for lost persons. <b>Undisputed.</b></p> <p>B6. Provide information to the conservation warden who serves as the park's court officer. Appear in court as state's witness if required. <b>Undisputed.</b></p> <p>B7. Complete reports &amp; records related to enforcement activities. <b>Undisputed.</b></p>

- 13%      B8. Administer the park's vehicle courtesy notice program which includes recording notices, filing & follow-up correspondence for compliance. **Disputed.**
- B9. Maintain firearms certification. **Undisputed.**
- B10. Smith & Wesson Armorer for N.C. dist. parks. **Undisputed.**
- B11. Possess & retain a valid Wis. drivers license to operate dept. vehicles. **Undisputed.**
- C. Maintenance of building/grounds & land improvements.
- C1. Maintain building & facilities to meet standards set by the recreation area operations & maintenance standards handbook, manual codes and park superintendent.
- C2. Perform grounds maintenance activities including mowing, sign repair & weed control.
- C3. Maintain park roads which includes road/parking lot surface repairs, striping, gates & bumper block maintenance & snowplowing. **Disputed.**
- C4. Maintain park trails (i.e., removing rocks, roots & stumps, leveling, brushing, removing limbs & signing). Develop new trails or re-route existing trails if hazards are found. **Disputed.**
- C5. Perform building maintenance activities including cleaning & structural repairs. **Disputed.**
- C6. Perform carpentry, plumbing & electrical repairs or schedule repair service. **Disputed.**
- C7. Maintain family & group campsites by brushing, clearing, signing & repairing pads to protect the sites from deterioration. **Disputed.**
- C8. Maintain public use facilities/equipment including grills, benches, picnic tables, playground equipment, kiosk, scenic overlooks, shelter & tower. **Disputed.**
- C9. Maintain water system that consists of pumps, reservoirs & associated lines.
- C10. Maintain extensive use areas in conformance with the master plan.
- C11. Perform solid waste collection & disposal activities.
- C12. Implement a recycling program. Consider use of recyclable products when procuring supplies & materials.
- C13. Perform preventative & scheduled maintenance on equipment & vehicles including oil changes, minor engine repairs & parts replacement.
- C14. Operate equipment such as tractors, trucks, ATV's, saws, pumps, generators, stump chipper, shop power equipment & hand tools.
- C15. Winterize park building & reactivate in the spring.
- C16. Assist the park superintendent in completing property environmental inspections & reports.

- 7%            D. Sales & Revenue Collection  
D1. Process campsite reservations & keep occupancy ledgers when LTEs are unavailable.  
D2. Issue sales items to employees.  
D3. Sell admission stickers, sales items & register camper. **Disputed.**  
D4. Be accountable for all assigned accounts & proper security. **Disputed.**  
D5. Train new employees in all aspects of sales & revenue collection.  
D6. Provide information to park visitors in regards to park facilities & services. Respond to written & telephone requests for information.
- 6%            E. Cooperation & Non-Routine Tasks  
E1. Assist at Council Grounds State Park as assigned by work unit manager. **Disputed.**  
E2. Assist other dept. functions at Rib Mountain & on other dept. projects as needed to develop, enhance & implement comprehensive integrated management of natural resources.  
E3. Perform fire suppression activities as needed within Rib Mountain, the Antigo area and throughout the North Central District.  
E4. Present talks & programs to schools, scout groups & other interested users. **Disputed.**
- 5%            F. Training  
F1. Attend the annual LE recertification which is needed to possess/retain LE credentials. **Undisputed.**  
F2. Attend self improvement courses as agreed to at the annual performance evaluation.  
F3. Attend training courses that are mandated by the dept. **Disputed.**  
F4. Instruct appropriate courses at the annual LTE training session. **Disputed.**

#### Disputed Tasks

A portion of PD tasks A1 (plan work of LTEs) and A9 (recruitment of LTEs) meets the Class Spec definition of actual LE activities. Specifically, Mr. Nordstrom testified that the park has 5-7 LTEs, one of which performs LE tasks. Only his planning for the LTE who performs LE duties meets the Class Spec definition (factor #5). PD tasks A5 (purchasing services/supplies) and A11 (assist with biennial budget) includes purchasing/budgeting for LE needs. Purchasing and budgeting, however, are not included in the Class Spec definition of actual LE activities.

Task B8 relates to ensuring compliance with citations and, accordingly, meets the Class Spec definition of actual LE activities (factor #2).

Tasks C3 through C8 do not meet the Class Spec definition of actual LE activities. Mr. Nordstrom's claim that these tasks involve LE work was based upon accident prevention by, for example, removing fallen trees on the trail and replacing missing signs and upon addressing violations if observed while performing the maintenance work. Maintenance tasks, however, are not included in the Class Spec definition of actual LE activities even if such work helps to prevent accidents. Also, addressing violations if observed while performing maintenance already is included under PD goal B.

Tasks D3 (sticker sales) and D4 (accountability for sticker-sales revenues) do not meet the Class Spec definition of actual LE activities. While it is true that a violation could be issued for failing to have a sticker, the sales and related accounting activities are not included in the Class Spec definition. The LE component of stickers already is included in PD goal B.

Task E1 (assist at different park) meets the Class Spec definition of actual LE activities. Specifically, Mr. Nordstrom assists at another park for special events with responsibility for parking cars, crowd control and enforcement of snowmobile regulations. His work with crowd control and enforcement of snowmobile regulations meets the Class Spec definition (factor #2).

Task E4 (present talks/programs to school, etc.) meets the Class Spec definition of actual LE activities. Mr. Nordstrom testified that he talks about Rangers as a career choice, but also explains rules and regulations to the "kids". The portion where he explains legal requirements meets the Class Spec definition (factor #14). He also provides training on sticker rules and regulations at the annual LTE training session (PD task F4), which meets the Class Spec definition (factor #14).

Mr. Nordstrom said PD task F3 (attending training courses) includes training he receives for CPR and weapons certification. He claimed the weapons certification as part of his LE work. The problem with his claim is that the weapons certification is already included in PD task B9, as meeting the Class Spec definition of actual LE activities.

#### Percent Time Spent by Mr. Nordstrom on "actual LE activities"

Based on a review of the PD alone (as noted in the prior paragraphs) not more than 39% of Mr. Nordstrom's time is spent performing actual LE activities. (This includes about 1% for tasks A1 and A9, 34% for goal B, about 2% for tasks E1 and E4, and about 2% for tasks F1 and F4.)

Mr. Nordstrom, however, claims that the time percentages in the PD are incorrect even though he signed the PD as accurate in relation to the duties and time percentages shown therein. He testified that the correct percentages for the goals of his PD should have been listed as follows: 15% for goal A, 65% for goal B, 5% each for goals C through F. Under this scenario, the position would perform a maximum of 69% actual LE activities (less than 1% in Goal A, 65% in Goal B, about 1% in Goal E and about 2% in Goal F). The Commission, however, does not find credible Mr. Nordstrom's estimate of 65% for Goal B, for reasons explained in the following paragraphs.

Also in the record are time sheets for Mr. Nordstrom's position (Resp. Exh. 5d), covering about an 18-month period from June 27, 1993 to January 21, 1995, which includes 41 two-week pay periods. The chart below shows for each of the pay periods: the total number of hours worked (not including time off work), the total training hours, and the total LE hours coded either as PRK 28 or as LE cooperation. The training hours are shown for background information. Mr. Nordstrom did not indicate at hearing which portion of the training hours should be counted as LE training.

<u>Pay Pd. (PP)</u>	<u>Hrs. Wkd.</u>	<u>LE Hrs. Wkd.</u>	<u>Training Hrs.</u>	<u>PP start date</u>
1	80	34		06/27/93
2	84	21		07/11/93
3	75	18		07/25/93
4	87	25		08/08/93
5	48	16		08/22/93
6	83	39		09/05/93
7	82	23		09/19/93
8	84	34		10/03/93
9	80	18		10/17/93
10	86	29	14	10/31/93
11	80	63		11/14/93
12	78	31		11/28/93
13	44	15		12/12/93

subtotal for pay periods 1-13:  
366 LE hours = 37% LE work/total work  
991 total hours

<u>Pay Period</u>	<u>Hrs. Wkd.</u>	<u>LE Hrs. Wkd.</u>	<u>Training Hrs.</u>	<u>PP start date</u>
14.	0	0		12/26/93
15.	48	11		01/09/94
16.	28	27		01/23/94
17.	86	29		02/06/94
18.	84	23		02/20/94
19.	86	12	35	03/06/94



20.	76	26	7	03/20/94
21.	33	15		04/03/94
22.	98	32	6	04/17/94
23.	88	34		05/01/94
24.	91	18	43	05/15/94
25.	75	30		05/29/94
26.	81	36		06/12/94

subtotal for pay period 14-26:  
 $\frac{293 \text{ LE hours}}{874 \text{ total hours}} = 34\% \text{ LE work/total work}$

Year subtotal for pay periods 1-26:  
 $\frac{659 \text{ LE hours}}{1865 \text{ total hours}} = 35\% \text{ LE work}$

<u>Pay Period</u>	<u>Hrs. Wkd.</u>	<u>LE Hrs. Wkd.</u>	<u>Training Hrs.</u>	<u>PP start date</u>
27.	93	33		06/26/94
28.	85	30		07/10/94
29.	86	29		07/24/94
30.	88	25	3	08/07/94
31.	91	29		08/21/94
32.	76	32		09/04/94
33.	85	30	14	09/18/94
34.	68	32		10/02/94
35.	83	27		10/16/94
36.	20	5		10/30/94
37.	75	40		11/13/94
38.	52	11		11/27/94
39.	28	8		12/11/94
40.	61	5	37	12/25/94
41.	72	23		01/08/95

subtotal for pay periods 27-41:  
 $\frac{359 \text{ LE hours}}{1063 \text{ total hours}} = 34\% \text{ LE work}$

TOTAL for pay periods 1-41:  
 $\frac{1018 \text{ LE hours}}{2928 \text{ total hours}} = 35\% \text{ LE work}$

The information summarized above from Mr. Nordstrom's time sheets which he signs as accurate when submitted do not support his contention that at least 60% of his time is spent performing LE work. Rather, the time sheets support the work percentages included in the signed PD.

The major difference between the time estimates in the signed PD and Mr. Nordstrom's testimony concern the amount of time which he spends on section B tasks. His opinion that he performs LE work at least 60% of his time would be deemed credible by the Commission only if the Class Spec definition of actual LE activities

were the same as the concept of LE work which DNR uses for timekeeping purposes (App. Exh. 4). DNR's concept definition is shown below:

Direct LE: Includes making contacts, giving warnings, courtesy sticker notices, issuing citations, making arrests, processing warrants, patrolling, conducting investigations. The LE duties would cover regulations relating to: boating, fishing, hunting, trapping, snowmobiling, environmental protection, archaeology rules, traffic control, alcohol and drugs, juvenile offenses, personal behavior, administrative codes, fire control regulations, etc.

Preventive LE: Includes visitor safety and educational programs, hunter safety, boating safety, ATV safety, user ethic programs, crime prevention programs, providing general information while in an enforcement uniform, providing information about rules and regulations prior to an official warning, providing visitors assistance with vehicles, delivering messages, looking for lost persons, rendering first aid, providing emergency information/warnings, etc.

LE Administration: Includes LE report writing, incident/accident/complaint reports, supervision of LE staff, interviewing and recruiting for LE staff, performance and background checks, meetings relating to LE, court duties/appearances, revenue deposits, etc.

LE Training: Includes basic recruit training, enforcement recertification training, firearms training, CPR, first aid training, on-property LE instruction and orientation training of property staff, specialized LE training and instruction, training related to rules and regulations, etc.

LE Equipment Maintenance: Includes maintenance of firearms and other personal LE equipment, radios, light bars, sirens and speaker systems and similar equipment directly related to the LE program.

The duties included by DNR for timekeeping purposes is broader than the definition of actual LE activities in the Class Spec. Some duties are included in both documents, such as issuing citations and attending LE recertification training. However, the DNR definition goes further with its inclusion (for example) of providing vehicle assistance to park visitors, delivering messages, maintaining equipment used by Rangers, as well as dissemination of any type of information to visitors as long as the Ranger is in uniform. If being in uniform were the determinative factor, there would be no need for more than one ranger classification level as individuals at both the Ranger 1 and 2 levels wear the same type of uniform. To the extent that differences exist between the Class Spec and DNR's definition of LE work, the Class Spec controls for classification purposes.

OPINION

The burden of proof in a reallocation case is on the appellant to show that he should be reallocated as requested, Vranes v. DER, 83-0122-PC (7/19/84), and the appellant must establish the requisite facts by a preponderance of the evidence, Tiser v. DNR & DER, 83-0217-PC (10/10/84). The key determination is whether the appellant's responsibilities are better described at the lower or higher classification level. Stensberg, et al. V. DER, 92-0325-PC, etc. (2/20/95).

The main distinction between Ranger 1 and Ranger 2 in the Class Spec, is the percent of time which the position spends performing actual LE activities, as that term is defined in the Class Spec. The Ranger 2 level requires that at least 60% of a position's time be spent performing actual LE activities, a requirement which Mr. Nordstrom has not established as true for his position.<sup>2</sup>

The appellant recognized in his reply brief (pp. 3-4), that the Commission lacks the authority to rewrite the Class Spec and, accordingly, must apply the Class Spec as written. Zhe, et al. V. Pers. Comm., 81-CV-6492 (11/82). He requests, however, that the Commission adopt DNR's timekeeping definition of LE work. Specifically, he notes that the second factor in the Class Spec definition of actual LE activities includes: "Enforcing laws, rules and regulations." (Emphasis added.) Appellant urges the Commission to interpret the word "Enforcing" to include DNR's broader definition. His argument is shown below with emphasis as it appears in the original document.

. . . [T]he Commission will be forced to address the question of what the term 'enforcing' includes. It can adopt DER's cramped position, which appears to leave little more than actual arrests and formal citations in the concept of actual law enforcement. This position was created by Troy Hamblin, who has never worked either as a Ranger or other law enforcement officer. Hamblin Cross. Or it can adopt the position of the DNR, an actual law enforcement agency with experience in the field, which states:

the lowest level of corrective action that will effectively handle the situation shall be used. Again, the goal is to prevent, through assistance and information, violations.

App. Exh. 11, at 2 (emphasis added). To the extent that Ripp v. DER, 95-0047-PC, disregards the broader concept of preventative law enforcement, it should be reconsidered by the Commission.

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<sup>2</sup> While appellant is correct that the Commission hears these appeals on a de novo basis, the Commission is not required to accept hearing testimony which is unpersuasive. Specifically, the appellant testified that at least 60% of his time was spent performing LE work, but such testimony was contrary to documents which he had signed as true (his PD and time sheets) and he failed to provide a persuasive explanation for the discrepancy.

A major difficulty with the appellant's above-noted argument is the record supports the conclusion that DER intended the narrower definition. As noted previously, the mere wearing of a uniform while disseminating any type of information could not have been contemplated under the Class Spec because all rangers wear the same uniform. Furthermore, the survey was initiated to improve recruitment and retention problems with police and state troopers. Ranger positions were part of the survey because of the requirement to have LE credentials and because of the related arrest authority. There is no persuasive indication in the record that the survey intended to measure these positions by factors other than duties directly related to arrest and citation powers, which was identified by DER as the common thread between the ranger, police and state trooper positions.

ORDER

Respondent's decision to reallocate Mr. Nordstrom's position at the Ranger 1 level is affirmed and this appeal is dismissed.

Dated: \_\_\_\_\_, 1996. STATE PERSONNEL COMMISSION

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LAURIE R. McCALLUM, Chairperson

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DONALD R. MURPHY, Commissioner

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JUDY M. ROGERS, Commissioner

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