

STATE OF WISCONSIN

PERSONNEL COMMISSION

**KENNETH C. LANE**  
*Appellant,*

v.

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

DECISION AND ORDER

Case No. 95-0064-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), Allan Nordstrom (95-0061-PC), Alexander T. J. Olson (95-0062-PC) and Richard J. Ostrowski (95-0049-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 Lane are contained on pp. 6-7 and on pp. 10-11 of Appellants' Brief. The objections specific to appellant Lane will be discussed below first, followed by a discussion of the arguments pertinent to all appellants.

#### Objections Specific to Appellant Lane

The objections filed on behalf of appellant Lane as stated on pp. 6-7 of Appellants' Brief are shown below followed by the Commission's response.

Appellant Lane contends:

The Commission concludes that Task A4 does not constitute actual law enforcement because "it relates to directing, training and monitoring LTE positions none of which require LE certification and none of which perform LE duties." Lane Proposed Decision, at 4. This is clear error. Task A4 states, "Direct, train and monitor activities of LTE Rangers on duty during shift." Resp. Ex. 21 (emphasis added). There is reference

only to LTE Rangers, not to any other type of LTE. These persons are certified for law enforcement and do perform law enforcement duties.

On cross examination, Mr. Lane said he provides lead worker duties for all limited term employees (LTEs) which includes 2 LTEs during the summer and 3 on weekends, the classifications of which he said he did not know. However, he did indicate that there is one LTE performing law enforcement (LE) work and, to this extent, the PDO is incorrect.

Appellant Lane's second contention is shown below:

The Commission also excludes Task A3 because it "pertain[s] to medical emergencies rather than LE duties." Lane Proposed Decision, at 4. But Task A3 states,

Take charge in emergencies during work shift. Determine need for assistance from EMS, fire dept., outside dept. LE & request as needed.

Resp. Ex. 2a (emphasis added). By its explicit terms, Task A3 refers to calling in outside law enforcement. Further, the class specs specifically refer to "investigations of accidents, fires, and incidents on state lands." Resp. Ex. 1 (emphasis added). Thus, actual law enforcement occurs at fires and medical emergencies.

This objection arguably has merit. The Class Spec definition of actual LE activities does not include rescue work. However, Troy Hamblin testified that he credited "rescue work" as actual LE activities when he made the initial reallocation decisions based upon a review of each ranger's PD. Accordingly, the Commission includes task A3, to afford appellant Lane the same treatment as DER gave all other rangers.

Appellant Lane's third contention is shown below:

Identical arguments can be made with regard to Task A13, which refers to necessary certifications for accidents and medical emergencies.

The Class Spec definition of actual LE activities does not include training or maintenance of certifications necessary to assist in visitor accidents and medical emergencies. Nor did Mr. Hamblin testify that he included possession of rescue certifications as meeting the Class Spec requirements. The LE training portion of appellant Lane's duties already are included in PD tasks A8 and A11.

In short, the Commission does not agree that task A13 should be included as actual LE activities.

Appellant Lane's fourth contention is shown below:

The Commission also eliminates task A15, "Maintain lines of communication with superintendent and other park officers." Resp. Ex. 2a; Lane Proposed Decision, at 4. Maintaining such communication with other law enforcement personnel is an essential part of "[r]andom patrols on state land and water. Enforcing laws, rules and regulations." Resp. Ex. 1. The communication allows Lane to provide evidence of violations and descriptions of suspected violators to other officers.

The explanation provided by appellant Lane's counsel regarding task A15 was not provided at hearing by appellant Lane. The PD description of task A15 is worded so broadly that it could be interpreted as having relevance to all his duties, including duties which do not meet the Class Spec definition of actual LE activities. In short, appellant Lane has not meet his burden of proof regarding task A-15.

Appellant Lane's final objection is contained on pp. 10-11 of Appellants' Brief as shown below:

At hearing, Ranger Ken Lane testified that when a longer period of work time is considered, it becomes clear that he should have been reallocated to a Ranger 2. Lane Direct. When the period 1987 to 1995 is considered, Lane coded a total of 62.56% of his time as law enforcement. App. Ex. 8. This larger time sample is clearly a more accurate measure of the work Lane actually performs than the 18 month period examined by DER. See Proposed Lane Decision, at 5-6.

The Commission's proposed decision for Lane omits any reference to this undisputed proof.

There are many problems with the above-noted argument, three of which are addressed here. Appellant Lane's own testimony provided an explanation which could account for higher LE work percentages in older time sheets. Specifically, he testified that his oversight of LTEs had included more LE workers in the past as compared to the period reviewed for purposes of the reallocation. Since this significant circumstance changed, it would be inappropriate to resort to the older time sheets. A second problem is that DER made its reallocation decisions based on the then-current PDs. 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. The time records were never used and were never intended as a replacement for the Class Spec requirements. A third problem is that to the extent Mr. Hamblin resorted to reference to the time sheets, such information was provided for the same time period for each ranger. Appellant Lane failed to show that adoption of an older time period for himself as opposed to all other rangers would be consistent with basic classification principles. In short, the Commission does not doubt that more than one ranger's classification would be changed if the ranger could take the liberty of identifying the time period for evaluation, but the Commission is unaware that such practice would be considered sound from a classification standpoint.

### Required Amendments

The following amendments are made to correct the errors recognized above:

1. The first full paragraph on page 4 of the PDO is amended to read as shown below:

Most of the PD tasks in goal A meet the Class Spec definition of actual LE activities, the exceptions being task A13 (possessing certifications related to rescue work), A15 (keeping lines of communication open with other staff) and task A17 (inspecting patrol vehicles). While the Class Spec definition of actual LE activities, includes attending and presenting LE training (factor #14), it does not include certifications or training needed for rescue work. While keeping lines of communication open may have relevance to LE work it has broad application to all of appellant's duties and he failed to establish what percentage of time spent on task A17 should be accorded solely for a potential tie-in with LE work. While inspection of vehicles may help to ensure safety on patrol, it is a maintenance function excluded from the Class Spec.

2. The first two paragraphs under the heading "Time Mr. Lane Spends on "actual LE activities", are amended to read as shown below:

Based on a review of the PD alone (as noted in the prior paragraphs) not more than 44% of Mr. Lane's time is spent performing actual LE activities. Section A contains 17 tasks listed for a total of 50% of the position's time, which on an equal split would result in a conclusion that each section A task accounts for a little less than 3%

of the position's time. One of the section A tasks, however, is the requirement to possess a driver's license (A14) which does not represent any time spent on the job. Accordingly, 16 tasks in section A account for a total of 50% of the position's time. Three of the remaining tasks (A-13, A-15 and A-17), as discussed previously, do not meet the Class Spec definition of actual LE activities. Accordingly, Mr. Lane spends about 41%<sup>1</sup> of his time under Goal A performing actual LE activities (50% , less 3% for A-13, less 3% for A-15 and less 3% for goal A-17 = 41%). He also spends about 3% performing actual LE activities under PD task C-4.

Mr. Lane testified that the correct percentages for the goals of his PD should have been listed as follows: 65% for goal A, 20% for goal B, 10% for goal C and 5% for goal D. If his contention that he spends 65% of his position's time on goal A tasks were true, he still would not prevail on his appeal. If 16 tasks under goal A account for 65% of his time each task would account for about 4% of his time, leaving a total of about 53% spent on actual LE activities (after reducing the total by 12% to account for exclusion of tasks A-13, A-15 and A-17). The 3% for task C4 added to the 53% for goal A would result in a conclusion that 56% of appellant Lane's time was spent in actual LE activities, which is insufficient to meet the 60% cutoff.

#### Point of Clarification

The time sheet information recited on p. 6 of the PDO pertains to the time codes created and used by the Department of Natural Resources (DNR), appellant's employing agency, prior to the survey (hereafter, the old time codes); which were changed after the survey (hereafter, the new time codes). The new time codes are shown on page 7 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 code contained in Exh. A-3.

The credibility note contained in the first full paragraph on page 7 of the PDO, pertains to DNR's new time codes. Specifically, appellant Lane testified that the old

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<sup>1</sup> The PDO erroneously includes "about 45%" for PD tasks in Goal A, and such mistake was due to a typographical error. Mr. Lane did not establish that any task in Goal A was performed at a different rate than another task in Goal A. Dividing the Goal A tasks equally, the PDO should have read that "about 35%" of the position's time spent on actual LE activities were for the listed tasks in Goal A. (Goal A accounts for 50% of the position's time in the PD, less about 3% for each of the 5 tasks excluded in the PDO = 35%).

time codes resulted in an undercounting of LE work on his time sheets. The point addressed in the credibility note pertains to appellant Lane's contention that the LE work recorded under the new time codes would present a more accurate reflection of the LE work performed by his position. This contention is rejected because the new time codes include 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 amended and supplemented by the discussion contained in this document.

Dated: February 10, 1997.

STATE PERSONNEL COMMISSION

  
LAURIE R. McCALLUM, Chairperson

  
DONALD R. MURPHY, Commissioner

  
JUDY M. ROGERS, Commissioner

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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

KENNETH C. LANE,

*Appellant,*

v.

Secretary, DEPARTMENT OF EMPLOYMENT  
RELATIONS,

*Respondent.*

Case No. 95-0064-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. Lane'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, Nordstrom v. DER, 95-0061-PC and Olson v. DER, 95-0062-PC. Appellants requested that the examiner issue a separate decision for each appeal.

**RANGER 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. Lane works for the Department of Natural Resources (DNR) Mirror Lake State Park. The position description (PD) for his job is in the record as Resp. Exh. 2a, and is summarized below. The parties had no agreement for Mr. Lane's position as to which PD tasks met the Class Spec definition of actual LE activities.

<u>Time %</u>	<u>Goals and Worker Activities</u>
50%	<p><u>A. Visitor protection, LE &amp; protection of property &amp; resources.</u></p> <p>A1. Patrol (squad, foot, bicycle &amp; boat) to protect visitors, resources &amp; property. Prevent violations from occurring, detect ongoing violations &amp; assist park visitors.</p> <p>A2. Investigate accidents, law violations &amp; visitor complaints. Interview victims, witnesses &amp; suspects.</p> <p>A3. Take charge in emergencies during work shift. Determine need for assistance from EMS, fire dept., outside dept. LE &amp; request as needed.</p> <p>A4. Direct, train &amp; monitor activities of limited term employee (LTE) rangers on duty during shift.</p> <p>A5. Prepare neat, accurate, concise &amp; complete reports of all enforcement activities. Maintain daily shift reports &amp; shift logs.</p> <p>A6. Carry out park LE objectives as needed to meet Park &amp; dept. LE goals.</p> <p>A7. Know, understand, adhere to &amp; enforce park dept. policies &amp; procedures.</p> <p>A8. Maintain knowledge, equipment &amp; skills necessary for the performance of LE duties including firearms qualification.</p> <p>A9. Maintain a working relationship with local police agencies &amp; the district attorney's office.</p> <p>A10. Prepare for &amp; appear in court as a state witness as needed.</p> <p>A11. Possess &amp; retain credentials necessary to perform LE duties.</p> <p>A12. Maintain required physical fitness standards.</p> <p>A13. Possess &amp; retain certification(s) necessary to assist in visitor accidents &amp; medical emergencies.</p> <p>A14. Possess &amp; maintain a valid Wis. driver's license required to operate patrol vehicles.</p> <p>A15. Maintain lines of communication with superintendent &amp; other park officers.</p> <p>A16. Serve as lead worker in absence of supervisors.</p> <p>A17. Inspect park patrol vehicles for operational safety.</p>
25%	<p><u>B. Perform park maintenance &amp; development duties.</u></p> <p>B1. Assist the park facility repair worker with maintenance &amp; development tasks as assigned.</p> <p>B2. Perform park trail inspections twice per year &amp; report deficiencies on property inspection report to superintendent.</p> <p>B3. Maintain park equipment for operational readiness.</p> <p>B4. Assist with snow removal.</p> <p>B5. Groom &amp; track cross-country ski trails.</p> <p>B6. Assist facility repair worker with annual building inspections.</p> <p>B7. Inspect park boundaries &amp; sign as needed.</p>

- B8. Monitor traffic signing & report any discrepancies in uniform signing requirements to superintendent.
  - B9. Assist facility repair worker start up & close down water supply systems.
  - B10. Maintain knowledges & skills necessary to operate heavy equip. Required to perform park maintenance.
- 20% C. Perform park visitor services.
- C1. Stay knowledgeable with changes in parks program to properly inform park visitors of dept. services.
  - C2. Serve as the lead visitor service employee in the absence of the superintendent & the fiscal clerk.
  - C3. Keep current with attractions, local businesses & current events to promote the area's tourist facilities.
  - C4. Sell park stickers, licenses, permits & register campers.
- 5% D. Performance other park functions.
- D1. Prepare administrative reports as requested.
  - D2. Assist other dept. functions as requested & approved by supervisor.
  - D3. Assist fire control with wildfire suppression & maintain certification in fire control duties.
  - D4. Perform other duties as assigned.

#### Analysis of PD Tasks

Most of the PD tasks in goal A meet the Class Spec definition of actual LE activities. The exceptions are: a) Tasks A3 and A13 which pertain to medical emergencies rather than to LE duties. b) Task A4 which relates to directing, training, and monitoring LTE positions none of which require LE certification and none of which perform LE duties. c) Task A15 (keeping lines of communication open with other staff) may be important to some LE functions, but does not meet the Class Spec definition. d) Task A17 (inspecting patrol vehicles) may help to ensure safety while on patrol, but such maintenance function is not included in the Class Spec definition.

Goal B tasks (park maintenance) do not meet the Class Spec definition of actual LE activities. Mr. Lane's claim that these tasks involve LE work was based upon accident prevention by, for example, reporting signage problems to the superintendent (B8) 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 work already is included under PD goal A.

A portion of PD task C4 (selling stickers) meets the Class Spec definition of actual LE activities. The actual sale of stickers does not meet the definition. However, Mr. Lane said he also answers questions about rules and regulations from



visitors, a task not contained in other portions of his PD and which arguably meets factor #14 of the Class Spec definition.

Mr. Lane considered that his yearly LE activity reports were included under PD task D1 (prepare administrative reports as requested). He is mistaken. LE activity reports already are included under PD task A5.

Time Mr. Lane Spends on "actual LE activities"

Based on a review of the PD alone (as noted in the prior paragraphs) not more than 48% of Mr. Lane's time is spent performing actual LE activities. This includes about 45% for PD tasks A1-A2, A5-A12, A14 & A16; and about 3% for the pertinent portion of task C4. Mr. Lane, 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 claims that at least 60% of his time is spent on actual LE activities.

Mr. Lane testified that the correct percentages for the goals of his PD should have been listed as follows: 65% for goal A, 20% for goal B, 10% for goal C and 5% for goal D. Even if these percentages were true, the conclusion would be that not more than 47% of his position's time is spent performing actual LE activities. This includes about 46% for Goal A and at most 1% for the pertinent portion of task C4.)

Resp. Exh. 5a, contains the time sheets for Mr. Lane's position covering an 18-month period from June 27, 1993 to January 7, 1995, which includes 40 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), as well as the total LE hours worked coded either as PRK 28, as LE training or as LE cooperation.

<u>Pay Pd. (PP)</u>	<u>Hrs. Wkd.</u>	<u>LE Hrs. Wkd.</u>	<u>PP start date</u>
1	84	71	06/27/93
2	92	87	07/11/93
3	83	79	07/25/93
4	84	84	08/08/93
5	84	77	08/22/93
6	72	43	09/05/93
7	72	25	09/19/93
8	24	17	10/03/93
9	75	32	10/17/93
10	16	6	10/31/93
11	72	62	11/14/93
12	56	17	11/28/93
13	75	22	12/12/93
subtotal for PPs 1-13: $\frac{622 \text{ LE hours}}{990 \text{ total hours}} = 70\% \text{ LE work/total work}$			

<u>Pay Period</u>	<u>Hrs. Wkd.</u>	<u>LE Hrs. Wkd.</u>	<u>PP start date</u>
14.	56	15	12/26/93
15.	80	22	01/09/94
16.	80	13	01/23/94
17.	80	15	02/06/94
18.	82.5	17	02/20/94
19.	86	39	03/06/94
20.	78	32	03/20/94
21.	64	18	04/03/94
22.	83	23	04/17/94
23.	81	16	05/01/94
24.	85	52	05/15/94
25.	80	62	05/29/94
26.	86	73	06/12/94

subtotal for pay period 14-26:  
397 LE hours = 39% LE work  
1021.5 total hours

Year subtotal for pay periods 1-26:  
1669 LE hours = 53% LE work  
2814.5 total hours

<u>Pay Period</u>	<u>Hrs. Wkd.</u>	<u>LE Hrs. Wkd.</u>	<u>PP start date</u>
27.	80	80	06/26/94
28.	84	84	07/10/94
29.	81	81	07/24/94
30.	81	81	08/07/94
31.	80	80	08/21/94
32.	84	47	09/04/94
33.	60	33	09/18/94
34.	24	3	10/02/94
35.	32	22	10/16/94
36.	48	27	10/30/94
37.	81	61	11/13/94
38.	57	23	11/27/94
39.	56	14	12/11/94
40.	56	14	12/25/94

subtotal for pay periods 27-40:  
650 LE hours = 72% LE work  
904 total hours

TOTAL for pay periods 1-40:  
1669 LE hours = 59.3% LE work  
2814.50 total hours

The information summarized above from Mr. Lane'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. It appears true that the 60% figure is exceeded in the first

part of each year but diminishes in the second half resulting in a yearly average of less than 60% LE work, a conclusion supported by his signed PD.

Mr. Lane's 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. Lane 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:

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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.

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.

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. Lane'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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