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WILLIAM J. MORRISSEY,
 Appellant,

v.

Secretary, DEPARTMENT OF
 EMPLOYMENT RELATIONS,
 Respondent.

Case No. 95-0097-PC

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RULING ON
 RESPONDENT'S
 MOTION TO
 DISMISS

The Department of Employment Relations (DER) filed a motion for summary judgment alleging entitlement to judgment as a matter of law based on undisputed facts. Both parties filed written arguments, with the final brief received by the Commission on September 7, 1995.

The hearing issue was agreed to by the parties at a prehearing held on August 3, 1995, as shown below.

Whether respondent's decision reallocating appellant's position to Director, Bureau of Petroleum Inspection rather than either Natural Resources Manager 1 or 2, or Administrative Officer 4 or 5, was correct.

BACKGROUND

1. Mr. Morrissey works at the Department of Industry, Labor and Human Relations (DILHR) in the Safety and Buildings Division's Bureau of Petroleum Inspection and Fire Protection.
2. DER reallocated Mr. Morrissey's position to a new classification series entitled: "Director, Bureau of Petroleum Inspection", effective April 16, 1995. This reallocation was based upon the duties listed in his Position Description (PD), which are summarized below using the PD format.

Position Summary: Under the general direction of the Division Administrator and Assistant Administrator, provide the executive management functions for three major statewide environmental regulatory programs and the state fire prevention effort. Administer the highly complex planning, development and

operation of efforts to protect Wisconsin's groundwater and air resources through the operation of the Petroleum Environmental Cleanup Fund, the regulation of petroleum product storage tank systems and the regulation of petroleum products. Represent the Department before the legislature and in national forums on issues of groundwater protection, the remediation of petroleum contaminated sites and the regulation of petroleum products for issues of air quality. This position provides the development, in conjunction with the administration for major environmental and regulatory programs including the: Petroleum Environmental Cleanup Fund (PECFA) . . . Regulation of Petroleum Product Storage Tank Systems . . . Regulation of Petroleum Products . . . [and] Fire Prevention . . .

<u>Time %</u>	<u>Goals and Worker Activities</u>
20%	A. Development of policies relating to the regulation of petroleum product storage tank systems, a major statewide environmental initiative to eliminate a threat to the groundwater of the state, and the fire prevention program regulating public buildings and places of employment.
20%	B. Management and direction of the primary environmental tool for accomplishing the remediation of the state's petroleum contaminated sites. Act as the insurance fund administrator providing coverage to 60,000 underground and aboveground petroleum storage systems.
20%	C. Regulate petroleum products to safeguard the environment and petroleum users. Implement federally mandated product requirements to reduce acid rain, carbon monoxide, ozone and volatile organic carbon emissions.
20%	D. Manage the administrative functions of the Bureau.
20%	E. Promote the concepts of Quality Improvement through Quality leadership, training, Division wide development.

Natural Resources Manager 1 or 2

3. Mr. Morrissey believes his position is better described by the Natural Resources Manager 1 or 2 classification. The classification specifications (Class Specs) for Natural Resources Manager contain the following text:

Purpose of this [Class Spec]: This [Class Spec] is the basic authority . . . for making classification decisions relative to present and future managerial/administrative positions located

within the Department of Natural Resources [DNR] and the Department of Agriculture, Trade and Consumer Protection [DATCP] which are responsible for administering natural resources, environmental protection, and/or natural resources enforcement programs within a DNR district or on a statewide basis. . .

Inclusions: This series encompasses managerial positions found in the central or district offices of the [DNR] or in the [DATCP]. The primary function of these positions is to administer and manage programs to protect and enhance Wisconsin's natural resources and environment - its air, land, water, wildlife, fish and plants. Positions allocated to this series are primarily responsible for program policy development, strategic planning, and implementation. . .

4. Mr. Morrissey works at DILHR, not at DNR or DATCP. Accordingly, his position could not be classified under the Class Spec for Natural Resources Manager even if his position performed duties similar to those described in the Natural Resources Manager Class Spec.

Administrative Officer 4

5. The position standard (Class Spec) for Administrative Officer 4, contains a definition of the classification with examples of the types of work performed. The definition as shown below has been re-formatted for clarity.

This is highly responsible administrative and managerial work in providing complex and diversified liaison, and staff functions and services. An employe in this class is responsible for:

1a) the direction of all business management functions in a large department, including the administration of the business management aspects of all personnel, fiscal, purchasing, data processing and systems, and budget programs, or

1b) the employe is responsible for the executive administration of several business management functions in a major department composed of several semi-autonomous divisions each of which is concerned with diversified major professional or technical programs.

2) The employe plans, determines, and directs or assists in the direction of the implementation of departmental policies and regulations in the sphere of business management for the department.

3) The employe is required to make high level management decisions which have major impact upon

departmental policy, programs and operations as they relate to business management.

4) The employe determines and evaluates departmental recommendations for the establishment and revision of legislation.

5) The work is performed for the most part independently, subject only to administrative direction and review by the department head.

Examples of Work Performed:

Plans and directs the administration of the business management function of a large department, initiating support programs to facilitate increased efficiency and effectiveness in business management.

On the basis of management studies, determines valid qualitative and quantitative standards for measuring departmental business management, and initiates or revises major departmental operating methods and procedures to achieve these standards.

Determines departmental policies and regulations in the sphere of business management, and directs major administrative programs, such as the implementation of costs reduction without impairing overall operations.

Develops programs to secure public acceptance and cooperation of major departmental plans and programs which require extensive planning and coordination of educational and informational techniques, devices, and media.

Maintains effective working relationships with legislative committees, management executives of other departments, communications media, and organizations interested in the policies and activities of the department, evaluating the effect of their reactions on departmental policies, programs, and projected plans.

Determines or assists in determining departmental recommendations for the establishment or revision of legislation.

6. The duties of Mr. Morrissey's position do not include the direction of all business management functions under "1a" above. Nor is his position responsible for the administration of the business management functions under "1b" above. Mr. Morrissey's position is responsible for substantive program areas, not for supporting program services of the nature described in the Administrative Officer 4 Class Spec.

Administrative Officer 5

7. The position standard (Class Spec) for Administrative Officer 5, contains a definition of the classification with examples of the types of work performed. The definition as shown below has been re-formatted for clarity.

This is highly responsible and difficult administrative and managerial work in providing complex and diversified liaison, and staff functions and services within a major department.

1) An employe in this class is responsible for the direction of the administrative services division of a major department composed of several semi-autonomous divisions each of which is concerned with diversified major professional or technical programs.

2) The employe is directly responsible for the executive administration of all personnel, fiscal, purchasing, data processing and systems, and budget programs in the department.

3) The employe plans, determines and directs the implementation of departmental policies and regulations and directives in all of the above program areas [listed in "1" and "2"] effecting the operations of all of the divisions of the department.

4) The level of management decisions made by the employe are at the executive level, and such decisions have fundamental impact upon departmental programs, organization and operations.

5) The employe develops and evaluates recommendations for the establishment and revision of legislation.

6) The work is performed for the most part independently, subject only to administrative consultation and review with the department head.

Examples of Work Performed:

Directs the administrative and central services of a major department with several semi-autonomous divisions with respect to all personnel, fiscal, purchasing, data processing and systems, and budget programs and is responsible for administrative program planning, development, and evaluation in these areas.

On the basis of management studies, recommends and implements programs or major projects that should be initiated, dropped, or curtailed; how much resources to devote to particular projects; the timing of initiating, dropping, or curtailing of particular programs or major projects; and what changes in emphasis need to be made in programs or parts of programs.

Determines departmental policies and regulations with regard to such factors as, desirability of changes in organizational structure and the particular changes to be effected, desirability of changes in lines of authority, measures for improving coordination among diverse units and programs,

and control measures needed to provide data for management purposes.

Plans and directs programs to educate and inform the public of important departmental programs and projected projects which require public acceptance and cooperation, including justifications for major expenditures for equipment, facilities, automation, or radical changes in operations.

Determines how to maintain and effectively maintains working relations with legislative committees, management executives of other departments, communications media, and organizations interested in the policies and activities of the department, and determines what compromises to make in operation in view of public relations implications and need for program support from various groups.

Determines departmental recommendations for the establishment or revision of legislation.

8. The duties of Mr. Morrissey's position do not include responsibility for the direction of administrative services, under "1" above. Nor is his position directly responsible for the executive administration of all personnel, fiscal, purchasing, data processing and systems, and budget programs in the department, under "2" above. The duties of his position are focused on specified program areas within the bureau. He has no duties of a broader nature involving the coordination and/or analysis of diverse program areas within the department, as described in the Administrative Officer 5 Class Spec.

Director, Bureau of Petroleum Inspection

9. The Class Spec for Director, Bureau of Petroleum Inspection is the best fit for Mr. Morrissey's position. The classification description is shown below from the Class Spec.

This is professional managerial work . . . in the Division of Safety and Buildings in the [DILHR]. The single position allocated to this class manages the petroleum inspection and fire protection programs of the Bureau of Petroleum Inspection. This position's principal focus is in direction the formulation, determination and implementation of programs for the operation of the Petroleum Environmental Cleanup Fund Act (PECFA), the regulation of petroleum product storage tank systems and the regulation of petroleum products. In addition, this position is responsible for administering a program to promote public health and safety related to fire prevention to include training of

local fire officials and the inspection and enforcement of laws relating to flammable and combustible liquids. Work includes

those tasks typical of managers of large programs which include such activities as strategic planning; policy review and development; coordination of programs between other jurisdictions at the local, state and national level; etc. Work is performed under general supervision of the Deputy Administrator and Division Administrator.

10. Mr. Morrissey replied to DER's Motion for Summary Judgment as shown below:

As a response to DER's motion for summary judgment, I would suggest that the role of the Commission in this case is to determine if DER has acted within its statutory authority. The statutes state:

230.09 **Classification.** (1) The secretary shall ascertain and record the duties, responsibilities and authorities of, and establish grade levels and classifications for, all positions in the classified service. Each classification so established shall include all positions which are comparable with respect to authority, responsibility and nature of work required. Each classification shall be established to include as many positions as are reasonable and practicable. In addition, each class shall:

* * *

(d) Where practical, be included in a series to provide probable lines of progression.

The legislature intended that a classification and series contain all positions which are comparable with respect to responsibilities and duties. They did not intend for classifications to be established for individual persons.

The issues that the Commission has to decide are whether the classification that my position has been assigned to includes all positions which are comparable in duties and responsibilities and whether the DER has acted within their statutory authority in establishing a one person classification.

DISCUSSION

Mr. Morrissey's dispute is with the existence of the Class Spec for his position (Director, Bureau of Petroleum Inspection). He does not dispute that the Class Specs at issue, as written, support DER's decision to reallocate his position to Director, Bureau of Petroleum Inspection. The undisputed portion of his case is the only issue over which the Commission has jurisdiction. In other words, the Commission's role is limited by statute to reviewing his job duties and determining which Class Spec, as written, is the best fit for his position.

The Commission lacks jurisdiction to consider Mr. Morrissey's argument that certain Class Specs violate s. 230.09(1)(d), Stats. The Commission's jurisdiction is limited by statute. Pertinent here is s. 230.44(1), Stats., which confers jurisdiction for limited subject-matter appeals under the Civil Service Code (Ch. 230, Stats.). The statutory text is shown below in relevant part.

230.44 Appeal procedures. (1) APPEALABLE ACTIONS AND STEPS. Except as provided in par. (e), the following are actions appealable to the commission under s. 230.45(1)(a):

(a) *Decision made or delegated by administrator.* Appeal of a personnel decision under this subchapter made by the administrator or by an appointing authority under authority delegated by the administrator under s. 230.04(2).

(b) *Decision made or delegated by secretary.* Appeal of a personnel decision under s. 230.09(2)(a) or (d) [relating to classification of positions] or 230.13(1) [relating to closed records] made by the secretary or by an appointing authority under authority delegated by the secretary under s. 230.04(1m).

(c) *Demotion, layoff, suspension or discharge. . . .*

(d) *Illegal action or abuse of discretion.* A personnel action after certification which is related to the hiring process in the classified service and which is alleged to be illegal or an abuse of discretion may be appealed to the commission.

(e) *Discretionary performance awards.* (No jurisdiction.)

(f) *Corrections employe rights. . . .*

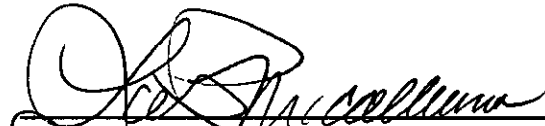
The statute does not give the Commission authority to review disputes arising under s. 230.09(1), Stats.

ORDER

DER's motion for summary judgment is granted and this appeal is dismissed.

Dated September 14, 1995.

JMR


LAURIE R. McCALLUM, Chairperson


DONALD R. MURPHY, Commissioner


JUDY M. ROGERS, Commissioner

Parties:

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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