

STATE OF WISCONSIN

PERSONNEL COMMISSION

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RAYMOND R. BRIGGS,

Appellant,

v.

Secretary, DEPARTMENT OF NATURAL
RESOURCES and Secretary, DEPART-
MENT OF EMPLOYMENT RELATIONS,

Respondents.

Case No. 95-0196-PC

* * * * *

INTERIM
DECISION
AND
ORDER

INTRODUCTION

None of the parties filed written objections to the proposed decision and order(PDO) mailed to the parties on May 10, 1996. The Commission, however, found some of the arithmetic faulty and has changed some of the language accordingly as denoted by alphabetic footnotes. This decision is issued as an interim decision and order to provide an opportunity for the appellant to file a request for fees and costs. The following paragraphs are taken from the PDO.

A hearing was held in the above-noted case on February 27, April 3, and April 22, 1996. The parties presented oral arguments at the close of hearing.

The parties agreed to a statement of the hearing issue at a prehearing conference held on November 16, 1995, as noted below.

Whether respondents' decision denying appellant's request for the reclassification of his position from Forestry Technician 4 (FT4) to Forestry Technician 5 (FT5) was correct.

FINDINGS OF FACT

The Classification Specification

1. The classification specification (Class Spec) for Forestry Technicians (Exh. A-1) is dated February 9, 1992, and contains definitions for five classification levels. The definitions of the 4th and 5th (highest) levels are shown below.

FORESTRY TECHNICIAN 4 - Positions allocated to this level perform: 1) objective level full range forestry management duties; 2) objective level full range of forest fire control duties which in most positions would typically include some forest management duties or comparable advanced level activities in fire administration such as training; or 3) function as the Field Foreman at a major nursery.

FORESTRY TECHNICIAN 5 - This is advanced technical level forest management work. Positions at this level perform, a majority of time, the most complex forest management work including planning, coordinating and implementing with significant delegation from professional or supervisory level forest management work assigned; the assigned responsibility for developing, coordinating and implementing the forest management plan; and the high degree of autonomy delegated the position due to the individual's recognized experience and expertise.

2. The Class Spec also provides definitions for the terms "forest fire control" and "forest management", as noted below.

Forest Fire Control (Administration) - Forest fire control activities include presuppression, suppression, and prevention. This includes such activities as the operation and maintenance of complex fire fighting equipment; directing fire operations as the Incident Commander in the absence of the Forester/Ranger; coordinating and completing Fire Action Plans, Fire Program Plans and Red Flag Alert Programs; managing subarea Emergency Fire Warden Programs; conducting inspections of properties, recreation areas, industrial sites, field operations, railroad right-of-way and other hazard areas for fire management purposes; and other related activities.

Forest Management - These activities include providing customers with technical assistance in tax law compliance including project inspections and evaluations, management plans, file updating; contacting landowners to determine compliance; answering questions from public regarding forest management practices, tax laws, cost sharing opportunities, insect and disease problems; checking aerial photos of less complex tax law entities to determine property location, boundaries, and timber types; independently collect and calculate field data for less complex properties and assist with data collection for complex properties; develop maps delineating timber types, topographic features, roads and other pertinent information; conduct independent timber cruising of less complex timber stands and assist in cruising more complex stands; and independently select and mark timber for harvesting.

Mr. Briggs' Position

3. Mr. Briggs' position underwent logical and gradual changes leading him to request reclassification from FT4 to the FT5 level. His reclassification request (reclass request) was received by the central personnel office of the Department of Natural Resources (DNR) on June 29, 1994, resulting in an effective date of July 10, 1994. (Exh. A-9) Respondents denied the reclass request by letter dated August 23, 1995. (Exh. A-2)
4. While the reclass request was being studied, respondents asked for an updated position description (PD) for Mr. Briggs' position. The updated PD (Exh. A-3) was developed by Mr. Briggs and his first-line supervisor, Timothy Mulhern using actual time sheets to develop time estimates for specific tasks. The duties reflected in this PD are shown below.

<u>Time %</u>	<u>Goals and Worker Activities</u>
30%	<u>A. Management of the Oneida County Forest and State Owned Fish and Wildlife Lands.</u> <ol style="list-style-type: none">A1. Collect data and prepare more complex forest management plans for review by forester.A2. Establish more complex silvicultural projects based only on training and experience.A3. Independently cruise most complex stands involving a variety of products and cutting prescriptions.A4. Establish most complex timber sale and boundary lines independently.A5. Independently select and mark trees for cutting in complex stands.A6. Inspect sales for contract compliance. Take independent action on minor violations. Maintain sale records.A7. Interpret and analyze recon and habitat data to meet special needs.
30%	<u>B. Management of Tax Law and Non-Tax Law Private Lands.</u> <ol style="list-style-type: none">B1. Meet with landowners and make management recommendations for more complex stands within the scope of existing guidelines.B2. Prepare Forest Tax Law packages on more complex parcels with limited guidance from forester. Follow up on compliance violations after consultation with forester.

- B3. Identify common insect and disease problems and make recommendations based on clear guidelines.
- B4. Certify need and completion for specific ASCS cost-sharing practices.
- B5. Work independently with consultant foresters to ensure compliance of management plans and the cooperating consultant agreement.
- B6. Establish more complex silvicultural projects based only on training and experience.

- 10% C. Administration of County Forest and Private Landowner Reconnaissance Records.
 - C1. Develop and maintain record keeping system for all recon records.
 - C2. Review recon updates to insure accuracy, completion and timely updating of all recon.
 - C3. Determine priorities, set work planning goals, and implement recon updating of out-of-date compartments and stands.
- 15% D. Fire Suppression and Fire Equipment Operation and Maintenance.

* * *
- 5% E. Implementation of Fire Prevention and Presuppression Programs and Forest Management Public Awareness.

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 - E2. Assist with school and adult fire prevention and forest management programs.

* * *
- 5% F. Maintenance of Buildings and Grounds

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- 5% G. Cooperation and Information Dissemination

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5. Goals A, B and C of the new PD (shown in prior paragraph) account for 70% of Mr. Briggs' position's time. Goals A and B (60%) meet the Class Spec definition of "Forest Management" and goal C (10%) relates to those same duties. Mr. Briggs claims his position spends more than 50% of its time performing tasks at the FT5 level. His opinion (in large part) is based upon a study conducted by his second-line supervisor, Kenneth Sloan. Mr. Sloan's study consisted of comparing documentation of Mr. Briggs' work (Exh. A-14) to a set of unofficial guidelines (Exh. A-9) developed by program managers from various districts in an attempt to define complex tasks, an undefined concept of the Class Spec. At the time of hearing, the unofficial guidelines were pending review in DNR's central personnel office; after which time review was expected at the Department of Employment Relations (DER). Louise Karpinski, personnel manager at DNR's NW district, knew and approved of Mr. Sloan's use of these guidelines to analyze Mr. Briggs' work in connection with the reclass request.
6. The classification experts testifying at hearing, Susanne Steinmetz (at DNR's central personnel office) and Ms. Karpinski conceded they have

no expertise in the area of forest management and, accordingly, rely on forest management experts for information in classification decisions. In resolving Mr. Briggs' reclass request, they relied upon the expertise of his supervisors, Mr. Sloan and Mr. Mulhern.

7. The examples of Mr. Briggs' work can be sorted by overall purpose of the task using the categories developed in the unofficial guidelines. The following paragraphs summarize each task by category, with reference to the pertinent portion of the unofficial guidelines.

Stewardship Management Plans (SMP) of Privately-Owned Lands

8. One type of work performed by Mr. Briggs is preparation of stewardship management plans (SMPs) for privately-owned lands. Pertinent here is "Forest Management Planning" description in the unofficial guidelines, the text of which is shown below.

Level 3
Prepare maps and simple plans based on data provided by supervisor. Plans at this level would typically involve a single, uniform stand, relatively small in size, and a single well defined practice. For example: tree planting in old fields or in situation where extensive site preparation was not required; harvest plans for a plantation requiring a row thinning, etc.

Level 4
Collect data and prepare less complex management plans. Plans at this level would typically involve a number of fairly uniform stands and straight forward silvicultural recommendations with clear, established guidelines. Recommendations would involve a variety/sequence of practices. For example: planting plans would require site preparation and release work, in addition to tree planting; harvest plans would involve scheduling a series of thinnings, road layout, slash treatment, etc., in addition to harvest recommendations. For example: reforestation of a jack pine clearcut; development of a thinning schedule and road network in a red pine plantation.

Level 5
Collect data and prepare more complex forest management plans. Plans at this level involve a number of diverse stands requiring the identification and evaluation of a number of subtle factors (growth levels, quality, habitat type, successional trends, understory, stocking, wildlife, aesthetics, etc.) in order to select the proper management practice. In many cases more than one guideline might apply to different portions of the same stand. Techs at this level are expected to independently select and interpret guidelines in all but the most complex cases, however, guidance is provided by the forester on new or unusual situations. For eg: selection and design of a harvest and regeneration system in oak, cedar, white pine, or northern hardwood stands where various systems might be appropriate depending on site

factors and/or other concerns
relative to wildlife,
aesthetics, etc.

9. The most recent SMP (Exh. A-14, pp. 1-6) was completed in June 1994. The 46 acres of privately-owned land were described as 5 separate areas: a) 17 acre stand of hemlock; b) 21 acre stand of white birch and red maple, with a few scattered aspens and balsam fir saplings; c) 1 acre stand of red pine; d) 3 acres of lowland alder brush; and e) 4 acres of "road right of way". Analysis of the first stand involved consideration of the rare nature of the tree type to the area, aesthetics and wildlife habitat which lead Mr. Briggs to suggest two management options. Analysis of the second stand resulted in four different harvesting options which noted certain tradeoffs such as monetary gain versus aesthetics. Analysis of the third stand resulted in a recommendation of light thinning. The fourth area provided food and cover for wildlife, a goal the landowner wished to maintain and so no change was recommended. Mr. Sloan characterized this work at the FT5 level, a conclusion supported by the unofficial guidelines under "Forest Management Planning".
10. The next SMP (Exh. A-14, pp. 7-14) was completed in June 1994. The 78 acres of privately-owned land were described as 5 separate areas: a) 63 acre stand of aspens, with a scattering of other trees including: jack pine, red maple norway pine and white spruce; b) 4 acre stand of aspens; c) 4 acres of open grass field; d) 4 acres of alder brush and e) 3 acres of house and driveway. Mr. Briggs' analysis of the first stand lead him to deviate from standard silvicultural harvesting methods to accommodate the landowner's concern for aesthetics. Mr. Sloan rated this analysis at the FT5 level and such conclusion is supported by the unofficial guidelines.
11. The next SMP (Exh. A-14, pp. 15-19) was completed in December 1993. The 76 acres of privately-owned land were described as 5 separate areas: a) 39 acre stand of scotch pine, b) 13 acre stand of black spruce with a scattering of tamarack, c) 6 acre stand of aspen, d) 10 acres of lowland keg, and e) 8 acres of pasture. Mr. Sloan characterized the work as involving "uniform stands with clear silvicultural guidelines" at the FT4

level. However, Mr. Sloan also characterized the work at the FT5 level because Mr. Briggs "made silvicultural recommendations in addition to collecting data". However, the unofficial guidelines under "Forest Management Planning", specifically anticipate that "straight forward silvicultural recommendations" are expected at the FT4 level. Mr. Sloan was relying on the draft guidelines under "Private Forestry Assistance" which describe the FT5 level as: "Make silvicultural recommendations for more complex stands within the scope of existing guidelines." The stands analyzed here are not the "more complex stands". Accordingly, this project was FT4 level work.

12. The next SMP (Exh. A-14, pp. 26-31) was completed in December 1993. The 67 acres of privately-owned land were all included in one stand of northern hardwoods, predominantly red maple, sugar maple, white birch and red oak; with a scattering of pines, balsam fir and aspen. Mr. Sloan characterized this plan as FT5 level because of the number of species predominate in the stand and because the analysis required consideration of quality, stocking levels, aesthetics and wildlife needs. His opinion is supported by the unofficial guidelines.
13. The next SMP (Exh. A-14, pp. 36-41) was completed in September 1993. The 113 acres of privately-owned land was described as 7 separate areas: a) 40 acre stand of aspen, with a scattering of red maple and oak; b) 22 acre stand of aspen; c) 9 acre stand of tamarack, d) 16 acre stand of black spruce, with some spruce and balsam fir; e) 4 acres of open marsh; f) 21 acres of open water; and g) 1 acre of upland grass. Mr. Sloan described this analysis as being fairly straight forward and meriting the FT4 level, except for the provision of silvicultural recommendations which he placed at the FT5 level. For reasons already discussed in par. 11 above, the silvicultural recommendations made in this analysis are at the FT4 level.
14. The next SMP (Exh. A-14, pp. 52-56a) was completed in July 1993. The 21 acres of privately-owned land were described as 2 separate areas: a) 11 acre stand of oak, sugar maple, white birch, red maple and aspen; and b) 10 acre stand of cedar with a scattering of red maple, yellow birch, spruce, hemlock, white birch and black ash. Mr. Sloan characterized this work at the FT5 level for the following reasons: 2 complex stands,

different cutting practices required within the same stand, significant judgement required in assessment of which trees to cut and wildlife considerations, and silvicultural recommendations made. All factors are supported by the unofficial guidelines and are sufficient to characterize the project at the FT5 level.

15. The next SMP (Exh. A-14, pp. 63-76) was completed in June 1993. The 31 acres of privately-owned land were described as five separate areas: a) 6 acre stand of red pine; b) 10 acre stand of aspen with scattering of red maple; c) 12 acre stand of oak, with mixing of aspen, red maple, red and white pine, scotch pine and white birch; d) 2 acres of natural grass openings; and 5) 1 acre of non-productive lowland. Mr. Sloan characterized this as FT4 level work with the exception of including silvicultural recommendations as FT5 level work. As noted in par. 11 above, FT4 level plans anticipate a basic level of silvicultural recommendations. This project, accordingly, is FT4 level work.
16. The next SMP (Exh. A-14, pp. 97-101) was completed in June 1993. The privately-owned 38 acres was described in two separate areas: a) 20 acre stand of sugar maple, red maple, basswood, white ash, yellow birch, balsam fir, aspen, and white birch; and b) 18 acre stand of northern hardwood and white birch. Mr. Sloan characterize this work at the FT5 level due to the diversity of species in the stands; required evaluation of site quality, species mix, successional trends, and vigor; and due to the applicability of more than three silvicultural guidelines with different treatments within the same stand. Mr. Sloan's analysis is consistent with the unofficial guidelines.
17. The next SMP (Exh. A-14, pp. 109-120) was completed in June 1993. The privately-owned 52 acres were described in 4 separate areas: a) 7 acre stand of oak, white birch, aspen and miscellaneous northern hardwoods; b) 22 acre stand of white birch, oak, aspen, balsam fir, miscellaneous hardwood, spruce and hemlock; c) 7 acres of keg; and d) 16 acres of lakes. Mr. Sloan's opinion is correct that this project is FT5 level work due to the number of species in the stands; required consideration of aesthetics, erosion and wildlife considerations; and application of silvicultural guidelines which varied within the same stand.

18. The next SMP (Exh. A-14, pp. 129-134) was completed in March 1993. The privately-owned 43 acres was described in 3 separate areas: a) 10 acre stand of aspen, white birch and scattered hardwoods; b) 29 acre stand of oak and red maple, with scattering of aspen and white birch; and c) 4 acre stand of northern hardwood with balsam fir saplings. Mr. Sloan's opinion is correct that this is FT5 level work due to the complexity of the stands; the required selection of prescriptions; and required evaluation of existing tree quality, site potential, wildlife and aesthetic impacts.
19. The next SMP (Exh. A-14, pp. 164-170) was completed in December 1992. The privately-owned 32 acres were described as one stand containing oak and aspen, with a scattering of white birch, red maple and white pine. Mr. Sloan correctly characterized this work at the FT5 level due to the diversity of the stand; the required analysis of site potential for a number of species; and integration in analysis of timber, wildlife and aesthetic concerns.
20. The next SMP (Exh. A-14, pp. 171-175) was completed in November 1992. The privately-owned 74 acres was described in 4 separate areas: a) 27 acre stand predominantly of aspen, with white birch, balsam fir, jack pine and spruce; b) 26 acre stand of black spruce and tamarack; c) 19 acres of lowland tag alder brush; and d) 2 acres flooded from a beaver dam. Mr. Sloan's opinion is correct that this is FT5 level work because of the stand complexity, the selection of prescription required analysis of site potential of a number of species, and within stand modifications to incorporate aesthetic concerns, wildlife impact and habitat improvement goals of the landowner.
21. The next SMP (Exh. A-14, pp. 176-181) was completed in September 1992. The privately-owned 120 acres was described in 6 separate areas: a) 33 acre stand of red maple, sugar maple, white ash and yellow birch, with an understory of balsam fir saplings; b) 15 acre stand containing mostly sugar maple, with a mixture of white ash, yellow birch and basswood; c) 29 acre stand aspen; d) 29 acre stand of open grassland; e) 9 acre stand of upland shrubs and brush, with some sapling size white birch, spruce, balsam fir and hardwood; and f) 5 acres of lowland tag alder brush. Mr. Sloan's opinion is correct that this is FT5 level work due to the stand complexity; the need to project thinnings based on analysis of growth

rates, site potential and stand structure; presence of significant disease considerations in the aspen stand; and the need to integrate timber and wildlife values.

22. The next SMP (Exh. A-14, pp. 182-188) was completed in September 1992. The privately-owned 80 acres was described in 5 separate areas: a) 10 acre stand of basswood, sugar maple, red maple, white birch and white ash, with sapling size balsam fir; b) 34 acre stand of northern hardwood mix like the first stand, but without the understory of balsam fir; c) 17 acre stand of aspen and balsam fir, with mixing of red maple, white birch and white spruce; d) 8 acre stand of black ash, and e) 11 acres of right of ways. Mr. Sloan's opinion is correct that this is FT5 level work due to the stand diversity; required analysis of growth projections based on site quality, stocking and stand structure; and required integration of "major" aesthetic and wildlife concerns.
23. The final SMP (Exh. A-14, pp. 192-205) was completed in January 1990. This work was at the FT4 level because it involved a number of fairly uniform stands with straightforward silvicultural recommendations and the prescriptions were applied uniformly throughout the stand. This example is not included in the remaining decision analysis because it is too old. Specifically, Mr. Briggs' position went to the FT4 level, effective with a survey reallocation on February 9, 1992; based on his PD which he signed on June 3, 1991, and again on December 3, 1991. (Part of Exh. A-4.) Mr. Briggs' testified that the gradual changes in his position started in "early 1992". Accordingly, examples prior to 1992 are too old to include in further analysis.

Timber Sales

24. The unofficial guideline heading pertinent here is "Cruising", the text of which are shown below.

Cruising

<u>Level 3</u>	<u>Level 4</u>	<u>Level 5</u>
Independent cruising of less complex stands, involving <u>1-2</u> species and a <u>single cutting prescription</u> . For example: cruising a uniform, defect free,	Independently cruise complex stands involving <u>2-3</u> species and <u>more than one cutting prescription</u> . For example: cruising a mixed stand of aspen, birch, and oak poles, where the aspen	Independently cruise most complex stands involving <u>several species</u> and a <u>variety of produces and cutting prescriptions and use of individual judgement</u> . Cruising at this level would typically

jack pine pole stand
to be clearcut.

and birch is designated for
cutting and the oak is
selectively marked.

be done in types like northern
hardwood which contain several
species mixed together and
where tree identification is
more difficult.

Layout cruise courses
with review by
forester.

Independently layout cruise
course and adapt cruising
methods within scope of
guidelines to meet objec-
tives. In the example cited,
for instance, the aspen and
might be cruised on a point
sample basis, while the oak
is cruised based on a mark-
and-tally sample.

Both saw timber and pulpwood
volumes must be estimated
based on different criteria and
measurements are complicated
by quality and defect
considerations.

25. The first example (Exh. A-14, pp. 20-25) involved an analysis completed in December 1993, in preparation for a timber sale on 23 acres of privately-owned land. Mr. Sloan characterized the majority of this work as being at the FT5 level for several reasons including: a) no previous map available; b) required analysis of stocking, species mix, quality and vigor; and c) presence of over mature birch which necessitated modification of the standard marking guide. His opinion is supported by the unofficial guidelines under the heading "Cruising".
26. The second example (Exh. A-14, pp. 42-51) involved an analysis completed in August 1993, in preparation for a timber sale on 24 acres of privately-owned land. Mr. Sloan noted that only 2 species of pulpwood were involved with one cutting prescription and that a "fairly straightforward" recommendation was made which required some assessment of hardwood quality and aesthetic impacts - but only at the FT4 level. Mr. Sloan felt some FT5 level work was involved due to a degree of uncertainty over boundary lines and due to silvicultural recommendations made. The FT5 level factors cited by Mr. Sloan, however, are not factors mentioned in the "cruising" guidelines.
27. The third example (Exh. A-14, pp. 102-108) involves an analysis completed in June 1993, in regard to a private timber sale of an 8 acre hardwood stand. Mr. Sloan placed this project at the FT5 level due to the multiple-species present in the stand; the analysis required consideration of form, vigor, density, quality, defect and wildlife considerations; the project required selective marking in all age saw

timber; and the project required evaluation of stocking level, quality stand, structure and wildlife considerations. These considerations are supported by the guidelines.

28. The fourth example (Exh. A-14, pp. 206-210) involves an analysis completed in (or about) June 1993, in connection with a timber sale on private property. Mr. Sloan characterized these tasks at the FT4 level¹ and there is no basis in the record for disagreeing with Mr. Sloan's opinion.

Recon of Public-Owned Lands

29. The unofficial guide chart heading pertinent here is "Compartment Recon", the text of which is shown below.

Level 3	Level 4	Level 5
Assist with collection of recon data.	<u>Interpret aerial photos and collect data</u> independently in less complex <u>stands</u> where clear guidelines are unavailable. Update <u>existing</u> recon data.	<u>Complete new recon</u> independently. Techs at this level would be capable of the <u>complete recon process</u> in an <u>entire compartment or large private ownership</u> , as opposed to level 4 techs who would only complete portions of a compartment by collecting data in less complex stands and/or update existing recon where only portions of the data were being changed.

30. The most recent example (Exh. A-14, pp. 32-35) involves Mr. Briggs' recon in the Oneida County Forest, which he completed in December 1993. The compartment at issue consisted of a total of 627 acres spread over 8 stands, of which Mr. Briggs performed recon on 338 acres. Mr. Sloan characterized this work at the FT4 level because Mr. Briggs was updating existing data, an opinion consistent with the unofficial guidelines under "Compartment Recon".

¹ It was not easy to determine at what level Mr. Sloan characterized this work. This example (unlike all the others in Exh. A-14) did not include a handwritten note from Mr. Sloan regarding the rationale used for judging the work. The examiner cross-checked all examples in Exh. A-14, with Mr. Sloan's summary sheet (Exh. A-10, p. 3) and by process of elimination discovered that this was a 16-acre private timber sale which Mr. Sloan placed at the FT4 level.

31. The second example (Exh. A-14, pp. 143-146) involves Mr. Briggs' recon of 198 acres in Oneida County Forest, which he completed in May, 1993. Mr. Sloan correctly rated this as FT4 level work as an update of existing recon data.
32. The third example (Exh. A-14, pp. 135-138) involves Mr. Briggs' recon of 83 acres of the Oneida County Forest, which he completed in February, 1993. Mr. Sloan correctly rated this as FT4 level work as an update of existing recon.
33. The fourth example (Exh. A-14, pp. 139-142) involves Mr. Briggs' recon of 318 acres of Oneida County Forest, which he completed in February, 1993. Mr. Sloan rated this as FT5 level work because of the complexity of stands involved which required an analysis of species mix, quality, site potential, etc. Furthermore, only part of the property had previous recon data which was determined to be inaccurate. Mr. Sloan's assessment at the FT5 level is consistent with the guidelines.
34. The fifth example (Exh. A-14, pp. 147-150) involves Mr. Briggs' recon of 375 acres in Oneida County Forest, which he completed in January, 1993. Mr. Sloan correctly rated 148 acres at FT4 level work as updating existing recon, and the remaining 227 acres at FT5 level work as new recon of complex stand.
35. The sixth example (Exh. A-14, pp. 151-154) involves Mr. Briggs' recon of 224 acres in the Oneida County Forest, which he completed in January, 1993. Mr. Sloan correctly rated this work at the FT4 level work for updating existing recon data.
36. The seventh example (Exh. A-14, pp. 155-158) involves Mr. Briggs' recon of 516 acres of the Oneida County Forest, which he completed in January, 1993, with the assistance of a trainee forester. Mr. Sloan correctly rated this as FT5 level work because there was no existing recon data of these complex stands.
37. The eighth example (Exh. A-14, pp. 149-163) involves Mr. Briggs' recon of 188 acres of the Oneida County Forest, which he completed in January, 1993. Mr. Sloan correctly characterized 20 acres at the FT4 level as an update of existing recon and the remaining 168 acres at the FT5 level because no recon data existed previously for the complex stands involved.

Tax Law Program

38. The unofficial guide chart heading pertinent here is "Private Forest Tax Law Program", the text of which is shown below.

Level 3	Level 4	Level 5
<u>Answer general questions</u> on the forest tax law program.	<u>Assist</u> landowners <u>with tax law applications</u> . <u>Assist</u> with data collection. Prepare finished tax law <u>maps</u> . Complete recon update on <u>less complex</u> entries.	Answer most questions on <u>all aspects</u> of the tax law program. Collect data <u>independently</u> . Prepare <u>complete</u> tax law <u>packages</u> , (as per handbook). Complete <u>all types</u> of tax law recon update. <u>Make compliance inspections</u> and report violations to supervisor.

39. The most recent example (Exh. A-14, pp. 56b-62) is a tax law package completed in July 1993. The 86 acres of privately-owned land were described as 5 separate areas: a) 39 acre stand of sugar maple, red maple, yellow birch, white birch, oak and hemlock; b) 7 acre stand of cedar, red maple, white birch, hemlock, aspen and balsam fir; c) 11 acre stand of pine saw timber and northern hardwood; d) 15 acre stand of hemlock, white birch, red maple, sugar maple and yellow birch; and 5) 14 acres of lowland tag alder brush. Mr. Sloan characterized the work at the FT5 level, a conclusion supported by the unofficial guidelines under the heading "Private Forest Tax Law Program".
40. The second example (Exh. A-14, pp. 77-85) is a complete tax law package completed in June 1993. The privately-owned 68 acres was described in two separate areas: a) 28 acre stand of oak, aspen, red maple, basswood and white birch, with a scattering of white ash; and b) 40 acre stand of predominantly aspen but also containing red maple, basswood, oak and white birch. Mr. Sloan correctly characterized this project at the FT5 level due to the following factors: 6 species in the first stand; poles and saw log size trees; analysis required projection of a series of thinnings and integration of timber, wildlife and aesthetic considerations; preparation of a complete tax law package.
41. The next example (Exh. A-14, pp. 86-91) is a complete tax law package completed in June 1993. The privately-owned 20 acres were described in two separate sections: a) 17 acre stand of aspen, with residual oak in

which the landowner wishes to plant 500 red pine seedlings; and b) 3 acres of non-productive keg. Mr. Sloan assigned the FT5 level to the project due to the complete tax law package, a conclusion supported by the unofficial guidelines. He gave a separate rating (FT4) to the forest-management aspect of the tax law package, but the unofficial guidelines include recon-related activities as part of the tax law package. Accordingly, this project is at the FT5 level.

42. The next example (Exh. A-14, pp. 92-96) is a complete tax law package finished in June 1993. The 70 acres of privately owned land was described in five separate areas: a) 54 acre stand of sugar maple, red maple and oak, with a scattering of red and white pine; b) 10 acre stand of hemlock and northern hardwood; c) 4 acres of non-productive keg; and d) 2 acres of non-productive black spruce. Mr. Sloan correctly characterized this project at the FT-5 level.
43. The next example (Exh. A-14, pp. 121-128) is a complete tax law package finished in June 1993. The privately-owned 70 acres was described in 4 separate areas: a) 54 acre stand of sugar maple, red maple and oak, with scattering of red and white pine; b) 10 acre stand of hemlock and northern hardwoods; c) 4 acres of non-productive keg; and d) 2 acres of non-productive black spruce. Mr. Sloan's opinion is correct that this project is FT5 level work.

Federal Cost-Sharing Programs

44. The unofficial guide chart heading pertinent here is "Federal Cost-Sharing Programs", the text of which is shown below.

Level 3	Level 4	Level 5
<u>Answer general questions</u> relating to cost-share programs, availability, etc.	<u>Explain</u> cost-share programs in detail. <u>Make recommendations to forester as to need</u> for specific ASCS practices. Certify completion of ASCS practices.	<u>Certify need</u> for specific ASCS practices. <u>Provide input to ASCS regarding practice modifications</u> , improvements, &/or problems.

45. The only example (Exh. A-14, pp. 189-191) relating to a federal cost-share program involved a 10 acre project² which was completed in

² The example in Exh. A-14, did not include the amount of acreage. Accordingly, the examiner went through a process of elimination (similar to

January 1992. Mr. Sloan is correct that this is FT5 level work under the guideline heading entitled: "Federal Cost-Sharing Programs" because Mr. Briggs certified a need for specific ASCS practices and provided input regarding practice modifications.

Summary of Work Examples

46. The detailed information provided in the preceding paragraphs regarding Mr. Briggs' forest management work demonstrates that roughly 3/4 of the work assignments are at the FT5 level, as are the number of acres associated with those assignments; as shown in the following charts.^a

<u>Job Category</u>	<u>Total # of Assignments</u>	<u># of Assignments At the FT 5 Level</u>
Stew. Mgmt. Plans	22	19
Timber Sales	4	2
Recon	9	3
Tax Law Prog.	5	5
Fed. Cost Sharg. Prog.	1	1
Totals (73% at FT5)	41	30

<u>Job Category</u>	<u>Total # of Acres</u>	<u># of Acres At the FT5 Level</u>
Stew. Mgmt. Plans	871	651
Timber Sales	71	31
Recon	3251	2240
Tax Law Prog.	341	341
Fed. Cost Sharg. Prog.	10	10
Totals (72% at FT5)	4,544	3,273

47. It takes, at a minimum, two times longer to complete a level 5 task than it takes to complete a more routine task.^{3,b,c}

the process described in the prior footnote) by comparing Exh. A-14, to Exh. A-10, p. 3. This effort resulted in narrowing the options to two choices; either 10 or 78 acres. The less favorable number was used here because it was Mr. Briggs' burden to establish the acreage involved.

^a This paragraph was changed to provide summarized information more useful to the changed analysis which appears later in the decision. (As a result, ¶ 47 of the PDO was deleted.)

³ Recon tasks at the complex (FT5) level were estimated by Mr. Sloan to take 2 and 2/3 times longer than routine recon tasks. He also estimated that sales

CONCLUSIONS OF LAW

1. Appellant met his burden of proof to show that respondents' decision denying his request to have his position reclassified from FT4 to FT5, was incorrect.
2. Appellant's position is the best fit under the FT5 classification.

DISCUSSION^d

Mr. Briggs, to prevail in his appeal, must show that he routinely spends a majority of his time on tasks identified at the FT5 level. See, DER & DP v. PC (Doll), Dane county Circuit Court, 79-CV-3860 (9/21/80); appeal settled, Court of Appeals, 80-1689 (2/9/81). The dispute in Mr. Briggs' case stems from a misunderstanding which occurred during the review of his reclass request. Specifically, Ms. Karpinski and Ms. Steinmetz understood Mr. Sloan to say that about half of the time Mr. Briggs' position spent on forest management work was at the FT5 level. The classification experts relied upon this misunderstanding in determining that the position should remain at the FT4 level. (Exh. R-4, p. 3) Specifically, sections A, B and C of Mr. Briggs' PD were identified as forest management work which represented 70% of his position's time. Ms. Steinmetz and Ms. Karpinski took half of the 70% figure and

establishment can take five times longer for a complex versus routine task. Mr. Briggs gave a general estimate that complex tasks take 2-3 times longer than more routine work.

^b The wording was changed slightly to comport with the changed analysis. (See ¶ 48 of the PDO.)

^c PDO ¶49 was deleted because the arithmetic contained therein was faulty. Specifically, there was no expert testimony indicating that it takes, for example, four times as long to complete a 4,000 acre assignment at the FT5 level, as it does to complete a 1,000 acre assignment at the FT5 level. In other words, the number of acres provides some basis for comparison but does not provide a perfect basis for converting from acreage to time percentages absent the noted expert testimony.

^d The wording of this section was changed to delete reference to the faulty mathematics relied upon in the PDO, and to reflect the rationale of the full Commission. The Commission was unpersuaded that consideration of the sole factor of number of tasks at the FT5 level as compared to total number of tasks bore a direct correlation to time spent on such tasks. In other words, one task at the FT5 level does not necessarily correlate to twice the time spent on a different task at the FT4 level. The Commission's concern over the lack of direct correlation also existed between the factor of FT5 level acreage as compared to total acreage.

concluded that Mr. Briggs' position spends only 35% of its time on FT5 level work.

Mr. Sloan attempted to rectify the misunderstanding in a memo dated September 6, 1995, which he sent to Ms. Steinmetz and copied Ms. Karpinski. (Exh. A-10, pp. 1-2) Both Ms. Steinmetz and Ms. Karpinski received the memo, yet offered no explanation at hearing as to why they did not follow-up on the attempted correction. Left "hanging in the air" at hearing was a suspicion that they simply did not believe what they perceived as a change of information from Mr. Sloan. Such suspicion, however, was left unstated and was insufficient to rebut the evidence of misunderstanding which was made part of the hearing record by appellant.

The confusing nature of the misunderstanding described above is further shown by the hearing testimony of Mr. Briggs. On direct exam, he gave the following testimony:

Q Ms. Steinmetz indicates there (in the reclass denial memo) that about 35% of the time is complex forest management work at the Technician 5 level. Is that the way you read (Ms. Steinmetz' letter), Ray?

A: Yes.

Q Ok. Do you agree with that?

A: No.

Q: Okay. To what extent are you involved in performing at the most complex forest management work which is performed by your agency?

A: Of my work, of the complex plans I can't put an exact number on it, but I'm definitely over 50-56% of my time is complex forest management work.

Q Ok. And on the basis of what do you say that?

A: Well, I used Ken Sloan's chart that he devised and what he came up with was 64% of the time was complex forestry tasks, but tasks - - to perform them tasks is a lot more time than doing say, a non-complex project.

Later during direct examination, Mr. Briggs again was asked whether he was spending more or less than half of his position's time performing FT5 level work to which he replied in the affirmative. Respondents' attorney objected to the answer. A considerable amount of confusion ensued over whether Mr. Briggs was attempting to change his testimony from a majority of

forest management tasks at the FT5 level, to a majority of his position's time at the FT5 level. The examiner listened to the hearing tapes of Mr. Briggs' testimony in preparing the proposed decision and order. Mr. Briggs' testimony (at least up to the time of objection by respondents' counsel) had been consistently phrased in terms of the majority of his position's time performing FT5 level tasks.

It is true that Mr. Briggs gave contrary testimony after the confusion noted in the prior paragraph arose. This contrary statement was most likely due to confusion, a conclusion which the examiner bases (in part) on listening to her own questioning of this witness at hearing. Specifically, the examiner asked a series of questions at different points during Mr. Briggs' testimony in an attempt to clarify the "time v. tasks" dispute. The examiner sometimes used the wrong terms (i.e. "tasks" rather than "time") in her own questioning of Mr. Briggs which, unfortunately, probably caused further confusion for the witness.⁴

Analysis of Mr. Briggs' Work, as documented in Exh. A-14.

The Commission's decision adopts Mr. Sloan's opinion of the difficulty of specific tasks based upon his expertise in forest management (except for the few cases where his reasoning was contrary to the unofficial guidelines). However, the method used by Mr. Sloan to tally the tasks was viewed by the Commission as flawed and, accordingly, was not followed.

The conceptual flaw with Mr. Sloan's approach was to count one project for more than one task. For example, some stewardship plans were counted three times: once under "Forest Management Planning", once under "Cruising" and a third time under "Private Forestry Assistance". In other words, he counted the cruising and the silvicultural aspects of developing a stewardship plan separately from the plan development itself. The approach taken by the Commission treated each project as justifying a count under only one category -- the most appropriate category in terms of the overall purpose of the assignment. This approach is supported by the guidelines which specifically recognize such tasks as cruising and silviculture as part of the stewardship plan itself.

⁴ These excerpts were transcribed by the hearing examiner (in rough form). If the parties wish to see them, they should contact the examiner.

The question remained after the above-mentioned adjustments of whether the majority of time spent by Mr. Briggs' position was performed at the FT5 level work. Mr. Sloan and the appellant testified that the majority of time was spent performing FT5 level tasks. While respondents contested those opinions, respondents provided no persuasive evidence to refute them. The preponderance of the record evidence does not contradict the stated opinions of Mr. Sloan and appellant. The record showed that Mr. Briggs' position performs forest management work for 70% of the position's time. The record further demonstrated that roughly 3/4 of the forest management tasks performed by Mr. Briggs' position involved FT5 level work, as did the number of acres associated with those tasks. Undisputed is the fact that it takes, at a minimum, two times longer to perform FT5 level tasks than lower-level tasks.

FT5 Level does not require control over a geographic area

The Class Spec definition of the FT5 level includes the requirement that the position has the "assigned responsibility for developing, coordinating and implementing the forest management plan". (Exh. R-1, p. 4) (Emphasis added.) Ms. Steinmetz testified that she understood the term "forest management plan" to mean a plan involved with a specific geographic area identified or assigned to a specific employee. She noted, for example, that the FT5 position held by Mr. Uhren (part of Exh. A-11) is the only position with assigned responsibility working in the Flambeau River Forest. She indicated she has used this interpretation to classify all Forestry Technician positions at DNR.

All of the forest management experts equated "forest management plan" with stewardship plans and tax law plans, such as those described in pars. 8-23 and 38-43, of the Findings of Fact. The only geographic association for these experts was the fact that each plan involves a section of land. Of significance on this point is an interpretive document for the Forestry Technician Class Spec prepared by DER which contains no support for Ms. Steinmetz' interpretation. (Exh. A-8)

The Commission cannot "graft" Ms. Steinmetz' requirement of an assigned geographic area into the Forestry Technician Class Spec when to do so would be contrary to the plain meaning of the terms used therein, and contrary to the meaning of those terms as used by the experts in the

profession described therein. To rule otherwise would constitute an attempt to rewrite the Class Spec, a power which the Commission does not have. 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).

ORDER

That respondents' denial of Mr. Briggs' reclassification request is rejected and this matter is remanded to respondents for action consistent with this decision.

Date: July 5 [1996]

STATE PERSONNEL COMMISSION

Laurie R. McCallum
LAURIE R. McCALLUM, Chairperson

Donald R. Murphy
DONALD R. MURPHY, Commissioner

Judy M. Rogers
JULY 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