

**STEVEN R. HOFFMAN,**  
*Appellant,*

v.

**Secretary, DEPARTMENT OF NATURAL  
RESOURCES, and  
Secretary, DEPARTMENT OF  
EMPLOYMENT RELATIONS,**  
*Respondents.*

**FINAL  
DECISION  
AND  
ORDER**

Case No. 00-0133-PC

The appellant filed written objections to the proposed decision in this matter. The Commission has considered those objections, consulted with the examiner and makes various revisions to the proposed decision. These changes are identified by alphabetical footnotes.

This matter is before the Commission as an appeal from a reallocation decision. The parties agreed to the following statement of issue for hearing:

Whether the respondents' decision to reallocate the appellant's position to Wildlife Technician was correct, or should the appellant's position have been reallocated to Wildlife Technician - Advanced.

The effective date of the reallocation decision in question is May 21, 2000.

Appellant works in the St. Croix Basin, in the respondent DNR's Northern Region.

Paul Kooiker is Subteam Leader for the Burnett subteam in the St. Croix Basin.

The Glacial Lake Grantsburg Wildlife Work Unit is one of 5 groups of employees that report to Mr. Kooiker. App. Exh. 4

The Glacial Lake Grantsburg Wildlife Work Unit consists of 5 employees, including 3 wildlife technicians, one of whom is the appellant. The other two wildlife technicians are Orland Luedtke and Mary Griesbach. The remaining 2 employees in the work unit are Pete Engman, the Wildlife Biologist at Crex Meadows Wildlife Area

(Crex), and Jim Hoefler, the "project manager" for Crex. Mr. Hoefler's position description is not part of the record. However, either Mr Engman's or<sup>A</sup> Mr. Hoefler's

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<sup>A</sup> Bruce Moss, appellant's second level supervisor, offered the following testimony relating to information given him by human relations staff as to why the technicians (including appellant) did not make it to the Advanced level:

Q(by respondent) And have you not been told as to the reasons why they were not taken to the higher level and why they were all treated the same?

A Uh, no. I have not to my knowledge.

Q And no body has ever told you as to the allocation of duties at Crex?

A Yeah, you're right. To a certain extent the. There were two things that I can recall being told. One was that Jim Hoefler, being sort of back up to the wildlife biologist, that they felt that by the time they got down to the Technicians, that there was very little opportunity for them to be, uh, sort of acting independently, because there was always a wildlife manager of some sort available for the most part. If Paul [Kooiker] wasn't there at that time, he was the wildlife manager, Jim Hoefler was.

And the other thing was that the duties were split up such that they, they felt there was a lot of overlap of responsibility. I may not be totally clear on that.

I will say that Jim Hoefler's responsibilities have changed dramatically since that time, with the Beginning to break ground now on the education center at Crex. His role and involvement in day-to-day team leading will be nil.

The Commission notes that appellant's position summary says he works under the general supervision of the Subteam Leader, i.e. Paul Kooiker, *and works with the Crex Meadows project manager in carrying out all phases of the wildlife management program.* Someone at Crex has to be the "project manager" referenced in the appellant's position description. The above testimony suggests Mr. Hoefler fulfilled that role. However, it is also possible that the Wildlife Biologist, Pete Engman, was the person being referred to as the "project manager." Mr. Engman testified:

A. Basically at Crex Meadows, I work under the direction of the subteam leader in Grantsburg. And as far as supervision of the technicians, I have no supervisory responsibility. They work independent of myself and all supervision is from the subteam leader.

Basically, we have a lot of individually assigned tasks between myself and the technicians. And we work pretty much independently. As far as my level of direction, like I said we work on all our small day-to-day tasks, the technicians and myself, pretty much work independent. Where I come into play is if we

responsibilities during the relevant time period include day-to-day team leading at Crex.  
(Cross examination of Bruce Moss and examination of Mr. Engman)

The Glacial Lake Grantsburg Wildlife Work Unit includes Crex and other properties.

Appellant's second-level supervisor is Bruce Moss, St. Croix Basin land and forestry leader

All 3 of the wildlife technicians in the work unit have responsibilities that encompass that portion of Burnett County that is west of Highway 35. This includes Crex.

The Wildlife Technician classification specification provides, in part:

C. Exclusions

Excluded from this classification are the following types of positions:

2. Positions which are, for a majority of time, engaged in technical paraprofessional wildlife management activities and are more appropriately classified within the Wildlife Technician-Advanced classification specification.

II. DEFINITIONS

WILDLIFE TECHNICIAN

Positions allocated to this classification: (1) assist in the breeding/hatching/brooding of pheasant chicks by providing husbandry and maintenance duties; (2) care for captive wildlife at the MacKenzie Center by feeding and monitoring the health of captive birds and mammals on exhibit; or (3) perform a limited range of development and implementa-

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have an extremely large project where we may have to pull together, oh a big contract or replace a structure, a wetland water control structure or, I'm trying to think of a good example, where it might involve working with engineers in Madison and at the regional level and I may wind up having to pull together some different functions to assist the crew to get the job done.

In addition, Mr. Kooiker testified, that under the *old* organizational structure, Jim Hoefler supervised the technicians, but this has been changed. He also testified that there was a year when they went without a project manager.

The Commission has revised this portion of the proposed decision to reflect the fact that either Mr. Engman or Mr. Hoefler served in the role of project manager.

tion activities on a wildlife property as an assistant to a Wildlife Technician-Advanced, Wildlife Biologist, Property Manager, or Natural Resources Supervisor. Positions may have responsibility for a specific segment of the wildlife programs on the property. Work is performed under general supervision.

Representative Positions:

Wildlife Crew Member -- Under the supervision/direction of the property manager, take the lead on and/or assist other lead crew members on specific wildlife habitat and facilities development and maintenance projects. Operate heavy and light equipment. Assist in planning and establishing work priorities and implementing work schedules. Work on the animal damage abatement program; conduct wildlife and user surveys; assist with managed hunting and trapping programs and participate in prescribed burns within property boundaries. Manipulate and control water levels and perform dike maintenance. Participate in barrens restoration and wetland habitat improvement projects on state wildlife areas or private lands.

The Wildlife Technician-Advanced classification specification provides, in part:

C. Exclusions

2. Technical positions whose primary emphasis is performing technical support activities within the Wildlife program and are more appropriately classified within the Wildlife Technician classification specification.

E. Definition of Terms Used in This Specification

Paraprofessional - A type of work closely relating to and resembling professional level work, with a more limited scope of functions, decision-making and overall accountability. A paraprofessional position may have responsibility for segments of professional level functions, but is not responsible for the full range and scope of functions expected of a professional position.

II. DEFINITION

WILDLIFE TECHNICIAN-ADVANCED

Positions allocated to this classification are responsible for technical paraprofessional wildlife management activities which have significant scope and impact. These positions will: (1) plan, schedule in and coordinate the work activities of breeding/hatching/brooding operations at the Game Farm and assist in work planning, budget development, purchas-

ing, and work scheduling; (2) perform the full range of technical paraprofessional wildlife activities for a specific portion of the wildlife program in a basin(s); 3) perform the full range of technical paraprofessional wildlife management duties with responsibility for the development, design and implementation of wildlife management projects; or (4) develop and implement projects on department properties as the assigned paraprofessional technical lands maintenance technician. The work is performed with significant delegation and under general supervision.

Representative Positions:

Wildlife Management Technician -- Implement land management development and maintenance activities to enhance wildlife populations habitat and public use. Plan habitat and facilities development projects. Plan and perform critical wildlife habitat projects such as dike repair/maintenance, wetlands, prairies/grasslands, oak savannas, forest habitat/croplands, and artificial nesting platforms. Develop, secure and monitor sharecrop agreements. Plan and implement wildlife, terrestrial and user surveys. Coordinate harvest registration stations. Implement animal damage and nuisance wildlife programs. Provide wildlife technical paraprofessional assistance to private landowners in the management and enhancement of wildlife habitat. Participate in prescribed burn operations. Operate and maintain equipment. Acquire land use rights. Perform public relations, information and education activities. As required, coordinate and guide the activities of assigned staff.

Mississippi River Wildlife Management Technician -- Under the general guidance of the Mississippi River Wildlife Biologist, plan and execute all field operations for the wildlife programs within the Western Boundary Rivers Unit. Responsibilities include the organization of equipment and staff to carry out field operations ranging from population habitat, harvest assessments and habitat development. Coordinate and provide assistance in the efficient use of equipment and personnel with other units and department programs and other states, US Fish and Wildlife Service, and US Army Corps of Engineers that have jurisdictional authority. Train field personnel in the correct methods of collecting and recording data and direct the collection of field data to ensure statistical and scientific validity of data is maintained. Conduct evaluations to assess short and long-term river habitat conditions and changes including vegetation and invertebrate sampling. Tabulate and analyze field data and prepare or assist in preparing technical and scientific reports and perform public relations and educational activities.

At some time prior to 1993,<sup>B</sup> there were 6 wildlife technician positions at Crex, Mike Johnson was denominated as "crew chief," he was classified at the higher (Technician 4) classification level that existed at that time, and appellant's position was classified at the Technician 3 level. After Mr. Johnson left that position, the duties of his position were divided up among the remaining 3 technician positions. In 1997 Mr. Kooiker was no longer just the property manager for Crex but was also the subteam leader for the geographic area that included the Crex property

Appellant's position description dated August of 1999 (App. Exh. 5 and Resp. Exh. 3) accurately describes appellant's duties during the relevant time period. It lists Mr. Kooiker, Natural Resources Supervisor 1, as appellant's supervisor and includes the following language:

Position Summary:

*This position functions as a member of the Lands Program within the Burnett Subteam of the St. Croix Basin. Works under general supervision of the Subteam Leader. Works with the Crex Meadows project manager in carrying out all phases of the wildlife management program, both on and off state wildlife areas. Works with the interpretive wildlife biologist in carrying out all phases of the wildlife education program. Provides direction to LTE's, interns, and volunteers. Activities include the planning, design, and implementation of wildlife habitat development and maintenance projects on public lands; working with landowners on private lands habitat management; conducting wildlife, wildlife habitat, and user surveys; conducting wildlife education and interpretive programs; assisting with animal damage and nuisance problems; maintenance of wildlife properties, equipment, and facilities; and cooperation with other DNR functions and agencies.*

Orland Luedtke's position summary (Resp. Exh. 5) has the identical language. Mary Griesbach's position summary (Resp. Exh. 4) is identical except that instead of "assisting with animal damage and nuisance problems," Ms. Griesbach is "coordinating" those responsibilities.

The appellant's position description includes the following goals and associated time percentages:

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<sup>B</sup> This phrase has been modified to more accurately reflect the record.

- 45% A. Development and Maintenance of Habitat on Public Lands
- 15% B. Implementation of Biological and Consumer Surveys, and Monitoring of Wildlife Diseases.
- 10% C. Development and Maintenance of Habitat on Private Lands
- 10% D. Development and Maintenance of Facilities
- 10% E. Provision of Wildlife Education
- 10% F. Cooperation and Other Activities

The three wildlife technicians in the GLG have numerous common/identical duties, but each one has also been given areas of concentration where they, rather than either of the other two technicians, have responsibility for planning/coordinating/developing particular programs or responsibilities. For example, all three spend 45 to 50% of their time performing responsibilities under the heading of "Development and Maintenance of Habitat on Public Lands." The three have a few common activities under this goal: participate in barrens habitat restoration and maintenance as well as in prescribed burns of state and county properties. Appellant 1) plans, coordinates and conducts the water level control activities in the work unit (15%) and 2) plans, coordinates and implements inspections and maintenance of the dikes and water control structures (10%). He keeps a log of these activities and evaluates the results. But the position descriptions for Mr. Luedtke and Ms. Griesbach show they also are responsible to conduct water level control activities "independently".

Conduct water level control activities, including operation of the diversion pump and Crisafulli pump, monitoring water level gauges, and manipulating flowage water levels. Respond appropriately to emergency flood/high water situations by making independent decisions without close supervision.

While the appellant's habitat maintenance focus is on controlling the water level, the other two technicians focus on other activities for their habitat maintenance goal. Ms. Griesbach evaluates the results of habitat management activities (10%), coordinates herbicide applications and is responsible for controlling exotic plants. Mr. Luedtke plans and coordinates the farm habitat program (20%), the sharecrop program, the grassland restoration program and the pothole development [sic] program. The appel-

lant is responsible for *participating* in many of these programs as shown in the following portions of his position description:

A4. Participate in the engineering, design, construction, and installation of potholes. .

A6. Participate in farm habitat program on state wildlife areas. Operate farm tractors and equipment, and apply herbicides

All three Glacial Lake Grantsburg wildlife technicians participate in various areas of responsibility. As a general matter, at least two of the three technicians are always involved in any distinct goal identified in one of their position descriptions. For some of the smaller goals (10% or less), one of the three may be responsible to plan, develop or coordinate the particular project. One of the three technicians is often the coordinator or planner for one or more activities or projects within a goal.

None of the three have been designated *the* lead technician and no lower level assistants in permanent positions<sup>c</sup> are on staff. The three technicians usually work independently of each other rather than together. They are typically cross-trained to handle each other's tasks. Emblematic of this relationship is activity F1 in the appellant's position description:

F1. Participate in the full range of wildlife management activities assigned to the Crex [Meadows] staff as circumstances and work scheduling dictate. Requires the knowledge and experience to handle any job assignment in the event of an emergency or in the absence of other personnel who would ordinarily be responsible for that particular work activity.

### Analysis

There are three allocations identified in the definition statement of the Wildlife Technician classification. The first two refer to positions that care for pheasant chicks or captive birds or mammals. Neither describes the appellant's activities. The third allocation refers to performing "a limited range of development and implementation activities on *a wildlife property* as an assistant to a Wildlife Technician-Advanced, Wild-

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<sup>c</sup> The Commission has added language to this sentence to make it clear that while the appellant may occasionally "lead" the work of volunteers or limited term employees, none of the three technicians at GLG satisfy the key requirement of leading permanent employees.



life Biologist, Property Manager, or Natural Resources Supervisor." (emphasis added) While appellant may spend the majority of his time on projects within the confines of Crex, his responsibilities are not limited to that one property. According to appellant's position description (Activity A3) there are 4 GLG properties and his activities cover all four. Appellant also has private lands responsibilities that extend beyond the confines of Crex Meadows. Appellant's set of responsibilities appears to be stronger than the language in the third allocation of the definition statement because his activities are not limited to "a wildlife property." However, the "Wildlife Crew Member" representative position at the Wildlife Technician level includes language that shows the definition statement must not be read so narrowly. The representative position lists a variety of responsibilities, including the following: "Participate in barrens restoration and wetland habitat improvement projects *on state wildlife areas or private lands.*" Because the duties of the representative position associated with allocation 3 extend beyond the confines of a single wildlife property, allocation 3 should not be read to exclude positions with responsibilities extending beyond a single property.

There are four allocations identified in the definition statement of the Wildlife Technician-Advanced classification. Appellant does not work at the Game Farm so he does not fall within the first allocation. The second allocation is for positions that perform the "full range of technical paraprofessional wildlife activities for a specific portion of the wildlife program in a basin(s)." Appellant is one of three wildlife technicians who handle the western half of Burnett County. Each of the three has primary responsibility for some of the wildlife programs in that geographic area and assists in some of the other programs. Because the "full range" of technical paraprofessional wildlife activities is divided among the three positions, neither the appellant nor Mr Luedtke or Ms. Griesbach can be said to perform the "full range" of those paraprofessional activities. Management has not assigned a "specific portion" of the wildlife program in the sense that he has not been assigned to handle all of the waterfowl responsi-

bilities.<sup>D</sup> Respondent has assigned appellant primary responsibility for water control activities, which has a significantly narrower scope than, for example, someone who is assigned primary responsibility for a larger category such as waterfowl habitat or forest habitat. This distinction in the relative scope of primary responsibility ties into the language of the definition statement at the advanced level: At that higher level, positions are to be responsible for paraprofessional activities "which have significant scope and impact."<sup>E</sup>

The third allocation references performing "the full range of technical paraprofessional wildlife management duties."<sup>F</sup> Again, appellant does not perform the "full range" of such duties. The final allocation refers to serving "as the assigned paraprofessional technical lands maintenance technician" on department properties. None of the three wildlife technicians with responsibilities for the western half of Burnett County has been so designated.

Where the language of the classification specifications does not clearly include/exclude an appellant's position, the Commission often relies on comparisons to other positions classified at the relevant levels. *Morgan v. DER*, 96-0137-PC, 8/13/97;

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<sup>D</sup> Allocation (2) is discussed further in that portion of this analysis dealing with the Borchert comparison position.

<sup>E</sup> The Commission has expanded this paragraph to more clearly reflect its analysis.

<sup>F</sup> As noted in his objections to the proposed decision, appellant believes his position should fall under allocation (3) at the Advanced level. (Objections, p. 3) The Commission interprets the reference to "full range" in allocation (3) to reflect the fact that a technician in one area of the state is not going to be required to perform work for wildlife that is only present in some other area of the state. Appellant phrases this concept as follows: "It is obvious that technicians in northern areas do not perform pheasant habitat management work and those in the far south do not worry about maintaining winter deer yard habitat." (Objections, pp. 3-4) However, appellant also contends that the term "full range" as used in allocation (3) should not be interpreted in terms of the geographic area to which a technician has been assigned: "Nothing in the specifications or the dictionary definition of full range makes any inference to the geographic area a person works in as it relates to whether or not a person is performing the full range of wildlife duties." (Objections, p. 4) Appellant goes on to state: "There is no relationship between a technician working alone and performing the full range of duties." (Objections, p. 4) The Commission disagrees. Allocation (3) only makes sense if it is understood to reference the technician's assigned geographic area and respondent has consistently applied it in this manner. A technician assigned to share responsibilities for a particular geographic area would not be performing the full range of responsibilities for that geographic area as contemplated in (3).

*Rhodes v. DOT & DER*, 96-0024-PC, 8/5/96. Use of comparable positions as a classification tool is a well-established practice in classification cases. Comparable positions can be useful to demonstrate how respondent has interpreted or applied the criteria listed in the class specifications. *Jacobson v. DER*, 94-0147-PC, 4/20/95.

a. The best comparisons for the appellant's position are to his two co-workers at Crex, **Ms. Griesbach and Mr. Luedtke**. Technician responsibilities for the Glacial Lake Grantsburg Work Unit are split equally between the three positions. The three employees perform comparable work. Respondents reallocated both the Griesbach and the Luedtke positions to the Technician level.

While these comparisons are certainly important in analyzing the correctness of the respondents' decision to reallocate the appellant's position, they are not determinative. Comparison to a position of a co-worker who declined to appeal a reallocation decision should not serve as the sole basis for deciding the proper classification of the appellants. *Aslakson et al. v. DER*, 91-0135-PC, etc., 10/22/96, citing *Moran & Kaeske v. DER*, 90-0372, 0382-PC, 1/11/94.

The record also includes information regarding a variety of other positions that have been assigned duties relating to those performed by the appellant.

b. The **Jon Robaidek, Richard Greene and Darrel Hardy positions** at the Sandhill-Meadow Valley Work Unit (Resp. Exh. 8, 9 and 10) are all classified at the Wildlife Technician level and report to a sub-team leader. Mr. Robaidek's position summary, set forth below, is identical to the position summaries of the other two technicians except for the highlighted portion:

Assist with and administer the wildlife management program in the Sandhill-Meadow Valley Sub Team within a four county area within the Central Wisconsin Basin. *This position leads sub team efforts in the survey and control of noxious plants and the management of a captive herd of bison.* Duties include: develop and maintain over 90,000 acres of State-managed Wildlife Areas and Natural Areas; conduct wildlife education through implementation of the Sandhill Outdoor Skills Program; conduct information and public relations programs; direct and perform harvest registration, controlled educational hunts and wildlife surveys; direct and perform public use facility development and maintenance on

public properties in the sub-team area; perform wildlife health and disease monitoring and control; cooperate with other wildlife agencies, DNR functions and private groups to enhance wildlife habitat and populations; direct work activities of LTE's, student interns, WCC crews and volunteers.

The different portion of the Greene position summary (Resp. Exh. 9) reads: "This position leads sub team efforts in administering the drinking water program on Departmental properties including the proper abandonment of wells and site reclamation of newly acquired properties."

The different portion of the Hardy position summary (Resp. Exh. 10) reads: "This position leads sub team efforts on property boundary issues, animal damage investigations, nuisance wildlife complaints, and conducting dam safety inspections."

All three positions independently monitor and adjust water levels on "100 different water control structures on 56 major flowages impounding 40,800 acre-feet of water."

These three positions are very similar to the three positions at Crex from an organizational standpoint and the Commission is unaware of any basis on which they may be differentiated on this record<sup>6</sup> from the appellant's position in classification terms.

c. The **Gary Dunsmoor** position (App. Exh. 6) is classified at the WT-Advanced level. Mr. Dunsmoor is a member of Land Program on the Spooner sub-team in the St. Croix basin.

Mr. Dunsmoor's geographic responsibilities cover that portion of Burnett County east of Highway 35 plus all of Washburn County. He usually works on his own, except for a part-year LTE. The wildlife technician responsibilities in his geographic area are not split with other technicians. As a consequence, he meets the "full range" allocation, i.e. allocation (3), at the Advanced level. Because the Dunsmoor position clearly falls within that allocation and appellant's position does not, the com-

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<sup>6</sup> This sentence has been modified to reflect that appeals regarding these positions are pending and the Commission is not deciding those appeals on this record.

parison does not support classification of the appellant's position at the Advanced level.<sup>1</sup>

d. The **Eric Borchert** position (App. Exh. 7) is classified at the WT-Advanced level.

Mr. Borchert and Mike Winski fill two Wildlife Technician-Advanced positions that are responsible for the geographic area consisting of Langlade County and a corner of Marathon County. This area is a portion of several basins (Upper Wisconsin River, Central Wisconsin River, Wolf River), but they are not responsible for all of one basin. There are other wildlife technicians in various other geographic areas in each of the three basins.

*Mr. Borchert is responsible for waterfowl habitat (including wetlands and grasslands) and Mr. Winski is responsible for forest habitat and also focuses on wildlife education in their area. Their responsibilities are divided so they usually work independently and "very seldom" work on a joint basis. Mr. Borchert's position summary provides that he has been given "lead responsibilities for all waterfowl management activities." Mr. Borchert does not have a crew assigned to assist him. If he needs help, he will get it from Mr. Winski or from forestry technicians in that area.*

There is clearly some overlap of the water control duties that appellant performs in western Burnett County, and the water control duties that Mr. Borchert performs for Langlade County and parts of Marathon County. This is similar to the overlap with respect to water control duties for appellant's position and the Hardy position in the Sandhill-Meadow Valley Work Unit. Mr. Borchert's position description includes the following information:

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<sup>1</sup> This is also true for the Patrick Coffen position (App. Exh. 8), the Larry Jonas position (App. Exh. 9) and the Kenneth Rued position (App. Exh. 10). The position description for Mr. Rued shows that he is responsible for both Taylor and Rusk counties, including the 7400 acre Pershing Wildlife Area. Mr. Coffen's counties and Mr. Jonas' counties are not specified in the record, but respondent's witness noted they are responsible for wildlife management for the counties in which they work, thereby placing all three positions within allocation (3). The Commission has added information to this footnote to better describe these three positions.

25% A. Responsible for Development and Maintenance of Dams and Water control Structures For All New Flowages as Directed by Supervisor and Maintenance of 45 Existing Dikes and Numerous Restored Wetlands.

5% B. Responsible for Restoration of Wetlands, Both on Public and Private lands in Langlade and Marathon Counties.

5% C. Establish and Monitor Deer/Bear Harvest Registration Stations for Langlade and Marathon Counties.

5% D. Responsible for Implementation of Animal Damage and Nuisance Wildlife Programs for Deer, Bear, Canada Goose, Sandhill Crane, as Well as Urban Wildlife Programs for Langlade and Portions of Marathon County.

5% E. Implement Wildlife, Range and Public Use Surveys.

5% F. Perform Public Relations Information and Education.

20% G. Responsible for Implementing Land Management Development and Maintenance Activities to Enhance Wildlife Populations and Public Use as Directed by Supervisor.

10% H. Responsible for Heavy and Light Equipment.

10% I. Perform Personnel and Administrative Duties.

5% J. Cooperate With Other DNR Programs.

Nevertheless, there are some important distinctions between the appellant's duties and Mr. Borchert's responsibilities. First, the scope of Mr. Borchert's responsibilities as a "coordinator" are not limited to water control. He also coordinates responses to animal damage and nuisance problems, much as Ms. Griesbach does in the western part of Burnett County. Mr. Borchert also has the wetland restoration responsibilities identified separately as goal B in his position description. Finally, Mr. Borchert testified that the picnic areas, boat ramps, trails, outbuildings and parking areas associated with GLG were not present in his areas of Langlade and Marathon counties, so he would not be spending as much time as appellant on maintaining those facilities.

The similarities and distinctions between appellant's duties and Mr. Borchert's duties are difficult to quantify, but the differences are clearly significant. Those differences tie directly to the fundamental element of "scope" used in the first sentence of the definition statement at the Advanced level to differentiate Advanced positions from Technician positions. The differences are such that the Commission concludes that the appellant has not sustained his burden to show that his position is substantially similar to the Borchert position in terms of falling within allocation (2) at the Advanced level.<sup>4</sup>

e. The **Tony Geiger** position at the Mead Wildlife Area is classified at the WT-Advanced level. Mr. Geiger's position description (Resp. Exh. 6) shows he is the "work unit crew foreman" and he "independently plans, coordinates, implements and administers *phases* of the wildlife management program" and includes the "daily direction of full time technicians, LTE's and student interns."

This technician has field level program responsibility for several major programs, including a major, intensively managed wetland habitat program, planning, engineering and implementation of major wildlife related development projects, a complex prescribed burning program and an intensive wildlife survey program."

Responsibility A15 is similar to appellant's water control responsibilities. The designation of Mr. Geiger as "crew foreman" with "daily direction of full time technicians" differentiates his position from appellant's position.

Mr. Geiger is not the only WT-Advanced at Mead Wildlife Area. The position summary for **Brian Peters** (Resp. Exh. 7) reads:

Plan, implement, and direct: development, maintenance, habitat management, land acquisition, surveys, and public relations programs on the 33,000 acre Mead-McMillan Wildlife Work Unit and cooperative managed private lands as required. Conduct administrative duties; operating independently and in conjunction with the property manager Plan and coordinate habitat and facilities development, management and maintenance on the 7,000 acre McMillan Marsh Wildlife Area. Plan, implement, coordinate and administer the woodland and upland grassland/cropland habitat management programs. Function as property manager in the absence of the property manager. Independently plan priori-

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<sup>4</sup> The last two paragraphs in subd. d., have been added to clarify the Commission's analysis.

ties and schedules; inform property manager of progress and problems. Provide information and education to the public, and maintain law enforcement credentials, working on and off property. Cooperate with other Department functions, agencies, private organizations and private landowners. Possess and retain a commercial driver's license required to operate department vehicles. Participate as part of the Wausau Sub-Team.

Mr. Peters' position is the position described as the final representative position at the WT-Advanced level and his position summary closely tracks that language. The Peters' position may be differentiated from the appellant's position on that basis.

*Consistent with the reference to "scope" in the first sentence of the Advanced level definition, both the Geiger and the Peters positions have a broader scope of responsibilities than does the appellant's position.<sup>1</sup>*

When viewed together, these comparisons do not justify a conclusion that respondents' decision to classify the appellant's position at the Wildlife Technician level was incorrect and that his position is better described at the Advanced level.

It is appellant's burden to show that his position is correctly classified at the higher or requested level rather than merely showing that the decision to classify his position at the lower level was incorrect. *Svensson v. DER*, 86-0136-PC, 7/22/87; *Ellingson v. DNR & DER*, 93-0057-PC, 5/28/96.

Respondent puts a lot of emphasis on the fact that Ms. Karpinski, who analyzed the appellant's position and testified at the hearing, also drafted the classification specifications and offered her opinion as to the proper classification of the appellant's position. However, the key to the Commission's analysis is how the appellant's duties compare to the specifications and comparison positions, rather than simply relying on Ms. Karpinski's thoughts as to where appellant's position belongs.

It is also clear that there has been a long-standing disagreement between management at Crex and human relations staff as to the appropriate classification level of the appellant's position (as well as the other two wildlife technicians who work there).

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<sup>1</sup> This sentence has been added to the proposed decision to better explain the Commission's rationale.



Appellant's supervisors did not feel there should be a classification distinction drawn between technicians at field stations (like Mr. Dunsmoor) and technicians operating out of work units, such as the appellant. Again, the testimony of various supervisors as to relative complexity may not be reflected in the classification specifications. It is the language of those specifications that the Commission must interpret and apply to the appellant's set of duties. Respondent takes the position that the GLG work unit positions may be structured in such a way that they can meet the Advanced level specifications, but that appellant's supervisors have chosen not to organize their operations in that manner. The employing unit could designate one position as the "lead" technician and that position could then qualify for the Advanced level classification. However, the employing unit is loath to designate one from among the three. As a consequence, any one of the three is not doing the "full range" of the paraprofessional technician duties being done in the geographic area. By definition, the highest level duties are being divided up between the three. Under appellant's theory, these duties could be divided up between 37 technicians and all could still qualify for the Advanced level classification.

This is not a particularly straightforward case. It is difficult to clearly delineate some of the distinctions that respondents have attempted to draw between various positions, including the Borchert position. However the closest comparables tend to support the respondents' decision and the language of the class specifications (allocation (3) of the Wildlife Technician definition) is not inconsistent with that decision. Testimony indicates that the technician-level of responsibilities at GLG is split among appellant, Mr. Luedtke and Ms. Griesbach. None of the three serves as the lead technician for broad goals, only for specific projects/activities. There are no subordinate technicians. Mr. Hoefler or Mr. Engman<sup>J</sup> serves as day-to-day team leader<sup>K</sup> Given that he has the burden of proof to show that the respondents' decision was incorrect, appellant does not prevail.

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<sup>J</sup> This sentence has been modified for the same reason as expressed in footnote <sup>A</sup>

<sup>K</sup> Appellant believes his position fits within allocation (3) at the Advanced level. In order to properly fall within that allocation, a position must perform the "full range of technical paraprofessional wildlife management duties" for the assigned geographic area.

ORDER

The action of the respondents is affirmed and this appeal is dismissed.

Dated: May 17, 2001 STATE PERSONNEL COMMISSION

  
LAURIE R. McCALLUM, Chairperson

KMS:000133Adecl.3

  
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.

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