

STATE OF WISCONSIN

PERSONNEL COMMISSION

TOM ACKLEY,
Appellant,

v.

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

Respondents.

**FINAL DECISION AND
ORDER**

Case No. 00-0135-PC

A hearing was held in the above-noted case on February 9, 2001, and was continued on February 27, 2001. The parties elected not to file post-hearing briefs. A proposed decision and order (PDO) was mailed on May 4, 2001. The appellant filed objections to the PDO by letter dated June 19, 2001 (received by the Commission the following day).

The Commission has reviewed the PDO and the appellant's objections. The Commission consulted with the hearing examiner and agreed with her credibility assessments. The Commission adopts the examiner's decisions with changes denoted by alphabetical footnotes.

The parties agreed to the following statement of the issue for hearing (see Conference Report dated October 26, 2000):

Whether respondents' decision to reallocate the appellant's position to Forestry Technician rather than to Forestry Technician – Advanced was correct.

I. Classification Specifications

The classification specifications for Forestry Technician (Exh. A-1) and for Forestry Technician – Advanced (Exh. A-2) contain the same language in the introductory sections, as noted below:

Purpose of This Classification Specification: . Classification decisions must be based on the "best fit" of the duties within the existing classification structure. The "best fit" is determined by the majority (more than 50%) of the

work assigned to and performed by the position when compared to the class concepts and definitions of this specification or through other methods of position analysis. Position analysis defines the nature and character of the work through the use of any or all of the following: definition statements; listing of areas of specialization; representative examples of work performed; allocation patterns of representative positions; job evaluation guide charts, standards or factors; statements of inclusion and exclusion; licensure or certification requirements; and other such information necessary to facilitate the assignment of positions to the appropriate classification.

I.A. Technician Classification Specification

Pertinent sections of the Forestry Technician (hereafter, Technician) classification specification (Exh. A-1) are noted below:

DEFINITIONS: Forestry Technician: Positions allocated to this classification: (1) participate in state nursery production and distribution work projects set up by the nursery foreman or nursery superintendent; or (2) perform a limited range of development and implementation activities as an assistant to Forestry Technician-Advanced, Forester, or a Natural Resources Supervisor. Activities include any phase of tree propagation, tree distribution, soil maintenance, equipment operation and maintenance, building and grounds maintenance, and fire prevention, presuppression and suppression. Positions may fabricate nursery equipment or direct LTE crews in sorting, lifting and packaging operations or operate trucks, tractors and specialized nursery equipment. Positions may also serve as the tower person during fire seasons. Work is performed under a general supervision.

Representative positions:

Nursery Technician – Implement production and distribution of work projects set up by the Nursery Supervisor/Foreman in relation to all phases of tree propagation, tree distribution, soil maintenance, equipment, building and grounds maintenance. Operate trucks and tractors while carrying out these duties. Assist in maintaining truck and tractor fleet and specialized nursery equipment.

Forestry Technician – Implement forestry program goals with the primary responsibility to maintain a dependable lookout for forest fires from the assigned tower and give prompt reports of smoke sighted. Assist with the maintenance of equipment, buildings and grounds, fire prevention, presuppression, suppression, and forest management work activities.

I.B. Advanced Classification Specification

Pertinent sections of the Forestry Technician-Advanced (hereafter, Advanced) classification specification (Exh. A-2) are noted below:

Definitions 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 a professional level functions, but is not responsible for the full range and scope of functions expected of a professional position.

DEFINITIONS: Forestry Technician – Advanced: Positions allocated to this classification are responsible for technical paraprofessional forest management and fire control activities which have significant scope and impact. These positions will: (1) coordinate the work of Forestry Technicians in the production, maintenance, and distribution of nursery stock at the state nursery; (2) perform the full range of technical paraprofessional forestry activities with responsibility for a specific portion of the forestry program within the basin(s); (3) perform the full range of technical paraprofessional forestry duties with responsibility for the development, design and implementation of forestry projects within one or more program areas; or (4) function as a fire control dispatcher. These positions are given the latitude to make decisions which have a significant impact on their assigned area of responsibility. The work is performed with significant delegation and under general supervision.

Representative positions:

Nursery Foreman – Under the direction of the Nursery Superintendent, coordinate, implement and direct work projects for activities related to seedling distribution, care of stock, seeding and maintenance of the physical plant. Direct permanent and Limited Term Employee staff in the performance of these activities to ensure the production of quality stock.

Forestry Technician – Perform a wide range of forestry duties which includes planning, coordinating, record keeping, and implementing the forest management fire control duties. Work includes fire suppression, presuppression and prevention; providing forest management recommendations on private and public lands including management of tax and non-tax law properties; operating specialized fire control equipment; issuing permits; developing and implementing forest fire prevention projects; and performing fire inspections.

Forest Management Technician – Under general direction, participate in establishing work plans, developing and recommending projects and assisting in multi-disciplinary team activities on integrated projects. Provide forest management assistance in all phases of the County forest management program including planning, coordination, record keeping and implementation of forest management activities.

Fire Control Dispatcher – Transmit, receive and relay information concerning public safety and forestry law enforcement; and coordinate the activities of aerial and ground forest fire suppression units, aerial and ground forest fire detection activities. Provide technical information and support for the forestry program including review of time sale status reports, providing forest management assistance on private and public lands, and assisting in fire control suppression and prevention activities.

II. Appellant's Position

The appellant works for the Department of Natural Resources (DNR) at the Friendship Ranger Station. The Friendship Ranger Station is part of one Fire Control Unit. Other sub areas that are part of the same unit are Wisconsin Dells, Necedah, Babcock and Nekoosa.

Ranger John Schwingel heads the Friendship office. The Team Leader is Becky Isenring who functions as the appellant's first-line supervisor. The Friendship office has two positions classified at the Advanced level, the incumbents of which are Carl Backhaus and Terry Schwerdtfeger. The appellant occupies the only position at Friendship classified at the Technician level.

The duties assigned to the appellant's position (Exh. A8) are noted below.

Position Summary: This position provides forest fire prevention, suppression, and pre-suppression services to the Friendship Fire Response Unit. It exposes the employee to dangerous situations and requires that he/she maintain a high degree of physical conditioning. Providing for public safety and protection is a primary concern of this position. The position also provides technical forest management assistance to the Friendship Forester.

<u>% Time</u>	<u>Goals and Worker Activities</u>
15%	A. Suppression of forest fires
30%	B. Fire pre-suppression
10%	C. Prevention of forest fires
35%	D. Maintenance of equipment, buildings, and grounds
5%	E. Forest Management

- 5% F. Cooperation with other functions
- G. Possessing and maintaining a Commercial Driver's License is a requirement of this position.

III. Analysis^A

The appellant contends that his position should have been reallocated to the Advanced level. In a reclassification appeal, the employee asserting that his/her position should be at a higher level has the burden of proof, and must establish the requisite facts by a preponderance of the evidence. If the trier of fact feels that the evidence on each side of a disputed issue is equally weighted, or that the respondent's evidence is more weighty, then the appellant cannot prevail as to that factual issue. See, for example, *Tiser v. DNR & DER*, 83-0217-PC, 10/10/84 and *Hubbard v. DER*, 91-0082-PC, 3/29/94; affirmed by Dane County Circuit Court, *Hubbard v. Wis. Pers. Comm.*, 94-CV-1408, 11/27/96.

Classification specifications are the basic authority for classifying positions. *Edwards v. DER*, 92-0423-PC, 11/29/93. *Zhe et al. v. DHSS & DP*, 80-285-PC, 11/19/81, affirmed by Dane County Circuit Court, *Zhe et al v. PC*, 81-CV-6492, 11/2/82. *Kennedy et al. v DP*, 81-180, etc-PC, 1/6/84. Comparable positions provide a secondary but useful tool in analyzing positions for classification purposes. *Harder v. DNR & DER*, 95-181-PC, 8/5/96 citing *Jacobson v. DER*, 94-0147-PC, 4/20/95. The testimony of classification experts may also be considered. However, in this case, the classification expert testified that positions that performed, for a majority of the time, a combination of fire and forest management (FM) activities were placed at the Advanced level if FM activities were performed at least 15% of the position's time. This testimony not only relies upon a criterion which is not reflected in the specifications for the Advanced classification, but also conflicts with the language in the "Purpose" section of the specifications to the effect that the "best fit" is determined by the majority (more than 50%) of the work assigned to and performed by the position.

The specifications require that, in order to be classified at the Advanced level, positions must perform paraprofessional forest management and/or fire control activities. A review of

^A This section was modified from that presented in the PDO to reflect the Commission's rejection of the classification standard articulated by the classification expert in her testimony, i.e., the 15% standard, and to more accurately reflect the Commission's rationale for its decision.

the language of the definition section as well as the description of duties assigned to representative Advanced level positions (see, in particular, the description of the duties and responsibilities of the Advanced Forestry Technician position), provides a general description as well as specific examples of the types of duties and responsibilities which would qualify as paraprofessional forest management and fire control activities. Utilizing these and parallel information from the Technician specifications as a guide, appellant's position and positions offered by the appellant for comparison purposes were analyzed, and the following duties and responsibilities were concluded to qualify as paraprofessional forest management (FM) or fire control (FC) activities or general administrative duties i.e., as Advanced level duties and responsibilities:

Appellant—Worker activities or Goals (FC=12.5%; FM=4.15%; Total=16.65%):

- A1. Operates crawler tractors, pumpers, tankers, other motorized and non-motorized equipment as a certified Fire Control Equipment Operator in suppressing forest fires. (3.75%)
- A2. Direct the suppression actions of a crew as a Strike Team Leader, Crew Boss or Squad Boss. (3.75%)
- C3. Inspect and issue regular, special and seasonal burning permits. (2.5%)
- C4. Assist in the investigation of forest fires to determine cause and origin. Assist in the investigation and enforcement of violations of Chapter 26 and other related law and codes. (It gives appellant the benefit of the doubt as to this worker activity since it involves his assisting in investigations rather than independently conducting such investigations.) (2.5%)
- E. Forest Management with the exception of assisting in planting trees (4.15%)

Mark Johnson—reallocated to the Advanced level—Worker activities or goals (FC=26.49%; FM=25%; General Administration (1.67%); Total=53.16%):

- A1. Operate complex firefighting equipment, including crawler tractors, tankers, pumps, etc. in a high fire occurrence, high hazard pine fuels area. Operate firefighting equipment in fire situations involving aerial suppression operations. Maintain Fire Control Equipment Operator Certification. (2.5%)

- A3. Direct and lead suppression actions of fire crews. Act as dozer/engine boss, strike team/task force/group leader Direct burning out operations. (2.5%)
- A4. Compile information and complete both routine and more complex fire reports and damage appraisals to include payroll accounts, maps, and suppression bills. (2.5%)
- A6. Work with volunteer firefighters to facilitate protection of structures from wildfire including operation of tankers and foam units. (2.5%)
- B2. Coordinate and complete updating of Fire Action Plan, Fire Program Plan and Red Flag Alert Program. Implement, update and maintain Incident Command Post pre-plan for the sub-area including the communications system. (2.14%)
- B3. Manage the sub-area Emergency Fire Warden Program to include recruiting, training, issuing supplies, maintaining signs, etc. (2.14%)
- B4. Portion stating: Independently train specialized crews to include standby riders, non-DNR tanker drivers, mobile crews. (1.07%)
- B5. Portion stating: Train LTE tower personnel in fire detection procedures. (1.07%)
- B6. Portion stating: Research data regarding fire occurrence, populations, demographics, etc. for use in fire management planning. (1.07%)
- C1. Plan, develop and present school and youth group fire prevention programs. Prepare and present adult public awareness and fire training packages. Prepare draft news releases and correspondence to the public. (3%)
- C3. Conduct inspections of properties, recreation areas, industrial sites, field operations, railroad right-of-way and other hazard areas for fire management purposes. Identify fire prone areas based on established criteria. Conduct fire prone property inspections in wildland/urban interface hazard areas encompassing entire townships and large, complex subdivisions. Work with landowners to reduce fire prone hazard. (3%)
- C4. Promote and maintain efficient public contacts for fire management purposes. (3%)
- D. Forestry, Law Enforcement and Fire Investigation. (5%)
- F. Private Forest Management and Tax Law Administration (except F5, dealing with equipment maintenance and tree planting). (20%)
- G2. Maintain station inventory. Gather data, submit required reports, and maintain station records. Maintain and order station supplies. (1.67%)

Gary Krause—reallocated to the Advanced level—Worker activities or goals (FC=25.6%, FM=20%, General Administration (10%) Total=55.6%):

- A1. Independently operate firefighting equipment, including crawler tractors, tankers, pumps, etc. in a high fire occurrence, high hazard pine fuels area. Operate firefighting equipment in fire situations involving aerial suppression operations. Maintain Fire Control Equipment Operator Certification. (1.67%)
- A3. Direct and lead suppression actions of fire crews. Act as dozer/engine boss. Direct burning out operations. (1.67%)
- A5. Work with fire departments to facilitate protection of structures from forest fires including the operation of tankers and foam units. (1.67%)
- A6. Gather and compile fire information and complete routine fire reports to include payrolls, maps and suppression bills. (1.67%)
- B2. Compile and update information for incorporation into the fire action and fire program plan. (2.14%)
- B6. Inspect and issue regular, seasonal, broadcast and special burning permits based on experience and judgment. (2.14%)
- B7. Gather, compile and update information for use in fire management planning such as structural mapping. Research data regarding fire occurrence, populations, demographics, etc. for use in fire management planning. (2.14%)
- C1. Prepare and present programs to adult and youth groups including school groups. Arrange prevention programs and maintain prevention contact records. (3.75%)
- C2. Independently conduct fire prone property inspections of wildland/urban interface areas encompassing entire subdivisions. (3.75%)
- D. Forestry Law Enforcement and Fire Investigation (5%)
- F. Private forest management and tax law administration. (10%)
- G. Public lands forest management. (10%)
- H. Administration of forestry operations. (10%)

Robert Lent—reallocated to the Advanced level—worker activities or goals (FC=22.4%; FM=20%; General Administration=20%; Total=62.4%)

- A1. Operate firefighting equipment, including crawler tractors, tankers, pumps, etc. in a high fire occurrence, high hazard pine fuels area. Operate firefighting equipment in fire situations involving aerial suppression operations. Maintain Fire Control Equipment Operator Certification. (1.67%)
- A3. Direct and lead suppression actions of fire crews. Act as dozer/engine boss. Direct burning out operations. (1.67%)
- A4. Compile information and complete both routine and more complex fire reports and damage appraisals to include payroll accounts, maps and fire suppression bills. (1.67%)

- A6. Work with volunteer firefighters to facilitate protection of structures from wildfire including the operation of tankers and foam units. (1.67%)
- B2. Inspect and issue regular, seasonal and special burning permits based on judgment and experience. (1.43%)
- B3. Coordinate and complete updating of the Fire Action Plan, the Red Flag Alert Plan and the Fire Program Plan. Assist with the establishment of incident command post for the Fire Response Unit to include communications systems. (1.43%)
- B4. Manage the sub-area Emergency Fire Warden program to include recruiting, newsletter writing, issuing supplies, maintaining signs, etc. (1.43%)
- B6. Complete and update information for use in fire management planning such as structural mapping and water point establishment. Research data regarding fire occurrence, populations, demographics, etc. for use in fire management planning. (1.43%)
- C1. Plan, develop, and present school and youth fire prevention programs. Prepare and present adult fire prevention programs. (2%)
- C3. Conduct inspections of properties, recreation areas, industrial sites, field operations, railroad right-of-ways and other hazards areas for fire management purposes. Identify fire prone areas based on established criteria. Work with landowners to reduce forest fire related hazards. (2%)
- C4. Coordinate the annual fire prevention order for the Babcock Fire Response Unit. (2%)
- C5. Promote and maintain efficient public contacts for fire management purposes. (2%)
- D. Forestry law enforcement and fire investigation. (2%)
- F. Private forest management and tax law administration. (5%)
- G. Public lands forest management (15%)
- H. Administration of forestry operations. (20%)

Terri Schwerdtfeger^B—reallocated to Advanced level—Worker activities and goals (FC=20.78%, FM=30%, General Administration=2%; Total=52.78%)

^B One position not discussed elsewhere in this ruling is the position held by one of the appellant's co-workers, Carl Backhaus. Mr. Backhaus' position was reallocated to the Advanced level. The Commission wishes to acknowledge appellant's assertion that he performs the same duties as Mr. Backhaus except in "degree" and "amounts." This argument was unpersuasive because such difference could be a valid reason for differences in classification. Accordingly, without the PD in the hearing record, appellant's argument cannot be analyzed.

- A1. Independently operate crawler tractors, 3-5 ton tankers, pumps, foam units and other complex fire suppression equipment as a certified forest fire control equipment operator (5%)
- A2. Direct the suppression efforts of a crew as a squad boss, dozer/engine boss, strike team/task force/group leader (5%)
- B1. Prepare and present prevention programs to adult, youth and school groups. (0.71%)
- B2. Conduct fire prone property inspections of wildland/urban interface areas encompassing entire subdivisions. (0.71%)
- B3. Inspect railroad right-of-way fire breaks for compliance with R.O.W maintenance orders. (0.71%)
- C1. Compile and update information for incorporation into the Fire Program Plan and the Fire Action Plan. (0.71%)
- C2. Participate in the planning and organization of Fire Command Post facilities for use in project fire situations. (0.71%)
- C3. Gather and compile information for sub-area structure maps. Complete and update graphics for structure maps. (0.71%)
- C5. Research data re: fire occurrence, populations & demographics. (0.71%)
- C6. Recruit, train, and certify non-DNR personnel for operation of DNR Tankers. Assist with training of WCC and other mobile crews. (0.71%)
- D1. Inspect and issue regular, special and seasonal burning permits. (1.7%)
- D2. Investigate forest fires to determine cause. Gather fire information and compile routine fire reports. (1.7%)
- D3. Investigate and document violations of Chapter 26 violations. (1.7%)
- G1. Prepare and submit vehicle reports. (1%)
- G5. Participate as a member of the Adams Sub-Team - Central WI Land Basin. (1%)
- H. Assistance in administration of tax laws. (20%)
- I. Assistance in establishing state owned forest timber sales. (5%)
- J. Assist in administration of FSA and SIP cost share program. (5%)

In the absence of evidence to the contrary, it was assumed for purposes of this analysis that each worker activity within a goal was performed for the same percentage of time.

A general review of appellant's duties and responsibilities, in relation to the duties and responsibilities of the Advanced positions offered for comparison purposes, supports the conclusions reached in the more specific analysis described above. Not only does appellant's position devote a significantly smaller percentage of time to forest management duties, which tend to be paraprofessional duties within the meaning of the Advanced classification, but his position also devotes a significantly smaller percentage of time than these other positions to

higher level fire control duties such as those involving independent planning, research, investigation, inspection, training and report preparation. Moreover, appellant's position devotes a larger percentage of time (35%) to maintenance of equipment, buildings, and grounds, duties specifically identified at the Technician level, than these other positions, i.e., Krause (15%), Lent (18%), and Schwerdtfeger (25%). Overall, appellant's position does not compare favorably, and is a significantly weaker position from a classification standpoint, than these Advanced level positions.

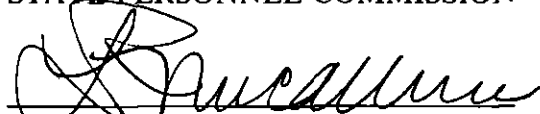
The duties and responsibilities of appellant's position do not satisfy the criteria for classification at the Advanced level, and do not compare favorably for classification purposes to the Advanced level positions offered for comparison purposes in the hearing record.

ORDER

Respondents' decision is affirmed and this case is dismissed.

Dated: August 1, 2001

STATE PERSONNEL COMMISSION


LAURIE R. McCALLUM, Chairperson

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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