STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

JAMES STEINKE, Appellant,

v.

Secretary, DEPARTMENT OF NATURAL RESOURCES and Director, OFFICE OF STATE EMPLOYMENT RELATIONS, Respondents.

Case 543
No. 62753
PA(der)-5

(Previously Case No. 02-0052-PC)

Decision No. 31103-B

Appearances:

Richard L. Binder, Attorney at Law, 607 North 8th Street, Sheboygan, Wisconsin, 53081-4556, appearing on behalf of James Steinke.

Dan Graff, Assistant Legal Counsel, Department of Natural Resources, 101 South Webster Street, P.O. Box 7921, Madison, Wisconsin 53707-7921, appearing on behalf of the Department of Natural Resources and the Office of State Employment Relations.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Commission signed a Final Decision and Order in this matter on May 12, 2005 (Decision No. 31103-A). Pursuant to Sec. 227.47, Stats., the decision was not accompanied by findings of fact or conclusions of law. The Appellant subsequently filed a petition for judicial review in Sheboygan County Circuit Court (Case No. 05 CV 0408). The Commission received notice of the petition on June 8, 2005.

The following findings and conclusions are issued pursuant to Sec. 227.47(2), Stats., which grants the Commission 90 days from receipt of notice of the petition for judicial review to issue written findings of fact and conclusions of law.

FINDINGS OF FACT

1. James Steinke held a position classified as Fisheries Technician 3 in the Department of Natural Resources at the Kettle Moraine Springs Fish Hatchery (KMSFH) when a survey of Fisheries Technician positions was completed in 2000.[1] As a result of the survey, the classification series was condensed and some positions formerly classified at the Fisheries Technician 3 level were reallocated to the new classification of Fisheries Technician (FishTech), while others were reallocated to the new Fisheries Technician-Advanced (FT-Advanced) level. Steinke's position was reallocated to FishTech level.

2. Steinke filed a timely appeal (Case No. 00-0127-PC), seeking reallocation to FT-Advanced. Immediately prior to the scheduled hearing, the parties reached an agreement pursuant to which Steinke would withdraw his appeal with the understanding that he would submit a new request to review the classification of his position.

3. As agreed, Case No. 00-0127-PC was dismissed and Steinke forwarded a revised position description to DNR human resources staff in February 2001. However, it was not until the position description had undergone several additional revisions that the requisite persons agreed to the accuracy of the document. It was this position description dated September 9, 2002, that served as the basis for a formal classification review and resulted in a denial letter dated December 3, 2002.

4. Steinke promptly appealed the matter and it was ultimately assigned No. 62753 by the Commission. This is the matter presently before the Commission.

5. The classification specifications for FishTech state in pertinent part:

B. Inclusions

> This classification encompasses positions found within the Department of Natural Resources' basins and fish production facilities throughout the state. These positions are involved in a variety of program support activities such as the repair and maintenance of fyke nets; spawning various species of fish; rearing fish; planting fish fry and fingerlings; creel census; lake and stream surveys; data tabulation; and stream and lake habitat development design and planning projects.

[1] Information in the Proposed Decision relating to Appellant's earlier work history is not relevant to the classification determination.

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 fisheries management activities and are more appropriately classified within the Fisheries Technician-Advanced classification specification.

DEFINITIONS

FISHERIES TECHNICIAN

Positions allocated to this classification: (1) participate in the extraction and collection of spawn; forage minnow and zoo plankton collection and distribution; propagation and rearing of warm/cool/cold water fish species; disease control; harvest and distribution of fish to lakes and streams; and maintenance of facilities, grounds and equipment; (2) participate in the rearing of fish in hatcheries and ponds which includes chemical treatments, monitoring and controlling of rearing environments, and the feeding process; (3) perform creel census by recording fishing pressure counts, interviewing angles, and collection and summarizing biological data; (4) function as a member of the region operations crew constructing and maintaining netting gear and equipment; performing warm/cool/cold water propagation activities; performing habitat development and habitat maintenance on state properties and easements; or (5) perform a variety of development and implementation activities as an assistant to a Fisheries Technician-Advanced, Fisheries Biologist or Natural Resources Supervisor. Work is performed under general supervision.

Representative Positions:

Crew Leader- Perform work in warm/cool/cold water fish propagation to include spawning, forage, rearing, harvesting, distribution, net and seine repair and construction. Serve as crew chief during spawning and forage operations with responsibility for assigned personnel and equipment; train and instruct Limited Term Employees and permanent staff in methods, procedures and aspects of warm/cool/cold water fish propagation.

Propagation Technician – Perform technical propagation operations including egg incubation, disease control, water level control, water quality monitoring, detailed record keeping, and outlying forage collection for hatchery productions. Monitor and observe the condition of eggs, fry and water quality and make needed corrections and adjustments when necessary.

Creel Census Clerk – Under the direction of the Treaty Assessment Biologist/Fisheries Technician-Advanced, conduct angler counts and interviews on lakes and streams to collect information to help determine fishing pressure, catch, harvest, and exploitation of the fishery. Provide field summarization of survey data. Assist field crews in surveys of selected lakes and streams. Serve as a point of contact for the public on a broad area of resource questions. Assist in educating and delivering information to the public on aquatic habitat protection.

Fisheries Crew Leader – As a member of the Regional Fish Habitat Subteam, conduct lake and stream surveys to gather data on warm/cool/cold water fishery populations; implement stream and lake habitat development projects; implement the region operations warm water propagation program; construct and maintain seines, and fyke nets; direct permanent, seasonal and Limited Term Employees; and coordinate cooperative projects with clubs and volunteers.

Fisheries Technician – Provides technical support to the Southeast Region's (SER) Lake Michigan Work Unit including assisting in the assessment and surveying of sport fisheries and fish population in SER Lake Michigan waters and tributary streams; assisting in the maintenance of databases complied during Lake Michigan salmonid assessment; and disseminating written and verbal information in response to request by staff and the public.

. . .

6. The classification specifications for FT-Advanced state in pertinent part:

B. Inclusions

The positions in this classification are technical paraprofessional positions located within the Department of Natural Resources which perform a full range of fisheries management activities within fish production facilities or basins throughout the state.

C. Exclusions

. . .

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

. . .

D. 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.

DEFINITIONS

FISHERIES TECHNICIAN-ADVANCED

Positions allocated to this classification are responsible for technical paraprofessional fisheries management activities which have significant scope and impact. These positions: (1) have a major role in developing the annual production plan for a fish production facility and have specific independent responsibilities for carrying out that plan, including prepare ponds or other raceways for production; prepare fertilizing and forage schedules; sample and monitor fish for health, growth and condition factors; sample and monitor ponds for water quality, fertility, abundance of zoo plankton and forage minnows; maintain statistical data; and generate production reports; (2) perform the full range of technical paraprofessional fisheries activities for a specific portion of the fisheries program in a basin(s); or (3) perform the full range of technical paraprofessional fisheries management technician duties with responsibility for the development, design and implementation of fisheries management projects. These positions have independent responsibility for the design and implementation of fisheries management projects which may include habitat development and planning, conducting, and interpreting analytical studies and preparing or assisting in the preparation of technical publications and reports. The work is performed with significant delegation and under general supervision.

Representative Positions:

Pond/Rearing Station Foreman – As the Pond/Rearing station Foreman, oversee and provide direction for all aspects of fish rearing and harvest operations at a warm/cool/cold water fish production facility. Propose renovation projects for the facility. Conduct administrative duties and tasks as assigned by the hatchery supervisor or regional operations coordinator.

Hatchery Foreman, Governor Thompson Hatchery Spooner – Oversee a computer operated water supply, well water, water filtration, degassing, egg incubation, rearing pond aeration and wastewater discharge system. Coordinate and oversee the daily operation of all coldwater fish egg incubation, fry and fingerling distribution and compile all data necessary to generate hatchery production reports. Audit and participate in all phases of operational planning to insure that statewide fish production goals are met. This position requires WPDES wastewater certification.

Fish Culturist, West Central Region – Produce forage minnows and develop and maintain all fish propagation land, facilities and equipment. Direct intensive forage rearing at DNR ponds, leased private ponds, US Army ponds at Ft. McCoy, and numerous sewerage treatment ponds. Purchase supplemental forage from private vendors in Wisconsin, Minnesota and South Dakota; and manipulate conditions to assure a hatch of fathead minnow fry when transferring fingerling fish to rearing ponds.

Winnebago System Technician – Provide technical support for the Winnebago System Biologist, the Winnebago Fisheries Biologist and the Winnebago Sturgeon Biologist. Perform field activities related to construction and monitoring of breakwall and other structures used in the Winnebago System Habitat Restoration Program. Conduct fisheries and aquatic surveys to gather data on biota and habitat response to long term habitat restoration within the Fox-Wolf-Winnebago System. Coordinate Winnebago System data management and computer workstation needs. Administer the Winnebago System long term Fish Tagging Program; record keeping, public contact, and data tabulation and summaries. Maintain computerized stocking data base. Age fish using approved techniques and operate fisheries equipment.

Upper Wisconsin Basin Technician – As a member of the Basin Team, perform a wide range of activities in support of the fisheries program in Vilas County. Duties include planning and conducting biological surveys; technical and scientific report preparation; stream and lake habitat development, rehabilitation and maintenance planning for and developing shore-based fishing access; public information and education; and assisting with aquatic habitat protection efforts within the Basin.

Lake Michigan Fisheries Technician – Works primarily on the Lake Trout restoration on Lake Michigan and is a member of the DNR Lake Michigan Sub-Team. Conduct a wide variety of surveys to collect population data on all life stages of lake trout in order to meet the goals of establishing natural reproducing lake trout under the guidance of the Great Lakes Fishery Commission. Interpret lamprey wounding rates on lake trout for Lake Michigan and submits annual report. Analyze and compile field data, age lake trout, maintain tag return file and lake trout computer database. Summarize survey data, prepare tables and figures for reports, and draft reports on selected lake trout surveys. Serve as the lead technical position that oversees the Lake Michigan food habits study. Develop and adapt computer data entry formats and statistical report formats to facilitate diet data analysis. Coordinate and oversee collection, tabulation, and analysis of data on diets of trout and salmon and drafts sections of annual report. Prepares draft sections of annual salmon food habits report. Coordinate brook trout assessments and participate in other fisheries surveys and projects as needed and available.

Fisheries Technician – Collect, tabulate and assist in analyzing fisheries and limnological data including creel surveys, assessments of fisheries including relative abundance indices, population estimates, mortality and survival rates, water thermochemistry analysis, aquatic vegetation surveys and surveys of fisheries habitat quality such as IBD (Index of Biotic Integrity) based analysis. Age fish using approved techniques. Prepare data and assist/prepare management reports. With a biologist, design and implement habitat development or improvement projects. Direct permanent, project and limited term employees and coordinate cooperative fishery projects with volunteers. Maintain fisheries facilities, equipment and properties as assigned. Operate boats and other specialized equipment to obtain necessary fisheries data. Provide information and education services to the public. Assist with other regional work. Conduct administrative duties and other tasks as assigned.

Treaty Assessment Technician – Conduct lake and stream surveys to gather data on cool and warm water fish populations and their habitat. Plan and support angler harvest survey program in a large geographic area. Age fish using approved techniques. Design, plan and implement fisheries surveys; collate and summarize survey data. Construct, operate, and maintain fish sampling equipment. Coordinate cooperative fishery projects. Use commercial and specialized computer program to enter fisheries data for analysis as per requirements of the State-Tribal Inland Technical Working Group and WDNR data base protocol.

. . .

7. The 300-acre KMSFH hatchery includes three separate buildings used for the cold-water production of various species or strains of fish for Lake Michigan. The hatchery acreage also includes outside raceways, a lower pond facility and a separate smaller rearing station located a few miles from the main buildings.

8. Personnel at KMSFH are organized so that a separate position is assigned to each cold-water building and each building is used for one strain of steelhead trout. This organizational structure is unique among the state fish hatcheries and arises, at least in part, from the fact that each of the main buildings has a separate water supply.

9. Mr. Steinke is assigned to the Building #1 system which includes the hatching tubs and tanks inside the building as well as the several raceways outside the building. Building #1 is a cold-water facility used primarily for a wild strain of trout, the Skamania steelhead. When Building #1 is empty after the Skamania operation it may be used for incubating other fish such as Coho salmon. Mr. Steinke is also assigned to the hatchery's ponds which are used for rearing species such as walleye, northern pike and bass.

10. All three technicians share assignment to an auxiliary hatchery, several miles away from the primary buildings, that is used to raise a fourth strain of steelhead.

11. Sometimes the employee assigned to one of the production buildings will need help from one or both of the employees from the other two buildings. For example, Mr. Nelson (Building #2) might obtain assistance from Mr. Steinke (Building #1) and Mr. Hron (Building #3) and would typically direct the activities of Steinke and Hron while they are working in Building #2.

12. DNR operates 14 fish hatcheries.

13. The three positions currently occupied by Steinke, Nelson and Hron were all reallocated in the 2000 classification survey to the FishTech classification.. Mr. Hron has a request pending to reclassify his position to FT-Advanced.

14. At all relevant times, Randall Link has filled the position of hatchery supervisor/manager and has served as first-line supervisor for all other positions at KMSFH.

15. The only other permanent position at KMSFH is that of hatchery foreman, which became vacant in June 2001 and had not been filled by the time of the hearing in this matter. Between two and nine limited term employees also work at the hatchery during the course of the year, performing various duties. Each of the three building managers periodically directs the work of some of the limited term employees and summer interns and each is assigned, on a rotating basis, to carry out the weekend operation of the entire facility. While the foreman position has been vacant, Steinke has temporarily performed some of the duties normally carried out by that position.

16. Prior to June 2001, Terrance Freije filled the position of foreman at KMSFH. The relevant position description includes the following summary:

> The focus of this position is a fish culturist at Kettle Moraine Springs the sole wild steelhead production facility for Lake Michigan. The responsibilities of this position require knowledge of fisheries culture, fish diseases and pathogens, environmental compliance standards, lead worker skills, planning expertise and written and oral communication skills. This position assists with production of fish operation of a statewide fish propagation facility. A variety of state and federal regulations must be understood. Fish culture programs under this position's direction operate under the general supervision of the propagation manager. Provide information and education to the public. Act as lead worker.

Goal A of the foreman position description encompassed 70% of the incumbent's time and it reads:

> Performance of and direction of other staff for the cold water propagation techniques used in the culture of trout and salmon (80% wild strains) for the fish management stocking program, especially Lake Michigan. Performance of and direction of other staff performing techniques used in propagation of coolwater species (limited program).

17. An activity unique to KMSFH is propagation of the entire wild steelhead population stocked in Lake Michigan. Propagation of this fish population starts with collecting wild steelhead in streams, removing spawn and sperm at streamside, fertilizing the eggs and incubating them at the hatchery, rearing hatched fish to fry and fingerlings in the various tubs, pools and raceways for each building at the hatchery, and distributing them back into the wild. Steelhead at the hatchery are fed by adjustable automatic feeders so the wild strains do not draw a connection between the presence of people and the feeding process. Steinke designed and built the 97 automatic feeders at the hatchery. He, along with the other technicians at the facility, monitors and records data relating to fish development, feeding patterns, health, weight and mortality and periodically provides his superiors with key production information based on the data. The KMSFH technicians may carry out special studies, usually at the direction of another DNR employee. The technicians administer therapeutics, pesticides and disinfectants as needed. They prepare, monitor and maintain hatching tubs, tanks, raceways,

and the water filtration system for each building system. They monitor and maintain ph, oxygen, iron, temperature and bacteria levels within certain parameters. When the fish reach various stages of development they are transported, sometimes by Steinke, to stocking and other rearing sites. There is a small population of wild brood stock maintained at the hatchery.

18. Steinke's PD dated September, 2002 is an accurate, but incomplete, description of the work and duties he was performing before June of 2000 until September of 2002. It reads, in part, as follows:

> POSITION SUMMARY
>
> The focus of this position is a fish culturist at Kettle Moraine Springs Fish Hatchery, the sole wild steelhead production facility for Lake Michigan. The position plans, implements and operates Hatchery building #1 system, the Lower Rearing Area Facility, all coolwater spawning and rearing operations, all offstation salmonid spawning, all net construction and repair and all woodworking activities. This position directs operations in these areas in the absence of Hatchery Supervisor.
>
> KMSFH Building #1 produces all of the wild Steelhead stocked in Wisconsin waters of Lake Michigan each year. This position is ultimately responsible for the design, construction and management of funded propagation projects within the Building #1 System.
>
> The position requires an advanced knowledge of fish propagation including genetics protocols, spawning techniques, egg incubation and development, larval stages of salmonids, fish disease and pathogens and fisheries culture. Person must have good lead worker, communication and record keeping skills. Knowledge also includes safe equipment operation, equipment maintenance, and a variety of state and federal regulations. Incumbent must have a commercial driver's license, be a licensed commercial pesticide applicator and be able to plan, direct and implement a major portion of Wisconsin's Wild Steelhead Propagation Program.
>
> The Steelhead propagation program results in millions of dollars of revenue for the Coastal Communities of Lake Michigan. This position is responsible for maintaining the put, grow and take fishery that provides Wisconsin anglers with one of the most outstanding Steelhead fisheries in the nation.

In addition to the Lead Technician duties and responsibilities listed above, the incumbent is also responsible for directing the design, construction and maintenance of all mechanical feeders, directing all woodwork at the facility, and operating water and sludge retention ponds to meet discharge standards.

Time %		Goals and activities
50%	A.	Plan, implement and direct fish propagation activities in the Building #1 Hatchery System and Lower Rearing Area System.
(25%)		A1. Propagate wild trout and salmon strains including Steelhead, Coho and Chinook Salmon. Implement and direct initial feeding operations for 300,000 steelhead including monitoring and directing operation of automated feeder systems.
(10%)		A2. Responsible for operations and maintenance of water filtration and water treatment systems to include retention ponds, bacteria culture substrate and water level control
(10%)		A3. Responsible for fish health, monitoring and disease control. Perform field diagnostics, summarize and report to supervisor. Direct and implement facilities disinfection between production lots
		A4. Submit required reports on feed efficiency, growth and mortality to supervisor.
		A5. Direct and conduct maintenance on 97 various automated feeders.
		A6. Maintain a certified pesticide applicator's license.
20%	B.	Plan, implement, direct field operations for coolwater fish propagation.
(10%)		B1. Assist in capture of coolwater species broodstocks from lakes and streams using electrofishing and netting. Responsible, for spawning and fertilizing eggs using bentonite to control egg adhesiveness. Implement and direct pond harvest and distribution, submit final rearing pond report to Supervisor.

B2. Enumerate eggs, measure eggs into incubation jars, submit egg inventory survival reports to supervisor.

B3. Responsible for administering therapeutics to control fungus on eggs. Perform field diagnostics on pond fish, report to supervisor.

B4. Prepare eggs for transport to hatchery or co-op rearing facility. Enumerate hatched fry for distribution and transfers. Transport fry via oxygenated bags and/or distribution tank trucks.

B5. Implement and direct preparation of ponds for rearing fry to fingerling. Plan and direct pond fertilization, algae and zooplankton seeding. Capture zooplankton from wild sources for pond seeding.

B6. Monitor pond conditions, fish growth and water quality parameters. Recommend forage minnow requirements to supervisor based on observations and documented growth rates.

15% C. Planning, implementation and direction of salmonid spawning operations at off station broodstock collection facilities.

(10%) C1. Collect fertilized trout and salmon eggs utilizing accepted spawning and genetics protocols, with the objective of meeting goals of Lake Michigan Management Plan.

C2. Responsible for administering vitamins, or other therapeutic substances to [p]repare eggs for incubation and minimize egg mortalities.

C3. Monitor and prepare eggs for transport to incubation facilities.

C4. Develop and submit reports on fecundity, egg survival and inventories to Supervisor.

C5. Responsible for implementing experimental design into spawning, hatching, and incubation activities to improve technology.

10% D. Plan, implement and direct woodworking, net building and automatic feeding systems construction projects.

(5%) D1. Direct construction and repair of fyke nets, seines and other specialized nets for monitoring and harvest of various life stages of cold and coolwater species.

D2. Direct the safe operation of woodworking equipment including table saw, radial arm saw, planer, sanders, drill presses and power nailers.

D3. Design and construct specialized or experimental equipment for developing new fish propagation technology.

D4. Design and construct all automatic feeder types including belt, blower and casting.

D5. Design, construct and maintain carpentry components of buildings, facilities and specialized equipment.

D7. Operate heavy equipment, emergency generators and light power equipment.

5% E. Provide information to hatchery visitors, provide technical support to other water team functions as required

E1. Conduct tours to school groups, clubs and other interested persons

E2. Provide information at job fairs, Sport Shows regarding fish propagation and other program functions.

E3. Attend training to enhance job skills and performance.

19. The record includes position summaries for several FT-Advanced level positions that reflect duties relating[2] to those performed by Steinke:

[2] Information in the Proposed Decision relating to various other fish propagation positions has been revised to reflect the Commission's conclusion as to comparability.

David Swansby, Wild Rose Hatchery

This position is a fish culturist working with the coldwater fish species at the Wild Rose Fish Hatchery. The responsibilities of this position require a basic knowledge of fisheries culture, fish diseases, environmental monitoring, of coldwater fish culture and may assist with coolwater propagation and spawning as assigned This position receives limited direction from the coldwater leadworker and directs the crew of two permanent employees and two LTEs while maintaining thirty ponds and twenty-two raceways.

Bruce J. Williams, Bayfield Fish Hatchery

This position functions as a member of the NOR Water Program Staff and works under the guidance of the Bayfield Hatchery Supervisor. The position functions as the lead worker at the Bayfield Fish Hatchery. Assigned duties include leadworker in the spawning, hatching, and rearing of 6-8 strains of wild salmonid fishes with yearly production numbering 750,000 to 1,500,000 fish. Other major duties include controlling diseases at the hatchery, distribution of fish, and operation of the Sewerage Treatment plant for the hatchery. The position is under close supervision of the hatchery supervisor and directs operations in the absence of the hatchery supervisor and foreman.

Gregory J. Durschba, Gov. Thompson Hatchery

This position functions as a member of the NOR Water Team as Musky/NP rearing Pond Manager. Coordinates pond production planning, conducting pond preparation, water control, water quality monitoring, pond aeration, zoo plankton production, disease treatment, predator control and feeding fingerlings. Directs forage crews and coordinates commercial forage deliveries. Directs rearing and harvest operations of musky and NP fingerlings. Acts as a Foreman to other FPT's and LTE's. This position requires advanced fish culture knowledge, organizational skills, effective leadworker and communication abilities. WI aquatic pesticide applicator's certificate is required.

Joseph Drabek, Jr., Gov. Thompson Hatchery

This position functions as a member of the NOR Water Team at the GTT Hatchery, performing spawning, rearing, harvesting, and distribution of cool water fishes. Foreman of a walleye harvest crew directing a walleye seining operation or a mini fyke net harvesting operation. This position has an assigned crew of fish propagation technicians and LTE's. Independently makes decisions on daily fingerling harvest and distribution. High level technical job requirements include advanced knowledge of fish propagation and leadworker techniques. Position requires limited supervision. Production facilities include 10 leased rearing ponds and 3 cooperative rearing ponds.

20. The position summary for the KMSFH Building #2 position occupied by Allen Nelson reads:

> The focus of this position is a fish culturist at Kettle Moraine Springs, the sole wild steelhead production facility for Lake Michigan. The responsibilities of this position require a basic knowledge of fisheries culture, fish diseases, environmental monitoring, and written and oral communication skills. This position assists with production of fish and operation of a statewide fish propagation facility. Provide information and education to the public. May act as leadworker for LTE crews and permanent personnel. This position receives limited supervision.

21. Steinke does not spend a majority of his time performing "paraprofessional" work as that term is applied in the FT-Advanced specifications. His role in establishing the production goals for Lake Michigan's wild steelhead is to offer his opinion to Mr. Link as to the number of fish that can be propagated in the Building #1 system. He uses Building #1 and other components of KMSFH and works with the other staff to meet and implement those goals. He exercises his judgment in all aspects of fish propagation, including spawning, egg incubation, enumeration, health, water quality and food. He may act as a lead worker for some tasks but at any given time, three other positions at the facility, including the hatchery foreman, may lead his work.[3]

Other matters appear as contained in the Memorandum.

CONCLUSIONS OF LAW

1. This matter is properly before the Commission pursuant to Sec. 230.44(1)(b), Stats.

2. The Appellant has the burden of establishing that the Respondent's decision to use an effective date in September 2002 was incorrect.

3. The Appellant failed to sustain his burden.

4. The correct effective date is in September 2002.

[3] Information in the Proposed Decision has been revised to reflect the Commission's conclusion as to the role of Appellant vis-à-vis the other four positions at KMSFH and KMSFH operation but not the entire facility.

5. The Appellant has the burden of establishing that the Respondents' decision to deny the Appellant's request to reallocate his position from Fisheries Technician to Fisheries Technician-Advanced was incorrect.

6. The Appellant failed to sustain his burden.

7. The Respondents' decision was correct.

Given under our hands and seal at the City of Madison, Wisconsin, this 29th day of July, 2005.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Judith Neumann /s/
Judith Neumann, Chair

Susan J. M. Bauman /s/
Susan J. M. Bauman, Commissioner

I dissent for the reasons expressed in the proposed decision.

Paul Gordon /s/
Paul Gordon, Commissioner

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