

STATE OF WISCONSIN

PERSONNEL COMMISSION

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MICHAEL REIF, MICHAEL RUSSO,
 GREGORY A. SEVENER,
 Appellants,

v.

Secretary, DEPARTMENT OF
 NATURAL RESOURCES,
 Respondent.

Case Nos. 85-0005, 0006,
 0012-PC

* * * * *

DECISION
 AND
 ORDER

This controversy is an appeal by appellants from the respondents' decision denying reclassification of appellants' positions from Environmental Specialist 4 to Environmental Specialist 5. A hearing was held on April 29, 1985 before Commissioner Donald R. Murphy and the post-hearing briefing schedule was completed on July 7, 1985. The following findings of fact, conclusions of law, opinion and order are based upon that hearing.

FINDINGS OF FACT

1. Appellants are employed in classified civil service by the Department of Natural Resources (DNR) as Environmental Specialist 4 (ES4) in the department's Lake Michigan District and have been so employed at all times relevant to this controversy. Their position descriptions are similar and comparable, but not identical.

2. In December, 1983, a reclassification request for the positions held by appellants was submitted to the DNR personnel section. The request was to reclassify the positions from ES4 (15-04) to ES5 (15-05).

3. In response to appellants' reclassification request, a DNR personnel specialist reviewed the area environmental specialist positions occupied by appellants. The review, during the course of a "pocket" survey of environmental specialist positions, included an analysis of the changes in duties and responsibilities, a comparison of the positions with the Environmental Specialist classification specifications and an audit of appellant Russo's position.

4. In a letter dated December 19, 1984, from Greg Samp, DNR Personnel, the department advised Charles Higgs the Director of the Lake Michigan District, that the reclassification request for appellants' positions was denied.

5. Samp, in the denial letter, stated that appellants' positions were reclassified to ES4 mainly because they were accountable for portions of the Water Resources Management and Wastewater Management programs. He said major changes in appellants' duties and responsibilities related to the recent decentralization of the Wisconsin Pollution Discharge Elimination System (WPDES) permit program and did not equal ES5 level duties.

6. The Lake Michigan District wastewater program includes municipal and industrial treatment systems, sludge treatment, plan review and approval, industrial pretreatment, operation and maintenance and WPDES permit issuance. These wastewater activities are divided between the area environmental specialists and engineers.

7. As area environmental specialists, appellants' responsibilities include monitoring facilities to determine compliance with permit requirements, tracking of permit requirements, reviewing plans and monitoring reports, preparing briefing memos and reviewing facilities' compliance

status for permit reissuance. Also, they are responsible for initiating permit enforcement.

8. Area engineers in the district are responsible for municipal permits, the largest industrial discharges and code development.

9. Pertinent language in the state position standard, defines Environmental Specialist 5 level duties as, "Positions... responsible for implementing all phases of a major environmental protection program in a portion of a district where program decisions are delegated from the district office or an equivalent combination of responsibilities, ... under general direction."

10. Appellants' duties don't consist of all phases of a major environmental protection program or its equivalency.

11. Appellants' duties more closely approximate the definition for the Environmental Specialist 4 classification.

CONCLUSIONS OF LAW

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

2. The appellants have the burden of proving by a preponderance of the evidence that respondents' decision denying reclassification of appellants' positions from Environmental Specialist 4 to Environmental Specialist 5 was incorrect.

3. The appellants have failed to meet that burden of proof.

4. The respondents' decision denying appellants' reclassification request was correct.

OPINION

Position reclassification actions are based upon requirements in Chapter ER-Pers 3, Wis. Adm. Code and the state position standard, class specifications. For a position to be reclassified (See ER-Pers 3.01(3), Wis. Adm. Code), it is required that the duties and responsibilities of the position undergo a logical and gradual change or the incumbent must attain some specified education or experience. Also under §3.015(3), the incumbent of the subject position must have performed these permanently assigned duties and responsibilities for a minimum of 6 months. Within this framework the Commission in Karlin v. DHSS, Case No. 82-204-PC (3/31/83) said that the proper classification of a position involves weighing class specifications and the actual work performed.

In Kailin v. Weaver and Wettengel, Case No. 73-124-PC (11/28/75), the commission held that while a position's duties and responsibilities may overlap a lower or higher classification, that position is not entitled to reclassification unless a majority of the total duties and responsibilities fit within that classification.

The issue in the present case before the Commission is whether appellants' positions should be classified to the level of Environmental Specialist 4 or Environmental Specialist 5.

Appellants argue that their positions, unlike other ES4 positions, cover a wide range of complex responsibilities which are comparable to ES5 duties. To buttress their argument, appellants called as witnesses the Lake Michigan District (LMD) Water Resources Management Specialist, the LMD Wastewater Management Specialist and the LMD Assistant District Director for Environmental Standards. None of these witnesses supervised appellants but they were familiar with the positions. Each testified that he believed appellants' positions merited an ES5 classification because they included a

combination of Water Resources Management program and Wastewater Management program duties which warranted an ES5 classification.

To counter appellants' argument, respondent called its Personnel Specialist. He agreed appellants performed both Water Resources Management and Wastewater Management duties but said appellants' duties had remained substantially the same since being classified to the ES4 level except for changes caused by the decentralization of the Wisconsin Protection Discharge Elimination System (WPDES) program. The Personnel Specialist testified that he reviewed each work activity, including the changes, performed by appellants, using a procedure called "costing out", to determine the class level of the specific activity. Based upon this method of analysis, he believed appellants' Water Resources Management duties -- approximately 25% to 35% of their work functions -- were identified at the ES4 level. It was also his opinion that appellants' WPDES duties compared favorably with district permit coordinator positions classified as ES3's. Respondents' Personnel Specialist acknowledged that some aspects of appellants' Wastewater duties were at the ES5 level, but believed the majority of their duties were in the ES to ES4 range.

Also, pointing to language in various position descriptions, appellants argue that some of respondents' past personnel decision are inconsistent. Without detailing these allegations, most are based upon suppositions and conclusions unsupported by evidence. Others are caused by a misunderstanding of reclassification regulations. For example, in 1983 respondent recognized Daniel Helf's responsibilities of coordinating animal waste activities for the district when he was reclassified from an ES3 to ES4, but in 1984 refused to acknowledge appellants' Animal Waste Program work activities while considering their reclass. While this personnel action

may appear inconsistent, it is not because the Animal Work Program was not in place until after the date of appellant's reclass request. However, respondents Personnel Specialist testified that he, as directed by the code, considered all permanent animal waste work activities performed by appellants six months or more before their reclass request.

In summary, appellants' argument that unlike other ES4 positions, they perform a combination of complex duties may have merit. However, they failed to present evidence, which showed their duties were comparable to ES5 level duties or conformed to the ES5 allocation pattern.

For the reasons stated, and based upon the evidence presented at the hearing, the Commission believes respondents' decision was correct.

ORDER

Respondents' reclassification decision is affirmed and these appeals are dismissed.

Dated: October 23, 1985 STATE PERSONNEL COMMISSION


DENNIS P. MCGILLIGAN, Chairperson


DONALD R. MURPHY, Commissioner


LAURIE R. MCCALLUM, Commissioner

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