

STATE OF WISCONSIN

PERSONNEL COMMISSION

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 JOHN E. BORKENHAGEN,
 Appellant,
 v.
 Secretary, DEPARTMENT OF
 EMPLOYMENT RELATIONS,
 Respondent.
 Case No. 85-0076-PC
 * * * * *

DECISION
 AND
 ORDER

The Commission adopts the proposed decision and order in the above matter with the following clarification.

In a letter regarding the proposed decision and order, the appellant stated:

After reading your decision, it is obvious that the Personnel Commission did not have the authority to act on my appeal in the first place. DER had put the nursery manager in the NRS-2 level and used the Hayward Nursery manager position as an example representative position. This, in itself, put the appeal out of the authority of the Commission, according to your decision. My testimony was all directed toward proving that my position was put in too low a classification by DER.

Although the appellant may have focused his arguments on the use of the nursery manager position as a NRS 2 representative position, this case is broader than that issue.

The determinative fact in this case is that the 50% of the appellant's duties that exist outside the scope of the representative position for "manager of a major state nursery" are at or below the NRS 2 level. Given this conclusion, it is not necessary for the Commission to reach the question of whether it has the authority to review an appeal brought by a person whose position is very specifically described as a "representative

position" in a position standard and who argues 1) that the representative position is more appropriately classified at another level or in a different series and 2) that the decision assigning the representative position to a particular classification is a quasi-judicial rather than a quasi-legislative exercise of administrative authority.

Dated: MAY 15, 1986 STATE PERSONNEL COMMISSION


DENNIS P. MCGILLIGAN, Chairperson


DONALD R. MURPHY, Commissioner

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PROPOSED
 DECISION
 AND
 ORDER

This matter is before the Commission as an appeal from a decision
 reallocating the appellant's position. The parties agreed to the following
 issues for hearing:

Whether the decision of respondent to reallocate appellant's
 position as a result of the Personnel Management Survey of
 Natural Resources Supervisor positions from Natural Resources
 Supervisor 2 to Natural Resources Supervisor 2 was correct.

Subissue: Whether appellant's position is more appropriately
 classified as a Natural Resources Supervisor 2 (PR01-13) or
 Natural Resources Supervisor 3.

FINDINGS OF FACT

1. At all times relevant to this appeal, the appellant has been
 employed as the superintendent of the Hayward State Nursery, Bureau of
 Forestry, Department of Natural Resources.

2. The Hayward nursery is one of three state-run nurseries in
 Wisconsin. Although programmatic direction for the nurseries comes from
 the Forest Management Section of the Bureau of Forestry, the superinten-
 dents of the three nurseries are supervised by management within the
 Natural Resources district in which they are located geographically.

3. Appellant's duties as the nursery superintendent include caring for and distributing nursery tree seedlings and transplants (approximately 40% of his time); supervising 4 permanent positions, 4 seasonal positions and more than 70 short-term LTE positions (5%); and maintaining the nursery physical plant, equipment and grounds (5%).

4. In addition, the appellant performs two duties that are directly related to his nursery responsibilities; planning and implementing the conifer seed extraction program and hardwood seed collection (5%); and directing the statewide tree improvement program (30%). The latter function has a goal of increasing the productivity of Wisconsin's forest lands via the genetic improvement of certain species. In coordination with the superintendents of the other two nurseries, the function includes locating suitable sites for seed orchards and for testing, locating superior seed sources, and supervising the establishment and maintenance of tree improvement plantations. With respect to his state tree improvement program function, appellant reports directly to the head of the Bureau of Forestry in Madison.

5. The appellant also is assigned two responsibilities that are not directly related to his nursery duties: overseeing the storage of all district pesticides in the storage facility at the Hayward Nursery (less than 5%); and serving as district staff specialist for state owned islands by, inter alia, monitoring inspections of the islands (10%).

6. As part of a classification survey carried out from June, 1984, until April, 1985, the respondent promulgated a position standard for the Natural Resources Supervisor series. The position standard provides in part as follows:

Poynette Game Farm Supervisor: reporting to the Wildlife Staff Specialist, this position is responsible for planning, coordinating, and supervising the game farm operations; preparing the budget and coordinating the work of subordinate staff to ensure pheasant production goals; coordinating pheasant distribution to sports clubs; treating diseased birds; and functioning as liaison with a variety of organizations such as private game and fur farms.

North Central Field Operations Supervisor: reporting to the District Staff Specialist/Chief of District Operations, this position is responsible for the district warm water and cold water fish propagation program, supervising the Woodruff auto mechanic and carpenter shop, preparing long-range comprehensive plans and weekly and daily work plans, preparing and controlling operating budgets, and developing training programs for field operations personnel.

Director, MacKenzie Environmental Center: reporting to the section chief, this position is responsible for planning, coordinating, and directing educational programs sponsored and conducted by the center, supervising staff and directing the operations of the center; and planning, designing, developing, implementing, evaluating, and revising environmental education programs and materials.

Research Project Leader: reporting to a group leader, this position is responsible for designing projects to answer resource management questions, collecting and analyzing data, evaluating results, writing technical reports; and supervising project staff.

NATURAL RESOURCE SUPERVISOR 3 (PR 1-14)

NATURAL RESOURCE SUPERVISOR 3 - MANAGEMENT (PR 1-14)

Definition:

This is very responsible professional supervisory resource management work. Positions allocated to this class typically function in one of the following capacities: 1) as an area program manager responsible for the implementation of all fish, forest management, fire control, or wildlife programs in a designated area of a DNR district/ 2) as a forest superintendent responsible for the management of a large State forest with varied and complex programs and facilities; 3) as the supervisor of a district field operations section, where the extent and complexity of the program easily distinguishes it from objective level operations coordinators at the Natural Resource Supervisor 2 level; 4) as a research group leader; or 5) as a central office supervisor responsible for the implementation of a program of significant statewide impact with independent responsibility for determining work strategies and controlling the technical accuracy and quality of the work product.

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water quality, farm wildlife, wetland wildlife, and forest wildlife studies.

7. Those functions (representing 50% of the appellant's time) listed in Finding of Facts 3 are specifically identified as comprising a representative position at the NRS 2 level. The representative position adequately describes the appellant's duties with the nursery but does not specifically describe his other responsibilities.

8. Appellant's duties described in Finding of Facts 4 and 5, when considered individually, would all be classified at or below the NRS 2 level.

CONCLUSIONS OF LAW

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

2. The appellant has the burden of proving that respondent's decision reallocating the appellant's position from Natural Resources Supervisor 2 to Natural Resources Supervisor 2 was incorrect.

3. Appellant has failed to satisfy this burden.

4. The respondent's decision reallocating the appellant's position from Natural Resources Supervisor 2 to Natural Resources Supervisor 2 was correct.

OPINION

The appellant's arguments in this case fall into two broad categories. The first is that the Natural Resources Supervisor position standard, which was adopted in 1985 as a consequence of a Personnel Classification Survey, should have recognized the duties of nursery superintendents as being at the same level as the duties performed by area fish managers and area foresters which are specifically allocated to the Natural Resources Supervisor 3 level. This argument asks the Commission to ignore or to revise

water quality, farm wildlife, wetland wildlife, and forest wildlife studies.

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the class specifications and to move the nursery superintendent allocation from the NRS 2 to 3 level. The Commission has repeatedly held that it lacks the authority to revise class specifications or position standards. Kennedy et al. v. DP, 81-180-PC, etc.-PC, 1/6/84, Wambold v. DILHR & DP, 82-161-PC, 1/20/83, Zhe et al. v. DHSS & DP, 80-285-PC, 11/19/81 (affirmed, Dane County Circuit Court, 81CV6492, 11/82). Here, the definition of the NRS 2 classification specifically includes the duties of a "manager of a major state nursery with responsibility for all nursery operations including production operations and facility maintenance." The specifications go on to list the Hayward Nursery Manager position as a representative position at the NRS 2 level. Based on this language, that portion of appellant's duties where he is responsible for "all nursery operations" would be allocated to the NRS 2 level.

As pointed out in the findings above, the appellant does have responsibilities that extend beyond that of managing the Hayward Nursery. The appellant's second general contention is that these additional duties are sufficient to justify his reallocation to the NRS 3 level. However, respondent presented testimony that if these additional duties are "cost out" (i.e., where separate classifications are assigned as if the individual responsibility represented 100% of the position's duties) they would not be above the NRS 2 level. This testimony is supported by a review of the position allocations listed for both the NRS 2 and 3. For example, the appellant states tree improvement responsibilities are conducted in cooperation with the other two nursery superintendents. The appellant's responsibilities in this area do not extend to the level of "a central office supervisor responsible for the implementation of a program of significant statewide impact with independent responsibility for

determining work strategies and controlling the technical accuracy and quality of the work product." In fact, the respondent offered testimony that as of the date of hearing the state tree improvement program had been assigned to a NRS 1 position. The same language indicates that appellant's state owned islands' responsibilities do not meet the NRS 3 class definition. Appellant's island work is limited to those islands in one of the state's DNR districts and is not a statewide responsibility. In order to fit the NRS 3 standard, management of the Northwest District's state owned island program would have to be equivalent of the Flambeau River Forest Superintendent who is responsible for timber management, land acquisition, operations, maintenance, and recreation programs for the forest. In comparison, the appellant monitors the inspections of the state owned islands to make sure the inspections are conducted on schedule and he also has a role in processing trespass disputes and ownership disputes that arise with respect to the islands by working with the area directors to address those problems. The appellant's reporting relationship regarding his state owned islands responsibilities appears to be comparable to that of the Flambeau River Forest superintendent, but his range of responsibility is much more limited, thereby distinguishing his duties in this area from the NRS 3 level.

It should also be noted that even if one or two of the appellant's non-nursery responsibilities were appropriately classified at the NRS 3 level, the Commission must look to see whether the majority of his duties are at the higher (NRS 3) level. Alsmo et al. v. Wettengel, 73-107, 108, 109 (Personnel Board) 7/3/75. Given that fully 50% of appellant's responsibilities are explicitly described at the 2 level, reallocation to the 3 level would only be appropriate if all of the remaining functions belonged to the 3 level. The facts do not support such a conclusion.

Both of the superintendent positions for the other two state nurseries are also classified at the NRS 2 level. These two superintendents spend a larger proportion of time than the appellant performing those nursery superintendent functions specifically described in the NRS 2 representative position. However, the superintendent for the Griffith nursery, Mr. Kenneth Wojahn, spends 20% of his time administering and coordinating the statewide tree and shrub distribution program and an additional 10% coordinating and implementing the statewide seeding and transplanting production programs. Mr. Wojahn's responsibilities in these areas are comparable to the appellant's responsibilities in the statewide tree improvement program.

ORDER

Respondent's action is affirmed and this appeal is dismissed.

Dated: _____, 1986 STATE PERSONNEL COMMISSION

DENNIS P. MCGILLIGAN, Chairperson

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DONALD R. MURPHY, Commissioner

LAURIE R. McCALLUM, Commissioner

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