

STATE OF WISCONSIN

PERSONNEL COMMISSION

* * * * *
 PATRICK D. BAGGOTT,
 Appellant,
 v.
 Secretary, DEPARTMENT OF
 NATURAL RESOURCES, and
 Secretary, DEPARTMENT OF
 EMPLOYMENT RELATIONS,
 Respondents.
 Case No. 87-0012-PC
 * * * * *

ORDER

This final decision and order incorporates the entire proposed decision and order as well as the following:

Appellant argues that the language utilized in the proposed decision to distinguish between the duties and responsibilities of the representative Environmental Specialist (ES) 5 and ES 6 positions described in the ES position standard, i.e., "overall program policy development and planning," is not language drawn from the ES position standard and, therefore, the Personnel Commission should not rely on it in reaching a classification decision in this appeal. However, the descriptions of the representative ES 5 and ES 6 positions are included in the ES position standard and the disputed language represents a means of drawing an obvious distinction between them. As a consequence it should be accorded substantial weight by the Personnel Commission in reaching the subject classification decision. Furthermore, these factors (overall program policy development and planning) also are relevant to an evaluation of the "general classification factors" contained in the position standard - particularly scope and impact

of work and discretion and accountability - and lend support to the ES 5 classification for this position.

Appellant further argues that Mr. Daniel's was required to initiate reclassification requests on appellant's behalf by the DNR Manual Code and failed to do so because he relied upon "improper" advice from Mr. Samp.

However, Section 9170.9 of the DNR Manual Code states that:

"It is the policy of the Department of Natural Resources to pay employees at the appropriate level for the work being performed. Therefore, if a review of the duties and responsibilities assigned to a position indicates an inaccurate classification level, a Reclassification Request should be initiated."

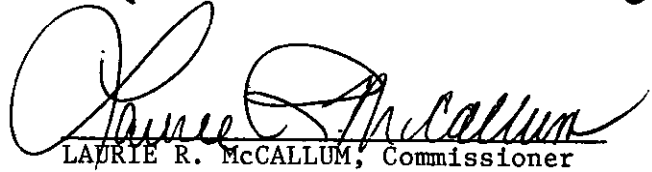
This language is clearly directory, not mandatory, leaving room for a supervisor to exercise his or her discretion in initiating a reclassification request for a subordinate position. Mr. Daniel's did so, relying on the advice of Mr. Samp, a personnel expert in DNR's Bureau of Personnel, in his decisions not to initiate reclassification requests for appellant's position. Appellant asserts that such advice was "improper." However, there has been no showing of impropriety, i.e., no showing that the advice given by Mr. Samp did not reflect his actual opinion at the time as a personnel expert or that it was inaccurate in view of the circumstances present at the time. This point is material with respect to appellant's argument that respondent is equitably estopped with respect to the effective date issue. There is no equitable estoppel because the first element is not present - there was no fraud or manifest abuse of discretion, Ferguson v. DOJ/DP, 80-245-PC (7/22/81), on the part of respondent.

Dated: December 23, 1987 STATE PERSONNEL COMMISSION


DENIS P. MCGILLIGAN, Chairperson

LRM:rcr
RCR03/2


DONALD R. MURPHY, Commissioner


LAURIE R. McCALLUM, Commissioner

Parties:

Patrick Baggott
4365 Windsor Road
P.O. Box 235
Windsor, WI 53598

Carroll Besadny
Secretary, DNR
P.O. Box 7921
Madison, WI 53707

John Tries
Secretary, DER
P.O. Box 7855
Madison, WI 53707

* * * * *
 PATRICK BAGGOTT,
 Appellant,
 v.
 Secretary, DEPARTMENT OF
 NATURAL RESOURCES and
 Secretary, DEPARTMENT OF
 EMPLOYMENT RELATIONS,
 Respondents.
 Case No. 87-0012-PC
 * * * * *

PROPOSED
 DECISION
 AND
 ORDER

NATURE OF THE CASE

This is an appeal of actions taken by respondent in regard to the classification of appellant's position. The parties agreed to the following issues:

1. Was the decision of respondent DNR to reclassify appellant's position from Environmental Specialist 4 (ES 4) to ES 5 instead of ES 6 correct?
2. Whether the effective date of the reclassification should be earlier than September 28, 1986, in view of appellant's alleged previous reclassification request, and, if so, what should the date be?

A hearing was held on July 28, 1987, before Laurie R. McCallum, Commissioner, and the briefing schedule was completed on September 14, 1987.

FINDINGS OF FACT

1. At all times relevant to this matter, appellant has been employed in the Air Monitoring Data Subunit of the Air Monitoring Section of the Bureau of Air Management of the Department of Natural Resources.

2. Sometime during the period of November of 1984 to January of 1985, appellant made an oral request of his first-line supervisor, Beecher

Daniels, that his position be reclassified from the ES 3 level to a higher level in the ES series and that his position description be written so as to completely and accurately state his job duties. During this same period of time, a personnel management survey of the ES series was being conducted. Mr. Daniels concluded that it would be inappropriate, in view of the requirements of the system for classifying positions, to draft a position description for appellant's position which would result in a reclassification or reallocation of appellant's position from the ES 3 to the ES 5 level. As a consequence, the position description that was drafted omitted or de-emphasized some of appellant's position's more complex duties. Appellant was aware of this and, although dissatisfied with the position description, did sign it on February 1, 1985. Also during this same period of time, Mr. Daniels consulted with Greg Samp of respondent's bureau of personnel regarding appellant's request for the reclassification of his position. Mr. Samp advised Mr. Daniels not to initiate such a request during the pendency of the survey and Mr. Daniels did not. Mr. Daniels so advised appellant during or around March of 1985. As a result of the survey, appellant's position was reallocated to the ES 4 level effective April 14, 1985. Mr. Daniels also advised appellant during or around March of 1985 that he would seek a reclassification of appellant's position to a level higher than ES 4, as soon as practicable after the survey was completed. Appellant advised Mr. Daniels in response to this that he was dissatisfied with this approach to changing the classification of his position.

3. Some time during October or November of 1985, appellant again requested of Mr. Daniels that his position be reclassified to a higher level in the ES series than its current ES 4 classification and that his position description be rewritten so as to completely and accurately

describe his job duties. Mr. Daniels and appellant redrafted appellant's position description and Mr. Daniels asked Mr. Samp to review such draft which he did. Mr. Samp advised Mr. Daniels not to submit a request for the reclassification of appellant's position at that time because it was too soon after the survey of the ES series and after the reallocation of appellant's position. Mr. Daniels did not initiate such a request and so advised appellant.

4. Appellant did not appeal respondent's actions described in 2. and 3. above, and did not file an appeal of the decision to reallocate appellant's position to the ES 4 level.

5. In a memo to Mr. Daniels dated July 28, 1986, appellant requested that his position be reclassified to the ES 5 or ES 6 level. In a memo dated September 15, 1986, to Donald Theiler, Director of the Bureau of Air Management, Mr. Daniels requested the reclassification of appellant's position.

6. In a memo dated September 17, 1986, to Debra Koyen, Director of DNR's Bureau of Personnel, Mr. Theiler requested the reclassification of appellant's position.

7. The reclassification of appellant's position to the ES 5 level was approved effective September 28, 1986.

8. On January 30, 1987, appellant filed an appeal of respondent's actions in regard to the classification of his position.

9. The position description signed by appellant on September 8, 1986, is an accurate description of appellant's duties and responsibilities and provides as follows:

The Air Quality Systems Manager position has statewide responsibility for all ambient air monitoring data systems. These include two micro-computer based data acquisition systems and two mainframe data base systems. The AQDSM is also responsible for

all software systems analysis work for two auxiliary data systems, the State Lab of Hygiene Particulate Analysis and Reporting System, and a micro-computer-based air toxics data base.

Together, this highly complex group of data systems accomplish acquisition, compilation, correction, reporting and archival of all Wisconsin Ambient Air Quality data.

The AQDSM is lead worker for two Environmental Specialist positions in the Data Subunit, and is directly responsible for the scheduling, timeliness and quality of their work. The AQDSM provides detailed training to these two positions, and helps plan their formal training course work.

The AQDSM provides complex air data analyses, summaries, and reports, including production of an annual Air Quality Data Report.

The AQDSM provides technical liaison with agencies and organizations outside Air Management, serving on data systems development committees as required.

10. The position standard for the ES series provides, in pertinent part:

ENVIRONMENTAL SPECIALIST 5 (PR 15-05)

Definition:

This is responsible environmental program coordinative work. Positions allocated to this class typically function as: 1) an area or district program specialist responsible for implementing a major environmental protection program in a portion of a district where program decisions are delegated from the district office; 2) a district specialist responsible for providing districtwide expertise and program coordination for a significant portion of a major environmental program; 3) a central office specialist responsible for providing central office coordination and/or guidance for segments of an environmental program being implemented on a statewide basis; or 4) an environmental scientist performing a wide range of functions involving assessment of unusual conditions; evaluating incomplete or conflicting data; choosing and adopting a variety of specific scientific principles and techniques in order to develop research conclusions; developing methods and standards; evaluating programs or proposals; planning projects; coordinating work with others; and resolving conflicts or unusual situations independently. Work at this level is performed under general direction.

Positions Functioning Out of the Central Office

Nonpoint Source Project Coordinator: this position is responsible for directing special nonpoint source projects

evaluating monitoring data from special nonpoint source projects; applying modeling to nonpoint source projects; and interpreting results of nonpoint source projects for application in State nonpoint source programs.

ENVIRONMENTAL SPECIALIST 6 (PR 15-06)

ENVIRONMENTAL SPECIALIST 6 - MANAGEMENT (PR 1-14)

Definition:

This is very responsible professional environmental program coordinative work. Positions allocated to this class typically function as: 1) an area or district program specialist responsible for implementing a major environmental program in a portion of a district where program decisions have been delegated and where the extent and complexity of the program easily distinguishes it from objective level specialists at the Environmental Specialist 5 level; 2) a district specialist responsible for districtwide expertise and program coordination of a significant portion of a major environmental program where the extent and complexity of the assignments easily distinguish it from objective level specialists at the Environmental Specialist 5 level; 3) a district specialist responsible for an environmental enforcement program which provides support to other district environmental programs; 4) a central office staff specialist responsible for independently planning, coordinating, and implementing all segments of a significant statewide environmental program; 5) an advanced environmental scientist which is distinguished from the previous level by the complexity and depth of knowledge required and the greater scope of standards developed or decisions recommended. Work at this level is performed under general direction.

Positions Functioning Out of the Central Office

Spill Control Specialist: this position is responsible for implementing the DNR's statewide program for the prevention, control, and cleanup of spills of oil and other hazardous substances which threaten the environment; developing contingency plans for effectively dealing with spill emergencies; assuring program compliance with federal oil pollution prevention regulations; and conducting follow-up investigations to insure that spills are adequately cleaned up and that the offender provides for the cleanup costs.

Air and Solid Waste Enforcement Coordinator: this position is responsible, as Assistant to the Director, for contributing to the development of program policies and objectives; providing administrative leadership for statewide solid waste and air enforcement programs; assisting district staff in defining program requirements; preparing reports on various program issues for presentation to the Natural Resources Board, Legislature, other State and/or federal agencies; and coordinating data management and information systems for all environmental enforcement programs.

11. The following ES positions were introduced for comparison purposes into the hearing record and were received:

a. Eric Mosher - ES 6 - This position establishes and maintains air pollutant emissions data bases for use in acid deposition studies; conducts analyses of primary and secondary environmental impacts associated with the potential implementation of alternative sulfur dioxide emission reduction strategies and makes recommendations concerning the adoption of acid rain control programs; develops and maintains data base management practices and procedures for use in evaluating potential acid rain control strategies; coordinates acid deposition modeling studies done for Wisconsin by outside modelers; and provides technical expertise in support of other acid deposition projects including tracking and evaluating acid deposition legislation passed in other states, analyzing Wisconsin air pollution control regulations which could affect acid rain in Wisconsin, providing expertise on chemistry of acid rain, and evaluating air pollutant damage to forests in Wisconsin.

b. James Morton - ES 6 - This position analyzes current research information on the effects of acid deposition, analyzes data gathered in Wisconsin to track and monitor the long-term effects of reductions; and uses this data to recommend environmental objectives for policy development; coordinates the preparation and implementation of the annual Acid Deposition Monitoring and Evaluation Plan, produces reports and statistical analyses of acid deposition data, maintains integrity of acid deposition data base, and develops necessary data analysis software for acid deposition data base; and conducts public information workshops.

c. Donald R. Williams - ES 6 - Quality Assurance Coordinator (QAC) - This position is responsible for the administration of a statewide program of Quality Assurance (QA) for all air management data related activities including the responsibilities for: developing and periodically reviewing QA plans; coordinating or conducting QA audits of DNR or industrial monitoring systems, instrumentation or laboratories; the evaluation and documentation of calibration and operating procedures; preparation, maintenance and document control of a Quality Assurance Handbook of QA plans, goals and objectives are being met, and reporting QA status to the Bureau Director and other appropriate Air Management staff. The QAC recommends solutions and works with personnel in the Central Office, the District and industry to resolve problems of data quality. Under minimal supervision and direction, the QAC exercises independent judgement and initiative in scheduling work activities to achieve QA goals and objectives and acts as coordinator with the U.S. EPA, representing the State in air management related QA concerns.

d. Roger T. Bannerman - ES 6 - The duties of this position include: directing water resource evaluations and tracking pollutant load reductions, assuring statewide implementation of the evaluation and tracking procedure, and reviewing water resource evaluation plans for each priority watershed project; statewide integration of rural and urban inventory analyses with results of water resources appraisal; directing water resource appraisals; developing and administering urban demonstration projects; and providing technical expertise on urban storm water problems and the application of storm water management practices.

12. The duties and responsibilities of appellant's position are better described by the class specifications for the ES 5 classification than those for the ES 6 classification and appellant's position is more appropriately classified at the ES 5 level.

13. The effective date of appellant's reclassification to the ES 5 level should be September 28, 1986.

CONCLUSIONS OF LAW

1. This matter is properly before the Commission pursuant to §230.44(1)(b()), Stats.
2. Appellant has the burden of proving that his position is more appropriately classified at the ES 6, not the ES 5 level.
3. Appellant has failed to sustain this burden.
4. Appellant has the burden of proving that the effective date of the reclassification of his position should be earlier than September 28, 1986.
5. Appellant has failed to sustain this burden.
6. Appellant's position is more appropriately classified at the ES 5 level and the effective date of the reclassification of appellant's position to the ES 5 level should be September 28, 1986.

DECISION

Appellant first alleges that, since he made numerous requests of his supervisor beginning in November of 1984 for the reclassification of his position, which requests respondent did not act upon and, since appellant has been performing essentially the same duties since at least December of 1983, the reclassification of appellant's position to the requested ES 6 level should be effective in March of 1985 at the latest.

Appellant contends that he relied upon his supervisor's representations that he was following up on appellant's reclassification requests and upon Mr. Samp's advice regarding the timing and likelihood of success of such requests and, as a consequence, did not take any independent action in relation to such requests. Appellant then argues by implication that since such inaction on his part was attributable to respondent, the instant appeal should relate back to and include requests for the reclassification of his position made by appellant beginning in November of 1984.

The Commission fails to accept such an argument. Had respondent failed to give appellant notice that such requests were not going to be processed or acted upon, appellant's argument would have more merit. Under the facts of the instant case, however, respondent notified appellant that his request for the reclassification of his position (other than the request made in 1986) were not going to be processed or acted upon and appellant could have appealed such decisions by respondent at the time they were communicated to him. It is important to note in this regard that appellant never initiated a written request for the reclassification of his position (other than the request made in 1986) and also failed to appeal the 1985 decision to reallocate his position to the ES 4 level. The appellant had ample opportunity to have his dissatisfaction with the classification of his position reviewed but failed to take advantage of any of such opportunities until he filed the instant appeal in response to the 1986 reclassification decision by the DNR. For that reason, the Commission refuses to include appellant's previous requests (those prior to 1986) for the reclassification of his position within the ambit of the instant appeal and concludes that the effective date of the appellant's reclassification should be September 28, 1986.

The second issue, then, is that regarding the proper classification of appellant's position. A review of the language of the ES position standard indicates that positions at the ES 5 level located in the central office are responsible for "providing central office coordination and/or guidance for segments of an environmental program being implemented on a statewide basis" whereas central office positions at the ES 6 level are "responsible for independent planning, coordinating, and implementing all segments of a significant statewide environmental program." This distinction is further illustrated by a review of the duties of the central office representative positions described in the position standard (see Finding of Fact 10, above). The representative ES 5 position directs non-point source pollution projects, evaluates data from such projects, and interprets the results of such projects -- this involves a narrow aspect of the non-point source pollution program and this position has limited input into the overall program policy development and planning process. The representative ES 6 positions, however, are responsible for much more inclusive aspects of their respective environmental programs and are involved in overall planning and policy development for such programs.

The duties and responsibilities of appellant's position are clearly limited to management of data systems and data analysis for an environmental program, i.e., air monitoring. The data system component constitutes only a narrow aspect of the air monitoring program. Appellant's position's input into the program policy development and planning process for air monitoring is limited to policy development and planning regarding data system management and data analysis and does not extend into other areas of the air monitoring program. As a result, the duties and responsibilities of appellant's position are better described by the class

specifications for the ES 5 classification than those for the ES 6 classification and are more closely comparable to those of the ES 5 representative position than the ES 6 representative position.

This conclusion is also supported by a comparison of the duties and responsibilities of appellant's position to those of the positions included in the hearing record for comparison purposes (see Finding of Fact 11, above). These positions all perform a variety, i.e., not a narrow range, of duties and responsibilities in their respective program areas, including overall program planning and policy development. As a result these ES 6 positions are clearly distinguishable from appellant's position. This is particularly clear in regard to the Mosher and Morton positions which are involved in management of data systems and data analysis for the acid deposition program as well as other aspects of the program. Appellant's position, on the other hand, is involved only in management of data systems and data analysis.

Although the appellant feels that the scope, impact, complexity and degree of discretion and accountability required of his position are clearly comparable to those of the ES 6 positions described in Finding of Fact 11, the Commission is required to apply the specific language of the ES 5 and ES 6 class specifications in rendering classification decisions. The specific distinction drawn by the ES position standard between positions of the ES 5 level and those at the ES 6 level, as discussed above, and as further illustrated in the class specifications through descriptions of the duties and responsibilities of representative positions, lead to the clear conclusion that appellant's position is more appropriately classified at the ES 5 level.

ORDER

The actions of respondent are affirmed and this appeal is dismissed.

Dated: _____, 1987 STATE PERSONNEL COMMISSION

DENNIS P. MCGILLIGAN, Chairperson

LRM:jmf
JMFO6/2

DONALD R. MURPHY, Commissioner

LAURIE R. McCALLUM, Commissioner

Parties:

Patrick Baggott
4365 Windsor Road
P. O. Box 235
Windsor, WI 53598

Carroll Besadny
Secretary, DNR
P. O. Box 7921
Madison, WI 53707

John Tries
Secretary, DER
P. O. Box 7855
Madison, WI 53707