

STATE OF WISCONSIN

PERSONNEL COMMISSION

* * * * *

TERRY TRAPP, *

Appellant, *

v. *

Secretary, DEPARTMENT OF *

NATURAL RESOURCES, and *

Secretary, DEPARTMENT OF *

EMPLOYMENT RELATIONS, *

Respondents. *

Case No. 87-0196-PC *

* * * * *

FINAL
DECISION
AND
ORDER

This matter is before the Commission following the issuance of a proposed decision and order by the hearing examiner. The Commission has considered appellant's arguments and objections with respect to the proposed decision and order and consulted with the examiner. Most of the points appellant raises are adequately addressed in the proposed decision. However, the Commission will address specifically a number of points that are not completely covered in the proposed decision.

Appellant refers to Mr. Galecke's extensive experience in fire control and argues:

" ... he [Galecke] should know the Department's definition of high hazard. Mr. Galecke's testimony should be sufficient evidence of the inaccuracy of the Department's data."

However, in addition to what is set forth in the proposed decision, it should be noted that at the hearing Mr. Galecke testified only that it was "likely" that respondent's figure of 18,700 high fire hazard acres for appellant's unit was low.

Appellant also contends that at the time the reclassification request was made in 1986, he was not reporting to a Natural Resource Supervisor II. While the record is unclear as to the exact date the reclassification request was submitted, it does reflect that the revised position description (PD) (Respondent's Exhibit 2) that was submitted in connection with the reclassification request was signed by appellant on September 26, 1986. The PD of the Natural Resource Supervisor II (Respondent's Exhibit 8), which reflects supervision of appellant's position, was signed by Mr. Ave' Lallement on September 16, 1986. On this record, it was not erroneous for respondent to have considered the intervening layer of appellant's position by a Natural Resource Supervisor II in evaluating this request for reclassification.

Appellant also points to situations at Wausaukee where the NRS 5 is reporting to an intervening layer of supervision -- a Natural Resource Supervisor III who is neither the Area Forester or the Area Ranger, and at Brule where he contends NRS 5's are presently supervising NRS 5's as an intermediate layer between the Area Forester/Ranger and field personnel. Even if these comparisons were to help his case, they cannot be considered because they are not part of the record made at the hearing.

Finally, appellant objects to the statement on page 10 of the proposed decision that: "... in that case [Jones v. DNR & DER, Wis. Pers. Commn. No. 85-0217-PC (1/24/86)] there was a different set of rating factors in use." This should have been a reference to different position standards rather than different rating factors. However, this does not lead to a different conclusion by the Commission. The current position standard (Respondent's Exhibit 1) requires that before a position such as appellant's can be reclassified from NRS 4 to NRS 5, it must be able to be

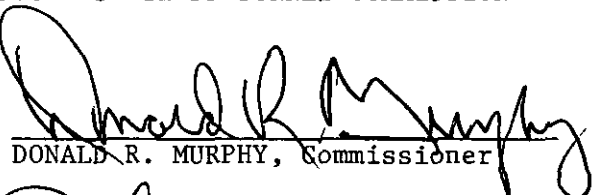
concluded that " ... the extent and complexity of the program easily distinguishes it from the objective level assistant area manager at the Natural Resource Specialist 4 level." (emphasis added) In Jones, there were three factors contained in the description of the NRS 4 representative position that the Commission felt were not adequately reflected in the rating factors -- number of counties served, population served, and number of forestry-related bodies with which the position must interact. The record in this does not reflect that appellant's position is under-classified with respect to these three factors when compared to other NRS 4 or 5 positions.

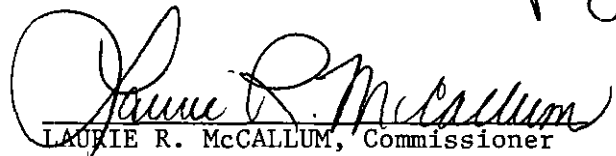
ORDER

The proposed decision and order, a copy of which is attached hereto and incorporated by reference as if fully set forth, except as amended on page 9, lines 14-15, where the words "set of rating factors" are changed to read "position standard," and adopted as the Commission's final disposition of this matter. Accordingly, respondent's action is affirmed and this appeal is dismissed.

Dated: June 8, 1988 STATE PERSONNEL COMMISSION

AJT:rcr
DPM/1


DONALD R. MURPHY, Commissioner


LAURIE R. McCALLUM, Commissioner

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PROPOSED
 DECISION
 AND
 ORDER

NATURE OF THE CASE

This is an appeal pursuant to §230.44(1)(b), Stats., of the denial of a request for reclassification of appellant's position from Natural Resource Specialist 4 (NRS 4) to Natural Resource Specialist 5 (NRS 5).

FINDINGS OF FACT

1. Appellant at all relevant times has been employed by respondent Department of Natural Resources (DNR) in the classified civil service in a position in the North Central District at Summit Lake with a working title of Forester/Ranger and a civil service classification of NRS 4.

2. The duties and responsibilities of this position are accurately set forth in the position description (PD) signed by appellant on September 26, 1986, Respondent's Exhibit No. 2, which includes the following "Position Summary":

"Administer and implement the Forest Fire Control program on about 265,000 acres in Langlade County. Administer and implement the private forest management program on 131,000 acres in the northern portion of Langlade County. Provide assistance for timber sale

establishment and administration, cultural and reforestation programs on the 93,000 acres of County Forest in the Work Unit."

The majority of the activities of this position involves fire control. About 30-40% involves the forestry program, and the remainder includes conservation law enforcement (about 3%), hunting and fishing licensing, some wildlife management activity with respect to maintenance of game openings and hunter walking trails; and fish management with respect to the maintenance of Pelican Boat Landing.

3. Subsequent to the execution of the aforesaid PD, Respondent's Exhibit 2, the supervision of appellant's position changed. Instead of being supervised by Norbert A. Galecke, Natural Resources Supervisor III and area forester, appellant began reporting to Ted Ave'Lallemant, Natural Resources Supervisor II, which classification is in a counterpart pay range to the NRS 5 classification. Mr. Ave'Lallemant's first priority is to act as Mr. Galecke's assistant, and he also has much administrative work to accomplish. The positions he supervises have large degrees of independence and autonomy to accomplish the goals he establishes.

4. The NRS position standard (Respondent's Exhibit 1) provides that the NRS 4 level is the objective level. The NRS 5 definition provides, as relevant:

This is very responsible resource management work. Positions allocated to this class typically function as: 1) an assistant area resource manager responsible for the implementation of a complete resource management program (i.e., fish, wildlife, forestry) in a geographic sub-area where the extent and complexity of the program easily distinguishes it from the objective level assistant area manager at the Natural Resource Specialist 4 level (emphasis added)

5. The position standard includes the following as representative NRS 4 positions:

Assistant Area Forester - advising woodland owners on timber stand improvement methods, completing management plans and making

recommendations on forest crop and woodland tax applications, marking and tallying timber, and developing short and long-term timber management plans.

Forester/Ranger - reporting to the Area Forester or Ranger, the activities and responsibilities of this position are very similar to those performed by an Assistant Area Forester. In addition, this position is responsible for implementing the fire prevention, presuppression, suppression and enforcement programs in an intensive or extensive fire area.

The position standard does not include a Forester/Ranger position among the representative NRS 5 positions. The position standard does include the following Assistant Area Forester position as a representative NRS 5 position:

Assistant Area Forester - reporting to the Area Forester, this position is responsible for the implementation of the forestry program in a sub-area of the State. This position is differentiated from lower level assistant area foresters by factors such as the extent of the forest resource, the heavy emphasis on private forestry assistance (or a comparable specialization), the extent and complexity of forest tax law entries and withdrawals, the extent of public forest land in the sub-area, and the high degree of public involvement and pressure in decisions made regarding the sub-area's forest resources. In order for assistant area forester positions to be allocated to this level, it must be demonstrated that the factors used to justify identification at this level contribute significantly to the position's complexity.

7. The NRS position standard provides at p. 4:

"... this position standard is not intended to restrict the allocation of representative positions to a specific classification level if the functions of these positions change significantly in level of complexity and/or responsibility ..."

8. DNR utilizes a number of rating factors to assist in the evaluation for classification purposes of the NRS forester/ranger positions, see Respondent's Exhibit 5. This evaluates positions on the basis of such things as high hazard, number of fires, size of resource base, etc. The data for the individual positions is derived from a number of sources, including DNR state reports and the addenda to the PD's that are filled out for each position by the employe and his or her supervisor.

9. The forester/ranger position at Florence is classified as NRS 5, one level higher than appellant's position at Summit Lake. DNR evaluated the Florence position using the criteria set forth on Respondent's Exhibit 5 at 322 weighted points as compared to 347 for the Summit Lake position. However, the Florence Position may have been evaluated at the NRS 5 level due to factors other than the Respondent's Exhibit 5 rating criteria.

10. The forester/ranger position at Grantsburg is also classified as a NRS 5. It received a rating of 532 weighted points under the criteria set forth in Respondent's Exhibit 5. This position reports directly to the Area Forester, a Natural Resources Supervisor 3, with respect to its forest management duties and responsibilities. There is some evidence that its forestry activities are less than the 50% listed on Respondent's Exhibit 5.

11. The forester/ranger position at Bowler is classified as a NRS 4. It received a rating of 523 weighted points under the criteria set forth in Respondent's Exhibit 5.

12. Mr. Galecke requested a reclassification of appellant's position from NRS 4 to NRS 5. This request was denied by DNR, acting on a delegated basis from DER pursuant to § 230.04(1m), Stats., as set forth in a memo dated October 21, 1987, to the North Central District Director from the DNR Bureau of Personnel and Human Resources, REspondent's Exhibit. This appeal ensued.

DISCUSSION

The NRS position standard expresses the distinction between the NRS 4 level and the NRS 5 level for assistant area resource managers as follows: "the extent and complexity of the program easily distinguishes it from the

objective level assistant area manager at the Natural Resources Specialist 4 level ..."

As a means of comparing the resource management programs associated with the various NRS positions, DNR has developed a number of rating factors. The data for NRS forester/ranger positions are set forth on Respondent's Exhibit 5, which contains information about each position's resource base, high hazard fire area, railroad track mileage, etc. The data contained on this exhibit and other documents respondent uses to evaluate such positions are derived from a number of sources, including the addendum to each employe's position description which is prepared by the employe with approval by and possible input from his or her supervisor. DNR does not depend solely on the rating factors to evaluate the NRS positions for classification purposes, but also considers other factors, such as supervisory reporting relationship.

The position standard for NRS 4 includes a Forester/Ranger position as a representative position at that level, as well as an Assistant Area Forester. The Forester/Ranger representative position is described as follows:

"Reporting to the area Forester or Ranger, the activities and responsibilities of this position are very similar to those performed by an Assistant Area Forester. In addition, this position is responsible for implementing the fire prevention, presuppression, suppression and enforcement programs in intensive or extensive fire area."

This is a general description. It certainly describes appellant's position. This fact supports the NRS 4 classification for appellant's position. The NRS 4 classification is also supported by the fact that there is no Forester/Ranger position among the representative NRS 5 positions. However, these points are not of great significance. The

position standard specifically provides that it "... does not attempt to cover every eventuality or combination of duties and responsibilities as they currently exist or may exist in the future. Additionally, this position standard is not intended to restrict the allocation of representative positions to a specific classification level as the functions of these positions change significantly in level of complexity and/or responsibility"

Therefore, the position standard does not rule out the possibility that a Forester/Ranger position could be classified at the NRS 5 level. In order to be at this level, the position must satisfy the requirement that "extent and complexity of the program easily distinguishes it from the objective level assistant area manager at the Natural Resource Specialist 4 level."

Based on the rating factor data utilized by respondent as set forth on Respondent's Exhibit 4 and 5, it appears that appellant's position is well within the NRS 4 level. Appellant attempted to establish that his position should be at the NRS 5 level by attacking the accuracy of some of this data; by comparing his position to Forestry positions (as opposed to strictly other Forester/Ranger positions); by focusing on aspects of his job that he contends are not reflected in the rating factors; and by contending that the rating system itself is not an adequate reflection of the position standards.

Appellant presented some evidence at the hearing that was inconsistent with the data respondent utilized in comparing NRS positions with respect to the rating factors. For example, Mr. Galecke, area forester and Natural Resources Supervisor 4 for the Antigo area testified that the Summit Lake high fire hazard area (18,700 acres) should be considerably higher based on

a definition of fire hazard contained in a standard text on forest fire control. He also testified that some of the appellant's fire prevention activities had more scope and impact than the programs of other positions that DNR apparently rated the same for classification purposes. Also, Mr. Ave'Lallemant testified that when he was in a trainee capacity at Grantsburg, in his experience the work was less than 50% forestry which was the data used by DNR.

Appellant has the burden of proof and he is required to establish the facts by the greater weight or preponderance of the evidence, to a reasonable certainty. Jackson v. Personnel Board, Dane Co. Circuit Court No. 164-086 (2/26/79); Reinke v. Personnel Board, 53 Wis.2d 123 (1971). Viewed against this standard, the most that can be said with regard to the evidence referred to above is that while complainant has raised some questions about respondent's data, he has not established the underlying facts to show that respondent erroneously rated his position based on the evaluation factors at the NRS 4 level instead of at an NRS 5 level.

With respect to the amount of high fire hazard average in the Summit Lake area, there is insufficient evidence to establish that respondent's figure is incorrect. Mr. Galecke's testimony was based on a definition of fire hazard found in a standard text. It is not known how this relates to the department's definition of high fire hazard as used in the rating factors. There is nothing in the record to establish that Mr. Galecke's opinion on this point is any more accurate than that which is reflected in the department's data.

Mr. Galecke's implicit conclusions about the impact of the appellant's fire prevention programs strike the Commission as essentially speculative. For example, while thousands of motorists a day may pass a fire prevention

sign, the mere number of people exposed to such a message does not mean that the program has more total impact than conducting instruction in fire prevention for a much smaller number of secondary students.

As to the testimony concerning the Grantsburg forestry percentage being less than the stated 50% when Mr. Ave'Lallemant was a trainee there, even if this were sufficient to base a finding that the department's data were off to some extent, it can not be concluded that this would have any significant impact on the classification level of appellant's position.

In conclusion, the record simply does not support any findings that DNR's data relating to the Rating Factors was incorrect in any material manner.

Appellant also contends in effect that the Forester/Ranger positions are inherently at a higher level than the Forester positions. This contention is grounded first on a generalized comparison based on the class factors set forth in the NRS position standards - scope and impact, complexity, discretion and accountability, knowledge and skills required, personal contacts and their purpose, work environment, and physical effort. Mr. Galecke testified that, in his opinion, Forester/Ranger jobs would rate higher on these factors than Forester positions primarily because of the added program--fire control - present in the former positions, and also based on the unrelated activities that are present in small amounts--enforcement, fish and game management, etc.

While it makes sense conceptually that positions responsible for two distinct programs would be at a higher level in terms of classification than positions responsible for only one program, there are two difficulties with appellant's approach here. One is that the position standards, which are the basic tool for classification analysis, have identified

Forester/Ranger and Assistant Area Forester positions with similar activities and responsibilities in the forest management area at the same (NRS 4) level. It is true, as discussed above, that the position standards state that the representative positions are not meant to be iron-clad. However, the flexibility involved is based either on changes or on unanticipated situations. Appellant's contentions involve the basic concepts involved in the Forester and Forester/Ranger positions which had to be considered when the position standards were drafted. Even if the Commission were to conclude that it had the authority to reject the concept embodied by the position standard in placing both the basic Assistant Area forester and the Forester/Ranger at the same class level, it would have to give considerable weight to the fact that DER made the decision to place these positions at the same class level after a personnel survey covering all the NRS positions. The record reflects that the Forester positions in question had more than 95% of their activities in forest management, whereas Mr. Galecke testified that only 30-40% of appellant's activities are in forestry. As a general proposition, it is logical that positions which are primarily in forest fire control are going to have less depth in terms of their forest management activities than positions that are 95% devoted to forest management, even if there were not a great disparity in the size of their respective resource bases. Furthermore, the NRS 5 position standard has the representative Forester position reporting to the Area Forester, whereas there is an intervening layer of supervision between appellant's position and the Area Forester.

Appellant also draws a comparison between his position's resource base and those of three NRS 5 Forester positions. See Appellant's Exhibit 4.

Mr. Galacke also testified that the supervisory responsibilities of certain of these positions were inaccurate based on his knowledge of the positions. This data shows that appellant's position compares relatively favorably on some factors and not so favorably on others. The picture is too mixed to conclude that appellant's position is at the same classification level as the Forester positions based solely on forest management activities, and, as discussed above, the Commission is not prepared to conclude on the basis of this record that Forester/Ranger positions as a category are inherently higher for classification purposes than Forester positions because of the additional program.

Appellant also argues that the rating factors used by DNR do not adequately reflect the fundamental classification concepts contained in the NRS position standard, citing Jones v. DNR & DER, Wis. Pers. Comm. No. 85-0217-PC (1/24/86). However, in that case there was a different set of rating factors in use. The current factors have not been shown on this record to be inadequate. While appellant objects in effect to the evaluation of his position solely on the Forester/Ranger factors, in the Commission's opinion, as discussed above, he has not established that his position should be at the NRS 5 level even if the Forestry factors are taken into account, particularly considering his position does not report to an Area Forester.

With respect to another point raised in the course of the hearing, the fact that DNR is considering some changes in its approach to certain organizational and classification issues is of interest, but what might happen in the future does not have any bearing on the issues regarding this transaction.

In conclusion, while appellant has raised questions about the NRS classification system and the data used for position comparison, he has been unable to show that his position should have been reclassified. A key difficulty with his case is the fact that not only does he not report to an area forester, but also, the position to which he reports is classified as a Natural Resources Supervisor II, which is in a counterpart pay range to the NRS 5 level. While this fact does not necessarily rule out the NRS 5 classification for appellant's position, it weighs heavily against it. The fact that appellant has a great deal of independence is significant but it does not obliterate the added layer of supervision.

CONCLUSIONS OF LAW

1. This matter is properly before the Commission pursuant to §230.44(1)(b), Stats.
2. Appellant has the burden of proof, which means that he must establish the facts necessary to prevail "to a reasonable certainty, by the greater weight of the credible evidence...." Reinke v. Personnel Board, 53 Wis. 2d, 123, 137, 191 N.W. 2d 833 (1971).
3. The appellant failed to satisfy his burden of proving that the extent and complexity of the programs he administers easily distinguishes it from the objective level assistant area manager at the Natural Resource Specialist 4 level.
4. Respondents did not err in denying the request for reclassification of appellant's position from NRS 4 to NRS 5.

ORDER

Respondents' denial of the request to reclassify appellant's position is affirmed and this appeal is dismissed.

Dated: _____, 1988 STATE PERSONNEL COMMISSION

DENNIS P. MCGILLIGAN, Chairperson

AJT:akw
VIC01/4

DONALD R. MURPHY, Commissioner

LAURIE R. McCALLUM, Commissioner

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