

STATE OF WISCONSIN

PERSONNEL COMMISSION

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DARYL A. STENSBERG,  
 JEFFREY G. NORRIS,  
 and ROBERT LENT,

Appellants,

v.

Secretary, DEPARTMENT OF  
 EMPLOYMENT RELATIONS,

Respondent.

Case Nos. 92-0325, 326, 327-PC

\* \* \* \* \*

DECISION  
AND  
ORDER

These matters are before the Commission as appeals from reallocation decisions. The appellants contend that their positions should have been reallocated to the Forestry Technician 5 (FT 5) level rather than the FT 4 level.

The appellants are employed at three different ranger stations in the Wisconsin Rapids area. The appellants all have similar, but not identical, position descriptions and duties. For example, the Stensberg position description (Resp. Exh. 2) lists 10 different goals, as follows:

- 15% A. Suppression of forest fires
- 15% B. Fire presuppression
- 10% C. Fire prevention
- 5% D. Forestry law enforcement and fire investigation
- 15% E. Maintenance of equipment, buildings, and grounds
- 5% F. Private forest management and tax law administration
- 10% G. Public lands forest management
- 10% H. Administration of fire and forestry operations
- 5% I. Training
- 10% J. Cooperation with other functions

Goals A, B, and C, totalling 40% are all fire control responsibilities. In addition, the bulk of goal D, as well as portions of goals E, H and I are also directly attributable to fire control duties. Forest management is represented by all of goals F and G, totalling 15%, plus portions of goals H and I. Other aspects of Mr. Stensberg's goals D, E, and J are not attributable to either fire control or forest management.

Mr. Norris' position description is substantially similar to the Stensberg document, except it allocates 10% to goal F and only 5% to goal J. Mr. Lent's position description also lists the same goals as the Stensberg document except it allocates 10% to goal A, 10% to goal B, 10% to goal F, 20% to goal G and 5% to goal J.

The FT class specifications include the following language:

#### **TERMS USED**

**Forest Fire Control (Administration)** - Forest fire control activities include presuppression, suppression, and prevention. This includes such activities as the operation and maintenance of complex fire fighting equipment; directing fire operations as the Incident Commander in the absence of the Forester/Ranger; managing subarea Emergency Fire Warden Programs; conducting inspections of properties, recreation areas, industrial sites, field operations, railroad right-of-way and other hazard areas for fire management purposes; and other related activities.

**Forest Management** - These activities include providing customers with technical assistance in tax law compliance including project inspections and evaluations, management plans, file updating; contacting landowners to determine compliance; answering questions from public regarding forest management practices, tax laws, cost sharing opportunities, insect and disease problems; checking aerial photos of less complex tax law entities to determine property location, boundaries, and timber types; independently collect and calculate field data for less complex properties and assist with data collection for complex properties; develop maps delineating timber types, topographic features, roads and other pertinent information; conduct independent timber cruising of less complex timber stands and assist in cruising more complex stands; and independently select and mark timber for harvesting.

#### **DEFINITIONS**

**FORESTRY TECHNICIAN 4** - Positions allocated to this level perform: 1) objective level full range forestry management duties; 2) objective level full range of forest fire control duties which in

most positions would typically include some forest management duties or comparable advanced level activities in fire administration such as training; or 3) function as the Field Foreman at a major nursery.

#### Representative Positions

Forestry Technician - Assist the Forest Superintendent at the Governor Knowles State Forest in forest management activities, recreational development and maintenance, and general field administration of forest lands on the 30,000 acre State Forest. Guides LTE and temporary personnel in the course of field activities. Operates heavy equipment and cooperates on fire control and game management activities as required. Activities include review recon data, scheduling timber sales, determines volumes and cutting prescription, prepares forms and maps, keeps harvest records and updates recon data on sales closed out. Administers timber sales contracts; and plans and implements reforestation programs,

Forest Fire Control Technician - Performs a full range of forest fire control activities to include presuppression, suppression, and prevention. This includes such activities as the operation and maintenance of complex fire fighting equipment; directing fire operations as the Incident Commander in the absence of the Forester/Ranger; coordinating and completing Fire Action Plans, Fire Program Plans and Red Flag Alert Programs; managing sub-area Emergency Fire Warden Programs; conducting inspections of properties, recreation areas, industrial sites, field operations, railroad right-of-way and other hazard areas for fire management purposes; and other related activities. May also provide private forest management and tax law administration and public lands forest management. Forestry duties include providing forester with technical assistance in tax law compliance including project inspection and evaluations, management plans, file updating; contacting landowners to determine compliance; answering questions from public regarding forest management practices, tax laws, cost sharing opportunities, insect and disease problems; checking aerial photos of less complex tax law entities to determine property location, boundaries, and timber types; independently collect and calculate field data for less complex properties and assist with data collection for complex properties; develop maps delineating timber types, topographic features, roads and other pertinent information; conduct independent timber cruising of less complex timber stands and assist in cruising more complex stands; and independently select and mark timber for harvesting.

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**FORESTRY TECHNICIAN 5** - This is advanced technical level forest management work. Positions at this level perform, a ma-

jority of time, the most complex forest management work including planning, coordinating and implementing with significant delegation from professional or supervisory level positions. Work is distinguished from lower level forest management work by the amount of complex forest management work assigned; the assigned responsibility for developing, coordinating and implementing the forest management plan; and the high degree of autonomy delegated the position due to the individual's recognized experience and expertise.

Representative positions.

Forestry Technician - Plan, coordinate, recommend and implement forest management procedures and programs on private and county forests under the supervision of the Black River Falls Forester. This includes setting up both routine and complex timber sales by cruising timber, marking timber, marking sale boundaries, mapping sale areas, locating access roads, preparing timber sale forms and keeping timber sale records and summaries; conduct routine and complex field inspections for compartment reconnaissance compiling statistics and preparing timber type maps and forms; implementing reforestation projects by compiling planting sites, designating planting site boundaries, traversing and mapping planted areas; setting up cultural projects by marking TSI for pruning, release or thinning, assisting with aerial herbicide applications, traversing and mapping completed practices and keeping records and forms; providing technical forestry assistance to private landowners by collecting data during field inspections of both routine and complex private woodlands, preparing cover-type maps and determining site-index for management recommendations; investigate tax law applications; investigate tree farm applications; compile data and complete fiscal year, monthly and annual reports, surveys and questionnaires; provide technical forestry assistance to local, state and federal agencies and prepare and present public presentations through the news media. Work is performed under general supervision with significant delegation to independently perform complex forestry activities normally performed by the forester.

There are three primary topics raised by these appeals. First the appellants have offered evidence in support of their contention that they were placed at the FT 4 level because of an agreement reached between the Wisconsin State Employees Union and the respondent.

Prior to the classification survey that is the subject of these appeals, the appellants were all classified at the Forest Fire Control Assistant 2 (FFCA 2) level. The survey in question had an effective date of February 9, 1992, although the employees were not notified of the final reallocation decisions until

some months later. Sue Steinmetz, who served as the DNR's coordinator for the survey, wrote a memo dated March 23, 1992 (App. Exh. 7) which stated, in part:

An agreement was reached this past week between WSEU and DER which *will reallocate all FFCA 2's, regardless of job duties, to the Forestry Technician 4 level. (This is a major change from our previous discussions.)*.... We are also discussing this with the Bureau of Forestry to determine if we should request that forestry assignments to immediately made to these FFCA 2's or if the class specifications should be revised to reflect that forestry does not need to be performed at the FT 4 level.... This change has resulted in an additional delay in the processing of the WSEU survey. We do hope that we can get the decisions needed and the re-evaluation of the classifications done within the next week so that this survey can be processed during the current pay period.  
(emphasis added)

The record does not include a copy of the FFCA 2 class specifications. However, testimony established that a key distinction between the FFCA 1 and 2 level was that the FFCA 2's were in charge of the station in the absence of the Ranger/supervisor.

Michael Soehner, who served as the survey manager and who drafted the specifications, testified that he participated in negotiations with the union on the topic of the pay range for various classifications and that those negotiations occurred while the survey was still in process. His testimony established that during the negotiations, he represented to the union that the survey would probably be implemented in 1992 and that the vast majority of positions then at the FFCA 2 level would be placed at the FT 4 level as a consequence of the survey. He provided the union with a tentative list of the individual positions which would end up at the FT 4 level. This list was prepared based upon field audits which had occurred up to that point. Thereafter, Mr. Soehner was presented with updated position descriptions for the FFCA 2 positions which showed many of them did not have much forestry management responsibilities. This was inconsistent with Mr. Soehner's understanding of the FFCA 2 responsibilities, and resulted in a new tentative reallocation list that was different with the previous list and was also in conflict with the union's expectations which had been generated from the previous list.<sup>1</sup>

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<sup>1</sup>Mr. Soehner's testimony in this regard is supported by the testimony of David Sleight, a FFCA 2, whose June, 1991 position description referenced assisting the Ranger in "meeting private forestry work goals" but whose December,

In early March, Mr. Soehner had additional discussions with the union. Up to the time of these discussions, the draft FT specifications were different than the specifications ultimately adopted by DER. These discussions caused changes in the allocation patterns, eliminating the requirement of performing any forest management work in order to be classified at the FT 4 level, so that the FT 4 specifications incorporated, in concept, the FFCA 2 definitions. In late March or early April, respondent again reviewed the various position descriptions and applied the revised specifications which were still in draft form but which were essentially the same as the version that was ultimately adopted. By April 3, 1992, the classification of individual positions had been completed, and their district managers notified of the results. Employees were officially notified of the results with their April 16, 1992 pay checks. (App. Exh. 8) However, it wasn't until May that the FT specifications were formally adopted with an effective date of February 9, 1992.<sup>2</sup>

The salient point is that the discussions with the union were carried out after the effective date of the specifications, but before they reached their final form and were formally adopted. Ms. Steinmetz' written statement that FFCA 2s would be reallocated to the FT 4 level regardless of duties is consistent with Mr. Soehner's explanation that any correctly classified FFCA 2 would fit

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1991 position description removed all references to performing any forestry management responsibilities. Mr. Sleight testified that in approximately January of 1992, his name was not on a tentative reallocation list, that he wrote to his union and complained, and that his name later appeared on the FT 4 tentative list dated approximately March 27, 1992.

<sup>2</sup>In their reply brief, the appellants contend that the Commission's decision in Bernier v. DER, 92-0342-PC, established that the FT class specifications were adopted on February 9, 1992, rather than a later date. The appellants were apparently citing a proposed decision issued in the Bernier case. The final decision of the Commission, dated April 19, 1994, included the following language:

On February 9, 1992, after completing a class survey of the Department of Natural Resources (DNR) technicians, respondent reallocated appellant's position from Forest Fire Control Assistant 2 (FFCA 2) to Forestry Technician 4 (FT4).

There is no indication that the date of the reallocation decision was in dispute in the Bernier case or that the above quoted language was based upon evidence as to when the actual reallocation decision was made. In addition, this statement is *not* a finding of fact. 1993 Wis. Act 16, §3020 The parties in the Bernier case are different than those in the present disputes, so this language is not binding on the Commission here.

into the FT 4 definition statement, which includes positions performing "objective level full range of forest fire control duties which in *most* positions would *typically* include some forest management duties or comparable advanced level activities in fire administration such as training." (emphasis added) It is clear that the final specifications do not require the performance of forest management responsibilities to reach the FT 4 level, although testimony indicated that an earlier draft of the FT specifications would have required some forest management responsibilities for classification at the 4 level. All three of the appellants perform both forest fire control activities and forest management activities, thereby meeting the language of the "typical" grouping of duties in allocation 2) at the FT 4 level.

The appellants contend that the Mark Johnson (App. Exh. 5) and David Sleight (App. Exh. 6) positions are examples of positions that have been incorrectly reallocated (i.e., reallocated "regardless of duties") to the FT 4 level.

Before the survey, the Johnson position position was classified at the FFCA 1 level, and not the FFCA 2 level, based upon the fact that he only served as the Incident Commander in the absence of both the Forester/Ranger and the FFCA 2 at the Friendship Ranger Station. While Mr. Johnson testified that he performed all of the fire control duties listed within the FT 4 representative position for Forest Fire Control Technician, he still does not appear to meet the requirement of performing the "full range" of forest fire control duties. In addition, Mr. Johnson had no special fire training responsibilities<sup>3</sup>, and respondent acknowledged that he had no forest management responsibilities. (Steinmetz testimony) Mr. Johnson does spend about 30% of his time at Roche-a-Cri State Park, assisting the superintendent and providing visitor services and protection. While Ms. Steinmetz testified that these were the additional duties that moved Mr. Johnson to the FT 4, this conclusion is inconsistent with her testimony that these additional duties are the same as duties performed by individuals in other classifications assigned to pay range 8, while the FT 4 classification is assigned to pay range 10. Given that Mr. Johnson apparently does not perform the "full range" of forest fire control duties, does not perform any forest management duties, and does not perform any other duties ex-

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<sup>3</sup>He does provide certain training to LTE's, but it is limited to about 8 hours per year, and similar training is provided by others at the ranger station, including a FT 3.

cept those which are two pay ranges below the FT 4 level, it is difficult to understand the basis for the classification of the Johnson position at the FT 4 level.

The second comparison at the FT 4 level offered by the appellants is the David Sleight position. Before, the survey, Mr. Sleight's position was classified at the FFCA 2 level. His position description (App. Exh. 6) used for the survey indicates he performs the "full range" of forest fire control duties at his station, including acting as lead worker and assuming the responsibilities of the Forester in that person's absence. Mr. Sleight testified that he had no forest management responsibilities and that he only filled in for the Forester in terms of fire control duties. Ms. Steinmetz testified that this responsibility of filling in for the Forester met the standard for "advanced level activities in fire administration such as training" as set forth in the second allocation at the FT 4 level. The Commission does not agree that filling in for the Forester for fire control activities is an "advanced level activity," because "directing fire operations as the Incident Commander in the absence of the Forester/Ranger" is one of the activities that is specifically described as being included within the "*full range* of forest fire control activities." This reference to "full range" at the FT 4 level is what distinguishes the fire control positions from the FT 3 level. The specifications for the FT 3 level read, in part:

FORESTRY TECHNICIAN 3 - Positions allocated to this level perform: 1) forest fire control duties;...

Representative Positions

Forest Fire Control Technician - Performs forest fire control activities to include presuppression, suppression, and prevention. This includes such activities the operation and maintenance of complex fire fighting equipment; directing fire operations as the Incident Commander in the absence of the Forester/Ranger; coordinating and completing Fire Action Plans, Fire Program Plans and Red Flag Alert Programs; managing subarea Emergency Fire Warden Programs; conducting inspections of properties, recreation areas, industrial sites, field operations, railroad right-of-way and other hazard areas for fire management purposes; and other related activities. Some private and public lands forest management activities may also be performed but they would either be limited in their scope and complexity or the amount of time allocated.



The FT 3 and FT 4 representative positions for Forest Fire Control Technicians are very similar. The only substantive distinction is the inclusion of the phrase "full range" at the FT 4 level when referring to the forest fire control duties. This phrase is also included in allocation 2) at the FT 4 level. Nothing in allocation 2) at the FT 4 level establishes as an absolute requirement, something more than performing the "full range of forest fire control duties." The specifications indicate that *most* positions in this allocation will include either some forest management duties or some advanced level fire administration responsibilities, such as training. However, the specifications cannot be read to require either of these inclusions. Because Mr. Sleight's position is assigned the "full range" of forest fire control duties, the fact that he is not assigned either forest management or "advanced level" fire administration responsibilities does not exclude his position from the FT 4 level.

Even though it appears that the Johnson position does not meet the requirements for FT 4 level, the conclusion that that one position may be misclassified does not automatically push the appellants' positions to the FT 5 class level. The key for that determination is whether the appellants' responsibilities are better described at the FT 4 or FT 5 level. If the appellants do not meet the requirements for the FT 5 level, the question of whether or not they were lumped together with other FFCA 2s has no effect. In their post-hearing brief, page 7, the appellants contend that the agreement between the union and DER placed the appellants "in the same situation that we found ourselves in before the survey and it created inequities between the different disciplines and resulted in us being treated unfairly compared to others in our own discipline who didn't have the program responsibilities that we did." This contention amounts to a request for the Commission to rewrite the class specifications that were adopted by the respondent. In numerous previous cases, the Commission has held that it lacks the authority to rewrite the specifications to better identify the appellants' positions, Kaminski et al. v. DER, 84-0124-PC, 12/6/84, or to create a new classification, assign the classification to a particular pay range and then allocate the appellants' positions to the new classification, Smetana et al. v. DER, 84-0099, et.-PC, 8/31/84.

#### Majority of Forest Management Duties

The second general topic in these appeals is the question of whether the appellants spend a majority of their time performing "forest management"

duties, rather than fire control responsibilities. One of the two requirements set forth in the FT 5 specifications is that positions must spend a "majority of time" on forest management work. The FT specifications clearly set the FT 4 level as the highest available classification for a technician who spends a majority of time of fire control duties. In analyzing the question of the "majority" of time, the Commission is not restricted to looking at the actual time spent during the 6 months immediately preceding the reallocation decision. There is nothing in the statutes or rules which limit the Commission to looking at this particular time period in a reallocation appeal.<sup>4</sup> The appellants perform their work on a seasonal or cyclical basis, with the bulk of the forest management work occurring in the six months ending in February. They perform almost exclusively fire control work during the March, April and possibly May of each year. The Commission will look at the appellants' duties performed throughout the year in order to insure an accurate classification decision.

Often, the amount of time spent by a position on a particular set of duties can be determined by examining the applicable position description. Here, the appellants all took the view that their position descriptions accurately described their duties except in terms of the time percentages allocated to the various goals and activities. The appellants contend that these inaccuracies are due to inconsistencies between the duties listed on their position descriptions and the time reporting system they use.<sup>5</sup> According to the appellants, the time reporting system, which served as the basis for the time percentages listed on their position descriptions, forces them to record some of their time under fire control categories, even though the duties could be considered forestry management. The appellants provide the following examples:

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<sup>4</sup>The rules, in §ER 3.015(3)(b), Wis. Adm. Code, include language which bars regarding an incumbent in a position which has been reallocated, pursuant to §ER 3.01(2)(f), due to a "logical change in the duties and responsibilities of the position," until the incumbent "has performed the permanently assigned duties and responsibilities for a minimum of 6 months." However, here we are not dealing with a regrade issue and the reallocation occurred due to the "creation of new classes" and the "abolishment of existing classes," as provided in §ER 3.01(2)(b) and (c), rather than reallocation pursuant to §ER 3.01(2)(f).

<sup>5</sup>In Bluhm v. DER, 92-0303-PC, 6/21/94, the Commission concluded that the appellant's position description, though entitled to some weight, was not conclusive, because the proceeding before the Commission is a hearing de novo in nature.

1. Time spent on "administration," although considered when calculating time percentages in the appellants' position descriptions as a fire responsibility, includes time spent by the appellants answering questions from the public regarding planting trees or tree diseases.

2. Time spent by one of the appellants conducting timber theft or trespass investigations is coded as fire investigation time, even though it would technically be forest management work. However, appellant Lent, who testified to this discrepancy, stated that he only performed these investigations on rare occasions.

3. In conducting fire prevention inspections of properties for the purpose of reducing fire hazards, appellants give suggestions in terms of what trees should be cut, even though they do not mark individual trees. This inspection work is identified on appellants' position descriptions as fire control time. This activity has some comparisons to forest management work.

4. After a fire, appellants perform a fire effects appraisal, which is regarded as a fire suppression responsibility in terms of the appellants' time records. This investigation/assessment requires the appellants to determine whether fire-damaged trees will survive and their life expectancy in order to come up with an assessment of timber loss. There is some similarity between this work and the "recon" work performed in order to prepare a forest management plan for a property covered by a forest tax law. However, testimony established that both the scope and complexity of forest management recon work is greater than that required for a fire assessment. (Wiegenstein testimony) Fire effects appraisals are conducted by approximately 60 or 70 Fire Control Technicians who are classified at the FT 4 level.

The Commission agrees that the "administration" time the appellants spend answering questions regarding forest management matters rather than fire control matters, should be included as part of their forest management time. The same can be said for the nominal amount of time they spend performing timber theft or trespass investigations.<sup>6</sup> However, the last two responsibilities relate primarily to fire suppression, suppression and prevention, even though they are somewhat similar to duties which are per-

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<sup>6</sup>The examples provided under 1. and 2., together, do not indicate that a significant portion of the appellants' time is misallocated to fire control rather than to responsibilities that fall within the definition of "forest management."

formed as part of DNR's forest management responsibilities. The Commission, therefore, rejects appellants' contention that the time they spend on fire prevention inspections and fire effects appraisals should be allocated to the category of forest management.

The other consideration raised by the appellants is the evidence that during the months prior to February of 1992, there were either vacancies and extended absences in the position of ranger/forester for their stations. Worker activity H1 in the position description for appellant Stensberg, who works out of the Necedah Ranger Station, reads: "Assume responsibility for and direct the management of the ranger station in the absence of the Forest Ranger." This activity is one of three activities listed under goal H ("Administration of fire and forestry operations") which lists a 10% time allocation. Appellants Norris (Nekoosa Ranger Station) and Lent (Babcock Ranger Station) have substantially identical language and the same time percentage in their position descriptions. However, testimony of Arvid Haugen was that during the absence of the ranger at the Nekoosa Station, appellant Norris only assumed the fire control responsibilities while the forest management responsibilities were assumed by someone else. Haugen also testified that due to a vacancy in the ranger position at the Babcock Station, appellant Lent spent approximately 50% of his time between January through June of 1991 administering the station. Appellant Stensberg testified that during 1991, the ranger for the Necedah Ranger Station was absent more than 50% of the time due to training, leave and comp time. Although there was no vacancy in the position during this period, 15 weeks of absence was for the recently hired ranger to attend law enforcement school. Attendance at law enforcement school is now a requirement for all new rangers at the time of their hire. Appellant Lent testified that there have been 8 different foresters/rangers at the Babcock Ranger Station since 1980, and most of the 8 have been new employees who needed substantial training. During the same period, appellant Lent also assisted at the Sand Hill Wild Life Area due to 4 separate vacancies in the forester position there.

The position descriptions for all three appellants provide that they are to assume certain responsibilities in the absence of the forester/ranger. This represents, according to Mr. Haugen, a responsibility for filling in when the permanently assigned ranger is ill or otherwise temporarily absent. Filling in

due to a vacancy, however, is a temporary rather than a permanent assignment and is not entitled to consideration for classification purposes.<sup>7</sup>

Likewise, time spent filling in while the ranger is undergoing initial training is not a regularly recurring responsibility of the same nature as when the ranger is ill or on vacation.

To the extent the appellants Stensberg and Lent<sup>8</sup> are responsible to take over in the absence of the forester/ranger, those responsibilities would include fire control responsibilities and forest management responsibilities. They could also include other forestry duties that fall outside the scope of both of these two definitions. Therefore, there is no indication this additional responsibility would actually help the appellants in reaching the "majority" requirement. For example, even if the appellants spent 30% of their time on administrative responsibilities in the absence of the Forester/Ranger, if 4/10ths of this time related to fire control, 4/10ths to forestry management and 2/10ths to other forestry responsibilities, it would further undercut the appellants' efforts to meet the "majority" requirement.

The remaining question is how much time did each appellant spend on fire control responsibilities versus forest management responsibilities. Appellant Stensberg initially testified that he could not even make a guess as to the percentage of time he spent on forest management responsibilities, but later stated that he knew "it was over 40% and probably is somewhere between 40 and 70%."<sup>9</sup> The appellant has the burden of establishing that respondent's decision to reallocate his position to the FT 4 classification was incorrect and in doing so must show, by a preponderance of the evidence, that he spends a ma-

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<sup>7</sup>Work performed on a temporary basis does not qualify a position for reclassification, Graham v. DILHR & DER, 84-0052-PC, 4/12/85, unless the work has been performed for a number of years and the timing of future changes cannot be predicted with any degree of certainty. Fredisdorf et al. v. DP, 80-000-PC, 3/19/82. A position which, over time becomes vacant on a periodic basis, cannot be considered a permanent vacancy, just as filling in for some of the duties of the periodically vacant position cannot be considered a permanent responsibility.

<sup>8</sup>As noted above, appellant Norris only assumed fire control duties, while the forest management responsibilities were assumed by someone else.

<sup>9</sup>Appellant Stensberg subsequently stated: "If I wanted to go to extreme, I know I could be over 50% for sure with no problem." He also testified to the effect that his fire control responsibilities, would, in a typical year be about 40% or so.

majority of his time performing forest management work. Tiser v. DNR & DER, 83-0217-PC, 10/10/84. The Commission finds that appellant Stensberg has not sustained his burden of proof on this point. Mr. Stensberg observed that some of the duties which are denominated as forest management for purposes of time records

are also actually fire control duties. It goes both ways, that is why we are trying to say they are all forestry but that fire control and forest management overall so much they are basically the same thing.

Q So when you were saying you were doing 40 to 70% forest management, some of that was probably done under your forest fire protection?

A To be truthful, yes.

The Commission interprets this testimony as stating that if one took all of the appellants' fire control duties that had some aspects of forest management responsibilities and added them to Mr. Stensberg's purely forest management activities, one would end up with a total of between 40 and 70%. As noted above, it is incorrect to allocate fire control duties with aspects of forest management responsibilities to the forest management side of the ledger. In light of that conclusion and the range of time testified to by Mr. Stensberg, he has failed to sustain his burden of proof in this matter.

Appellant Norris testified that with leave time, he spent 1649 hours actually working during the one year period ending on the effective date of the reallocation. He also testified that he could come up with over 800 hours of forestry responsibilities, even though his position description only specifically identified 20% of his time on forestry management work, and that the vacancy in the ranger position had a big effect on the percentages. As noted above, time spent due to a position vacancy is not permanently assigned work and is not entitled to consideration for reallocation purposes. Again, appellant Norris cannot be said to have met his burden of proof to establish that he spent more than 50% of his time performing forest management responsibilities. In response to a question from the examiner asking him to clarify his statement that he could come up with more than 800 hours of forest management responsibilities, the appellant stated:

Using a basic program services, using some... like I say, everything is combined together so I don't know the exact hours but if I took 100% of those hours which virtually you could I could come up with over 800 hours of forestry [management].

Mr. Norris' testimony is to the effect that if he took those tasks which are part fire and part forest management, and if he considered them to be entirely forest management, he could come up with over 800 hours of forest management. This statement is not the same as testifying that Mr. Norris spent more than 50% of his time on activities falling constituting forest management work. In contrast, Mr. Norris' immediate supervisor, Mr. Zalewski, testified that Mr. Norris does not spend the majority of his time on forest management responsibilities, as those responsibilities are defined in the class specifications. Mr. Haugen also testified, as noted above, that Mr. Norris' responsibilities during a ranger vacancy only include fire control administration responsibilities, rather than forest management administration duties.

Appellant Lent did testify that more than 50% of his time was spent on forest management. However, Mr. Lent's supervisor, Mr. Zalewski, testified that Lent did not spend the majority of his time on forest management responsibilities as defined in the specifications.<sup>10</sup> Mr. Zalewski went on to state that his gut reaction was that because certain duties performed by Mr. Lent, such as the maintenance of DNR buildings, did not fall within the scope of either fire control or forest management, Lent didn't spend the majority of his time in either area. This testimony is consistent with classification of the Lent position at the FT 4 level. Also, Mr. Lent's admission that his duties were described accurately in the FT 4 representative position for "Fire Control Technician" supports the conclusion that Mr. Lent also did not sustain his burden of establishing that the majority of his time was spent on forest management responsibilities.

In their brief, on page 14, the appellants also make various arguments to the effect that it was inappropriate to establish the "majority... forest management work" requirement for classification at the FT 5 level, and to fail to identify the highest level fire control responsibilities at the FT 5 level. The

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<sup>10</sup>Appellants sought to qualify Mr. Zalewski's testimony by defining "majority" as a mere plurality, i.e. the largest of any category. However, the FT 5 specs are clear in requiring a majority of forest management responsibilities, rather than a mere plurality.

Commission has already noted that it must apply the specifications as they are written and does not have the authority to modify the specifications.

Most complex forest management responsibilities


Because the appellants have not satisfactorily established that they spend the majority of their time on forest management responsibilities rather than on any other responsibilities falling within the scope of forestry responsibilities, including fire control, it is unnecessary to reach the third main topic in these matters, that of what constitutes "most complex" forest management responsibilities.

In analyzing this matter, the Commission has not considered respondent's brief which was filed two days after it was due.

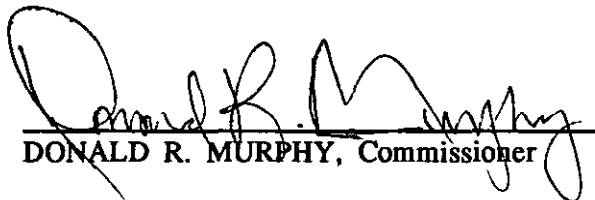
ORDER

The respondent's reallocation decisions are affirmed and these appeals are dismissed.

Dated: February 20, 1995      STATE PERSONNEL COMMISSION

  
LAURIE R. MCCALLUM, Chairperson

KMS:kms

  
DONALD R. MURPHY, Commissioner

  
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NOTICE  
OF RIGHT OF PARTIES TO PETITION FOR REHEARING AND JUDICIAL REVIEW  
OF AN ADVERSE DECISION BY THE PERSONNEL COMMISSION

**Petition for Rehearing.** Any person aggrieved by a final order (except an order arising from an arbitration conducted pursuant to §230.44(4)(bm), Wis. Stats.) may, within 20 days after service of the order, file a written petition with the Commission for rehearing. Unless the Commission's order was served personally, service occurred on the date of mailing as set forth in the attached affidavit of mailing. The petition for rehearing must specify the grounds for the relief sought and supporting authorities. Copies shall be served on all parties of record. See §227.49, Wis. Stats., for procedural details regarding petitions for rehearing.

**Petition for Judicial Review.** Any person aggrieved by a decision is entitled to judicial review thereof. The petition for judicial review must be filed in the appropriate circuit court as provided in §227.53(1)(a)3, Wis. Stats., and a copy of the petition must be served on the Commission pursuant to §227.53(1)(a)1, Wis. Stats. The petition must identify the Wisconsin Personnel Commission as respondent. The petition for judicial review must be served and filed within 30 days after the service of the commission's decision except that if a rehearing is requested, any party desiring judicial review must serve and file a petition for review within 30 days after the service of the Commission's order finally disposing of the application for rehearing, or within 30 days after the final disposition by operation of law of any such application for rehearing. Unless the Commission's decision was served personally, service of the decision occurred on the date of mailing as set forth in the attached affidavit of mailing. Not later than 30 days after the petition has been filed in circuit court, the petitioner must also serve a copy of the petition on all parties who appeared in the proceeding before the Commission (who are identified immediately above as "parties") or upon the party's attorney of record. See §227.53, Wis. Stats., for procedural details regarding petitions for judicial review.

It is the responsibility of the petitioning party to arrange for the preparation of the necessary legal documents because neither the commission nor its staff may assist in such preparation.

Pursuant to 1993 Wis. Act 16, effective August 12, 1993, there are certain additional procedures which apply if the Commission's decision is rendered in an appeal of a classification-related decision made by the Secretary of the Department of Employment Relations (DER) or delegated by DER to another agency. The additional procedures for such decisions are as follows:

1. If the Commission's decision was issued after a contested case hearing, the Commission has 90 days after receipt of notice that a petition for judicial review has been filed in which to issue written findings of fact and conclusions of law. (§3020, 1993 Wis. Act 16, creating §227.47(2), Wis. Stats.)

2. The record of the hearing or arbitration before the Commission is transcribed at the expense of the party petitioning for judicial review. (§3012, 1993 Wis. Act 16, amending §227.44(8), Wis. Stats. 2/3/95