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GERRY G. BEVER, \*

Appellant, \*

v. \*

Secretary, DEPARTMENT OF \*

NATURAL RESOURCES, and \*

Secretary, DEPARTMENT OF \*

EMPLOYMENT RELATIONS, \*

Respondents. \*

Case No. 92-0749-PC \*

\* \* \* \* \*

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 from Natural Resource Supervisor 3 (NRS 3) to Natural Resource Supervisor 4 (NRS 4).

FINDINGS OF FACT

1. At all times relevant to this appeal, appellant has been employed in the classified civil service in a position with the working title of Park Falls Area Fisheries Manager, and classified as NRS 3.<sup>1</sup>

2. The duties and responsibilities of appellant's position are essentially accurately set forth in a position description (PD) signed by appellant on November 16, 1990 (Respondent's Exhibit 2), and are summarized on this PD as follows:

- 35% a) Administers and supervises the fisheries management program for the Park Falls area, which consists of Price, Rusk, Sawyer, and Taylor Counties. also administers and supervises the fishery management program for the Chequamegon National

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<sup>1</sup> This position was reallocated in 1992 to a Fisheries Supervisor classification as the result of a survey. However, the reclassification request and denial was based on the pre-existing position standard, and this appeal is unaffected by the survey and reallocation.

Forest, which includes substantial acreage in each of the foregoing four counties plus Ashland and Bayfield Counties, pursuant to a contract between DNR and the U.S. Forest Service that amounts to about \$100,000.00 annually. This activity involves coordination with four assistant area fish managers that have jurisdiction within the Chequamegon National Forest.

- 25% b) Assesses and monitors the impact of Native American fishing. This activity includes service on a technical working group which deals with a number of issues concerning Native American fishing, and which includes other DNR employees and members from the Great Lakes Indian Fish and Wildlife Commission. This activity also includes the development and implementation of programs to assess the impact of Native American fishing on the sport fishing harvest.
- 5% c) Implementation of biological investigations and management of waters utilizing fishery science principles to protect or enhance the fishery resource
- 5% d) Protection of aquatic habitat and water quality.
- 1% e) Minimize the detrimental impacts and accentuate the positive benefits of hydropower facilities or the fisheries in the Park Falls area.
- 4% f) Provide public access and facilities.
- 2% g) Acquire lands for habitat protection enhancement and development.
- 22% h) Coordination and implementation of external assistance, cooperation, information and education program that includes the coordination of cooperative management programs with the U.S. Forest Service, public relations activities, etc.

- 1% 1) Provide direction of assistance in the development and implementation of the Affirmative Action/Equal Employment Opportunity Program.

3. Appellant's position is responsible for the supervision of three permanent professional manager positions, four non-professional permanent positions, and several LTE positions.

4. The NRS position standard (Respondent's Exhibit 1) includes the following definitions and representative positions:

NATURAL RESOURCE SUPERVISOR 3 (PR 1-14)

Definition:

This is very responsible professional supervisory resource management work. Positions allocated to this class typically function in one of the following capacities: 1) as an area program manager responsible for the implementation of all fish, forest management, fire control, or wildlife programs in a designated area of a DNR district..

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Representative Positions:

Area Fish Manager. reporting to the Area Director, this position is responsible for planning, coordinating, and supervising subordinate professional and paraprofessional positions in the management of all fish programs in a designated area (typically three counties) of a DNR district. The objective of enhancing and maintaining fish populations and habitats is achieved by planning, coordinating, and conducting lake and stream surveys; developing and implementing management recommendations based upon survey results; developing long-range program management plans; controlling budget expenditures; developing and coordinating the work of subordinate staff.

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NATURAL RESOURCE SUPERVISOR 4 (PR 1-15)

Definition.

This is very responsible professional supervisory resource management work. Positions allocated to this class typically function in one of the following capacities... 3) as an area

program manager responsible for the implementation of the assigned resource program in a designated area of a DNR district where the extent and complexity easily distinguishes it from the objective level area manager at the Natural Resource Supervisor 3 level.

5. In comparison to other NRS 3 area fish managers, appellant's position has a stronger supervisory responsibility in that it supervises three biologists and three technicians, whereas the others have one or two biologists and one to three technicians. The other primary distinguishing features about appellant's position are its involvement with the Chequamegon Forest, the U.S. Forest Service contract and its participation on the technical working group involved with Native American fishing activities. While the duties and responsibilities of appellant's position have a greater extent and complexity than other NRS 3 area fish manager positions, the differential is not such as to "easily distinguish it from the objective level area manager," NRS 4 definition, Respondent's Exhibit 1. The NRS 3 position at Oshkosh occupied by Ronald Bruch (Respondent's Exhibit 9) has the kind of area fish manager duties and responsibilities similar to the NRS 3 representative position, and in addition has responsibility for the administration and supervision of the Winnebago Comprehensive Management Plan, which involves multiple and overlapping DNR programs (fish, wildlife, wetland protection and restoration, etc.), which extend beyond area and district jurisdictions, and the necessity of working with other DNR and state, local and federal governmental units. The NRS 3 position at Marinette occupied by Thomas Thuemler (Respondent's Exhibit 10) has the kind of area fish manager duties and responsibilities similar to the NRS 3 representative position, and in addition has responsibility for overseeing a contract with the U.S. Forest Service for fish management within the Nicolet National Forest, and for coordination and negotiations with Michigan regarding boundary waters with that state. The NRS 3 position at Antigo occupied by Max Johnson (Respondent's Exhibit 11) also has typical area fish manager duties, but in addition, is the only area with responsibility for a complex, multi-district spring pond dredging program.

6. In comparison to the NRS 4 positions that were included in the record, appellant's position is not equivalent in terms of extent and complexity. The NRS 4 position at Bayfield occupied by Bruce Swanson (Respondent's Exhibit 7) has typical area fish manager responsibilities, and in addition has both inland and Lake Superior waters, and responsibility with respect to commercial as well as sport and Native American fishing. The NRS 4 position at Cumberland occupied by Thomas Beard (Respondent's Exhibit 8) has typical area fish manager duties and responsibilities, and in addition has a 35% district-wide component for direction of the Treaty Fishery Assessment Work Unit (TFAWU) program in the Northwest District. This activity involves coordination budgeting, staffing, assessment, and central office input.

7. By a memo dated July 13, 1992, (Respondent's Exhibit 6) respondent DNR decided that appellant's position was appropriately classified at the NRS 3 level as opposed to the NRS 4 level.

#### CONCLUSIONS OF LAW

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

2. Appellant has the burden of proof to establish by a preponderance of the evidence that respondent's decision to retain the classification of appellant's position at the NRS 3 level was incorrect.

3. Appellant having failed to sustain his burden, it is concluded that respondent's decision to retain the classification at the NRS 3 level was not incorrect.

#### OPINION

The essential distinction between the NRS 3 and 4 levels is set forth in the NRS 4 definition (Respondent's Exhibit 1) as follows: "... an area program manager responsible for the implementation of the assigned resource program in a designated area of a DNR district where the extent and complexity easily distinguishes it from the objective level area manager at the Natural Resource Supervisor 3 level" (emphasis added). Appellant's case

included testimony about certain distinctive facets about this position that were deemed noteworthy by the witnesses, but with respect to which there was not a ready basis of comparison to other positions. These include, for example, testimony about the extensive non-resident use of resources in Sawyer County. However, for the most part the record did not include evidence to make a significant case that these factors "easily distinguished" appellant's position from other NRS 3 positions. The three facets of appellant's position with respect to which there was more significant evidence of this nature are:

- (1) Staffing level - appellant's position has supervisory responsibility for three professional and four technical positions, whereas most of the other area fisheries managers supervise one or two fish managers, at most.
- (2) Responsibility for administration of the DNR/USFS Contract Program, with an annual budget of approximately \$100,000.00, with respect to federal land in the Chequamegon National Forest, which has significant acreage in Ashland and Bayfield Counties, in addition to the four counties that comprise the Park Falls Area.
- (3) Responsibility for serving on the Technical Working Group, which consists of members of the Great Lakes Indian Fish and Wildlife Commission as well as a number of DNR employees, as well as other responsibilities with respect to Native American fishing.

All three of these factors contribute to the "extent and complexity" of appellant's position. The determination of whether they are enough to easily distinguish appellant's position from other objective level area manager positions requires a weighing process and involves a "judgment call." Respondent DNR's decision, after going through this process, was that appellant's position was not easily distinguishable from other objective level positions in terms of scope and complexity. Appellant had the burden of proof to establish by a preponderance of the evidence presented at the hearing that

respondent erred in its decision. While in the opinion of the Commission this is a relatively close case, appellant failed to satisfy his burden.

While all three of these factors strengthen appellant's position, there are countervailing factors on which DNR relied in reaching its decision. The U.S. Forest Service contract, while of some significance, has not on this record been distinguished from the nature of the other fish management work appellant performs on state or private land. Other objective level area managers have somewhat similar responsibilities. With respect to appellant's treaty-related responsibilities, these primarily are restricted to his area. His service on the Technical Working Group with the Great Lakes Tribal and Fisheries Commission is a relatively small percentage of his time. His work in this area can be distinguished from NRS 4 level positions which have district-wide responsibility in this area that includes budget, staffing, and dealings with the central office in Madison. In addition to these distinctions, respondent also stressed the fact that other NRS 4 level positions also had Great Lakes fisheries management responsibility in addition to inland waters. With respect to the difference in staffing levels between appellant's position and the other NRS 3 positions, while this supports appellant's case, it is insufficient to outweigh the countervailing factors.

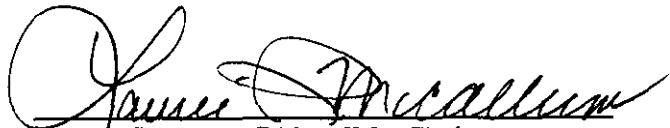
Based on this record, and particularly in light of the requirement in the NRS 4 position standard that the "extent and complexity [of the position] easily distinguishes it from the objective level ", the Commission is unable to reach the conclusion that respondent erred when it reached the foregoing conclusion. Basically, what emerges from this record are differences in opinion concerning the weight to attach to the various factors discussed above. In order to have been in a position to have satisfied his burden of proof, appellant apparently would have had to have broken down the various area manager positions in more detail to have permitted a more exacting comparison on the basis of the classification factors set forth in the position standard. This is not to say that such a process would have resulted in either a clear comparison or a definitive conclusion that appellant's position should be at the NRS 4 level. However, given the nature of the positions and the programs involved on this record, the more conclusory kinds of opinions and

other evidence appellant offered fell slightly short of carrying his burden of proof.

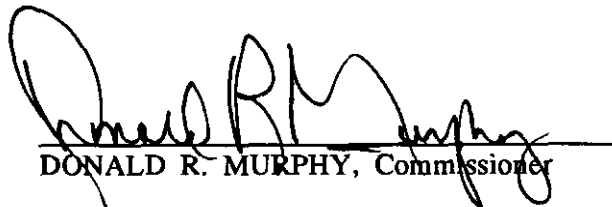
ORDER

Respondent's action of retaining the classification level of appellant's position at the NRS 3 level is affirmed, and this appeal is dismissed.

Dated: March 10, 1993 STATE PERSONNEL COMMISSION

  
LAURIE R. McCALLUM, Chairperson

AJT:dkd

  
DONALD R. MURPHY, Commissioner

  
GERALD F. HODDINOTT, 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 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 per



sonally, 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.