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RON ELLINGSON,

Appellant,

v.

Secretary, DEPARTMENT OF
NATURAL RESOURCES, and
Secretary, DEPARTMENT OF
EMPLOYMENT RELATIONS,

Respondents.

Case No. 93-0057-PC

* * * * *

FINAL
DECISION
AND
ORDER

A proposed decision was issued in this matter on March 20, 1996. Respondent filed objections thereto. After considering the record and the arguments of the parties, and having consulted with the hearing examiner, the Commission rejects the conclusion reached in the proposed decision.

One important question raised by this appeal is whether the appellant, an employe of the Department of Natural Resources, Bureau of Parks and Recreation, was a supervisor in August of 1991, when a reclassification request was submitted for his position. The appellant seeks reclassification from Natural Resource Specialist 7-Management to Natural Resource Administrator 2. Both classifications were created in 1985 and were abolished on April 19, 1992, pursuant to the Science Survey.

The appellant's position description, signed on August 5, 1991, reflects a working title of "Unit Leader, Development and Accessibility Unit." The position description shows the appellant spends 50% of his time directing the preparation of the capital improvement budget for the Bureau of Parks and Recreation and performing related responsibilities. Another 30% of the appellant's time is spent guiding a department-wide effort to insure accessibility for persons with disabilities.

At the time of his reclass request, the appellant reported to Kermit Traska, chief of the Property Operations Section. Mr. Traska, whose position is classified at a Natural Resources Administrator 3 level, in turn reports to the director of the Bureau of Parks and Recreation, David Weizenicker.

On a date earlier in 1991, the Bureau had been reorganized, resulting in the structure set forth above. Prior to the reorganization, the appellant's position was at the section chief level so that he reported directly to Mr. Weizenicker.

Both Mr. Weizenicker and Mr. Traska testified that appellant served as a supervisor during the period relevant to his reclassification request. The appellant supervised two permanent positions, one a .5 FTE position at the Program Assistant 1 level, and the other a .75 FTE position at the Program Assistant 3 level, as well as several limited term employees. Appellant testified that he performed the full range of supervisory responsibilities for these positions, including the responsibility "for effectively recommending the hire, transfer, suspension, layoff, recall, promotion, discharge, assignment, evaluation, discipline, and adjustment of grievances."

The position standard for the Natural Resource Specialist series contains the following language:

Inclusions

This series encompasses the professional nonsupervisory resource management positions which are located predominantly within the Department of Natural Resources.... [T]hese positions are of the following types:

* * *

D. Positions engaging predominantly in executive and management functions including the formulation, determination, and implementation of management policy are allocated to the management designated classifications.

* * *

Exclusions

A. All supervisory and confidential positions are excluded from this series.

* * *

NATURAL RESOURCE SPECIALIST 7 - MANAGEMENT (PR 1-15)

Definition:

This is advanced resource management program coordinative work. Positions allocated to this class typically function in one of the following capacities... (4) as a central office staff specialist responsible for developing and monitoring a statewide resource management program of major scope which has a significant impact on inter-state commitments and a large segment of the public.

The position standard for the Natural Resource Administrator series includes the following language:

Inclusions

* * *

Positions allocated to this series are primarily responsible for program policy development and/or implementation. Additionally, all positions allocated to this series must function as "true" employe supervisors with responsibility for effectively recommending the hire, transfer, suspension, layoff, recall, promotion, discharge, assignment, evaluation, discipline, and adjustment of grievances of subordinate permanent employes.

Exclusions

Although positions allocated to this series are administrative/managerial in nature, they all require significant background and experience in one or more of the natural resource or environmental protection program areas. Administrative positions which do not require this background or experience are not allocated to this series. Other types of positions which are not allocated to this series include:

- A. Supervisory positions in the natural resource or environmental protection areas which are not considered to be primarily administrative/managerial in nature;
- B. Positions which are specifically identified by other classification series; or
- C. Nonsupervisory positions.

* * *

II. CLASS DEFINITIONS AND REPRESENTATIVE POSITIONS

The following definitions of duties and responsibilities and listings of representative positions provide examples and patterns for both present and future position allocations.... This position standard does not attempt to cover every eventuality or combina-

tion of duties and responsibilities either as they currently exist or may exist in the future.

* * *

NATURAL RESOURCE ADMINISTRATOR 2 (PR 1-17)

Definition:

Positions allocated to this class typically function in one of the following capacities... 3) as the line deputy to a bureau director meeting the criteria for the Natural Resource Administrator 3 level; 4) as the assistant director of a bureau which has no line deputy but whose director meets the criteria for the Natural Resource Administrator 4 level... or 5) as a section chief responsible for a significant statewide program within a major bureau including planning, directing, implementing and monitoring of department policies statewide.

The Commission has previously held that a supervisor need not have more than one subordinate employe in order to meet the definition in §111.81(19), Stats. That subsection provides:

"Supervisor" means any individual whose principal work is different from that of the individual's subordinates and who has authority, in the interest of the employer, to hire, transfer, suspend, layoff, recall, promote, discharge, assign, reward or discipline employes, or to adjust their grievances, or to authoritatively recommend such action, if the individual's exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

In McKnight v. DER, 92-0493-PC, 5/2/94, the appellant had appealed a decision reallocating his position to the Environmental Analysis and Review Specialist-Advanced classification, which specifically excluded supervisory positions. Mr. McKnight contended his position was better described at either the EAR Supervisor or Manager classifications which specifically required supervisory responsibility. Respondent moved for summary judgment and the Commission denied the motion:

While there may be some dispute between the parties as to whether the appellant has been delegated the full range of supervisory responsibility with respect to the [sole allegedly subordinate] position, that potential dispute would be moot if the Commission were to conclude that, as a matter of law, a "supervisor" must have more than one subordinate in order to meet the definition set forth in §111.81(19). In support of its

reading of the statute, the respondent relies on the references in it to "subordinates" and "their grievances." However, respondent's analysis is contrary to §990.001(1), Stats., which provides:

In construing Wisconsin laws the following rules shall be observed unless construction in accordance with a rule would produce a result inconsistent with the manifest intent of the legislature:

(1) SINGULAR AND PLURAL. The singular includes the plural, and *the plural includes the singular.* (Emphasis added)

There is nothing in §111.81(19) which reflects a "manifest intent" of the legislature to require more than one subordinate in order to be considered a supervisor. It would have been very easy, if the legislature had intended such a result, to specifically reference "two or more subordinates" in the definition. Because there is no contrary "manifest intent," the Commission is required by §990.001(1) to read the definition of "supervisor" in §111.81(19) to include individuals who have only one subordinate and who otherwise meet that definition.

The description of the term "supervisor" used in the NRA position standard tracks the statutory definition. There is nothing in the position standard for either the Natural Resource Specialist series or the Natural Resource Administrator series that specifies or suggests an individual must oversee at least two full-time positions in order to be considered a "supervisor."

In Smetana v. DNR & DER, 898-0055-PC, 2/12/90, the Commission concluded that supervision of permanent and non-permanent employees could not be strictly equated for classification purposes, given that permanent employees have more rights and their supervision entails more responsibility. Based on this reasoning, the Commission will not consider subordinate LTEs in determining whether or not the appellant qualifies as a supervisor within the meaning of the class specifications at issue.

As noted above, the evidence clearly indicates that appellant acted as the supervisor for two permanent part-time Program Assistant positions.¹ He

¹The record includes two position descriptions for the appellant's position. Both position description forms include lines asking the following questions: "Does this position supervise subordinate employees in permanent positions? [yes] [no] If yes, complete and attach a supervisory position analysis form (DER-PERS-84)." The appellant's 1985 position description has a check in the box marked "yes." The 1991 position description has a typed "x" in the "yes" box, with that "x" crossed off and a handwritten "x" in the "no" box. Mr. Traska

performed the full range of supervisory responsibilities. Respondents suggest that an employe must work more than 50% time in order to be considered a subordinate for classification purposes. Even if the Commission accepted this contention, the appellant would be considered a supervisor because one of the two Program Assistant positions is a 75% position.

Respondents contend the appellant's position does not meet the Natural Resources Administrator requirement that it be "primarily administrative/managerial in nature" because it is below the section chief level and the NRA specifications only identify managerial positions at or above the section chief level. This contention also has no support in the language of the specifications. In addition to referencing section chiefs, the allocation pattern set forth in the NRA 1 definition lists both the director of an office and the assistant director of an office. Nothing in the specifications suggests an assistant director of an office is at or above the organizational level of a section chief.

While the NRA specifications do not define "primarily administrative/managerial in nature," the "Inclusions" section of the NRA position standard does refer to positions "primarily responsible for program policy development and/or implementation." In interpreting the language in the NRA specifications, it is helpful to consider the alternative classification being advanced by respondents for appellant's position. The Natural Resource Specialist position standard includes three "Management" designated classifications at the NRS 6, 7 and 8 levels. The NRS position standard differentiates "Management" from the non-management classifications with the following language:

D. Positions engaging predominantly in executive and management functions including the formulation, determination, and implementation of management policy are allocated to the management designated classifications.

This standard for "Management" in the NRS position standard appears to be equivalent to the "primarily administrative/managerial" requirement for the NRA series. If respondents take the position the appellant meets the "Management" requirement for classification at the NRS 7-Management classification, it is difficult to understand how they can contend the appellant does

testified he did not make the change and that he should have attached a supervisory analysis form, but did not.

not meet the "primarily administrative/managerial" requirement for classification at the NRA 2 level.

The appellant's supervisory position is expressly excluded from the NRS 7-Management classification.

However, the fact that appellant's position is excluded from one classification does not mean that appellant has sustained his burden of establishing that his position falls within the alternative classification, NRA 2, identified in the issue for hearing. It is the appellant's burden to show that his position is correctly classified at the higher or requested level rather than merely showing that the decision to classify his position at the lower level was incorrect. Svensson v. DER, 86-0136-PC, 7/22/87. In that case, the respondent had conceded that the appellant's position was not properly classified at the Tourist Promotion Representative 3 level, but because the appellant was unable to show that his position was correctly classified at the only other classification level identified in the issue for hearing, Administrative Assistant 5, the respondent's decision denying the appellant's request to reclassify his position was affirmed.

In the present case, respondents contend that in order to be classified at the NRA 2 level, the appellant's position must meet one of the five allocations identified at that level. At least theoretically, a position could be properly classified at the NRA 2 level even though it was not identical to any of the five allocations set forth in the definition. The definition statement describes positions which "*typically* function" in one of the five listed capacities. Elsewhere, the specifications clarify that the definitions "provide examples and patterns" of positions, but the standard "does not attempt to cover every eventuality." If the appellant could identify one or more positions which had been classified at the NRA 2 level even though they did not fit within one of the five allocations and if the appellant could also show that his position was substantially similar to those positions, he most likely would have sustained his burden in this matter.

Here, the appellant acknowledged his position did not fit within any of the five allocations listed at the NRA 2 level. The NRA series clearly emphasizes a position's reporting relationship in establishing the proper class level. The appellant's position in the central office was designated a unit leader and reported to a section chief. Appellant did not serve as a section chief.

Appellant did not establish that any central office unit leader position had been classified at the NRA 2 level. Respondent's classification analyst, Susan Steinmetz, testified that she was unaware of any changes to the NRA 2 allocations. She also testified that there were no unit leader positions classified in the NRA series. The unit leader of the Park Finances & Technical Services Unit, Rod Nelson, was classified as a Natural Resource Specialist rather than in the NRA series. Appellant's supervisor, Mr. Traska, offered ambiguous testimony relating to the classifications of the central office positions of unit leader, Visitor Services Unit, and unit leader, Trails Unit. The parties stipulated that the latter position was filled by Mr. Moorman via promotion at the Parks and Recreation Supervisor 1 level, effective October 19, 1992. This promotion occurred after the NRS and NRA series had been abolished, so the classification of the filled position is not material to the present dispute. The testimony as to the classification of the unfilled position is vague and to the extent it suggests that the unit leader of the Trails Unit had been approved to be filled at the NRA 2 level, this suggestion is contrary to the testimony of Ms. Steinmetz. Mr. Traska's testimony as to the position of unit leader of the Visitor Services Unit was also unclear, but to the extent he was suggesting it may have been approved to be filled at the NRA 2 level, that suggestion is also contrary to the Steinmetz testimony.²

Therefore, the Commission must conclude that the appellant did not sustain his burden of establishing that his position could be properly classified at the NRA 2 level. Even though the record showed that the appellant's position was not properly classified in the Natural Resources Specialist series, respondents' decision must be affirmed.


²The position of unit leader of the Visitor Services Unit was never filled.

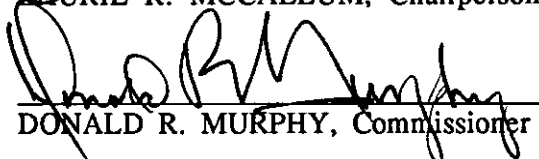
ORDER

Respondents' decision denying the request to reclassify the appellant's position from Natural Resource Specialist 7-Management to Natural Resource Administrator 2 is affirmed and this appeal is dismissed.

Dated: May 28, 1996 STATE PERSONNEL COMMISSION

KMS:kms
K:D:Merits-reclass (Ellingson)2


LAURIE R. MCCALLUM, Chairperson


DONALD R. MURPHY, Commissioner


JUDY M. ROGERS, Commissioner

Parties:

Ron Ellingson
DNR
P.O. Box 7921
Madison, WI 53707-7921

George E. Meyer
Secretary, DNR
P.O. Box 7921
Madison, WI 53707-7921

Jon E. Litscher
Secretary, DER
P.O. Box 7855
Madison, WI 53707-7855

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