

CORY CARTER,
Appellant,

v.

**Secretary, DEPARTMENT OF NATURAL
RESOURCES, and Secretary,
DEPARTMENT OF EMPLOYMENT
RELATIONS,**
Respondents.

DECISION AND ORDER

Case No. 97-0052-PC

A hearing was held on the above-noted appeal on November 4, 1997. All parties elected at the close of hearing not to present oral or written arguments.

The issue for hearing was established at a prehearing conference held on August 5, 1997, as shown below:

Whether respondents' decision, to deny the request for reclassification of appellant's position from Air Management Specialist-Senior to Air Management Specialist-Advanced, was correct.

The Classification Specification

The classification criteria for appellant's position are detailed in the Air Management Specialist (AMS) classification specification (Class Spec). The AMS series has five classification levels including (from lowest to highest): entry, developmental, objective, senior, and advanced. Respondents felt the duties of appellant's position were best described at the AMS-Senior level. Appellant's witness (and prior supervisor), Ralph Patterson, conceded that appellant's job meets all the requirements at the senior level. The Class Spec definition of the senior level is shown below:

AMS, Senior

Positions allocated to this level include senior AMS. Positions at this level differ from lower level positions in that the specialist develops and follows broadly defined work objectives and the review of the work is limited to administrative evaluation by the supervisor. Positions at this level have extensive authority in carrying out their assigned responsibilities. This involves independent implementation of assigned duties and recognition of having developed specialized knowledge in a specific program area, or requiring coordination of diverse segments of the program to accomplish program specific

objectives such as administrative rule development. Work performed at the senior level requires a high degree of coordination, interpretation and creativity in the application of scientific judgment. Senior level positions may also review the work products of other staff positions for completeness. Specialists at this level may be considered an authority for a specific segment of the program. Positions at this level typically function as: (1) a senior area/district AMS responsible for developing, administering and evaluating the air management program in the assigned geographic area; (2) a senior district AMS responsible for developing, administering and evaluating a major portion of the air management program being implemented districtwide; (3) a senior central office AMS responsible for serving as the assistant to a higher-level AMS/supervisor having responsibilities for a major aspect of the program, or (4) as a program specialist responsible for the implementation of a program which is smaller in scope and complexity and does not have the interaction and policy development that is found at higher levels. In order to be designated at this level positions must be differentiated from the objective level by their depth and extent of program involvement, the number and complexity of the program(s) managed, and the complexity and uniqueness of the program in the assigned area.

Appellant feels the duties of his position are better described at the AMS-Advanced level. Respondents agree that his duties meet some of the advanced criteria. The table below lists the advanced-level criteria and indicates whether the parties dispute that appellant's position meets the criteria.

AMS-Advanced Criteria	Disputed?
1. Positions typically serve as the department expert for a significant segment of the air management program. ¹	1. Disputed.
2. The area of responsibility includes: a) a significant segment of the air management program and will normally cross program boundaries, b) require continually high-level and complex contacts with a wide variety of government entities, business industry, and private citizens regarding highly sensitive and complex air management issues and c) have significant regulatory and programwide policy impact.	2a. Undisputed. 2b. Disputes continually high level contacts and highly sensitive issues. c. Disputes significant program-wide policy impact.
3. The area of expertise will: a) represent an important aspect of the program, b) involve a significant portion of the position's time and c) require continuing expertise.	3a. Undisputed. 3b. Undisputed. 3c. Undisputed.

¹ A second allocation pattern is recited in the Class Spec but omitted here. The omitted pattern pertains to positions located in a district office whereas appellant's position is located in the central office.

4. The knowledge required at this level is both more in-depth and of a wider range than that found at the AMS-Senior level.	4. Disputed.
5. Positions at this level develop and follow broadly defined work objectives with the review of work being limited to broad administrative review.	5. Disputes that appellant developed the work objectives.
6. Positions have extensive authority to deal with top officials, both within and outside the department, especially in highly sensitive and complex statewide, interstate and/or national issues.	6. Disputes that the contacts involved highly sensitive issues.
7. These positions are responsible for: a) developing, implementing, monitoring and evaluating statewide policies and programs and b) function under general supervision, c) work independently, and d) are considered to be the statewide expert in their assigned program area.	7a. Disputed. 7b. Undisputed. 7c. Undisputed. 7d. Undisputed.
8. In order to be designated at this level, the position must be easily distinguishable from positions at the Senior level by the scope and complexity of the responsibilities.	8. Disputed.

Appellant's Position

Appellant worked (at times relevant to this appeal) in the central office of the Department of Natural Resources (DNR) in the Bureau of Air Management (hereafter, "Bureau"). His position was located in the Emissions Inventory Unit of the Bureau's Planning Section. The position description (PD) submitted with his reclassification request is true and correct as to time percentages and duties noted therein. (Exh. A-2) It is appellant's work with the "diskette program" which made him decide to file a reclassification request.

The diskette program is part of DNR's Air Emissions Management System (AEMS). The process begins with companies (2,600) reporting annually regarding the pollutants which their businesses contribute to the air quality in Wisconsin.

Appellant's diskette program is the first step of the AEMS. Appellant receives the pollution-reporting data from the companies and places it into the AEMS to create a database used for many other purposes. He exercises scientific judgment in this process to help ensure the reliability of the data base. For example, based on his training and experience he is able to detect such errors as an incorrect reporting of a company's "collector efficiency" which requires knowledge of the company's pollution-control system and its effectiveness. (See pp. 2-3, Exh. A-14, as supplemented by appellant's testimony.) There is no requirement that an individual trained in environmental issues be used by companies to report the data and, accordingly, reporting errors do occur. Only about 30% of the reporting companies (the larger ones) have trained staff available to complete the reports.

The remaining steps of the AEMS are the responsibility of someone other than the appellant. The second step is to take the information generated by the diskette program and to process it into a large inter-connected data base. The third step is to take the system created by the second step and to place it in a separate federal computer system which is a prerequisite for receipt of grant money from the federal Environmental Protection Agency (EPA). The system created in the third step is referred to as the Aerometric Information Retrieval System/Air Facility Subsystem (AIRS/AFS), which is comprised of at least the following components: air quality data, compliance information, and mapping and emission trend analysis by computer modeling.

The AEMS is vital to DNR's operation. DNR depends on the system for planning, for issuing permits as required by the EPA, and for assessing emission fees to each reporting company which accounts for about 50% of the revenue source for the Air Management Program (about \$8.5-9 million/year). The information contained in the AEMS is public information. It is used to help companies reduce their pollution emissions. Congress relies on the information to regulate national emission requirements.

Appellant's duties in relation to the diskette program are shown below as recited in Goal A of his PD. The break-down of the total percentage of time for Goal A was provided by testimony from Ralph Patterson, who was appellant's supervisor at the time the reclassification request was submitted.

TIME % GOALS AND WORKER ACTIVITIES

- | | |
|-----|---|
| 50% | A. Directs the annual statewide effort to collect air emissions inventory data. |
| 10% | A1. Maintain the air emission inventory diskette program that collects data from air pollutant emitting sources within the state. Make changes to the computer program when errors are identified. Enhance the computer program when enhancements are deemed necessary. |
| 15% | A2. Conducts training of company representatives in training courses established across the state through January and February. |
| 15% | A3. Answer questions regarding the air emission inventory diskette program from companies that are running the diskette program. |
| 10% | A4. Coordinate the loading of data from the air emission inventory computer program into the Air Emission Management System (AEMS) database. |

Mr. Patterson testified that appellant must use scientific judgments to perform the duties described in A2 and A3 above (a maximum of 30% of the position's time). He also

indicated scientific judgments were required to perform duties B2 and B3, which are shown below.

- 10% B2. Develops quality assurance computer programs to check information in the AEMS database to ensure the information is consistent across companies that have similar manufacturing processes.
- 15% B3. Modify data in AEMS (with the approval of district or regions) to make it accurately reflect the operation of the company in the prior year.

Analysis of Appellant's Position to the Class Specs

Some of the most complex tasks performed by appellant relate to the nature of the diskette computer program. The complexity of the computer program is shown in Exhibit A-14. Appellant did not write the program but he has to work with it, train others how to use it, assist with de-bugging problem areas, advise users what computer equipment would be compatible with the system and help users install the program. Appellant relied a great deal at hearing on tasks of this nature as justification for his reclassification. Such reliance is unsupported by the Class Spec which keys on scientific knowledge related to air pollution, as opposed to knowledge of computer programs and equipment. Furthermore, the pay range associated with the level of computer tasks performed by appellant is lower than the AMS - Advanced level (testimony of J. Kaufmann). Appellant's position, however, is included appropriately in the AMS Class Spec because the majority of his job tasks involve knowledge and experience in air pollution issues. (Per Mr. Patterson's testimony, 55% of appellant's job requires such knowledge as noted by PD tasks A2, A3, B2 and B3.)

It is undisputed that appellant's position serves as the DNR expert for the diskette program which is part of the Bureau's emission inventory function. The disputed question is whether the diskette program is a "significant segment" of the air management program. (See item #1 in above table.) Respondents contend the phrase should not be interpreted to include appellant's position which is responsible for only one component of the AEMS function. Appellant established that respondents have interpreted the phrase "significant segment" of the air management program to include positions which perform a component of DNR's computer pollution modeling. (See, for example, Exh. A-4, Sims PD.) Respondents were unable to provide a persuasive explanation to distinguish complainant's situation (one of several positions responsible for a component of the AEMS) from the modelers' situation (where several positions perform different components of the modeling function). Accordingly, the Commission concludes that appellant's position meets this requirement of the Class Spec.

It is undisputed that appellant's position has high-level and complex contacts with DNR staff as well as with a variety of government entities, industry and private citizens regarding complex air management issues. (See item #2b in above table.) What is disputed is whether the contacts "continually" involve "high-level contacts" about "highly sensitive issues." Appellant did not meet his burden of proof on this dispute. He did not establish that his numerous contacts were continually at a high level and about highly sensitive issues. Some of his contacts were with high-level individuals in an industry, for example. Even these contacts, however, mostly related to the diskette program which was not a highly sensitive issue. It appeared the majority of his contacts were with users of the diskette program attempting to work out bugs with the system or to resolve scientific questions; for example, his assistance to district staff as described at hearing by Thomas Stibbe. The Commission acknowledges that some of appellant's contacts regarded confidential information relating to a company's patent information which could meet the "highly sensitive" requirement, but appellant failed to show that such contacts occurred with sufficient frequency to meet the "continually" requirement.

Respondents next dispute whether appellant's area of responsibility has a significant "programwide policy impact" (see item #2c in the above table). Appellant did not meet his burden of proof in regard to this requirement. The diskette program creates a database utilized by other positions for various regulatory functions and, eventually, results in programwide impact such as Congressional establishment of emission level requirements. Appellant's role is too far removed from these end results to count as a classification factor for his own position. A gross analogy would be to say the positions who type the policy papers enable the implementation of the policy by others. Clearly, the typist positions would not receive credit for classification purposes for the ultimate use of the typed product. Furthermore, there is no indication that complainant's position has any policy impact. The term "policy" is defined in the Class Spec (in relevant part) as a "broad guideline or framework within which decisions are made regarding the distribution of program resources or benefits." While one end result of the diskette program is the generation of operating funds through emission fees, there was no evidence that the diskette program otherwise contributed to a "broad guideline or framework within which decisions are made regarding the distribution of program resources or benefits."²

² It does not appear that the AMS-Advanced positions performing modeling meet this requirement either. This disparity is not a matter of interpreting the language of the Class Spec such as attempting to determine the meaning of "significant segment" in item #1 of the above table. The disparity instead involves a requirement of the Class Spec at the advanced level. Accordingly, it appears the modeling positions are classified incorrectly. The Commission cannot compound such errors by ignoring the clear requirements of the Class Specs because to do so would in effect amount to rewriting the Class Spec. See, for example, *Zhe et al. v. DHSS & DP*, 80-285, 286, 292, 296-PC, 11/18/81; aff'd. by

Appellant has not met his burden of showing that the knowledge required of his position is both more in-depth and of a wider range than found at the AMS-Senior level (see item #4 in the above table). Certainly, his position appears unique in the requirement for extensive computer knowledge but, as noted at the beginning of this analysis, the computer knowledge required is not equivalent to the AMS-Advanced level of responsibility (as evidenced by the pay range comparisons discussed previously) and does not equate to the type of scientific knowledge of air pollution contemplated under the AMS Class Spec (as evidenced by specific language in the Class Spec, such as the definition of "science" and the requirement at the Senior level that positions apply "scientific judgment"). The knowledge required at the AMS-Senior level best describes appellant's position as involving "independent implementation of assigned duties and recognition of having developed specialized knowledge in a specific program area (requiring) a high degree of coordination, interpretation and creativity in the application of scientific judgment."

Appellant established that he is responsible to develop and follow broadly defined work objectives (see item #5 in the above table). He wrote a reference guide (Exh. A-11) and an instruction booklet (Exh. A-12) for the diskette program. Respondents wondered whether appellant performed such work within strict parameters previously established by other positions but such speculation was insufficient to refute appellant's evidence.

Appellant did not meet his burden to show that his authority to deal with top officials and others involves "highly sensitive" issues (see item #6 in the above table). The reasons for this conclusion are similar to those discussed in regard to item #2b and, accordingly, are not repeated here.

Appellant did not meet his burden of showing that his position is responsible for "developing, implementing, monitoring and evaluating statewide policies and programs" (item #7a in the above table). As noted in the discussion for item #2c in the table above, the Class Spec definition of "policy" does not result in a conclusion that this criterion has been met.

The final disputed criterion is whether appellant's position is "easily distinguishable from positions at the Senior level by the scope and complexity of the responsibilities." The scope and complexity from a "scientific" standpoint has not been shown to be greater than at the senior level. As discussed previously, the extensive knowledge of computers required for his position appears unique but is not a consideration supporting classification at the AMS-Advanced level. His position meets all requirements of the AMS-Senior level, but does not meet many of the requirements of the AMS-Advanced level. Under these circumstances,

appellant has not shown that his position is "easily distinguishable" from other AMS-Senior level positions.

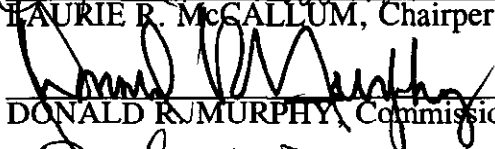
ORDER


That respondents' decision is affirmed and this case is dismissed.

Dated: February 11, 1998.

STATE PERSONNEL COMMISSION


LAURIE R. MCGALLUM, Chairperson


DONALD R. MURPHY, Commissioner


JUDY M. ROGERS, Commissioner

JMR
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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