

STATE OF WISCONSIN

PERSONNEL COMMISSION

**DARREL A. HARDY,
RICHARD L. GREENE, AND
JON F. ROBAIDEK,**
Appellants,

v.

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

FINAL DECISION AND
ORDER

Case Nos. 00-0106-PC
00-0107-PC
00-0119-PC

A Proposed Decision and Order was issued on August 14, 2001. Neither party filed objections. The Commission made one change for clarification and such change is denoted herein by an alphabetical footnote.

The above-noted cases¹ were consolidated for hearing on February 13 and March 6, 2001. The post-hearing briefing schedule was delayed to allow the appellants to obtain copies of the hearing tapes. The final brief was filed on June 11, 2001.

The parties agreed to the following statement of the issue for hearing (see Conference Report dated September 8, 2000):

Whether respondents' decision to reallocate the appellant's position to Wildlife Technician rather than Wildlife Technician-Advanced was correct.

The classification specifications at issue here each have an effective date of May 21, 2000.

¹ The case numbers are as follows: Mr. Hardy's is 00-0106-PC, Mr. Greene's is 00-0107-PC and Mr. Robaidek's is 00-0119-PC.

I. Classification Specification – Wildlife Technician

The classification specification definition of Wildlife Technician (hereafter, Technician) (Exh. R-1) provides three allocation patterns and representative positions. Only the third allocation pattern is pertinent in this case. The definition is shown below in pertinent part, along with the corresponding representative position.

WILDLIFE TECHNICIAN

Positions allocated to this classification (3) perform a limited range of development and implementation activities on a wildlife property as an assistant to a Wildlife Technician-Advanced, Wildlife Biologist, Property Manager, or Natural Resources Supervisor. Positions may have responsibility for a specific segment of the wildlife programs on the property. Work is performed under general supervision.

Representative Position

Wildlife Crew Member – Under the supervision/direction of the property manager, take the lead on and/or assist other lead crew members on specific wildlife habitat and facilities development and maintenance projects. Operate heavy and light equipment. Assist in planning and establishing work priorities and implementing work schedules. Work on the animal damage abatement program; conduct wildlife and user surveys; assist with managed hunting and trapping programs and participate in prescribed burns within property boundaries. Manipulate and control water levels and perform dike maintenance. Participate in barrens restoration and wetland habitat improvement projects on state wildlife areas or private lands.

II. Classification Specification – Wildlife Technician Advanced

The classification specification definition of Wildlife Technician Advanced (hereafter, Advanced) (Exh. R-2) provides four allocation patterns and describes five representative positions. The first allocation pattern is inapplicable here. The remaining definition and related representative positions are noted below:

WILDLIFE TECHNICIAN-ADVANCED

Positions allocated to this classification are responsible for technical paraprofessional wildlife management activities which have significant scope and impact. These positions will (2) perform the full range of technical paraprofessional wildlife activities for a specific portion of the wildlife program in a basin(s); (3) perform the full range of technical paraprofessional wildlife management duties

with responsibility for the development, design and implementation of wildlife management projects; or (4) develop and implement projects on department properties as the assigned paraprofessional technical lands maintenance technician. The work is performed with significant delegation and under general supervision.

Representative Positions

Wildlife Management Technician – Implement land management development and maintenance activities to enhance wildlife populations, habitat and public use. Plan habitat and facilities development projects. Plan and perform critical wildlife habitat projects such as dike repair/maintenance, wetlands, prairies/grasslands, oak savannas, forest habitat/croplands, and artificial nesting platforms. Develop, secure and monitor sharecrop agreements. Plan and maintain public use facilities, draft bid specifications for development projects, direct private contractors. Plan and implement wildlife, terrestrial and user surveys. Coordinate harvest registration stations. Implement animal damage and nuisance wildlife programs. Provide wildlife technical paraprofessional assistance to private landowners in the management and enhancement of wildlife habitat. Participate in prescribed burn operations. Operate and maintain equipment. Acquire land use rights. Perform public relations, information and education activities. As required, coordinate and guide the activities of assigned staff.

Lands Management Technician – Perform a broad range of property management activities which include planning and implementing projects on Department properties as assigned. Plan and recommend development and land acquisition; inspect and maintain parking areas, roads, trails, and other special use areas and prepare inspection reports. Post and maintain property boundary markers and informational signs; develop and monitor maintenance contracts with vendors; identify and obtain permits/approvals required for site improvement or development activities. Maintain contacts with adjacent landowners, coordinate site reclamation/restoration activities. Participate in biological surveys, beaver control activities, vegetative management such as prescribed burning and timber sales, cooperation with fisheries staff on habitat projects and operate heavy equipment as assigned.

Wildlife Property Management Technician – Plan, implement and direct development, maintenance, habitat management, land acquisition, surveys and public relations programs on the Mead-McMillan Wildlife Work Unit and on cooperative managed private lands. Conduct administrative duties in conjunction with the property manager. Plan and coordinate habitat and facilities development, management and maintenance on the McMillan Marsh Wildlife Area. Plan, implement, coordinate and administer the woodland and upland grassland/cropland habitat management programs. Function as property manager in property man-

ager's absence. Provide information and education to the public and perform property law enforcement.

III. The Appellants' Work Unit

The appellants work for respondent Department of Natural Resources (DNR). They are stationed at the Sandhill-Meadow Valley work unit (Work Unit). This Work Unit includes the following wildlife areas: Meadow Valley, Sandhill Wildlife and Wood County Wildlife. Each wildlife area is summarized below.

1. The **Meadow Valley Area** is in Juneau County and is comprised of 57,612 acres, the majority of which are leased from the federal government.
 - The goal is to manage the property for optimum production of forest and wetland wildlife, production of timber products and to provide opportunities for compatible public resource use.
 - Water resources include 8 flowage developments, 35 water control structures, 1,394 acres of open water impounded and 1,100 acres of waterfowl refuge.
 - Facilities include 5.5 miles of public use access roads, 9 campgrounds and 25 miles of managed snowmobile trails.
 - Principal wildlife includes grouse, deer squirrels, waterfowl, rabbits, raccoons, turkeys, sandhill cranes and Karner blue butterflies.
 - Habitats include marshes, forests, lakes and open fields.
 - Recreational activities include birdwatching and berry picking.
(Exh. U, p. 28, Exh. D, p. 3 and Exh. E.)

2. The **Sandhill Wildlife Area** is in Wood County and is comprised of 9,455 acres owned by the State.
 - The goal is to manage the property as an experimental and demonstration area, highlighting wildlife habitat management and quality hunting techniques and to provide a setting for outdoor skill instruction.
 - Water resources include 16 flowages flooding 1,722 acres; 20 water control structures; 40,656 linear feet of dike; 24 miles of drainage ditch and 4,500 acres of wildlife refuge.
 - Facilities include 6 DNR buildings, 3 observation towers, 3 miles improved hiking trail; 11 miles ski trail; 16.5 miles perimeter fence; 3 miles interior fence; 29.25 miles primary access roads (includes 14.5 miles Auto Tour); 19.5 miles secondary access roads, Outdoor Skills Center including rifle range and orienteering course, 250 acre fenced oak barrens supporting 15-20 American Bison, as well as 16 exterior and 35 interior gates.

- Principal wildlife include deer, waterfowl, squirrels, ruffed grouse, woodcock, sandhill cranes, trumpeter swans, buffalo, Karner blue butterflies and massasauga rattlesnakes.
 - Habitats include marsh and forest.
 - Recreational activities include hiking, bird watching and berry picking. (Exh. U, p. 26, Exh. D, p. 1 and Exh. E.)
3. The **Wood County Wildlife Area** is in Wood County and is comprised of 19,303 acres of which about one-third is owned by the State and the remaining is leased from the county (Exh. O, p. 8).
- The goal is to manage the property for optimum production of forest and wetland wildlife with special consideration towards endangered species and provide compatible recreational and educational opportunities.
 - Water resources include 53 miles of ditches; 21 water control structures; 8 impoundments encompassing about 1500 acres; 58,080 linear feet of dike and a 269 acre waterfowl refuge.
 - Facilities include 10.3 miles of department graded primary access roads; 26 miles of other public roads that pass through or traverse the edge of the property, 10.5 miles mowed secondary access roads and 2 semi-primitive campgrounds.
 - Principal wildlife includes ducks, grouse, deer, rabbits, squirrels, woodcock, sandhill cranes, sharp-tail grouse, Karner blue butterflies and massasauga rattlesnakes.
 - Habitats include marsh and forest.
 - Recreational activities include bird watching, hiking and berry picking. (Exh. U, p. 26, Exh. D, p. 2 and Exh. E)

The appellants also work on the Cranberry Creek property. This aspect of their job is not well developed in the record except to say that the property contains Indian mounds and the appellants work with private landowners to accomplish their tasks.

IV Staffing Levels in the Work Unit

The number of employees in the Work Unit has decreased over time as noted below (Exh. C).

12 Positions in 1980's	8 Positions in 1990s to Present
<ul style="list-style-type: none"> • 2 crew foremen (adv. level)² • 1 mechanic • 1 forestry tech (adv. level) • 1 wildlife tech (mid level) • 3 wildlife techs. (lower level) • 1 research biologist • 1 program assistant • 1 forester • 1 superintendent 	<ul style="list-style-type: none"> • (no crew foremen) • (no mechanic) • (no forestry tech) • (no wildlife tech) • 3 wildlife techs • (no research biologist) • 1 biologist • 1 program assistant • 1 forester • 1 superintendent • 1 skill center coordinator

The three remaining wildlife technicians are the appellants.

The degree of supervision the appellants receive has decreased since the crew foremen positions were eliminated. Thereafter, they worked with minimal supervision from the Work Unit Supervisor, Mike Zechmeister. The degree of supervision decreased again starting in February 2000, after Mr. Zechmeister left for another job and for the following 1-1/2 year period that his position remained vacant.

DNR employs 67 wildlife technicians statewide (including positions at the Advanced level). The 3 positions held by the appellants account for only 4% of the wildlife technician workforce yet they are responsible for 14.7% of the wildlife acreage managed by DNR (Exh. E).

V The Appellants' Positions

The appellants work as a team to accomplish the heavy workload of technician tasks in the Work Unit. According to the appellants, management selected the team approach as the most efficient way to get the work done.

² The appellant's characterization of advanced level, mid-level and lower level, refers to the classification level of the positions. The technician positions in the 1980s were classified by numbers (i.e., wildlife technician 1 through 5) rather than by the current structure of Technician and Advanced levels.

The position descriptions (PDs) for the appellants' positions contain a Position Summary (Exhs. R3, R4 and R5). The shared text is shown below. Asterisks show where a unique sentence was inserted in each PD, as discussed later

Assist with and administer the wildlife management program in the Sandhill-Meadow Valley Sub Team within a four county area within the Central Wisconsin Basin. *** Duties include: develop and maintain over 90,000 acres of State-managed Wildlife Areas and Natural Areas; conduct wildlife education through implementation of the Sandhill Outdoor Skills Program; conduct information and public relations programs; direct and perform harvest registration, controlled educational hunts and wildlife surveys; direct and perform public use facility development and maintenance on public properties in the sub-team area; perform wildlife health and disease monitoring and control; cooperate with other wildlife agencies, DNR functions and private groups to enhance wildlife habitat and populations; direct work activities of LTE's, student interns, WCC crews and volunteers.

The unique sentence inserted in the above text for each appellant is shown below:

Hardy: This position leads sub team efforts on property boundary issues, animal damage investigations, nuisance wildlife complaints and conducting dam safety inspections.

Robaidek: This position leads sub team efforts in the survey and control of noxious plants and the management of a captive herd of bison.

Greene: This position leads sub team efforts in administering the drinking water program on Departmental properties including the proper abandonment of wells and site reclamation of newly acquired properties.

Each appellant's PD contains the same goals and time percentages for each goal. Most of the work activities under each goal are the same. The tasks are noted below, listing shared (or common) tasks first and then noting unique tasks (if any).

Time % Goal/Worker Activity
30% **A. Conduct land management development and maintenance on State-owned properties.**

Shared Tasks

- A1. Assist in planning, development and maintenance of wildlife habitat and public use facilities on over 90,000 acres of public land.
- A2. Develop, design and construct wetland restoration and enhancement projects.
- A3. Responsible for maintenance of roads, trails, dikes, buildings, fences and other public use facilities.
- A4. Evaluates and independently conduct improvements or repairs to public use facilities.
- A5. Independently monitors and adjusts water levels on 100 different water control structures on 56 major flowages impounding 40,800 acre-feet of water
- A6. Coordinates water management activities with local cranberry marshes.
- A7 Conduct mechanical and chemical control of brush and noxious weeds; prepare and submit required application for and reports of chemical use.
- A8. Participate in the planning, implementation and follow up evaluations of prescribed fires; conducts suppression activities and investigates the cause and affects of wild fires on assigned lands.
- A9. Direct LTE's, WCC crews, volunteers, and private contractors during property development and maintenance.

Unique Tasks

Hardy: The following separate task was unique: "Leads sub-team efforts in identification of boundary lines and resolving boundary disputes. Maintain postings on boundaries and closed areas; provide additional postings as needed."

Robaidek: The following separate task was unique: "Maintain postings on boundaries and closed areas; provide additional postings as needed."

Greene: The following separate task was unique: "Leads sub team efforts in the proper abandonment of wells and site reclamation of newly acquired properties"

20% **B. Conduct wildlife populations, habitat, and user surveys.**

Shared Tasks

- B1. Monitors deer, bear and turkey registration stations to include accounting for registration materials and assist in the coordination of the registration tally.
- B2. Participates in annual deer aging, hunter density surveys, and conducts surveys to evaluate hunter satisfaction during the opening weekend of deer gun season.
- B3. Conduct wildlife population surveys for game, endangered and threatened wildlife species.
- B4. Respond to reports of wildlife disease and injury
- B5. Maintain Blasting Certification to blast beaver dams on state-managed properties.
- B6. Assist in meeting annual Giant Canada Goose and waterfowl capture and banding efforts.

Unique Tasks

Hardy:

- The following sentence was unique and added to task B5 above: "Responsible for maintaining safe and proper storage of explosives."
- The following separate task was unique: "Leads sub-team efforts in animal damage investigations and nuisance wildlife complaints to determine nature of damage and Department responsibility."

Robaidek:

- The following sentence was unique and added to task B3 above: "Leads and coordinates the Breeding Bird Survey within the sub team."
- The following separate task was unique: "Leads sub-team efforts in exotic plant surveys and control measures."
- The following separate task was unique: "Responsible for the management of a captive herd of bison by adjusting grazing rotations, over-winter feeding, and facilitate annual inspections. Develop action plans to improve the overall health of the herd including habitat modifications. Independently, plan, organize and implement auctions to maintain a balanced herd."

Greene: The following separate task was unique: "Assists in animal damage investigations and nuisance wildlife complaints to determine nature of damage and Department responsibility."

20% **C. Conduct wildlife education, interpretation, information and public relations programs.**

Shared Tasks³

- C1. Plan and implement a variety of Outdoor Skills Center workshops, clinics and educational field events.
- C2. Independently instruct students on a variety of outdoor skills subjects such as: the safe use of firearms, hunting, trapping, camping and wildlife observation.
- C3. Lead wildlife management information tours to regional school groups, outdoor clubs and Universities.
- C4. Plan and implement controlled educational hunts.
- C5. Provide public presentations to external partner groups to provide updates on wildlife management accomplishments.

15% **D. Administration**

Shared Tasks

- D1. Provides project management input for work planning, budget development and purchasing.
- D2. Independently evaluates and monitors development and maintenance activities.
- D3. Maintain Commercial Pesticide Applicator License.
- D4. Prepares and directs preparation of vehicle reports, progress reports and field requisitions.
- D5. Document and report wildlife management accomplishments.
- D6. Attend technical meetings, workshops and classes to stay current with rules, regulations, policies and technical advances.

Unique Tasks⁴

Hardy: The following separate task was unique: "Annually inspects dams and dikes within the sub team, develops and implements corrective action plans and subsequent evaluations. Documents and coordinates inspection results.

Greene: The following separate task was unique: "Administer the Drinking Water Program for Department properties within the sub-team. Independently samples public drinking water sites, coordinates water analysis, and promptly handles unsafe (positive) samples. Provides public notification when deemed necessary in accordance with Drinking Water Codes."

³ There were no unique tasks under goal C.

⁴ Mr. Robaidek had no unique tasks under goal D.

10% **E. Responsible for heavy and light equipment.**

Shared Tasks⁵

- E1. Plans and performs heavy equipment operation, maintenance and storage.
- E2. Directs and performs efficient and safe operation of chainsaws, hand tools, tractors, crawlers, dump trucks, road grader, and light trucks.
- E3. Determines needs for specialized equipment along with normal supplies and materials; locates vendors and obtains these materials by either purchase or rental.
- E4. Maintains equipment by performing routine maintenance or arranging for this work to be accomplished.
- E5. Maintain Commercial Driver's License.

5% **F. Cooperation with other functions.**

Shared Tasks⁶

- F1. Assists in prescribed burning and other habitat management programs on other properties.
- F2. Assists with other Land and Water Division activities as needed.
- F3. Assist the Bureau of Endangered Resources in monitoring endangered and threatened species.

The appellants have taken the lead on some projects over the past three years either in the unique areas assigned in the PDs, or on specific projects (Exh. B). The phrase "taken the lead" in this context means that an appellant conceived the project and with the Superintendent's approval, undertook responsibility to ensure the project was completed; including arranging for the necessary equipment, etc. Each appellant's projects of this nature are listed below:

Hardy	Project	Property
1.	Wildlife (WL) area boundary posting	All
2.	Nuisance WL& damage inspections	All & private prop.
3.	Dam & structure safety inspections	All
4.	Kingston flowage dike reconstruction	Meadow Valley (MV)
5.	Scott flowage drawdown & rehydration	MV
6.	Scott flowage dike reconstruction	MV
7.	Dike reconstruction at Dandy Creek flowage	MV

⁵ There were no unique tasks under goal E.

⁶ There were no unique tasks under goal F.

8.	Dunn flowage basin work & dike reconstruction	MV
9.	Construction of diversion ditch spillway	MV
10.	SE pool bulkhead replacement	MV
11.	Greenhead dike reconstruction	MV
12.	Monroe County flowage drawdown and rehydration.	MV
13.	1 st imp. Water control structure replacement	Wood County (WC)
14.	Remington ditch plugs & keyway development	WC
15.	South Bluff road tube replacement	WC

Robiadek	Project	Property
1.	Purple loosestrife control	All
2.	Spotted Knapweed control	All
3.	Cranberry Creek (CC) fire break construction	CC
4.	CC brush & fuel reduction	CC
5.	Bison sale for sports club gam feed (yearly)	Sandhill
6.	Bison sale for winter feeding program	Sandhill
7.	Trumpeter trail resurfacing (1 mile)	Sandhill
8.	Bison Auction to cull herd	Sandhill
9.	A flowage draw down and re-hydration	Sandhill
10.	A flowage north structure installation	Sandhill
11.	A flowage dike reconstruction	Sandhill
12.	D flowage drawn down and re-hydration	Sandhill
13.	Trumpeter Trail resurfacing (another mile)	Sandhill
14.	D flowage satellite pool reconstruction	Sandhill
15.	Trumpeter Trail resurfacing (2 miles)	Sandhill
16.	C flowage draw down and re-hydration	Sandhill
17.	Bluff Tower access reconstruction	Sandhill
18.	West Gallagher draw down for duck pad refurbishment	Sandhill
19.	5 th imp. N. water control structure replacement	Wood County (WC)
20.	5 th imp. S. water control structure replacement	WC
21.	5 th impoundment draw down and re-hydration	WC
22.	Ditch bank road water control development	WC
23.	Remington ditch spillway construction	WC
24.	Ingrahm flowage draw down and re-hydration	WC
25.	3 rd imp water control structure replacement	WC
26.	3 rd imp draw down and re-hydration	WC
27.	Potter flowage draw down and re-hydration	WC

Greene	Project	Property
1.	Property water quality monitoring	All
2.	Campground and facility water source monitoring	All

3.	Greenhead flowage draw down and re-hydration	Meadow Valley (MV)
4.	Scott flowage structure replacement	MV
5.	Kingston flowage draw down and re-hydration	MV
6.	NE refuge pool structure replacement	MV
7.	East pool drawn down and re-hydration	MV
8.	East pool water control structure replacement	MV
9.	1 st imp draw down and re-hydration	WC

VI. Perception that the Appellants' Positions are Underclassified

Mike Zechmeister was the Supervisor of the Sandhill-Meadow Valley work unit. He voiced his concerns to management that the appellants' positions have been under-classified for years. Pertinent excerpts from a memo he wrote on January 8, 1999 (Exh. O, p. 1) are shown below (emphasis in original):

I have seen recruitment, retention and compensation problems related to DNR Technician classifications. I also see a failure to meet the Department's Strategic Goal to treat the Wildlife Technicians within my sub-team as "an important and valued asset." I will provide specific examples:

1. Mark Randall worked as a Wildlife Technician at Sandhill until 1993. Mark wanted to remain working at Sandhill but was extremely frustrated with the re-classification attempts. Unfortunately, it was not until he left that the position was appropriately classified as a Wildlife Technician 5. Since Mark has left, we have lost a valuable Wildlife Technician position. This would not likely of happened if adequate compensation through appropriate classification would of occurred in a more timely manner.
2. Larry Jonas worked as a Wildlife Technician at Sandhill until the early 1990's. Larry worked as the "crew chief" until he decided that the only way he could get a Technician 4 position was by transferring to another station. Again, he was frustrated by the re-classification efforts that limited his ability to progress as a Wildlife Technician. Larry took with him nearly 20 years of experience working in this area. After keeping in contact with Larry through the years, he has indicated that he wished he could of stayed working at Sandhill. However, the compensation process (chiefly classification) left a very "sour taste" with him.
3. At Sandhill, all three of our technicians are classified at the Wildlife Technician 3 level. The duties that these technicians undertake for a majority of their time are consistent with the duties outlined in the Classification Specifications for a Wildlife Technician 4. In practicality, all of the Sandhill technicians perform their functions under very general supervision. In addition, the duties these technicians undertake are similar to other Technician

positions **within our own Region** that are classified at the Technician 4 level

In summary, the Wildlife Technicians within our sub-team are very unhappy with the Technician 3 classification when other comparable positions are at the objective 4 level. This has everything to do with compensation, retention and treating our employees as “an important and valued asset.”

Mr Zeckmeister voiced his concerns that the new classification specifications at issue here would perpetuate the perceived inadequacies noted in his prior correspondence. (Exh. O, p. 4, memo dated July 1, 1999.)

Mr. Zeckmeister now works as a team leader for the Antigo land and forestry team. He currently supervises three wildlife technicians⁷ who were reallocated to the Advanced level. Mr. Zeckmeister indicated that the property where he now works is smaller and less complex than the appellants’ Work Unit.

Keith Nemec currently works in Wautoma. He previously had worked with the appellants. He indicated that the property where he now works is smaller and less complex than the appellant’s Work Unit. Mr. Nemec noted that a Wautoma wildlife technician was placed at the Advanced level.⁸

Mr Nemec recommends to prospective employees that they learn the job at the appellants’ Work Unit due to the diverse learning opportunities. In fact, individuals have worked as a LTE or an intern at the appellants’ Work Unit have been hired at other properties and are now classified at the Advanced level while the appellants remain at the Technician level.

Mark Randall worked at the Mead-McMillan work unit from the fall of 1982 until the fall of 1985. He thereafter worked at the appellants’ Work Unit first as a wildlife biologist, then as a research sales technician and later as a wildlife technician including the crew foreman position, which he held until August 1993. He indicated that the property where he now works is smaller (by at least one-half) and less complex than the appellants’ Work Unit. He was

⁷ The names of these technicians are Mike Winski, Eric Borchert and Alan Bluhm. The PDs for these positions are not in the record. The Commission, however, has analyzed the Winski and Borchert PDs for a different case involving the same classification specifications at issue here. *Hoffman v. DNR & DER*, 00-0133-PC, 5/17/01

⁸ The witness did not provide the name of this technician nor is it apparent from the record.

surprised that two positions at Mead-McMillan were reallocated to the Advanced level whereas no Advanced positions exist at the appellants' Work Unit.⁹

VII. Classification Expert's Explanation for Placing Appellants' Positions at Technician Level

The classification expert who testified at the hearing wrote the classification specifications at issue here and made all resulting reallocation decisions. She testified that the appellants' positions were reallocated to the Technician level because they are in the same Work Unit performing similar duties. She concluded that under these circumstances, the appellants perform a limited range of development and implementation activities on a wildlife property fitting the second allocation pattern in the Technician classification specifications. Her attempts to explain how this conclusion was supported by the classification specification definition of a Technician were confusing and, at times, contradictory.

The potential allocation patterns in the Advanced classification specifications are repeated below:

These positions will (2) perform the full range of technical paraprofessional wildlife activities for a specific portion of the wildlife program in a basin(s); (3) perform the full range of technical paraprofessional wildlife management duties with responsibility for the development, design and implementation of wildlife management projects; or (4) develop and implement projects on department properties as the assigned paraprofessional technical lands maintenance technician.

The classification expert said that none of the appellants are the assigned paraprofessional technical lands maintenance technician and, accordingly, their positions do not fit allocation pattern #4 above.

As to allocation pattern #2, the classification expert explained that the requirement of performing the "full range" of wildlife activities for a "specific portion of the wildlife program" means the position is responsible for a specific portion of the wildlife program. She

⁹ The witness did not provide the names of these technicians but it appears he is referring to the Mead-McMillan positions currently held by Brian Peters and Anthony Geiger.

indicated that the appellants' positions do not meet this requirement because of the shared or overlapping responsibilities of their positions.

As to allocation pattern #3, the classification expert said the position would be independently responsible from start to finish for wildlife projects such as for all private lands management or all habitat projects. She indicated that due to the shared or overlapping responsibilities of the appellant's positions that they do not meet this requirement.

VIII. Geiger and Peters' Positions at the Advanced Level

Two positions at the Mead-McMillan Wildlife Area, held by Brian Peters and Anthony Geiger, were reallocated to the Advanced level. Respondents' classification expert indicated that both positions were reallocated under allocation pattern #2 in the Advanced classification specification.

The classification expert indicated that **Mr. Geiger's** *specific portion of the wildlife program* is responsibility for all outside work. The position summary of his PD (Exh. R6) indicates that he functions as the work unit crew foreman responsible for daily direction of full time technicians. He is responsible for independently planning, coordinating, implementing and administering certain portions of the wildlife management program including managed wetland habitat projects, the prescribed burning program and the wildlife survey program. She considered that he performed the *full range* of these activities because he is responsible for identifying and planning projects as well as ensuring project completion.

The classification expert indicated that **Mr. Peters' specific portion of the wildlife program** is responsibility for administrative duties (also referred to in the record as "inside work"), as noted in Goals A, C, D and a portion of B in his PD (Exh. R7), as summarized below.

Goal A is entitled "Administration, work planning and implementation of acquisition program," and accounts for 30% of the position's time. Tasks include writing project proposals and budget requests, monitoring budgets, maintaining computer records and negotiating land use agreements.

Goal C is entitled "Administer Work Unit Timber and Woodland Habitat Management Program," and accounts for 20% of the position's time. Tasks include planning annual and long-range timber and woodland habitat management

objectives, awarding timber sales contracts, collecting payment, inspecting for contract compliance and maintaining related records and reports.

Goal D is entitled "Administer Work Unit Sharecropping and Upland Grass/Cropland Management Program," and accounts for 15% of the position's time. Tasks include planning annual and long-range management schedules for upland grass and cropland areas, issuing sharecropping agreements, monitoring compliance and maintaining related reports.

Goal B is entitled "Plan and Implement Development and Maintenance Projects and Operations," and accounts for 20% of the position's time. Tasks include planning projects and acquiring bids; designing and updating computer record system for development and maintenance operations using habitat maps, management data, survey data, water level records, etc., as well as securing approvals and permits for land management projects.

Mr. Peters' position is the representative position in the Advanced classification specification entitled: "Wildlife Property Management Technician."

IX. Roers' and James Robaidek¹⁰ Positions at the Advanced Level

Eric Roers and James Robaidek work at the Wolf River and upper Green Bay geographical management unit (Work Unit). They are the only wildlife technicians in the Work Unit. Both positions were reallocated to the Advanced level. These positions operate very similarly to the appellants' positions in that they work as a team and the duties of their positions have significant overlap (or shared duties).

The classification expert said she would recommend that these positions be audited to ensure that the tasks listed in their PDs (Exhs. W and X) are correct. She indicated that if the duties listed in the PDs are correct as currently written, the positions should have been reallocated to the Technician level.

The classification expert explained how these positions were (perhaps) incorrectly reallocated to the Advanced level. She said a technician who worked alone on a property was reallocated to the Advanced level. When she reviewed existing PDs, she first looked at box #5 on the front page to determine if the technician worked alone. If they worked alone, she placed the position at the Advanced level without further analysis. If more than one technician worked on a property, she reviewed the rest of the PDs for further analysis before making a

reallocation decision. Box #5 in Mr. Roers' PD indicates that he works on the Navarino Wildlife Area in Shiocton, Wisconsin. Box #5 in James Robaidek's PD indicates that he works in Shawano, Wisconsin. Accordingly, the classification expert did not review the remainder of the PDs from which it is apparent that both positions work together on the same property.

Also pertinent here is the fact that both positions had previously been classified (under the now outdated classification specifications) as Wildlife Technician 4's. The classification expert indicated that her supervisor told her that positions classified at this level should be reallocated to the Advanced level.

The appellants' PDs, in contrast, have the same work unit and address noted on box #5 of their PDs. Prior to the reallocation decision at issue here, their positions were classified as Wildlife Technician 3's.

X. Analysis

The appellants have the burden to establish by a preponderance of the evidence that their positions should have been reallocated to the Advanced level. *See, e.g., Tiser v. DNR & DER*, 83-0217-PC, 10/10/84; followed in *Hubbard v. DER*, 91-0082-PC, 3/29/94; affirmed by Dane County Circuit Court, *Hubbard v. Wis. Pers. Comm.*, 94-CV-1408, 11/27/96. They have failed to sustain their burden.

The appellants first focus on their perception that the classification specifications could have been written better by, for example, clearly defining terms. They also dispute the classification expert's interpretation of certain terms. (Post-hearing brief dated April 26, 2001) The Commission agrees that, at least with the benefit of hindsight, the classification specifications could have been written more clearly. As to the appellants' observation that they disagree with the classification expert's interpretation of certain terms, the Commission notes that her interpretation is relevant but not controlling. Her interpretation of terms is relevant as to the purported intent of the classification specifications but the weight of such testimony would be diminished significantly if unsupported by the text of the classification specifications

¹⁰ James Robaidek is the brother of appellant Jon Robaidek.

(including the representative positions) and if unsupported by an analysis of comparison positions.

The third allocation pattern of the Technician classification specifications is repeated below:

WILDLIFE TECHNICIAN

Positions allocated to this classification (3) perform a limited range of development and implementation activities on a wildlife property as an assistant to a Wildlife Technician-Advanced, Wildlife Biologist, Property Manager, or Natural Resources Supervisor. Positions may have responsibility for a specific segment of the wildlife programs on the property. Work is performed under general supervision.

The term "limited range" is a term that the appellants believe should have been defined in the classification specification. They dispute the classification expert's interpretation of that term as excluding the appellants' positions because their duties overlap significantly. They argue that they do not perform a limited range of duties because they "*typically* are given responsibility for the development, design and implementation of a wildlife management project" (emphasis added). (Post-hearing brief dated April 26, 2001, p. 2) While it is true that over the past three years they have taken the lead on certain projects (as noted previously in this decision), the appellants did not establish that this was *typical*. Rather, the time spent by the appellants taking the lead on projects is of the extent contemplated under the Technician classification specification as evidenced by the following statement from the representative position:

Under the supervision/direction of the property manager, take the lead on and/or assist other lead crew members on specific wildlife habitat and facilities development and maintenance projects.

The appellants also note that their workload and responsibilities have expanded due to staff reductions in their Work Unit. (Post-hearing brief dated April 24, 2001, p. 2) There is ample evidence in the record supporting their contention but these facts are not determinative. One change has potential relevance to classification at the Advanced level, to wit: the elimination of the crew foremen, which left the appellants performing work without daily direction from a supervisor. Other changes, such as taking on the routine maintenance tasks after the

mechanic position was eliminated, involved tasks contemplated at the Technician level. As the Commission has noted, the proper focus of inquiry in a classification case is not whether the duties of a position have changed *per se*, but whether the majority of the assigned duties meets the requirements of the higher classification. See, e.g., *DER & DP v. PC (Doll)*, Dane County Circuit Court, 79-CV-3860, 9/21/80.

Mr Thiel testified that the Technician classification specification was “representative of the appellants’ work.” However, he also noted that the same could be said for *any* technician position. The Commission agrees with his observation that the Technician specifications are written in such general terms as to describe any technician PD in this record. The Commission, accordingly, looks to the Advanced classification specification for clarification.

Three allocation patterns in the Advanced classification specification have potential applicability here as repeated below:

These positions will (2) perform the full range of technical paraprofessional wildlife activities for a specific portion of the wildlife program in a basin(s); (3) perform the full range of technical paraprofessional wildlife management duties with responsibility for the development, design and implementation of wildlife management projects; or (4) develop and implement projects on department properties as the assigned paraprofessional technical lands maintenance technician.

The Commission agrees with the classification expert that the appellants’ positions do not fit the **fourth allocation pattern** because none of the appellants function as the assigned paraprofessional technical lands maintenance technician.

Allocation pattern #2 requires a position to perform the “full range of technical paraprofessional wildlife activities *for a specific portion of the wildlife program* in a basin” (emphasis added). Regardless of how the terms “full range” and “paraprofessional” are defined, the position must perform wildlife activities “*for a specific portion of the wildlife program.*”

Each appellant has an area of specialization. Mr Hardy leads sub team efforts on property boundary issues, animal damage investigations, nuisance wildlife complaints, as well as conducting dam and dike safety inspections. He also is responsible for the safe storage of explosives. Mr Robaidek leads sub team efforts in the survey and control of noxious plants,

in the management of a bison herd and in the breeding bird survey. Mr. Greene leads sub team efforts in administering the drinking water program including the proper abandonment of wells and site reclamation of newly acquired properties.

The areas of specialization noted above do not have the scope required for inclusion at the Advanced level. In *Hoffman v. DNR & DER*, 00-0133-PC, 5/17/01, the Commission found that responsibility for waterfowl habitat (including wetlands and grasslands) met the scope requirements at the Advanced level in the position held by Eric Borchert, as did responsibility for forest habitat (along with an educational component) in the position held by Mr Winski. These areas of responsibility are significantly greater in scope than those assigned to any appellant here. The appellants attempt to avoid this conclusion contending as shown below (Post-hearing brief dated April 24, 2001, p. 5; emphasis in original):

As for the Antigo technicians, their supervisor (Mike Zeckmeister) who is located in the same office as they are, testified that the Antigo technicians share most every duty that they do. He stated: **“They share responsibilities, for example, water level management, prescribed burning, so there is a certain degree of shared responsibility with the Eric Borchert and Mike Winski positions.”** The respondents rebutted with the fact that they did not share maintaining and developing waterfowl habitat, education and forest habitat. The Appellants’ witness then testified that the Antigo technician duties **“are probably more similar than dissimilar when you look at the wetland and waterfowl habitat management.”**

The above argument is unpersuasive. The PDs for these positions are not part of the record, which made it difficult to understand exactly what Mr Zeckmeister meant about the similarities in the wetland and waterfowl habitat duties. He had no PDs for reference to clarify his testimony or to facilitate follow-up questions by respondents or the hearing examiner. It could be that he meant the PDs inaccurately reflect the duties performed by the Borchert and Winski positions, which would be insufficient to challenge the Commission’s analysis of those positions in *Hoffman*, Id., which relied on text of the PDs.

As to the Geiger position, his responsibility for wetland habitat projects is greater than the scope of the appellant’s areas of specialization. In addition, Mr Geiger functions as the crew foreman directing the work of full time technicians. Similarly, the Peters’ position is

responsible for administering entire programs, which is of a greater scope of responsibility than any appellant's areas of specialization. Also, his position is specifically included in the Advanced specifications as a representative position.

The anomalies are the positions held by James Robaidek and Eric Roers. According to the PDs, those positions perform essentially in the same manner as the appellants' yet they were classified at a higher level than the appellants *before and after* the reallocation decisions at issue here. It is not difficult under these circumstances to understand why the appellants filed their appeals and why a broader perception exists that the appellants' positions are under-classified as compared to other positions. Particularly disturbing was the classification expert's testimony that she was told to reallocate to the Advanced level any position previously classified as a Wildlife Technician 4. Such a "bright line" principle is not only unsupported by the classification specifications but also is prone to perpetuate the impact of prior inconsistent or incorrect classification decisions, as might have occurred here.

It also could be that the positions held by James Robaidek and Eric Roers were classified correctly at the Wildlife Technician 4 level. For example, those positions may not have had crew foremen during the time period when the appellants received daily instruction from crew foremen. The classification expert responsible for the reallocation decisions had audited the appellants' positions previously and, based on that audit, felt she knew the duties performed. What she missed, however, was the fact that the crew foremen positions had been eliminated several years prior to the reallocation decisions at issue here.

If the James Robaidek and Eric Roer's positions meet the Advanced level requirements, it could only be under the **third allocation pattern**¹¹, which is repeated below:

(3) perform the full range of technical paraprofessional wildlife management duties with responsibility for the development, design and implementation of wildlife management projects;

¹¹ They do not meet the requirements of the 4th allocation pattern because neither is designated as the assigned paraprofessional technical lands maintenance technician. They do not meet the 2nd allocation pattern because neither has responsibility for a specific portion of the wildlife program meeting the scope required at the Advanced level.

The Commission has had only one opportunity to interpret the meaning of the above language as noted below:

Allocation (3) only makes sense if it is understood to reference the technician's assigned geographic area and respondent has consistently applied it in this manner. A technician assigned to share responsibilities for a particular geographic area would not be performing the full range of responsibilities for that geographic area as contemplated in (3).

Hoffman v. DNR & DER, 00-0133-PC, p. 10, footnote F, 5/17/01. Such interpretation excludes the appellants' positions *and* the positions held by James Robaidek and Eric Roer.

The hearing record in *Hoffman*, however, did not contain the PDs of James Robaidek and Eric Roer. The question here is whether these positions at the Advanced level are evidence that respondent has not consistently applied the third allocation pattern to positions that work alone in a geographic area. The Commission concludes that to the extent that the James Robaidek and Eric Roer positions were reallocated to the Advanced level based on the present PDs, such decision appears to have been a mistake.[^]

It is clear that the classification expert took shortcuts that created inequities that have come back to haunt her. One shortcut was that she looked only at box #5 on the first page of the PDs from which she incorrectly concluded that the positions held by James Robaidek and Eric Roer were in different geographic locations. It also is clear that someone instructed her to follow other shortcuts, such as placing all Wildlife Technician 4's at the Advanced level, which she did without first ensuring that the positions met the requirements of the Advanced classification specification. The hearing examiner found her testimony credible and concludes therefrom that she classified the James Robaidek and Eric Roer positions at the Advanced level in error.

The Commission has held that a conclusion that a position may be misclassified does not automatically push the appellants' positions to the higher level. *Stensberg et al. v. DER*, 92-0325-PC, etc., 2/20/95. Such principle is based on a desire to avoid compounding the er-

[^] This sentence was changed to clarify that the issue before the Commission did not include resolution of the correct classification of the positions held by Robaidek and Roer.

ror. See, *Harder v. DNR & DER*, 95-0181-PC, 8/5/96, citing *Augustine & Brown v. DATCP & DER*, 84-0036, 37-PC, 9/12/84.

The Commission strongly urges, but does not have the power to direct, the respondents to carry through with their promise to study and rectify the inequities, which appear to exist with regard to the positions held by the appellants and by James Robaidek and Eric Roer.

ORDER

The respondents' decisions are affirmed and these cases are dismissed.

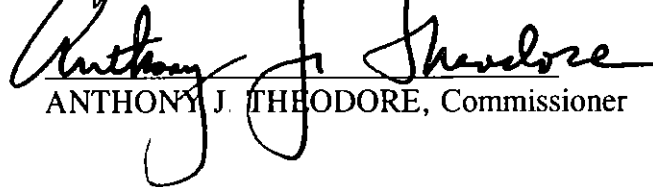
Dated: October 3, 2001.

STATE PERSONNEL COMMISSION


LAURIE R. McCALLUM, Chairperson

JMR:000106 + Adec2.doc


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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 au-

thorities. 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