

**TOM ACKLEY,**  
*Appellant,*

v.

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

*Respondents.*

Case No. 00-0135-PC

FINDINGS OF FACT  
AND  
CONCLUSIONS OF LAW

The Commission signed a Final Decision and Order in the above-noted case on August 1, 2001, and, pursuant to §227.47, Stats., the decision was not accompanied by findings of fact and conclusions of law. After the Commission denied the appellant's petition for rehearing on September 6, 2001, the appellant filed a petition for judicial review in circuit court in Adams County (Case No. 01-CV-0157). The Commission received notice of the petition on October 5, 2001. This decision is issued pursuant to §227.47, Stats., which requires the Commission to issue written findings of fact and conclusions of law within 90 days after receipt of notice of the petition for judicial review. No substantive changes have been made. However, some information previously contained in the "Analysis" section of the Final Decision and Order was moved to the Findings of Fact in this decision.

FINDINGS OF FACT

1. The classification specifications for Forestry Technician (Exh. A-1) and for Forestry Technician – Advanced (Exh. A-2) contain the same language in the introductory sections, as noted below:

Purpose of This Classification Specification: Classification decisions must be based on the "best fit" of the duties within the existing classification structure. The "best fit" is determined by the majority (more than 50%) of the work assigned to and performed by the position when compared to the class concepts and definitions of this specification or through other methods of position analysis. Position analysis defines the nature and character of the work through the use of any or all of the following: definition statements; listing of areas of specialization;

representative examples of work performed; allocation patterns of representative positions; job evaluation guide charts, standards or factors; statements of inclusion and exclusion; licensure or certification requirements; and other such information necessary to facilitate the assignment of positions to the appropriate classification.

2. Pertinent sections of the Forestry Technician (hereafter, Technician) classification specification (Exh. A-1) are noted below:

**DEFINITIONS: Forestry Technician:** Positions allocated to this classification: (1) participate in state nursery production and distribution work projects set up by the nursery foreman or nursery superintendent; or (2) perform a limited range of development and implementation activities as an assistant to Forestry Technician-Advanced, Forester, or a Natural Resources Supervisor. Activities include any phase of tree propagation, tree distribution, soil maintenance, equipment operation and maintenance, building and grounds maintenance, and fire prevention, presuppression and suppression. Positions may fabricate nursery equipment or direct LTE crews in sorting, lifting and packaging operations or operate trucks, tractors and specialized nursery equipment. Positions may also serve as the tower person during fire seasons. Work is performed under a general supervision.

**Representative positions:**

**Nursery Technician** – Implement production and distribution of work projects set up by the Nursery Supervisor/Foreman in relation to all phases of tree propagation, tree distribution, soil maintenance, equipment, building and grounds maintenance. Operate trucks and tractors while carrying out these duties. Assist in maintaining truck and tractor fleet and specialized nursery equipment.

**Forestry Technician** – Implement forestry program goals with the primary responsibility to maintain a dependable lookout for forest fires from the assigned tower and give prompt reports of smoke sighted. Assist with the maintenance of equipment, buildings and grounds, fire prevention, presuppression, suppression, and forest management work activities.

3. Pertinent sections of the Forestry Technician-Advanced (hereafter, Advanced) classification specification (Exh. A-2) are noted below:

**Definitions of Terms Used in This Specification: Paraprofessional** – A type of work closely relating to and resembling professional level work, with a more limited scope of functions, decision-making and overall accountability. A paraprofessional position may have responsibility for segments of a professional level functions, but is not responsible for the full range and scope of functions expected of a professional position.

**DEFINITIONS: Forestry Technician – Advanced:** Positions allocated to this classification are responsible for technical paraprofessional forest management and fire control activities which have significant scope and impact. These positions will: (1) coordinate the work of Forestry Technicians in the production, maintenance, and distribution of nursery stock at the state nursery; (2) perform the full range of technical paraprofessional forestry activities with responsibility for a specific portion of the forestry program within the basin(s); (3) perform the full range of technical paraprofessional forestry duties with responsibility for the development, design and implementation of forestry projects within one or more program areas; or (4) function as a fire control dispatcher. These positions are given the latitude to make decisions which have a significant impact on their assigned area of responsibility. The work is performed with significant delegation and under general supervision.

**Representative positions:**

**Nursery Foreman** – Under the direction of the Nursery Superintendent, coordinate, implement and direct work projects for activities related to seedling distribution, care of stock, seeding and maintenance of the physical plant. Direct permanent and Limited Term Employee staff in the performance of these activities to ensure the production of quality stock.

**Forestry Technician** – Perform a wide range of forestry duties which includes planning, coordinating, record keeping, and implementing the forest management fire control duties. Work includes fire suppression, presuppression and prevention; providing forest management recommendations on private and public lands including management of tax and non-tax law properties; operating specialized fire control equipment; issuing permits; developing and implementing forest fire prevention projects; and performing fire inspections.

**Forest Management Technician** – Under general direction, participate in establishing work plans, developing and recommending projects and assisting in multi-disciplinary team activities on integrated projects. Provide forest management assistance in all phases of the County forest management program including planning, coordination, record keeping and implementation of forest management activities.

**Fire Control Dispatcher** – Transmit, receive and relay information concerning public safety and forestry law enforcement; and coordinate the activities of aerial and ground forest fire suppression units, aerial and ground forest fire detection activities. Provide technical information and support for the forestry program including review of time sale status reports, providing forest management assistance on private and public lands, and assisting in fire control presuppression and prevention activities.

4. The appellant works for the Department of Natural Resources (DNR) at the Friendship Ranger Station. The Friendship Ranger Station is part of one Fire Control Unit. Other sub-areas that are part of the same unit are Wisconsin Dells, Necedah, Babcock and Nekoosa.

5. Ranger John Schwingel heads the Friendship office. The Team Leader is Becky Isenring who functions as the appellant's first-line supervisor. The Friendship office has two positions classified at the Advanced level, the incumbents of which are Carl Backhaus and Terry Schwerdtfeger. The appellant occupies the only position at Friendship classified at the Technician level.

6. The duties assigned to the appellant's position (Exh. A8) are noted below.

Position Summary: This position provides forest fire prevention, suppression, and pre-suppression services to the Friendship Fire Response Unit. It exposes the employee to dangerous situations and requires that he/she maintain a high degree of physical conditioning. Providing for public safety and protection is a primary concern of this position. The position also provides technical forest management assistance to the Friendship Forester.

<u>% Time</u>	<u>Goals and Worker Activities</u>
15%	A. Suppression of forest fires
30%	B. Fire pre-suppression
10%	C. Prevention of forest fires
35%	D. Maintenance of equipment, buildings, and grounds
5%	E. Forest Management
5%	F. Cooperation with other functions
	G. Possessing and maintaining a Commercial Driver's License is a requirement of this position.

7. The specifications require that, in order to be classified at the Advanced level, positions must perform paraprofessional forest management and/or fire control activities.

8. The appellant's position performs Advanced-level paraprofessional forest management (FM) or fire control (FC) activities or general administrative duties as follows:

**Appellant**—Worker activities or Goals (FC=12.5%; FM=4.15%; Total=16.65%):

A1. Operates crawler tractors, pumpers, tankers, other motorized and non-motorized equipment as a certified Fire Control Equipment Operator in suppressing forest fires. (3.75%)

- A2. Direct the suppression actions of a crew as a Strike Team Leader, Crew Boss or Squad Boss. (3.75%)
- C3. Inspect and issue regular, special and seasonal burning permits. (2.5%)
- C4. Assist in the investigation of forest fires to determine cause and origin. Assist in the investigation and enforcement of violations of Chapter 26 and other related law and codes. (It gives appellant the benefit of the doubt as to this worker activity since it involves his assisting in investigations rather than independently conducting such investigations.) (2.5%)
- E. Forest Management with the exception of assisting in planting trees (4.15%)

9. The position held by Mark Johnson was reallocated to the Advanced level. His position performs Advanced-level paraprofessional FM or FC activities or general administrative duties as follows:

**Mark Johnson**—reallocated to the Advanced level—Worker activities or goals  
(FC=26.49%; FM=25%; General Administration (1.67%);  
Total=53.16%):

- A1. Operate complex firefighting equipment, including crawler tractors, tankers, pumps, etc. in a high fire occurrence, high hazard pine fuels area. Operate firefighting equipment in fire situations involving aerial suppression operations. Maintain Fire Control Equipment Operator Certification. (2.5%)
- A3. Direct and lead suppression actions of fire crews. Act as dozer/engine boss, strike team/task force/group leader. Direct burning out operations. (2.5%)
- A4. Compile information and complete both routine and more complex fire reports and damage appraisals to include payroll accounts, maps, and suppression bills. (2.5%)
- A6. Work with volunteer firefighters to facilitate protection of structures from wildfire including operation of tankers and foam units. (2.5%)
- B2. Coordinate and complete updating of Fire Action Plan, Fire Program Plan and Red Flag Alert Program. Implement, update and maintain Incident Command Post pre-plan for the sub-area including the communications system. (2.14%)
- B3. Manage the sub-area Emergency Fire Warden Program to include recruiting, training, issuing supplies, maintaining signs, etc. (2.14%)
- B4. Portion stating: Independently train specialized crews to include standby riders, non-DNR tanker drivers, mobile crews. (1.07%)
- B5. Portion stating: Train LTE tower personnel in fire detection procedures. (1.07%)
- B6. Portion stating: Research data regarding fire occurrence, populations, demographics, etc. for use in fire management planning. (1.07%)

- C1. Plan, develop and present school and youth group fire prevention programs. Prepare and present adult public awareness and fire training packages. Prepare draft news releases and correspondence to the public. (3%)
- C3. Conduct inspections of properties, recreation areas, industrial sites, field operations, railroad right-of-way and other hazard areas for fire management purposes. Identify fire prone areas based on established criteria. Conduct fire prone property inspections in wildland/urban interface hazard areas encompassing entire townships and large, complex subdivisions. Work with landowners to reduce fire prone hazard. (3%)
- C4. Promote and maintain efficient public contacts for fire management purposes. (3%)
- D. Forestry, Law Enforcement and Fire Investigation. (5%)
- F. Private Forest Management and Tax Law Administration (except F5, dealing with equipment maintenance and tree planting). (20%)
- G2. Maintain station inventory. Gather data, submit required reports, and maintain station records. Maintain and order station supplies. (1.67%)

10. The position held by Gary Krause was reallocated to the Advanced level. His position performs Advanced-level paraprofessional FM or FC activities or general administrative duties as follows:

**Gary Krause**—reallocated to the Advanced level—Worker activities or goals (FC=25.6%; FM=20%; General Administration (10%) Total=55.6%):

- A1. Independently operate firefighting equipment, including crawler tractors, tankers, pumps, etc. in a high fire occurrence, high hazard pine fuels area. Operate firefighting equipment in fire situations involving aerial suppression operations. Maintain Fire Control Equipment Operator Certification. (1.67%)
- A3. Direct and lead suppression actions of fire crews. Act as dozer/engine boss. Direct burning out operations. (1.67%)
- A5. Work with fire departments to facilitate protection of structures from forest fires including the operation of tankers and foam units. (1.67%)
- A6. Gather and compile fire information and complete routine fire reports to include payrolls, maps and suppression bills. (1.67%)
- B2. Compile and update information for incorporation into the fire action and fire program plan. (2.14%)
- B6. Inspect and issue regular, seasonal, broadcast and special burning permits based on experience and judgment. (2.14%)
- B7. Gather, compile and update information for use in fire management planning such as structural mapping. Research data regarding fire

- occurrence, populations, demographics, etc. for use in fire management planning. (2.14%)
- C1. Prepare and present programs to adult and youth groups including school groups. Arrange prevention programs and maintain prevention contact records. (3.75%)
  - C2. Independently conduct fire prone property inspections of wildland/urban interface areas encompassing entire subdivisions. (3.75%)
  - D. Forestry Law Enforcement and Fire Investigation (5%)
  - F. Private forest management and tax law administration. (10%)
  - G. Public lands forest management. (10%)
  - H. Administration of forestry operations. (10%)

11. The position held by Robert Lent was reallocated to the Advanced level. His position performs Advanced-level paraprofessional FM or FC activities or general administrative duties as follows:

**Robert Lent**—reallocated to the Advanced level—worker activities or goals (FC=22.4%; FM=20%; General Administration=20%; Total=62.4%)

- A1. Operate firefighting equipment, including crawler tractors, tankers, pumps, etc. in a high fire occurrence, high hazard pine fuels area. Operate firefighting equipment in fire situations involving aerial suppression operations. Maintain Fire Control Equipment Operator Certification. (1.67%)
- A3. Direct and lead suppression actions of fire crews. Act as dozer/engine boss. Direct burning out operations. (1.67%)
- A4. Compile information and complete both routine and more complex fire reports and damage appraisals to include payroll accounts, maps and fire suppression bills. (1.67%)
- A6. Work with volunteer firefighters to facilitate protection of structures from wildfire including the operation of tankers and foam units. (1.67%)
- B2. Inspect and issue regular, seasonal and special burning permits based on judgment and experience. (1.43%)
- B3. Coordinate and complete updating of the Fire Action Plan, the Red Flag Alert Plan and the Fire Program Plan. Assist with the establishment of incident command post for the Fire Response Unit to include communications systems. (1.43%)
- B4. Manage the sub-area Emergency Fire Warden program to include recruiting, newsletter writing, issuing supplies, maintaining signs, etc. (1.43%)
- B6. Complete and update information for use in fire management planning such as structural mapping and water point establishment. Research data regarding fire occurrence, populations, demographics, etc. for use in fire management planning. (1.43%)

- C1. Plan, develop, and present school and youth fire prevention programs. Prepare and present adult fire prevention programs. (2%)
- C3. Conduct inspections of properties, recreation areas, industrial sites, field operations, railroad right-of-ways and other hazards areas for fire management purposes. Identify fire prone areas based on established criteria. Work with landowners to reduce forest fire related hazards. (2%)
- C4. Coordinate the annual fire prevention order for the Babcock Fire Response Unit. (2%)
- C5. Promote and maintain efficient public contacts for fire management purposes. (2%)
- D. Forestry law enforcement and fire investigation. (2%)
- F. Private forest management and tax law administration. (5%)
- G. Public lands forest management (15%)
- H. Administration of forestry operations. (20%)

12. The position held by Terri Schwerdtfeger was reallocated to the Advanced level. Her position performs Advanced-level paraprofessional FM or FC activities or general administrative duties as follows:

**Terri Schwerdtfeger**—reallocated to Advanced level—Worker activities and goals (FC=20.78%; FM=30%; General Administration=2%; Total=52.78%)

- A1. Independently operate crawler tractors, 3-5 ton tankers, pumps, foam units and other complex fire suppression equipment as a certified forest fire control equipment operator. (5%)
- A2. Direct the suppression efforts of a crew as a squad boss, dozer/engine boss, strike team/task force/group leader. (5%)
- B1. Prepare and present prevention programs to adult, youth and school groups. (0.71%)
- B2. Conduct fire prone property inspections of wildland/urban interface areas encompassing entire subdivisions. (0.71%)
- B3. Inspect railroad right-of-way fire breaks for compliance with R.O.W maintenance orders. (0.71%)
- C1. Compile and update information for incorporation into the Fire Program Plan and the Fire Action Plan. (0.71%)
- C2. Participate in the planning and organization of Fire Command Post facilities for use in project fire situations. (0.71%)
- C3. Gather and compile information for sub-area structure maps. Complete and update graphics for structure maps. (0.71%)
- C5. Research data re: fire occurrence, populations & demographics. (0.71%)
- C6. Recruit, train, and certify non-DNR personnel for operation of DNR Tankers. Assist with training of WCC and other mobile crews. (0.71%)
- D1. Inspect and issue regular, special and seasonal burning permits. (1.7%)



- D2. Investigate forest fires to determine cause. Gather fire information and compile routine fire reports. (1.7%)
- D3. Investigate and document violations of Chapter 26 violations. (1.7%)
- G1. Prepare and submit vehicle reports. (1%)
- G5. Participate as a member of the Adams Sub-Team – Central WI Land Basin. (1%)
- H. Assistance in administration of tax laws. (20%)
- I. Assistance in establishing state owned forest timber sales. (5%)
- J. Assist in administration of FSA and SIP cost share program. (5%)

13. Appellant's position devotes a larger percentage of time (35%) to maintenance of equipment, buildings, and grounds, duties specifically identified at the Technician level, than the positions held by Krause (15%), Lent (18%) and Schwerdtfeger (25%).

14. Appellant's position devotes a significantly smaller percentage of time to forest management duties, which tend to be paraprofessional duties within the meaning of the Advanced classification, than the comparison positions at the Advanced level. Appellant also devotes a significantly smaller percentage of time than these other positions to higher level fire control duties such as those involving independent planning, research, investigation, inspection, training and report preparation.

15. Appellant and Carl Backhaus have related responsibilities but differ in terms of the degree or amount of those duties.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction in this case pursuant to §230.44(1)(b), Stats.
2. The appellant has the burden of proof in this matter.
3. The appellant failed to establish that respondent's decision to reallocate the appellant's position to Forestry Technician rather than Forestry Technician – Advanced was incorrect.

Dated: December 14, 2001.

STATE PERSONNEL COMMISSION

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JUDY M. ROGERS, Commissioner

  
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ANTHONY J. THEODORE, Commissioner

Laurie R. McCallum, Chairperson, did not participate in the consideration of this matter.