

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

MARSHA B. BURZYNSKI, Appellant,

vs.

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

Case 542
No. 62752
PA(der)-4

Decision No. 31125

Appearances:

Ms. Marsha B. Burzynski, 528 Oak Street, South Milwaukee, Wisconsin 53172, appearing on her own behalf.

Mr. Daniel A. Graff, Attorney, Bureau of Legal Services, Department of Natural Resources, P.O. Box 7921, Madison, Wisconsin 53707-7921, appearing on behalf of Respondents.

INTERIM DECISION AND ORDER

This matter is before the Wisconsin Employment Relations Commission on an appeal of Respondent's decision to deny Appellant's request to reclassify her position from Program and Planning Analyst 4 (PPA 4) to Program and Planning Analyst 5 (PPA 5), effective June 4, 2000. At the time the appeal was filed with the Wisconsin Personnel Commission in June of 2002, the Respondents were identified as the Secretary of the Department of Employment Relations (DER) and the Secretary of the Department of Natural Resources. The Personnel Commission was abolished pursuant to 2003 Wis. Act 33, effective July 26, 2003, before a hearing had been held, and the authority for processing the matter was transferred to the Wisconsin Employment Relations Commission. The same legislation reorganized the executive branch so that the position of Secretary of DER is now the Director of the Office of State Employment Relations (OSER). The Commission's decision in this matter is premised on the statutes and rules that existed at the time the appeal was filed and all quoted provisions are those in existence in June 2002 unless otherwise noted.

A hearing on the matter was held in the Commission's Offices in Madison, Wisconsin on March 28, 2004, before Hearing Officer Edmond J. Bielarczyk, Jr., a member of the Commission's staff. A briefing schedule was established and the record was closed on April 28, 2004, after receipt of briefs. The parties stipulated to the following issue:

Did the Respondent correctly deny the employee's reclassification request from Program and Planning Analyst 4 to Program and Planning Analyst 5 effective June 4, 2000, in particular concerning the factors Scope and Impact and Work and Complexity?

The hearing examiner issued a proposed decision on October 27, 2004. No objections were filed by the requisite due date of November 26, 2004.

For the reasons set forth below, the Commission concludes that Respondent's decision was incorrect and Appellant's position is better described at the Program and Planning Analyst 5 classification level.

Ms. Marsha Burzynski, the Appellant in this matter, is employed by the Department of Natural Resources in its Southeast Region.

Prior to March of 1999, the focus of her position was on conducting water basin planning activities for the Sheboygan River Basin.

On April 22, 2000, Appellant's supervisor, Ms. Sharon Gayan, submitted a reclassification request and a revised position description on Appellant's behalf. Gayan identified certain duties that Appellant no longer performed, as well as new duties assigned in March of 1999. The position description describes the new duties as Goal A and B and accurately reflects all of Appellant's responsibilities as of June 4, 2000.

POSITION SUMMARY

This is a professional level position that assumes an independent role with limited supervision and broadly defined objectives. This position is solely responsible for developing and implementing the State of the Basin Report (or Integrated Plans) for each Southeast Region land and water GMU [Geographic Management Unit] (Fox (IL), Milwaukee, Root/Pike and Sheboygan) with little or no specific direction or review. This is a regional position focusing on complex land and water resource interactions and management and is responsible for developing, administering and evaluating the Integrated Plans at the Regional level. These reports provide a link between the Department's strategic implementation plans, resource conditions and regional work planning activities. This position plans and conducts chemical, physical and biological studies of river systems, prepares river basin survey reports and identifies and evaluates chemical and biological samples to determine the effect of pollutants on aquatic biota. This position also provides

technical expertise to and builds consensus with other Department programs, local governments, nonprofit organizations and other interested parties regarding water resource issues.

This position requires a great deal of cross-program integration with staff from Wildlife Management, Forestry, Waste Management, Remediation and Redevelopment, Environmental Analysis and Review, Information Systems, Parks and Recreation, and all Water Division programs for collecting, analyzing and summarizing data for preparing and implementing the Integrated Plans and other water resource programs. This position also requires direct communication and cooperation with federal, State and local officials for implementing recommendations for each of the Integrated Plans and the *Milwaukee Estuary Remedial Action Plan*.

Other responsibilities include conducting water quality trend monitoring, conducting remedial action plan ecosystem monitoring, managing and interpreting ecosystem data using complex databases and geographic information systems, and developing ecosystem quality indicators.

Key testimony will be provided at administrative hearings and enforcement actions dealing with regulatory water quality issues, rule making and administrative code hearings and related functions as they apply to Departmental Integrated Plan, Remedial Action Plan, ecosystem management and nonpoint source control initiatives.

**40% A. DESIGN AND PREPARE STATE OF THE BASIN
REPORTS FOR THE FOUR SOUTHEAST REGION LAND
AND WATER GMUs.**

A1. Serve as project leader/manager to prepare detailed and complex Integrated Plans for each of the four major basins in the Southeast Region. These plans must include a detailed assessment of water quality conditions to meet stringent U.S. Environmental Protection Agency Clean Water Act requirements, while integrating land, and water quality components into a comprehensive 6-year plan. These comprehensive plans are new initiatives for three of the GMUs in the Southeast Region and are used to drive the Region's work planning and budget process for Land and Water programs and are tied to the Department's Strategic Plan.

A2. Collect, analyze and summarize data and other technical information to describe the state of the basin for each GMU. Direct/manage staff assistants to collect water quality data. Present and explain information to Land and Water GMU Partnership

Teams and other external groups. Data to analyze and summarize will address the following:

- Land use patterns and population trends as they relate to environmental quality and integrity;
- Biological, chemical and physical land and water complex interactions
- Wetland statistics (acres filled, converted, restored) and effects on wildlife, fisheries, agriculture and water quality
- Forestry (urban and Managed Forest Law) statistics
- Wildlife populations and relationships to changing environmental conditions
- Potential urban restoration areas (brownfields)
- Endangered and threatened resources
- Municipal and industrial stormwater management issues and challenges
- Drinking water and groundwater quality and quantity
- Sediment quality and relationships to the aquatic ecosystem health
- Airborne contaminant deposition and relationships to biotic integrity and human health
- Environmental and navigational dredging impacts
- Unique resources for management and protection
- Waste site impacts on environmental integrity

A3. Develop region-wide data management and analysis capabilities through designing databases for managing environmental data and incorporate the use of geographic information systems (GIS). These advanced “state of the art” GIS mapping and analysis tools are relatively new to Southeast Region and will provide each GMU with the capability to analyze spatially as well as graphically, and to create high quality graphic presentations (maps) for communicating the Department’s mission and priorities to diverse partners.

A4. Coordinate and manage environmental goals and work planning priorities for each GMU and coordinate work activities with internal and external partners. These Integrated Plans will identify environmental programs and identify specific actions necessary to eliminate or reduce the severity of the problem source.

A5. Coordinate public involvement and present the Integrated Plans through a formal process. This involvement will be tailored to the needs of each GMU while ensuring all viewpoints have adequate representation through the process.

20% B. IMPLEMENT RECOMMENDATIONS FOR ACHIEVING INTEGRATED PLAN GOALS FOR EACH SOUTHEAST REGION GMU.

B1. Identify sources of funding and assist GMU leaders, partner teams, local governments, and nonprofit organizations in obtaining funding for implementing plan recommendations. Assure intergovernmental cooperation to achieve joint priorities through building partnerships and alliances.

B2. Evaluate and report the status of ecosystem quality improvement and protection projects to GMU Partnership Teams, federal, state, and local governments and other partners.

B3. Provide region-wide technical expertise to implement monitoring protocols for developing environmental indicators and other performance measures.

35% C. DESIGN AND CONDUCT WATER QUALITY AND SEDIMENT EVALUATION ACTIVITIES FOR THE MILWAUKEE RIVER BASIN.

C1. Design and conduct studies, interpret data, and report the results of chemical, physical, and biological investigations for determining progress in achieving regional Integrated Plan and *Milwaukee Estuary Remedial Action Plan* objectives.

C2. Manage and conduct Southeast Region's Stream Trend Monitoring program in the Milwaukee River Basin by collecting and analyzing chemical, physical, and biological data. Analyze data for long term water quality trends.

C2. Manage and conduct water quality standards review studies by U.S. EPA for section 208 of the Clean Water Act.

C3. Manage in-place pollutant sediment studies, including sediment mapping and sampling analysis. Implement sediment remediation projects.

C4. Prepare stream appraisal reports documenting sources contributing to water quality degradation and propose methods to reduce pollutant contributions.

C5. Manage technical aspects of water quality implementation projects to ensure compliance with water quality standards and guidelines.

C6. Prepare detailed work plans and funding proposals, and implement projects for *Milwaukee Estuary Remedial Action Plan*, GMU Integrated Plans and other water resource related projects.

5% D. CONDUCT ACTIVITIES TO SUPPORT MILWAUKEE REVER BASIN INTEGRATED ECOSYSTEM MANAGEMENT (IEM) PROJECTS.

D1. Develop and analyze existing water quality and land use data and develop GIS capabilities to display and analyze the data. Prepare high quality maps to use at public information meetings and for reports.

D2. Recommend data collection and analysis activities to support environmental indicator development for the Milwaukee River Basin.

D3. Provide direction and expertise to team members and others in the Southeast Region as needed to develop and evaluate performance measures.

The State of Wisconsin uses a Factor Evaluation System to determine the appropriate classification level for positions encompassed by the PPA series. The evaluation system relies on five basic factors as well as several sub-factors. Those five factors and the relevant sub-factors are:

1. Scope and impact of work
 - Scope sub-factor
 - Impact sub-factor
2. Complexity of work
3. Knowledge and skills required
4. Personal contacts and their purpose
5. Discretion and accountability

Every factor and sub-factor is further divided into multiple levels, with each level assigned a different point value. Once a civil service position is analyzed in terms of each factor and sub-factor, the points are totaled and compared to the range of points assigned to the different class levels.

The parties stipulate that Appellant's position is entitled to the following points:

- | | |
|--|-----------|
| 3. Knowledge and skills required | 80 points |
| 4. Personal contacts and their purpose | 60 points |
| 5. Discretion and accountability | 80 points |

The parties also stipulate that her position falls within Impact sub-factor level 3. They disagree only as to the appropriate levels for the Complexity factor and the Scope sub-factor.

The point range established for the PPA 4 classification is from 320 to 405. The range for the PPA 5 class level is 410 to 500 points.

The Scope sub-factor is divided into five levels. The two levels that are relevant to this dispute are S-2 and S-3 which are described in the PPA position standard as follows:

S-2

The purpose of the work is to apply a wide range of analytic approaches, methods or criteria to provide technical assistance, prepare analytical studies or forecasts, develop particular programs or policy options, evaluate the effectiveness of existing programs or the adequacy of plans or proposals prepared by others, formulate procedures or regulations, or carry out similar analytic functions which do not involve all factors of policy analysis, planning, or program evaluation, as defined in Section I. G. of this standard. The analyst may work independently or as the “specialist” or “expert” on a major phase of a large project. Results depend on substantial adaptation or extension of existing plans, policies, or results. These serve, however, as significant constraints on the scope of the analysis and the content of recommendations.

S-3

The purpose of the work is to formulate and conduct policy analysis, planning, program evaluation, or similar analytic projects, as project leader, frequently with specifically assigned staff assistants. Projects involve all factors of policy analysis, planning, or program evaluation, as defined in Section I.G. of this standard. The analyst is accountable for clarifying the problem to be addressed, designing the study and choosing methodology, collection and analysis of information, development of alternatives, options, or conclusions, and recommendation of the appropriate course of action based on the results of analysis. Results depend on the development of new approaches, concepts, or methods. Existing plans, policies, or program results provide only broad constraints on, or presuppositions for, the scope of the analysis and content of project results.

OR

The purpose of the work is to direct an organizational unit of analysts engaged in policy analysis, planning, program evaluation, or a similar analytic function, typically as its first-line supervisor. The position is responsible for developing of unit objectives and priorities, recommending what projects should be conducted, directing specific projects, allocating staff time and resources to achieve unit goals, and assigning and reviewing work products.

Both levels S-2 and S-3 refer to the following terms that are defined in Section I.G. of the PPA Standard:

Planning/Plan - The process of developing a specification for a future state and the processes or means necessary to achieve it. Planning involves choosing or prioritizing goals, identifying and developing alternative courses of action as means to achieve these goals, and selecting or recommending the optimum course based on systematic comparison of the efficiency or effectiveness of the alternatives. A plan is the formal specification of the future state and the means chosen to achieve it.

Policy Analysis – The systematic study of an issue, problem, or decision situation requiring policy action designed to provide decision-makers with the information on the costs, benefits, or consequences of alternative courses of action or decisions needed in order to formulate policy. Typically, policy analysis involves defining the decision-maker’s objectives, developing or clarifying alternative means to those objectives, assessing the impacts of alternatives by developing a model that projects their consequences, the establishment of criteria to rank the alternatives in order of desirability or priority, and the recommendation of the appropriate alternative to the policy-maker.

Program Evaluation – The systematic examination of an existing program or policy for the purpose of determining its effectiveness or efficiency in achieving its goal, by developing and applying quantitative measures of costs and/or benefits, to provide decision-makers with recommendations for the continuation, modification, or discontinuation of the program or underlying policy.

A position assigned to Impact sub-factor level I-3 and placed at level S-2 for the Scope sub-factor receives only 110 points for the Scope and Impact factor. However, at levels I-3 and S-3, it receives 140 points for Scope and Impact factor.

Appellant’s position is solely responsible for developing State of the Basin reports for four (4) Southeast Region land and water geographic management units and serving as project leader for the reports. Appellant’s duties involve all factors of policy analysis, planning or program evaluation. For three (3) of the geographic management units there are no existing plans, policies or results that would serve as constraints on the analysis or content of the State of Basin Reports. Appellant’s position satisfies the S-3 level.

The PPA position standard also divides the Complexity factor into five levels. The two levels that are relevant to this dispute are C-2 and C-3 which are described in the position standard as follows:

C-2 70 Points

The work involves analyzing problems or situations with many diverse, poorly defined, novel or conflicting factors, applying and interpreting theory, expert opinion, broad policy, or general professional standards, and developing, evaluating, or justifying alternative course of action. Deciding what needs to be done requires relating the assigned problem to broad factors such as theoretical or policy issues, or the operation of a variety of programs, as well as testing different technical approaches to determine the most appropriate methodology. Doing the work is complicated by the need to develop new measures of variables or apply more complex analytic techniques**, make numerous, subjective judgments on the validity of information, the soundness of arguments, or the interpretation of standards, and to take into account diverse precedents and potential trade-offs in developing conclusions.

C-3 115 Points

Assignments involve either: a) particularly intensive, technically-sophisticated analysis or b) the synthesis of a particularly broad and diverse range of facts, objectives, views and concepts, in order to establish innovative conclusions or recommendations. Intensive technical analysis involves such things as refining or developing multi-variable quantitative models of social processes, designing cost/benefit analyses or quasi-experimental studies, or utilizing the latest, specialized theories of research results in a professional field. Characteristic synthetic activities include directing multi-disciplinary planning or evaluation studies and developing policy proposals involving multiple programs. Deciding what needs to be done requires considerable analysis to clarify the problem to be addressed as well as to choose methods and approaches, due to the novel or obscure nature of the problem, conflicting/ambiguous goals, policies, or precedents, or changing program objectives. Doing the work is complicated by a variety of factors such as: the need to define and develop measures for previously undefined variables, to work out the application of advanced analytic techniques, or to make decisions or develop policies involving extensive trade-offs between conflicting objectives, views, standards or policies; severe time constraints, the long-range (10-20 years) nature of plans or policies to be developed, the lack of directly applicable precedents or guidelines, or the need to establish a new frame of reference to solve the assigned problem.

* For example, calculation and comparison of averages of frequencies; flow-charting; unit costing; comparison of tests: content analysis of interview data.

** For example, quantitative analysis techniques such as regression, linear programming, or mathematical modeling; formalized cost/benefit analysis; formalized case studies.

The new duties assigned to the Appellant are multi-disciplinary involving multiple programs, require the Appellant to deal with problems of multiple goals, policies and objectives, and require the Appellant to deal with the problems caused by the tradeoffs between conflicting goals, policies and procedures. Appellant's position satisfies the C-3 level.

New duties assigned to the Appellant to design and prepare State of the Basin Reports for the four Southeast Region Land and Water geographic management units demonstrate a gradual and logical change in assigned duties and responsibilities. More specifically, the change was from one program area (Water) to a multi-disciplinary program (ecosystem planning and management).

The Appellant's position is entitled to receive a total of 475 points under the PPA Factor Evaluation System. The position is better described at the PPA 5 level than at the PPA 4 level.

ORDER

Respondents' decision to deny the request to reclassify the Appellant's position from Program and Planning Analyst 4 to Program and Planning Analyst 5 is rejected and this matter is remanded for action in accordance with this decision. The Commission will retain jurisdiction in order to consider any timely application for fees and costs under Sec. 227.485, Stats.

Given under our hands and seal at the City of Madison, Wisconsin, this 6th day of January, 2005.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Judith Neumann /s/

Judith Neumann, Chair

Paul Gordon /s/

Paul Gordon, Commissioner

Susan J. M. Bauman /s/

Susan J. M. Bauman, Commissioner

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Office of State Employment Relations
& Department Of Natural Resources (Burzynski)

MEMORANDUM ACCOMPANYING INTERIM DECISION AND ORDER

This appeal arises from a decision to deny a request to reclassify the Appellant's position. Ms. Burzynski contends that her position is better described at the Program and Planning Analyst 5 (PPA 5) level than at the Program and Planning Analyst 4 (PPA 4) level. In *DUESTERHOEFT V. DER*, 90-0343-PC, 12/17/92, the Personnel Commission outlined the nature of the typical analysis performed in classification cases:

The basic authority for the classification of positions is the position standard and, within a position standard, the specifications for each classification. The specification providing the 'best fit' is used to determine the actual classification. The 'best fit' is determined by the specification reflecting job duties and activities within which the employee routinely spends a majority of his/her time. *DER & DP V. PC (DOLL)*, Dane County Circuit Court, 79-CV-3860, 9/21/80; appeal settled, Court of Appeals, 80-1689, 2/9/81.

The instant matter is not a typical "best fit" classification analysis. The State of Wisconsin has developed a Factor Evaluation System as the basis for making differentiating positions assigned to the Program and Planning Analyst (PPA) series. Classifying a position within a particular level of the PPA series is quite complicated because the Factor Evaluation System requires an analysis of many different aspects of the responsibilities assigned to a position. The Position Standard's factor evaluation guide (Ex. A-10, R-101, p. 10) provides that to be properly evaluated at any particular level of a factor, the position should exceed the lower levels of the same factor or sub-factor. Fortunately, the parties in this matter agree on most factors and sub-factors and the only areas of dispute are the sub-factor Scope and the Complexity of Work factor. If the Respondent has correctly assigned Appellant's position to Scope level S-2 and Complexity level C-2, then the point total of 400 places the position within the range encompassed by the PPA 4 classification. Respondent has argued that Human Resource Specialist Mr. Cornell Johnson and his supervisor, Ms. Susan Steinmetz, Chief of the Department of Natural Resources' Classification, Compensation and Selection Section, who made the evaluation, analysis and conclusion concerning Appellant's position have credentials and expertise to make such decisions while Appellant and her witnesses do not. Steinmetz approved Johnson's May 8, 2002 correspondence denying Appellant's reclassification request (Ex. A-8, R-111). However, Steinmetz did not testify and there is nothing in the record that identifies what level of approval and scrutiny she provided Johnson. It is the Appellant's burden to demonstrate that the duties assigned to the Appellant are more properly described at either the S-3 or the C-3 level. If Appellant demonstrates her duties are at the S-3 or C-3 level then the position falls within the point range for the PPA 5 classification.

Respondent's classification analyst, Johnson, concluded that while there were changes to the Appellant's duties, such changes had to be substantial and must be better identified within a different classification series level in order to justify reclassification. Johnson further concluded

that the changes in Appellant's position were not sufficient to warrant a reclassification action. However, he still performed an analysis to ensure the position was properly classified. Johnson assigned the following factors to Appellant's position:

Factor 1: Scope – S-2, Impact – I-3	110 points
Factor 2: C-2	70 points
Factor 3: KS-3	80 points
Factor 4: Nature – NC-3, Purpose – PC-2	60 points
Factor 5: D-3	80 points

Johnson further stated in his letter:

“The analysis of the factors indicates the point value of this position is 370. In order for a position to be classified at the Program and Planning Analyst 5 level the point value for the factor analysis must fall between 410 and 500. Therefore it is determined that the position remains appropriately classified at the Program & Planning Analyst 4 level. Additionally, it should be noted that the assigned duties and responsibilities are similar to other positions, appropriately classified at the Program & Planning Analyst 4 level in the Department of Natural Resources.”
(Ex. A-6, R-111)

At the hearing it was stipulated the correct point tabulation for Johnson's analysis was 400 points. Appellant timely appealed the denial of her request.

Johnson testified at the hearing that the focus of a reclassification request in the Program and Planning Analyst series is on the position description and how it relates to the factors. Johnson also testified that he did not discuss the decision with any supervisors or the Appellant prior to rendering his analysis but noted his supervisor, Steinmetz, had reviewed his work. Johnson also testified that the S-2 level was appropriate because the Appellant did not spend a majority of time as a project leader and did not directly supervise or direct staff, noting that leading employees has to be for a significant amount of time.

Scope sub-factor

A careful review of Factor 1, Scope and Impact, Scope sub-factor, demonstrates the following distinctions between the S-2 and S-3 levels:

Scope 2:

1. Performs analytic functions that do **not** involve all factors of policy analysis, planning, or program evaluation as defined in the Position Standard.
2. May work independently or as a specialist/expert on a major phase of a large project.
3. There must be substantial adaptation or extension of existing plans, policies, or results that nevertheless serve as “significant constraints” on the scope of the analysis and content of the product.

Scope 3

1. Projects involve **all** factors of policy analysis, planning, or program evaluation as defined in the Position Standard.
2. Must work as project leader, frequently with specifically assigned staff assistants.
3. Results depend on the development of new approaches, concepts, or methods and existing plans, polices, or program results provide only broad constraints on, or presuppositions for, the scope of the analysis and content of project results.

In analyzing the Appellant's job description, Respondent's classification analyst, Johnson, concluded that the S-2 level best described Appellant's responsibilities, noting in his analysis that "[t]he purpose of the work is to apply a wide range of analytic approaches, methods or criteria to provide technical assistance," (Ex A-8, R-111) and noting that the Appellant is called upon to provide the Integrated Resource Management Plans for the Southeast Region land and water resources. However, level S-2, as noted above, also provides that the analytic functions do not involve all factors of policy analysis, planning or program evaluation. In order to satisfy the S-3 level, the Appellant must demonstrate that any existing plans, policies, or program results only provide broad constraints on the scope of analysis and content of the Integrated Resource Management Plans, that she works as a project leader frequently, with specifically assigned staff, and that she performs analytic functions that apply all factors of policy analysis, planning or program evaluation. These policy analysis, planning and program evaluation tasks are defined in the PPA Position Standard as follows:

Planning/Plan - The process of developing a specification for a future state and the processes or means necessary to achieve it. Planning involves choosing or prioritizing goals, identifying and developing alternative courses of action as means to achieve these goals, and selecting or recommending the optimum course based on systematic comparison of the efficiency or effectiveness of the alternatives. A plan is the formal specification of the future state and the means chose to achieve it.

Policy Analysis – The systematic study of an issue, problem, or decision situation requiring policy action designed to proved decision-makers with the information on the costs, benefits, or consequences of alternative courses of action or decisions needed in order to formulate policy. Typically, policy analysis involves defining the decision-maker's objectives, developing or clarifying alternative means to those objectives, assessing the impacts of alternatives by developing a model that projects their consequences, the establishment of criteria to rank the alternatives in order of desirability or priority, and the recommendation of the appropriate alternative to the policy-maker.

Program Evaluation – The systematic examination of an existing program or policy for the purpose of determining its effectiveness or efficiency in achieving its goal, by developing and applying quantitative measures of costs and/or benefits, to provide decision-makers with recommendations for the continuation, modification, or discontinuation of the program or underlying policy.

The Appellant's position description states: "This position is solely responsible for developing and implementing the Integrated Resource Management Plans for each Southeast Region land and water GMU (Fox IL, Milwaukee, Root/Pike and Sheboygan) with little or no specific direction or review." GMU is an acronym for Geographic Management Unit. Appellant's duties include developing, administering and evaluating integrated plans at the regional level. Appellant's position description requires her to identify and clarify issues, choose methodologies, collect and analyze information, draw conclusions and recommend what actions are to be taken. Clearly, the Appellant is required to perform all the factors of planning, policy analysis, or program evaluation in order to produce the Integrated Resource Management Plan, a six (6) year plan that supports State of Wisconsin land and water programs and meets the requirements of U.S. Environmental Protection Agency Clean Water Act, U.S. Fish and Wildlife Service and U.S. Environmental Protection Agency. Appellant testified she is responsible, from start to finish, for four (4) Integrated Resource Management Plans for the State's Southeast Region. Appellant also testified she is responsible for choosing methodologies, collecting and analyzing information, drawing conclusions from analysis and recommending actions based upon the analysis. Appellant's supervisor, Ms. Sharon Gayan, testified the Appellant spent the majority of her time performing these duties as a project leader. Gayan testified the Appellant worked independently, and, with supervisor approval, directed work to other employees. Gayan further testified that the Appellant works independently, that Appellant's tasks are very complex, that she herself had been a PA5 with similar responsibilities, and that Appellant's work concerns new concepts and new sets of principles.

Respondent, in acknowledging that Appellant's work included leading teams or as a project leader for policy analysis and initiatives, contended that such assignments were not a majority of her duties. Appellant's position description demonstrates that forty percent (40%) of Appellant's duties, goals and worker activities are to act as project leader to develop and implement State of the Basin Reports for the State's southeast region. While Appellant directed some limited term employees (LTEs) in that role, Appellant and Gayan testified that the Appellant's responsibilities as project leader included directing the work of full time staff. There is at least some support for the conclusion that the nature of the role of project leader would be unaffected by whether the others working on the project were permanent employees or LTEs. In *JESSE V. DHSS & DER*, 92-0036-PC, 9/18/92 no distinction was drawn between leading LTEs rather than permanent employees. There is a logical distinction between the responsibility to supervise a permanent employee and an LTE because the LTE is not subject to the just cause requirement and the privileges that are accorded to permanent employees. However, the distinction is not relevant for someone serving as a team leader. There is also no evidence to dispute Gayan's testimony that Appellant spent seventy-five per cent (75%) of her time performing duties involving S-3 and C-3. As noted above, the Position Description states forty percent (40%) of Appellant's time is spent performing the duties and responsibilities of paragraph A.

Clearly the Appellant spends a significant amount of time acting as a project leader (40%). There are no existing plans, policies or program results that provide constraints on scope of analysis and content of project results. The State of the Basin reports require all factors of policy analysis, planning or program evaluation. The State of the Basin reports are similar to work the Appellant has performed on the Sheboygan Food Chain report (Ex. A-2). Given the foregoing, we conclude that sub-factor S-3 best describes Appellant's job duties. This results in a Factor Rating of Factor 1 of 140 points and raises Appellant's factor analysis total to 430 points. This increase alone would place the Appellant's position in the PPA 5 classification.

Complexity factor

The PPA Standard provides that "Factor 2 – Complexity of Work" consists of three components: 1) Nature of the work; 2) Difficulty in deciding what needs to be done; and; 3) difficulty in performing the work. In *BLASCOE V. DHSS & DER*, 94-0920-PC, 12/20/95, the Personnel Commission addressed the distinctions between these two levels of complexity. As explained in that case, the differences between C-2 and C-3 can be described as follows:

C-2

- 1) Assignments consist of a variety of analytic and coordinative, and/or supervisory tasks involving problems with many diverse, poorly defined, novel, or conflicting factors, requiring the analyst to adapt a variety of general standards, policies, or theories, and to plan, coordinate, and conduct studies, projects, or evaluations.
- 2) Deciding what needs to be done requires relating the assigned problem to broad factors such as theoretical or policy issues, or the operation of a variety of programs, as well as testing different technical approaches to determine the most appropriate methodology.
- 3) Doing the work is complicated by the need to develop new measures of variables or apply more complex analytic techniques (such as quantitative analysis techniques like regression, linear programming, or mathematical modeling; formalized cost/benefit analysis; formalized case studies), make numerous, subjective judgments on the validity of information, the soundness of arguments, or the interpretation of standards, and to take into account diverse precedents and potential trade-offs in developing conclusions. Or, the work is complicated by the need to plan, assign, coordinate, and review the work of professional subordinates.

C-3

- 1) Assignments involve either: a) particularly intensive, technically-sophisticated analysis (involving such things as refining or developing multi-variable quantitative models of social processes, designing

cost/benefit analyses or quasi-experimental studies, or utilizing the latest, specialized theories or research results in a professional field) or b) the synthesis of a particularly broad and diverse range of facts, objectives, views, and concepts, in order to establish innovative conclusions or recommendations (such as directing multi-disciplinary planning or evaluation studies and developing policy proposals involving multiple programs).

- 2) Deciding what needs to be done requires considerable analysis to clarify the problem to be addressed as well as to choose methods and approaches, due to the novel or obscure nature of the problem, conflicting/ambiguous goals, policies, or precedents, or changing program objectives.
- 3) Doing the work is complicated by a variety of factors such as: the need to define and develop measures for previously undefined variables, to work out the application of advanced analytic techniques, or to make decisions or develop policies involving extensive trade-offs between conflicting objectives, views, standards, or policies; severe time constraints, the long-range (10-20 years) nature of plans or policies to be developed, the lack of directly applicable precedents or guidelines, or the need to establish a new frame of reference to solve the assigned problem.

In reviewing the distinctions between C-2 and C-3 the key distinction in the instant matter is whether the work involves one program area or is multi-disciplinary involving multiple programs. C-3 requires assignments to be multi-disciplinary, dealing with the problems of multiple goals, policies and objectives, and addressing the problems caused by the tradeoffs between these conflicting goals, policies and objectives.

In determining the Complexity (Factor 2) of Appellant's responsibilities, Johnson compared the nature of work, the difficulty in deciding what needs to be done, and the difficulty in performing the work. He concluded that level C-2 best defined the complexity of the position. In Johnson's May 8, 2002 correspondence he noted that the "primary purpose of the position is to ensure that water quality standards are in conformance with the DNR administrative code and to develop and implement water resource management/water quality management plans, conduct water quality evaluations, perform water quality standards activities and cross program issues." (Ex. A.8, R-111) Johnson testified at the hearing that Appellant's duties were all related to Water and were not multi-disciplinary. Respondent argued that Appellant's duties do not meet the C-3 requirements because the majority of her duties do not rise to a level of "intensive technically-sophisticated analysis" or a "synthesis of particularly broad and diverse facts" and related factors as defined in C-3. However, the Position Standard is silent concerning the percentage of the incumbent's time that must reach the higher level. A review of the seven (7) PPA 4 position descriptions (Ex. R 103 to R 109) and the one (1) PPA 5 (Ex. R 110) provided by the Respondent in support of Johnson's decision to deny the Appellant's reclassification request does not resolve this matter because they do not identify what level, C-2 or C-3, was applied to them or whether a determination was made as to the percentage of time the incumbent spent performing duties in either level.

At hearing, Johnson testified that level C-2 best described Appellant's position because her assignments primarily related to Water and were not multi-disciplinary in nature. Johnson testified that he reached this determination based solely on his review of the Position Description and did not consult with the Appellant's supervisor. Johnson further testified that Appellant's duties all related to Water with other areas appearing to be incidental. Johnson concluded that this was all one programmatic area, Water, and was therefore not multi-disciplinary. Respondent, in support of its position that the Appellant's reclassification was properly denied, points to Johnson's May 8, 2002 letter and argues Appellant's duties did not qualify for factor C-3 because Johnson found a majority of Appellant's duties did not rise to the level of intensive technical analysis or synthesis of broad and diverse facts and related factors as defined in the C-3 class specification.

A review of the Appellant's Position Description demonstrates that while the Appellant is assigned tasks dealing specifically with Water, she also is assigned tasks dealing with forestry, urban restoration areas, municipal and industrial waste treatment facilities and their environmental impact, aquatic ecosystem health, and airborne contaminate deposition. These new tasks are reflected in Goal A, which represents 40% of her time and Goal B, which represents 20% of her time. The Appellant testified that the Department of Natural Resources has changed in focus from program specific planning (Water) to a multi-disciplinary approach of ecosystem management. Appellant demonstrated this in a Milwaukee River Basin Environmental Indicator's Pilot final report, wherein she was project manager (A-1). This report covered areas including Human Health, Land Use, Air Quality, Terrestrial Habitat Quality and Diversity, and Aquatic Habitat Quality and Diversity. Appellant was also project manager for a Sheboygan River Food Chain and Sediment Contaminant Assessment (A-2). The overall goal of this study was to establish baseline contaminant concentrations associated with sediments, water column and biota. Appellant's new duties identified in A2 include analyzing land use patterns and population trends; effects on wildlife, fisheries, agriculture and water quality; forestry; urban restoration areas; airborne contaminant deposition and relationships to biotic integrity and human health; and waste site impacts on environmental integrity. Thus, Appellant's position is multi-disciplinary and is not limited to only Water. As noted above, sixty percent (60%) of the new duties assigned to the Appellant is a result of the Department of Natural Resources change from program specific planning to a multi-disciplinary approach of ecosystem management. Only Goal C, described in Appellant's position description as "C. Design and Conduct Water Quality and Sediment Evaluation Activities for the Milwaukee River" basin is limited to one program area (Water). Goal C only represents thirty-five percent (35%) of the duties assigned to the position.

Clearly the new duties assigned to the Appellant are multi-disciplinary involving multiple programs, require the Appellant to deal with the problems of multiple goals, policies and objectives, and require the Appellant to deal with the problems caused by the tradeoffs between conflicting goals, policies and procedures. Given the foregoing, we conclude that level C-3 best describes the complexity of Appellant's job duties. The resulting 135 points raises Appellant's point total to 475. Even if the Commission had concluded that the position met level S-2 rather than S-3, the C-3 level would place the Appellant's position into the Program and Planning Analyst 5 class level.

Johnson, in denying the Appellant's reclassification request, noted that positions are reclassified based upon logical and gradual changes to duties. The term "reclassification" is defined in Sec. ER 3.01(3), Wis. Adm. Code:

"Reclassification" means the assignment of a filled position to a different class by the secretary as provided in s. 230.09(2), Stats., based upon a logical and gradual change to the duties or responsibilities of a position or the attainment of specified education or experience by the incumbent.

The terms "logical" and "gradual" were defined by Johnson as follows:

Logical changes are defined as those that are reasonably related to the previous duties and responsibilities. Additionally, if more than 50% of the duties have changed since the last position description review, the changes are not considered logical but rather reflect the creation of a new position.

Gradual changes are defined as those duties that constitute the reason for the class level change and were at least 26% of the position and have expanded to 51%, over a period of six months. (Ex. A-8, R-111)

Herein the Appellant's position description demonstrates a logical change from a single program area (Water) to a multi-disciplinary approach for forty percent (40%) of her duties. These duties are reasonably related to her previous duties of water management plans.

Based upon the above, the Commission concludes that the Appellant's duties and responsibilities have gradually and logically changed and are more appropriately identified at the Program and Planning Analyst 5 level. The Appellant has satisfied her burden of establishing that her position was better described at the Program and Planning Analyst 5 level as of June 4, 2000.

Dated at Madison, Wisconsin, this 6th day of January, 2005.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Judith Neumann /s/

Judith Neumann, Chair

Paul Gordon /s/

Paul Gordon, Commissioner

Susan J. M. Bauman /s/

Susan J. M. Bauman, Commissioner

