

STATE OF WISCONSIN  
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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**THOMAS SOLIN**, Appellant,

v.

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

Case 637  
No. 63608  
PA(der)-89

**Decision No. 31424**

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**Appearances:**

**Thomas Solin**, 1034 Sudden Valley, Bellingham, Washington 98220, appearing on his own behalf.

**Daniel Graff**, Attorney, Department of Natural Resources, PO 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 Appellant's (Mr. Solin's) appeal of Respondents' (the employer's) decision which denied reallocation of his position in the Department of Natural Resources. The appeal was filed April 26, 2004. At a prehearing conference held May 25, 2004, the parties agreed to the following issue:

Whether Respondent's decision not to reallocate Appellant's position from Natural Resources Law Enforcement Supervisor to Natural Resources Program Manager was correct?

The parties also agreed to a sub-issue relating to the proper effective date of any reallocation.

Part of the relief requested by Mr. Solin is for this Commission to adjust his base pay. That request was the subject of a Motion to Determine Jurisdiction filed by the employer on June 22, 2004.

Dec. No. 31424

A hearing was held in this matter on July 28, 2004 before Commissioner Paul Gordon, serving as the designated hearing examiner, with authority to prepare a proposed decision pursuant to Secs. 227.46(2), and 227.47(2) Stats. During the course of the hearing, Commissioner Gordon announced his ruling on Respondents' Motion to Determine Jurisdiction and provided his rationale. The analysis is also summarized below and both the ruling and the analysis are adopted as part of this Interim Decision and Order. Written briefs were filed by the parties and the record was closed on October 5, 2004. The hearing examiner issued a proposed decision on August 11, 2005, that would have upheld the employer's classification decision and set an effective date in August 2002. Written objections were filed and the final date for submitting a written response was September 22, 2005.

The Commission has consulted with the examiner. After carefully considering the record, the proposed decision and the objections, the Commission rejects the proposed decision, rejects the employer's action and remands the matter to the employer.

For the reasons set forth below, the Commission concludes that the appropriate effective date for the transaction that is the subject of this appeal is August 28, 2002 rather than in February 2000, and that the duties performed by the Appellant in August 2002 are better described by the Natural Resources Program Manager classification than the Natural Resources Law Enforcement Supervisor classification. Therefore, the decision of the employer is rejected.

During the relevant time period and until January 2003, the Department of Natural Resources (DNR) employed Mr. Solin as the Chief of the Special Operations Section in the Bureau of Law Enforcement, Division of Enforcement and Science. In addition to Special Operations, the Bureau included separate sections relating to Environmental Enforcement, Training, and Recreational Safety as well as an Administrative Services section.

Until some time prior to November 2002, Thomas Harelson was the Director of the Bureau of Law Enforcement and served as Solin's immediate supervisor.

Susan Steinmetz serves in DNR's Bureau of Human Resources and has at all times had the authority to make classification decisions regarding the position occupied by Mr. Solin.

At all relevant times prior to February 2000, Solin's position was classified as a Natural Resources Warden Supervisor (hereafter referred to as Warden Sup) assigned to pay range 01-17.

During 1999 and 2000, the employer prepared to "broadband" various positions in the State civil service. Broadbanding is a flexible compensation system designed to simplify both the classification and the compensation structure and to provide more pay flexibility for recruiting and retaining employees. Both the Warden Sup and the Natural Resources Manager 1 (Manager 1) classifications were among those included in the broadbanding efforts. The broadbanding changes were scheduled to go into effect in March 2000.

Appellant's position description (PD) was updated in February 2000 to reflect his permanent responsibilities at that time.

In a memo dated February 22, 2000, Mr. Harelson asked that Solin's position be reallocated as a consequence of various changes during the previous two years. Respondents did not formally respond to this memorandum until July 20, 2004.<sup>1</sup>

Both Mr. Harelson and his superior, the Administrator of DNR's Division of Enforcement and Science, desired to have Solin's position classified as a Manager 1 and made it known to Solin that they were making efforts to change his classification.

Effective March 12, 2000, the employer implemented the broadbanding changes by simultaneously abolishing the classifications of Warden Sup and Manager 1 and creating the Natural Resources Law Enforcement Supervisor (LE Sup) and Natural Resources Program Manager (Program Manager) classifications. Respondents assigned the LE Sup classification to pay range 81-78 and the Program Manager classification to pay range 81-02.

Before the reallocation took place, Ms. Steinmetz met with various managers and explained what classification changes would be made to the positions reporting to that manager. Ms. Steinmetz met with Mr. Harelson and indicated Mr. Solin's position would be reallocated to the LE Sup classification upon the implementation of broadbanding.

On or about April 6, 2000, the employer notified Mr. Solin that his position had been reallocated to the new LE Sup classification. Although the notice included a recitation of the procedure to appeal the reallocation decision, Solin did not file an appeal.

As of the effective date of the classification survey, Mr. Solin's position was the only section chief in the Bureau classified below the level of Program Manager.

In 2000, the Bureau's Management Team met bimonthly and held conference calls on the other months. At that time, the Team consisted of the Warden, the Deputy Chief Warden and the 5 regional wardens. The remaining section chiefs, including Mr. Solin, were ad hoc rather than continuing participants. By 2001, the Management Team had been formally expanded to include Mr. Solin and the other Bureau section chiefs as permanent members.

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<sup>1</sup> Respondents' decision was made after Mr. Solin had filed this appeal.

In a memo to Ms. Steinmetz dated August 28, 2002 that bore the heading "Classification to NR Manager 1," Mr. Solin wrote, in part:

Sue about a month ago I stopped in to talk to you about my position not being classified correctly. You asked for a copy of my PD to review for a starting point. . . . Here is a copy of my PD. I also included a copy of Supervisor Exclusion Analysis for your review and my copy of the Re-allocation request from 2-21-2000.

It was my understanding that this was going to be taken care of during the last reorganization but some how was overlooked when the others were sent over to DER. The other Section Chiefs in the Bureau of Law Enforcement are classified as Natural Resource Managers. This is important to me because I am retiring in January . . . .

The employer did not issue a decision reviewing the classification request until March 30, 2004.

Mr. Harelson left the Bureau Director position and Randy Stark served in that capacity beginning in November 2002.

In anticipation of Mr. Solin's scheduled retirement in January 2003, Respondents commenced the hiring process to fill the position he would vacate. The process included settling on the duties that would be permanently assigned upon the hire of a new employee, revising the PD to reflect those duties and establishing the appropriate classification for the new collection of responsibilities. Based upon the duties to be assigned (and as those duties were reflected in a revised PD) Ms. Steinmetz approved filling the anticipated vacancy at the Program Manager level. The revised PD did not list a name for the position incumbent because the position it described had not yet been filled.

Mr. Solin's permanently assigned duties in August 2002 were, for the most part, accurately reflected in the position description written for the purpose of hiring his successor as Section Chief for the Special Operations Section. That document includes the following "position summary" and goals:

Under the general direction and supervision of the Director, Bureau of Law Enforcement, the Director of Special Operations manages the statewide Special Operations Program as a member of the Bureau of Law Enforcement Management Team. The Director of Special Operations is responsible for

managing, directing, supervising and coordinating all programs relating to the following Special Operations Section [responsibilities]:

- Commercial Wildlife Crime Investigations
- Wildlife Disease Investigations where violations are potential causation (example: CWD)
- Captive Wildlife Program
- Fraud License Program
- Wholesale Fish Dealer Program
- Commercial Fishing Enforcement Program
- Natural Resources Violation hotline Program and the associated Rewards Program
- Boat Theft and Fraudulent Boat Lien and Titling Investigations Program
- Snowmobile and ATV Fraudulent Application and Dealer Violation Investigations
- Falconry and Taxidermy Monitoring Program
- Commercial Reptile and Amphibian Trade Investigations
- Fur Dealers, Bait Dealer and Ginseng Dealer Monitoring Programs
- Manage Uniform Crime Reporting and Bureau NCIC/CIB liaison relations
- DNR Bond Book changes and updates
- Distribution of statewide officer safety messages [Mr. Solin was not responsible for this final function.]

This position is responsible for policy development, strategic planning, budget management, operational planning and implementation, directing team operations, employee supervision, and evaluating the efficiency and effectiveness of the Special Operations programs. The incumbent makes recommendations for programmatic priorities and changes to meet the needs of the service. The incumbent supervises one administrative warden, two special investigative wardens, one Support Team Leadworker (Confidential Program Assistant), and three conservation communications operators. This position coordinates and manages relationships with regions in developing Special Operations program direction, setting workplanning priorities and conducting program reviews for the statewide investigative team consisting of Special Operations Section staff, the Administrator of Environmental Enforcement and the Regional Investigators. The Director of Special Operations coordinates with regions in conducting performance evaluations for regional investigators. [Positions formally designated as regional investigators were not in place by August 2002. However, Mr. Solin oversaw investigations that were conducted on a regional basis and he developed many of the policies relating to regional inspectors.]

During incidents requiring a statewide or multiple region investigative response, this position is designated as Incident Command System (ICS) incident commander for the investigation. As such, once ICS is invoked the position is responsible for managing and coordinating the investigative response activities of regional investigative wardens, warden supervisors and conservation wardens statewide.

The position manages the coordination of Special Operation Program activities with law enforcement executives and directors representing federal, state, county and local law enforcement agencies both in Wisconsin and nationwide. The position manages coordination of Special Operations Program activities with regulatory agencies with overlapping responsibilities such as DATCP, Department of Revenue and the USDA.

This position is responsible for managing the external constituent relationships related to carrying out Special Operations program responsibilities. These include relationships with the organizations and representatives of captive wildlife licenses, wholesale fish dealers, commercial [fishermen], taxidermists, falconers, fur dealers, bait dealers, and ginseng dealers.

- 50% A. Management of the Statewide Special Operations Program
- 25% B. Administer Human Resources Management practices for the Special Operations Section
- 15% C. Participate in the management of the overall Law Enforcement Program
- 10% D. Enforcement of Natural Resources and Environmental Laws

In addition to those duties that are described in the above position description, Solin worked steadily over the course of 12 years in an effort to update Wisconsin's captive wildlife laws. The legislation passed in April 2000, shortly after Chronic Wasting Disease (CWD) was initially discovered in Wisconsin. Once the legislation had been adopted, Solin continued to spend approximately 10 to 15 hours per week on writing the administrative rules that were necessary to implement the legislation. Solin also served as a member of the interagency science and health planning team. By August of 2002, Solin was performing primary responsibilities relating to the emerging CWD issue.

Mr. Solin retired on January 31, 2003.

By letter dated May 2, 2003, DNR appointed Chris McGeshick to fill the Special Operations Section Chief vacancy at the Program Manager level. Mr. McGeshick did not sign a PD until April 2004.

The LE Sup classification specification includes the following:

Positions within this classification are professional supervisors responsible for directing a team/unit of Department of Natural Resources Wardens. These positions function as . . . central office team/unit supervisor responsible for supervising the recruit wardens or serving as the administrator of environmental criminal investigations. These positions function under general supervision.

The Program Manager classification specification includes the following language:

This is responsible administrative, management and supervisory work in the Department of Natural Resources. Positions allocated to this classification are responsible for developing rules, policies and guidelines; ensuring statewide consistency; managing budgets; planning, coordinating, and guiding professional, technical and administrative personnel; maintaining liaisons with regions and central office staff to ensure that the assigned programs are carried out in a uniform manner and meet the standards and goals of the program statewide; and recommending improvements to the program. The program [sic] administered by positions in this classification are statewide in nature, have direct impact on various groups outside of state government and affect the natural resources of the state. The work is performed under the general direction of a Bureau Director.

The Program Manager specifications also set forth the following “exclusion”: “Section Chiefs in a major program bureau which do not require specific science background and/or supervise general professional and non-professional staff without major policy responsibilities.”

Ms. Steinmetz denied the request to reallocate Mr. Solin’s position to the Program Manager classification. The memo also informed Solin that if he disagreed with her decision, he could file an appeal with the Commission within 30 days. Solin filed this appeal.

By memo dated July 20, 2004, Ms. Steinmetz addressed the February 22, 2000 memo seeking reallocation of Mr. Solin’s position. Ms. Steinmetz concluded that reallocation of the position as of February 2000 would be inappropriate.

The Commission issues the following

**ORDER**

The employer's decision to deny the request to reallocate Mr. Solin's position from Natural Resources Law Enforcement Supervisor to Natural Resources Program Manager effective in August 2002 is rejected and the matter is remanded to the employer for action in accordance with this decision. The Commission retains jurisdiction in this matter in order to address questions as to remedy that may arise and in order to provide Solin an opportunity to request fees and costs under Sec. 227.485, Stats.

Within 20 days of the date of this Interim Decision and Order, Respondent shall notify the Commission and Mr. Solin in writing as to the action it has taken to comply with the Commission's Order.

Given under our hands and seal at the City of Madison this 4th day of November, 2005.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Judith Neumann /s/

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Judith Neumann, Chair

Susan J. M. Bauman /s/

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Susan J. M. Bauman, Commissioner

I dissent for the reasons expressed in the Proposed Decision and Order.

Paul Gordon /s/

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Paul Gordon, Commissioner



**DNR & OSER (Solin)**

**MEMORANDUM ACCOMPANYING INTERIM DECISION AND ORDER**

This matter is before the Commission as a dispute relating to the classification of the position occupied by Mr. Solin. More specifically, the issue relating to the class level reads: “Whether [Respondents’] decision not to reallocate Appellant’s position from Natural Resources Law Enforcement Supervisor to Natural Resources Program Manager was correct?” In addition, the parties disagree as to the appropriate effective date of the underlying classification issue and the employer has raised what amounts to a jurisdictional objection to some of the claims advanced by Mr. Solin.

**Effective date**

The effective date of a request to review a position’s classification level is the beginning of the first pay period following receipt of the request by the reviewing agency. ABDULGHANI V. DOT & DER, CASE NO. 96-0143-PC (PERS. COMM. 11/7/97). The present dispute as to effective date is described in the prehearing conference report as follows:

A sub-issue was identified: Is the effective date August 28, 2002 pursuant to the reallocation request of that date, or the date the February 22, 2000 request was received by Respondent’s Human Resources office. There is a factual dispute as to when, if ever, the February 22, 2000 request was received. The March 30, 2004 decision of Respondent, the subject of this appeal, was made pursuant to the August 28, 2002 request.

A fact central to this determination is that the LE Sup and Program Manager classifications were created on March 12, 2000 and the Warden Sup and Manager 1 classifications were abolished on the same date.

Mr. Solin contends that his position was better described<sup>2</sup> by the Program Manager classification (assigned to pay range 81-02) than the LE Sup classification (assigned to pay range 56-01) as of late August of 2002,<sup>3</sup> based upon his memo dated August 28, 2002 that sought determination of the correct classification of his position. Respondent contends the

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<sup>2</sup> In his post-hearing brief, Mr. Solin argues that he “was working at the level of Natural Resources Program Manager” and that his position should have been “reclassified” at that level effective August 28, 2002. The terms “reallocation” and “reclassification” are defined in Sec. ER 3.01(2) and (3), Wis. Adm. Code. Both parties appear to interchange the terms in their post-hearing briefs even though this matter arises from a reallocation request and the issue for hearing refers to reallocation and not reclassification. The Commission has analyzed the case as a reallocation appeal.

<sup>3</sup> More specifically, if DNR promptly received the Wednesday, August 28<sup>th</sup> memo, the beginning of the next pay period would be Sunday, September 1, 2002. The Commission will refer to an effective date in August 2002 to order to avoid possible confusion.

effective date for the transaction that is the subject of the appeal is in February 2000, because the decision must be based upon an accurate position description and the only PD signed by Solin is the one dated February 10, 2000.

Even though the parties spent a large portion of the hearing focused on the Warden Sup and Manager 1 classifications, the record clearly shows that Solin's April 26, 2004, letter of appeal arose from Respondents' March 30, 2004 decision that his position was better described at the LE Sup classification and that the March 2004 decision arose from Solin's August 28, 2002 review request.

The Commission is unaware of any support for the employer's contention that the effective date is somehow tied to the date of the most recent PD that has been signed by Mr. Solin. While it may often be the case that the position description accompanying a reallocation or reclassification request bears a date near the time that the request is submitted, there is no requirement to that effect. It could be months or even years after a PD update when an incumbent first concludes that the changes reflected in the updated PD justify a change in classification. The effective date for a reclassification or reallocation request initiated by the position incumbent is tied to the date the request is submitted rather than the date of the PD supporting the request. The employer's arguments regarding the proper effective date are also inconsistent with the stipulated issue in this matter. The issue requires comparison of the LE Sup and Program Manager classifications. Neither class existed as of the February 2000 effective date that Respondents propose. Finally, the August 2002 effective date is consistent with the date of the letter of appeal in this matter. Appellant filed the appeal on April 26, 2004 which was within the 30-day filing period after he received the March 30<sup>th</sup> classification decision signed by Ms. Steinmetz. It wasn't until several months later that Ms. Steinmetz addressed the February 22, 2000 memo that would have generated an effective date in February 2000.

On a somewhat related topic, the Commission notes that the delay that occurred between the August 2002 reallocation request and the decision in March 2004 is not an element in the Commission's analysis of this matter. We agree that had both Solin and his former supervisor, Mr. Harelson, still been employed by DNR at the time of the denial, it would have been far easier for the employer's classification analyst, Ms. Steinmetz, to access relevant information relating to the duties that Solin was performing at the relevant time. However, the Commission's analysis is a de novo review of the classification decision and it has to be based on the evidence of duties performed as found in the record before it.<sup>4</sup>

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<sup>4</sup> Where a request for reclassification was filed initially in 1973, and, after a series of inconclusive communications, no decision had been received by 1979 when the appellant filed another reclassification request which was denied on May 9, 1980, the reclassification request was not handled in a timely manner, but since the appellant did not establish that the denial was incorrect, he was not entitled to any independent relief. SHEPARD V. DP, CASE NOS. 80-234-PC, ETC. (PERS. COMM. 6/3/81).

In some of his materials, Mr. Solin seems to contend that he is entitled to reallocation in 2000 because he understood that Harelson and the Division Administrator were in favor of changing his classification from Warden Sup to a classification encompassed by the career executive program. To the extent Solin is raising this argument, it is inconsistent with his contention that the effective date should be in August 2002. Furthermore, a statement by a supervisor that she will change a position's classification to a higher level in the future does not provide a basis for reallocating or reclassifying the position. *DOEMEL V. DER*, CASE NO. 94-0146-PC (PERS. COMM. 5/18/95) (Equitable considerations, such as an alleged statement by the survey coordinator that the appellant's position would remain at its previous classification, do not prevail over the requirements of the class specifications.)

### **Prerequisites for reallocation**

The request that serves as the subject of this appeal was to reallocate Solin's position, effective August 2002, to the Program Manager classification. Reallocation is defined in Sec. ER 3.01(2), Wis Adm. Code:

“Reallocation” means the assignment of a position to a different class by the director as provided in s. 230.09(2), Stats., based upon:

- (a) A change in concept of the class or series;
- (b) The creation of new classes;
- (c) The abolishment of existing classes;
- (d) A change in the pay range of the class;
- (e) The correction of an error in the previous assignment of a position;
- (f) A logical change in the duties and responsibilities of a position; or
- (g) A permanent change in the level of accountability of a position such as that resulting from a reorganization when the change in level of accountability is the determinant factor for the change in classification.

Solin can rely on either of two theories as support for his claim that his position should have been reallocated. He can argue that the March 2000 reallocation of his position to the LESup classification was in error and seek to correct that error, effective in August 2002, pursuant to ER 3.01(2)(e). He can also argue that his position underwent a logical change<sup>5</sup> sometime between March 2000 and August 2002. The employer's action in 2001 to add Solin, along with the other section chiefs, to the Bureau's Management Team is precisely such a change.

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<sup>5</sup> A “logical” change that can serve as the basis for a reallocation decision is distinct from a “logical and gradual” change that, except as to a progression series, is essential for reclassification. Sec. ER 3.01(3).

### Duties performed

Given that the proper effective date is in August 2002, the Commission must base its decision on the duties that were permanently assigned to Mr. Solin at that time. This task is made somewhat more difficult both because Solin had announced he would be retiring in January 2003 and because Tom Harelson had left the position of Bureau Director, which was responsible for supervising Solin's position. Randy Stark had only begun to work as the new Bureau Director in November 2002 and he was relatively unfamiliar with Solin's responsibilities during the brief time he served as Solin's supervisor.

The employer's classification analyst, Suzanne Steinmetz, relied heavily upon the February 2000 position description as an accurate description of Solin's duties for the purpose of performing her reallocation analysis. While the February 2000 PD was the most recent PD relative to the August 2002 effective date, that fact is not determinative as to whether it accurately described Solin's duties as of the effective date. *BLUHM V. DER* (CASE NO. 92-0303-PC (PERS. COMM. 6/21/94) (The employee's position description is entitled to some weight but is not conclusive and the Commission may consider additional evidence concerning the duties performed by the position.) Solin offered a variety of evidence to establish that the 2000 PD was no longer accurate by the time of his reallocation request in 2002.

One indicator of the changes that the position had undergone is the position description the employer prepared for filling the Special Operations Section Chief position after Solin's retirement. Even though the new incumbent did not officially sign the PD until April 2004, the position summary and the goals and worker activities had all been established before recruitment for the vacancy began very early in 2003. Because there were stringent limitations on filling vacant positions at the time, both the DNR Secretary and the agency's Human Resources staff had to provide special approvals before the hiring process could proceed. In a justification memo dated February 20, 2003, Mr. Stark wrote:

This position has historically been critical to the Law Enforcement Program and the Department because of directing the Commercial Wildlife Crimes investigations, directing the Law Enforcement portion of Captive Wildlife Law enactment and implementation. Another critical function to this position is directing the central office and field operations/planning, carrying out the Chronic Wasting Disease investigations in both the Captive and free ranging deer herds.

The employer takes the position that Mr. Stark developed the new PD for filling the vacant position by considering his vision for the position rather than by basing it on the duties already being performed by Solin. Mr. Stark had been working at least two years as a section chief in the Bureau as the Director of Training before he began serving as Bureau Director in

November 2002. He testified that some of the changes in responsibilities that were reflected in the PD for the vacant position were already being performed by Solin while other changes reflected Stark's anticipation of duties that would be performed in the future. However, his testimony established that practically all of the changes were already assigned to Solin. Mr. Stark acknowledged that Solin was responsible for managing, directing, supervising and coordinating the following programs that did not appear in the 2000 PD but were listed on the PD for the vacant position: "Wildlife Disease Investigations where violations are potential causation (example: CWD)," "Commercial Fishing Enforcement Program," "Commercial Reptile and Amphibian Trade Investigations," "Manage Uniform Crime Reporting and Bureau NCIC/CIB liaison duties." Only the "Distribution of statewide officer safety messages" was a responsibility not already performed by Solin.

Even though the February 2000 PD indicated the incumbent had a 9% goal to "Function as a member of Bureau of Law Enforcement Management Team," it was written before Solin was officially designated as a member of the Management Team and before he was required to attend all of the meetings of the Team. Testimony from former Deputy Warden Daniel confirmed that 9% accurately described the amount of time Solin spent on the duty in 2000 when he only attended those Team meetings that related to his particular area of responsibility. Daniel's testimony indicates Solin would have spent more than 9% of his time in August 2002 as a member of the Management Team.

The February 2000 PD also fails to fully account for Solin's extensive work in the area of the Captive Wildlife Program. Sarah Hurley, who as Deputy Administrator for DNR's Land Division worked very closely with Solin in this area, testified that he spent probably 10 to 15 hours every week on policy development relating to captive wildlife for a period of more than 13 years. With the discovery of Chronic Wasting Disease in the state in February 2002, the issue became a critical component of Solin's position and the legislature finally passed captive wildlife legislation that Solin had been working on since the 1980s. The legislative action required DNR to promulgate administrative rules to implement the new law and Ms. Hurley testified that the Special Operations Chief would spend about 10 hours per week on the rulemaking for the foreseeable future.

In sum, Mr. Solin's duties in August of 2002 were much more than merely serving as a professional supervisor with the responsibility for directing a team of DNR wardens. Solin's August 2002 duties are not accurately described by the PD dated February 2000, but are at least better described by the bulk of the language in the PD developed late in 2002 for the position as it would exist when filled by another employee.

### **As applied to the class specifications**

Mr. Solin contends that as of August 2002, his permanently assigned duties were better described by the Program Manager classification than the LESup classification. The record in this matter does not include a complete copy of either of the two specifications, so the Commission must make its decision based upon the limited text that is available.

The Program Manager classification, which became effective in March 2000, includes the following language:

This is responsible administrative, management and supervisory work in the Department of Natural Resources. Positions allocated to this classification are responsible for developing rules, policies and guidelines; ensuring statewide consistency; managing budgets; planning, coordinating, and guiding professional, technical and administrative personnel; maintaining liaisons with regions and central office staff to ensure that the assigned programs are carried out in a uniform manner and meet the standards and goals of the program statewide; and recommending improvements to the program. The program[s] administered by positions in this classification are statewide in nature, have direct impact on various groups outside of state government and affect the natural resources of the state. The work is performed under the general direction of a Bureau Director.

This general language aptly describes the vast majority of Mr. Solin's responsibilities. As section chief, Solin directly supervised 6 FTE<sup>6</sup> positions, including covert investigators. He was responsible for the statewide Special Investigation program which has a direct impact on a variety of groups outside of DNR and affects Wisconsin's natural resources. In the process, he maintained important liaisons with regional staff and the central staff. He was a member of the Bureau's Management Team and was responsible for managing numerous programs that related to the section's core responsibility of conducting covert investigations.

The employer contends that Solin's position is specifically ruled out from classification as a Program Manager by language expressly excluding "Section Chiefs in a major program bureau which do not require specific science background and/or supervise general professional and non-professional staff without major policy responsibilities." Nothing in the record suggests the Bureau of Law Enforcement is not a "major program bureau" or that Solin does not supervise "general professional and non-professional staff." The employer contends that Solin does not have "major policy responsibilities" and, more specifically, that he does not spend the majority of his time on "major policy" matters.<sup>7</sup>

The language in the Program Manager specification does not support imposing a requirement that positions in the series spend the *majority* of time on management or "major policy" responsibilities. The specification's requirements merely describe positions that spend the majority of time on "administrative, management *and* supervisory work" and exclude certain section chiefs who fail to spend significant time on major policy responsibilities. The classification structure imposed by the wording of the specifications in the present case is akin

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<sup>6</sup> Full Time Equivalent employees. Although this information is derived from the Supervisor Exclusion Analysis form that Mr. Solin signed in February 2000, there is no evidence of record indicating that Mr. Solin's supervisory responsibilities changed significantly in the subsequent 30 months.

<sup>7</sup> Neither party suggests that the phrase "without major policy responsibilities" modifies "general professional and non-professional staff" even though the words are adjacent to each other. The Commission interprets the sentence to exclude "Section Chiefs without major policy responsibilities in a major program bureau."

to the one that was the subject of *WAGER v. DP*, CASE NO. 81-0134-PC (PERS. COMM. 6/18/86). In that matter, the employee performed a function (collection maintenance and preservation) at least 5% to 10% of his work time in addition to performing a primary function (cataloging) more than 50% of his time. As a consequence, he was reallocated to the Librarian I classification because the specification called for two or more library functions in contrast to the Library Associate 2 classification which called for only one library function.

Here, the employer's classification analyst acknowledged that Solin performed some significant management duties and that he worked on some major policy matters. Solin spent at least 10% of his time as a member of the Bureau's Management Team and Ms. Hurley testified that he spent 10 to 15 hours weekly leading the effort to dramatically revise the laws relating to captive wildlife. The Commission believes that both of these responsibilities qualify as major policy matters so as to cause Solin's position to fall outside the exclusion to the Program Manager classification that was relied upon by the employer in its reallocation decision.

Having concluded that the position is reasonably described by the Program Manager classification, the next question is how Mr. Solin's collection of duties relates to the available language from the LE Sup classification:

Positions within this classification are professional supervisors responsible for directing a team/unit of Department of Natural Resources Wardens. These positions function as . . . central office team/unit supervisor responsible for supervising the recruit wardens or serving as the administrator of environmental criminal investigations. These positions function under general supervision.

Solin served as a professional supervisor responsible for directing a unit consisting of one Administrative Warden and two Special Investigators. He was a supervisor in DNR's central office, although he did not supervise the recruit wardens nor was he the administrator of environmental criminal investigations. While the LE Sup specification makes no mention of any management responsibilities of the type Solin performed, nothing in the above paragraph would specifically exclude his position as of August 2002.

The Program Manager specification does not exclude any portion of Solin's responsibilities. In contrast, it is difficult to conclude that the LE Sup classification is the best fit when it not only does not specifically mention the Special Operations section chief position,<sup>8</sup> but it fails to encompass the extent of Solin's management duties, especially when testimony

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<sup>8</sup> Even though the Natural Resources Warden Supervisor and the Natural Resources Manager 1 classifications were abolished before the effective date of the decision being reviewed, a comparison of the Warden Supervisor and LE Sup classifications is consistent with a decision to grant Solin's reallocation request. The language of the Natural Resources Warden Supervisor classification specifically identified "positions in the Bureau of Law Enforcement that function as the Special Operations Section Chief, the Recruit Training Officer, or the Unit Leader for Environmental Enforcement" which were described as "professional supervisory positions that have program and policy development responsibility within their assigned program." In contrast, the LE Sup specification mentions only the two positions "responsible for supervising the recruit wardens or serving as the administrator of environmental criminal investigations."

established that he spent at least 9% of his time in early 2000 on Management Team duties even before he was a true member of that team and that he spent about 10 hours per week on captive wildlife program matters where Ms. Hurley testified that Solin made most of the policy decisions relating to the captive wildlife legislation that finally passed in April 2002.

While the Commission concludes that the language of the Program Manager specification better describes Solin's August 2002 duties than does the language of the LE Sup classification, the record includes other evidence that strongly supports reallocation of his position.

### Comparable positions

Even if the Commission were to conclude that both of the LE Sup and Program Manager classifications encompassed Solin's position, we would look to comparison positions of record and find that his position should be classified at the Program Manager level.

Since appellant's position could plausibly be described by either the [Administrative Assistant] 4 or AA 5 definition, determination of the appropriate level rests primarily on . . . a comparison to other positions in this series. *FAY v. DER*, 92-0438-PC (PERS. COMM. 7/7/94)<sup>9</sup>

The most instructive comparison for classifying Solin's duties in August 2002 is the set of duties reflected in the position description developed to fill the vacancy upon his retirement in January 2003. The employer asserts that the position filled by Mr. McGeshick after Solin's retirement is correctly classified at the Program Manager 1 level. As already noted above, the employer was unable to draw any significant distinctions between the duties assigned to the position when it was classified at the Program Manager 1 level and the duties performed by Solin just a few months earlier.

In her memo denying Solin's reallocation request, DNR's classification analyst identified the position filled by Thomas Krsnich as "more comparable" than the McGeshick position for purposes of classifying Solin's August 2002 duties. Mr. Krsnich served as the Environmental Criminal Investigator Chief which is one of the two positions specifically described by the LE Sup classification language. However, the LE Sup position of Krsnich is better described as a "contrasting" position rather than a comparison position when classifying Solin's duties. Krsnich's immediate supervisor, rather than Krsnich, was the section chief for

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<sup>9</sup> The Administrative Assistant series also included "examples of work performed" at every classification level, so in *FAY v. DER* the Commission also weighed the employee's assigned responsibilities relative to the work examples. In contrast, nothing in the record suggests that either the LE Sup or Program Manager classifications include work examples.



the Environmental Enforcement section in DNR's Bureau of Law Enforcement. It is the supervisor's position, rather than Krsnich's, that corresponds to Solin's position of Special Investigation section chief and served on the Bureau's Management Team.

The Bureau's Training section is similarly organized. One of the specific allocations at the LE Sup level is that of the "unit supervisor responsible for supervising the recruit wardens." The sole organization chart of record for the Bureau shows a position of "Recruit Training Officer" serving as the direct supervisor of between 15 and 21 recruit wardens in the Training Section. The same chart shows Randy Stark in the position of the "Director of the Training Section" and the supervisor of the recruit training officer.<sup>10</sup> This comparison strongly supports classifying Solin at a level above that of LE Sup because his section chief position is at the same organizational level as the chief (director) of the training section who supervised a LE Sup position.

It is undisputed that all of the other section chiefs in the Bureau were classified at a level higher than LE Sup. Given the absence of any evidence provided by the employer that the other section chiefs had substantially more management responsibility than Solin, these positions all suggest that by August 2002, Solin's position was better described at the Program Manager class.

### **Other theories advanced by Solin**

While technically it is unnecessary to do so, the Commission will also address Mr. Solin's contention, as articulated in his post-hearing brief, that the "evidence and testimony shows that position number 013653, Chief of Special Operations DNR Bureau of Law Enforcement was reclassified [sic] to Natural Resource Program Manager while Thomas Solin was still actively in the position and Solin was not provided the *advantages* of that reclassification." (Emphasis added.) Appellant suggests that the classification of the position was changed from LE Sup to the higher class of Program Manager while he was the position incumbent and in preparation for filling the vacancy after Appellant's scheduled retirement.

Appellant's contention is inconsistent with the specified issues for hearing, which identify February 2000 and August 2002 as the possible effective dates for reallocation of the position. Nothing in the record suggests that the PD Mr. McGeshick signed in 2004 had been formally adopted by DNR as of August 2002.

This contention also alludes to the rate of pay to which Mr. Solin was entitled when he was filling the position prior to his retirement as well as to a restriction in the number of

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<sup>10</sup> Clearly this was when Mr. Stark was serving as a section chief (where, as he testified, he held the classification of Program Manager) and before he was hired into the position of Bureau Director.

overtime hours that he was permitted to claim.<sup>11</sup> The Commission lacks the authority to hear a direct appeal regarding an employee's rate of pay or a restriction on the number of overtime hours, unless there is a claim that the employing agency has taken a disciplinary action by reducing the employee's rate of base pay.<sup>12</sup> There is no contention in the present matter that DNR intended to discipline Solin when Ms. Steinmetz denied his August 2002 reallocation request.

Prior to the hearing in this matter, the employer submitted a Motion to Determine Jurisdiction, contending that that the Commission lacked the authority to address Mr. Solin's claims relating to his proper base salary, his eligibility for overtime pay and his assertions relating to his position's eligibility for broadbanding. These claims have already been at least indirectly addressed in the context of the second contention in Appellant's post-hearing brief. At hearing, the designated hearing examiner granted Respondents' motion and explained the limits to the Commission's jurisdiction.<sup>13</sup> That ruling is restated here, notwithstanding the

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<sup>11</sup> In his letter of appeal that was filed with the Commission on April 26, 2004, Mr. Solin requested the following relief:

9. In February 2003 I received notice from Department of Employee Trust Funds on my Group Health Insurance Certification. The conversion of 4422.70 hours of sick leave was based on a base salary of \$33.313.

My true base salary was the hourly salary of \$33.313 plus the 120 hours authorized overtime to adjust my annual salary to the same pay level as the other Section [Chiefs] in the Bureau of Law Enforcement. . . .

My request is to have my base pay adjusted to correctly reflect the hourly rate based on the authorized annual salary. In my calculations my true base pay was \$35.233 per hour not \$33.313 as provided to the department to employee trust funds for determining the accumulated sick leave account value.

<sup>12</sup> Precedent is consistent with this conclusion regarding the limits to the Commission's jurisdiction. *GARR V. DER*, CASE NO. 90-0163-PC (PERS. COMM. 1/11/91) (no jurisdiction over decisions regarding salary adjustments made in connection with reallocations); *KNUEPPEL V. DOT*, CASE NO. 90-0194-PC (PERS. COMM. 7/22/92) (no jurisdiction over issues of sick leave benefits for periods of overtime); *LUCHSINGER V. PSC*, CASE NO. 82-233-PC (PERS. COMM. 1/31/83) (no jurisdiction per sec. 230.44(1), Stats. on claims of denial of overtime hours worked even if rule violations occurred); *HEATH & MORK V. DOC*, CASE NO. 94-0550-PC (Pers. Comm. 12/22/94 (no jurisdiction regarding pay calculations in context of reclassification); *JOHNSON V. DER*, CASE NO. 94-0064-PC (Pers. Comm. 7/25/94) (pay range issues are not reviewable). The Commission's jurisdiction over certain forms of discipline, including reductions of base pay, is based on Sec. 230.44(1)(c), Stats.

<sup>13</sup> The Commission's authority to review actions relating to the State civil service system is limited to the provisions found in Sec. 230.44(1) and .45(1), Stats. Among those actions are classification decisions, such as this one, delegated to the DNR under Sec. 230.05(2)(a), Stats. Thus, the classification decision is reviewable by the Commission under Sec. 230.44(1)(b), Stats. However, none of the types of actions reviewable by the Commission under Sec. 230.44(1), Stats., encompass payment or benefit issues such as those claimed by Appellant. Thus, there is no statutory authority granting jurisdiction to the Commission to hear the salary, overtime and benefits claims raised by Appellant. Appellant argues that the issues are intertwined so as to confer jurisdiction. While classification decisions may have an impact on salary and benefits that are provided to the subject position, the Commission's authority is limited to the classification question.

admission into evidence of various exhibits and the limited testimony regarding these aspects of the Appellant's assertions.

Dated at Madison, Wisconsin, this 4th day of November, 2005.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Judith Neumann /s/

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Judith Neumann, Chair

Susan J. M. Bauman /s/

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Susan J. M. Bauman, Commissioner

I dissent for the reasons expressed in the Proposed Decision and Order.

Paul Gordon /s/

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Paul Gordon, Commissioner