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**COMMONWEALTH OF MASSACHUSETTS  
CIVIL SERVICE COMMISSION**

**SUFFOLK, ss.**

\_\_\_\_\_  
**CONRAD LETOURNEAU,**  
Appellant

v.

\_\_\_\_\_  
**DEPARTMENT OF CONSERVATION  
AND RECREATION,**  
Respondent  
\_\_\_\_\_

**Case No. C-07-327**

Appellant's Attorney:

Karen E. Clemens Atty.  
Associate General Counsel  
AFSCME Council 93  
8 Beacon Street  
Boston, MA 02108

Respondent's Attorney

Francis Hartig, Atty.  
Assistant General Counsel  
251 Causeway Street  
Boston, MA 02114

Commissioner:

Daniel M. Henderson

**DECISION**

Pursuant to the provisions of G.L. c. 30, § 49, the Appellant, Conrad Letourneau (hereinafter "Appellant" or "Mr. Letourneau"), is appealing the August 8, 2007 decision of the Human Resources Division (hereinafter "HRD") denying his request for reclassification from the position of Forest and Park Supervisor I to the position of Forest and Park Supervisor II within

the Massachusetts Department of Conservation and Recreation (hereinafter “DCR”). The appeal was timely filed and a hearing was held on December 4, 2007 at the Civil Service Commission (hereinafter “Commission”). One (1) tape was made of the hearing and is held at the Commission office.

### **FINDING OF FACTS:**

Based on the seven (7) exhibits and stipulation of facts submitted into evidence and the testimony of Cheryl Ferrando, Personnel Analyst II from the Department of Conservation and Recreation, and the Appellant Conrad Letourneau, I make the following findings of fact:

1. The Appellant has been employed with DCR for approximately nineteen (19) years, starting out as a Laborer I. (Stipulated Fact, Testimony of Appellant)
2. The Appellant has held his current position for approximately two (2) years as a Forest and Park Supervisor I, at a pay grade of 14, with the DCR’s Division of Water Supply Protection, Quabbin Section. (Exhibit 6)
3. On or about August 6, 2006, the Appellant filed a written request with DCR to be reclassified from his position as a Forest and Park Supervisor I to a Forest and Park Supervisor II. (Stipulated Fact)
4. The Classification Specification for the Forest and Park Supervisor series provides a summary of that series which states: “incumbents of positions in this series supervise the maintenance of assigned recreational areas; inspect the condition of state-operated forest and park recreational areas and facilities; patrol recreational areas and facilities; permit the use of recreational facilities, park areas, etc.; organize and implement recreational and cultural programs; and perform related work as required.” (Exhibit 1, Page 1)

5. The differences between the responsibilities of a Forest and Park Supervisor I and a Forest and Park Supervisor II, as stated in the Classification Specification for the series are as follows:

Duties Common to All Levels in Series:

- a. "Supervises the maintenance of assigned recreational areas, including such activities as grounds maintenance, building and equipment maintenance and repair and removal of hazardous trees or limbs."
- b. "Inspects the condition of state-operated forest and park recreational areas and facilities to determine their suitability for public use, ensure compliance with safety standards and determine maintenance needs."
- c. "Patrols recreational areas and facilities to maintain security and ensure compliance with applicable rules, regulations and policies."
- d. "Issues permits or gives permission for the use of recreational facilities, park areas, etc. and collects related fees."
- e. "Maintains records and prepares reports concerning assigned work to provide information and make appropriate recommendations."
- f. "Organizes and implements recreational and cultural programs, including sports competitions, nature walks, shows, etc. for the enjoyment of visitors to the parks."
- g. "Coordinates the activities and work of volunteers, court referred individuals, etc."
- h. "Performs related duties such as determining supply needs; operating and performing routine maintenance on various types of equipment and vehicles; providing information to the general public; interviewing candidates for employment; providing on-the-job training; and using small hand tools."

(Exhibit 1, Pages 1-2)

A Forest and Park Supervisor II shall:

- a. "Monitor the activities of recreational area personnel to ensure the maintenance of state forest and park areas for recreational purposes."
- b. "Confer with agency personnel concerning assigned unit activities to resolve problems, provide information, and make recommendations."
- c. "Review reports and make recommendations concerning actions to be taken to resolve problems, and/or to recommend changes in policies, procedures, etc."
- d. "Based on assignment, incumbents of positions at this level may also prepare budgets for the assigned area by projecting resource needs and preparing required documentation for agency's budget request."

(Exhibit 1, Page 2)

6. The Appellant is currently responsible for supervising maintenance operation personnel at Quabbin Park, a 3200 acre recreational park. The Appellant is also responsible for supervising maintenance operation personnel at Quabbin Cemetery, an 82 acre satellite area approximately four (4) miles away from Quabbin Park. (Testimony of the Appellant; Exhibit 5, Page 1)
7. The Appellant acts as a Foreman or working supervisor in scheduling, managing and participating in the work of an assigned crew of Laborers and Equipment Operators. He supervises three (3) employees. He works under the supervision of a Forest and Park Supervisor II, Thomas Kology. Re allocating The Appellant to the same title as his supervisor Thomas Kology would be organizationally disruptive to the Division and other Quabbin Section employees. (Testimony of Ferrando, Exhibits 2 and 5)

8. The Appellant does not perform any of the duties of a Forest and Park Supervisor II on a regular basis. However, the Appellant has covered for his supervisor, Thomas Kology at least several weeks per year. (Testimony of Appellant and Ferrando)
9. In his reclassification request-Audit Interview Guide, the Appellant stated he has contact with environmental engineers, foresters, Massachusetts Highway Department, State Police and others in the course of his job activities. However, this contact is not daily or frequent but only on an "as needed" basis. It appears that this contact is for routine purposes such as providing information, materials or logistical support. (Testimony of Appellant and Ferrando; Exhibit 6)
10. The Appellant stated further that he has made recommendations to his supervisors to solve problems, and as an example that he proposed a solution to solve a problem regarding a need for a place to clean work vehicles. (Testimony of the Appellant; Exhibit 6)
11. The Appellant's position was audited by Cheryl Ferrando, a Personnel Analyst II for the DCR after he filed his appeal for reclassification. She examined the Appellant's Form 30 and his Interview Guide. She determined that his duties were substantially the supervision of assigned crews of Laborers and Equipment operators doing maintenance, and some special projects in his assigned area. She determined that he was properly classified as a Forest and Park Supervisor I, and that he did not perform any of the duties of a Forest and Park Supervisor II. (Testimony of Cheryl Ferrando)
12. On July 16, 2007, DCR issued a decision stating that the Appellant was properly classified as a Forest & Park Supervisor I. (Exhibit 4)
13. On July 24, 2007, the Appellant appealed the DCR decision to HRD. HRD denied his appeal and sent him written notification on August 8, 2007. (Exhibit 3)

14. On September 14, 2007, the Appellant filed a timely appeal with the Commission.

(Stipulated Fact)

15. At the hearing, the Appellant gave a description of his duties. He testified that he reviews the employees who report to him through the Employee Performance Review process. He also maintains the employees' time sheets. (Testimony of Appellant)

16. The Appellant also testified that he supervises the Quabbin Deer Hunt, and is in charge of the digging of graves at the Quabbin Cemetery. (Testimony of Appellant)

17. The Appellant currently is supervised by a Forest and Park Supervisor II, Thomas Kology. Mr. Kology also filed a reclassification appeal at the Commission, requesting the classification of Forest and Park Supervisor III. Kology's appeal, Docket No. C-07-326 was dismissed by the Commission on August 21, 2008. It was found in that Kology decision that he did not perform any of the level distinguishing duties of the title he sought, Forest and Park Supervisor III. It was also found that Kology did not perform the incumbents of the Forest and Park Supervisor III title, more than 50% of the time on a regular basis.

(Administrative notice, Exhibit 2)

18. Cheryl Ferrando, the Classification Coordinator for DCR testified at the Kology hearing that the position of Forest and Park Supervisor III has never been filled in the Quabbin Section, but it has been available in other sections of DCR. (Administrative notice Docket No. C-07-326, Testimony of Cheryl Ferrando)

19. There are two (2) other supervisor titles between the Appellant and his immediate supervisor David Small, who has the title of Assistant Regional Director. Those two titles are Forest and Park Supervisor III and Forest and Park Regional Coordinator. However, the Quabbin

Section did not have a Forest and Park Supervisor III position and the Forest and Park Regional Coordinator position was vacant at that time (Testimony, Exhibits 1 and 2)

20. There are two (2) supervisor titles between the Appellant's supervisor (Thomas Kology) and the next immediate supervisor in the Quabbin Division's organizational structure. Those two titles are Forest and Park Supervisor III and Forest and Park Regional Coordinator. However, the Quabbin Section historically did not utilize a Forest and Park Supervisor III position and the Forest and Park Regional Coordinator position was vacant at that time ( Administrative notice Docket No. C-07-326, Testimony of Cheryl Ferrando, Exhibit 2)
21. The reclassification of the Appellant, Letourneau to the title and position of Forest and Park Supervisor II, in the Quabbin section, as a practical matter would require that Kology vacate his position or the DCR create a duplicative position for Letourneau. (Administrative notice Docket No. C-07-326, Testimony of Cheryl Ferrando, Exhibit 2)
22. Both Letourneau and Kology are competent and experienced employees. They are both capable of performing the duties of the higher position they are seeking, if such positions were available. However no such position was available at the time. It would be disruptive to the Quabbin Section's organizational structure and employees to have two identical titles performing the same or similar duties in the same chain of command or supervision. The DCR has a limited number of positions available or open in the Quabbin Section. Many of these positions are specialized in duties and/or authority. The DCR organizational structure does not lend itself to the gratuitous creation of new or redundant positions with the accompanying fiscal and administrative consequences. (Administrative notice, Testimony and Exhibits)

23. Although the Appellant may have the competence and experience to fill the title of a Forest and Park Supervisor II, the duties actually performed by the Appellant in the Quabbin section of DCR satisfy the specifications of a Forest and Park Supervisor I, not those of a Forest and Park Supervisor II. (Testimony and Exhibits, Exhibit 2)
24. The DCR has the fundamental prerogative to establish and maintain an organizational structure which it believes is effective and efficient in accomplishing its purposes and goals. Disturbing or destabilizing that structure would adversely affect the DCR's performance and fiscal soundness. (Administrative notice Docket No. C-07-326, Testimony of Cheryl Ferrando, Exhibit 2)

## **CONCLUSION**

Pursuant to G.L. c. 30, §49, there must be an appeal to HRD before an Appellant appears before the Commission. §49 reads: "Any...employee of the commonwealth objecting to any provision of the classification affecting his office or position may appeal in writing to the personnel administrator [HRD] and shall be entitled to a hearing upon such appeal. If the administrator finds that the office or position of the person appealing shall warrant a different position allocation...he shall report such recommendation to the budget director and the house and senate committees on ways and means...Any...employee...further aggrieved after appeal to the personnel administrator may appeal to the civil service commission. Said commission shall hear all appeals as if said appeals were originally entered before it."

After the Appellant's request for reclassification was denied by the DCR, he appealed to HRD. When the appeal also failed, he filed an appeal with the Commission. After careful review of the testimony and evidence presented in this appeal, the Commission concludes that the



HRD's decision should be upheld, and the Appellant should remain at the position classified as Forest and Park Supervisor I. The Appellant has not met his burden of proof to demonstrate that he was improperly classified as a Forest and Park Supervisor I, in that he has not shown he has performed the duties of a Forest and Park Supervisor II more than fifty (50) percent of the time.

The Appellant's argument that he exercises supervision equivalent to the level of a Forest and Park Supervisor II is not sound. Under the "supervision exercised" section of the Specification Classification for a Forest and Park Supervisor I, it states: "incumbents of positions at this level exercise direct supervision (i.e., not through an intermediate level supervisor) over, assign work to and review the performance of 1-15 recreational area personnel." Therefore, the Appellant is supposed to assign work to and supervise his crew, as a requirement for the position of Forest and Park Supervisor I. The Appellant is performing the duties as determined by his job description, and he is not performing duties of a Forest and Park Supervisor II more than fifty (50) percent of the time.

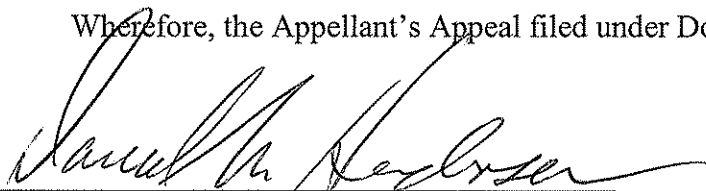
The duties required of a Forest and Park Supervisor II encompasses a greater scope of responsibility than those performed by the Appellant, as show in Finding of Fact #5. While the Appellant inspects and monitors his area and his crew, he is not primarily responsible to do so. This responsibility falls to the Forest and Park Supervisor II, who is responsible for supervising the daily maintenance operations of the Appellant and his crew's specific work sites. Even though the Appellant may have made recommendations to his supervisors to solve problems on occasion, he does not conduct the duties required of a Forest and Park Supervisor II over fifty (50) percent of the time. Although the Appellant may have made suggestions in regard to budgetary matters, he has not recommended any changes in agency policy nor prepared any

budget for the agency: which are technical duties required in the Classification Specification for the position of Forest and Park Supervisor II.

The Appellant had no justifiable expectation that the DCR would create a position in the Quabbin Section just to satisfy the Appellant's wishes, despite the organizational disruption it would cause in the DCR's Quabbin Section.

The Appellant's supervisor is a Forest and Park Supervisor II. It is probable that having two (2) employees in the same position in a chain of command or supervision would disrupt the organizational structure of the Division.

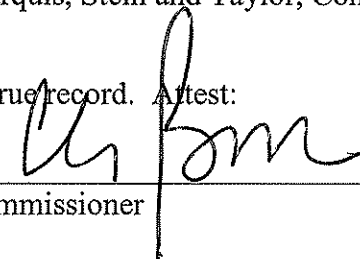
Wherefore, the Appellant's Appeal filed under Docket No. D-07-327 is hereby *dismissed*.



Daniel M. Henderson,  
Commissioner

By vote of the Civil Service Commission (Bowman, Chairman; Henderson, Marquis, Stein and Taylor, Commissioners) on August 28, 2008.

A true record. Attest:

  
Commissioner

A motion for reconsideration may be filed by either Party within ten days of the receipt of a Commission order or decision. A motion for reconsideration shall be deemed a motion for rehearing in accordance with M.G.L. C. 30A §14(1) for the purpose of tolling the time for appeal.

Any party aggrieved by a final decision or order of the Commission may initiate proceedings for judicial review under section 14 of chapter 30A in the superior court within thirty (30) days after receipt of such order or decision. Commencement of such proceeding shall not, unless specifically ordered by the court, operate as a stay of the commission's order or decision.

Notice:

Karen E. Clemens, Atty.  
Francis Hartig, Atty. DCR  
John Marra, Atty. HRD