

respect to the computation of the effective dates of movements up the salary schedule in the teacher classification.

3. In response to these discussions, DHSS, with the approval of the State Bureau of Personnel, implemented a policy to the effect that with respect to teachers moving from one pay level to another, the effective date would be at the end of the pay period during which the necessary documentation was submitted by the employing institution to the DHSS personnel department, plus one additional pay period.

4. In May 1977, a new position standard for the teacher series went into effect. See Appellant's Exhibit 5. This differed from the prior standard in material part inasmuch as under the prior standard there was a single teacher classification with 6 pay levels, whereas the new standard contained 6 classifications, Teacher 1 - Teacher 6.

5. The new position standard contained, in part the following language:

"Progression through this series will be by reclassification as incumbents attain specific training and experience.

* * *

Allocation to any of these levels is based upon the training and experience of the incumbent rather than the duties and responsibilities of the position. Consequently, objections and tasks of higher level positions will be very similar to lower level positions."

6. Pursuant to a memorandum dated November 23, 1977, from the State Bureau of Personnel to the DHSS Personnel Officer, a schedule was established for fixed effective dates for delegated reclassification or reallocation actions. Pursuant to this schedule, if reclassification or reallocation requests were submitted to DHSS by certain established dates

then the action requested, if eventually approved, would have an effective date no later than a particular fixed date, despite the fact that the final approval may have occurred after the established effective date in the schedule.*

CONCLUSIONS OF LAW

1. This appeal is properly before the Commission pursuant to §230.44(1)(b), Stats.

2. The reclassification and regrade of any of the appellants during their probationary period was prohibited by §Pers. 13.06(5), Wis. Adm. Code.

3. The respondents did not violate any policy as set forth in findings 3 and 6 or any provision of Subchapter II of Chapter 230, or of Chapter Pers. Wis. Adm. Code, in their establishment of the effective dates for reclassification as set forth in the stipulation of facts incorporated by reference by finding # 1.

OPINION

As can be seen from the factual stipulation, DHSS did not reclassify any of these teachers while they were on probation. The agency relies on §Pers 13.06(5), Wis. Adm. Code, which provides as follows:

"REGRADE. No employe shall be regraded as defined under Wis. Adm. Code section Pers 3.02(3) during the time the employe is serving a probationary period."

*For example, requests submitted before December 5, 1977, would be given an effective date of not later than January 1, 1978, despite the fact that final approval might not be made until after January 1, 1978.

Section Pers 3.02(3) provides:

"(3) REGRADE. The action by the director under section 16.07(2)(d), Wis. Stats., following the reallocation of a filled position, which results in the determination that consideration of other employes to fill the position is not necessary, and therefore the incumbent remains in the position."

Section 16.07(2)(d), Stats., provided:

"(2) After consultation with the appointing authorities, the director shall allocate each position in classified service to an appropriate class on the basis of its duties, authority, responsibilities or other factors recognized in the job evaluation process. He shall likewise reclassify or reallocate positions on the same basis whenever he finds such action warranted.

* * *

"(d) If after review of a filled position the director reclassifies or reallocates the position, he shall determine whether the incumbent shall be regraded or whether the position shall be opened to other applicants."

This section has been renumbered §230.09 by Chapter 196, Laws of 1977.

"Reallocation" is defined by §Pers 3.02(2), Wis. Adm. Code as:

"The assignment of a position to a different class by the director as provided in Section 16.07(2), Wis. Stats., based upon;"

* * *

(g) Reclassification as provided in subsection (4).

Section Pers 3.02(4), Wis. Adm. Code, provides:

"RECLASSIFICATION. The reallocation of a filled position to a different class and the subsequent regrading of the incumbent by the director as provided in section 16.07(2), Wis. Stats., based upon:

(a) A logical and gradual change to the duties and responsibilities of a position.

(b) Attainment of specified training and experience, and demonstrated performance by an incumbent in a position identified in a classification series where the class levels are differentiated on this basis."

The essence of appellants' argument is stated in their brief as follows:

Since the language of 16.07(2)(d) has no application to teachers movement up the pay scale based on experience or teacher credits, such movement is not a "regrade" as defined in Pers 3.02(3). Therefore, the prohibition on the regrades of a position filled by a teacher on probation is inapplicable. What is applicable is the language of Pers 3.02(2)(b) which states:

"(2) REALLOCATION. The assignment of a position to a different class by the director as provided in section 16.07(2), Wis. Stats., based upon:..."

"(b) Attainment of specified training and experience, and demonstrated performance by an incumbent in a position identified in a classification series where the class levels are differentiated on this basis."

The Commission cannot agree with this argument. Clearly, a reclassification is a form of reallocation. See §Pers 3.02(2)(g) and the definition of reclassification in §Pers 3.02(4). As the latter subsection specifically sets forth, a regrade is inherent in a reclassification.

Prior to the establishment of the new position standard for teachers in 1977, which included specific classification levels, there was a single classification with separate pay levels provided by the classification and compensation plan.

The appellants point out that before the change, teachers were moved to higher pay levels regardless of their probationary status. However, there is no argument that the then director did not have the authority to or did not change the classification structure. Once the director established Teacher 1-6 as specific classification levels, then movement through those levels required reclassification and the restriction imposed by §Pers 13.06(5) came into play.

The appellants also argue that it is inequitable and irrational

to withhold a teacher's regrade on account of probationary status:

"No one disputes that experience gained or credits earned during the probationary period is as valuable as that gained or earned at any other time [or] that teachers should have received and did receive pay based on such experience and credits prior to the change in the characterization of the Teacher 1 through 6 series [or] that this change in characterization did not affect either the value of teaching experience or education attainment of the state or its recognition of this value. For all relevant purposes of payment then, no change took place."

In the opinion of the Commission, the personnel rules involved are relatively clear. These rules have the force and effect of law. The appellants' arguments more appropriately might be directed to the legislature or the administrator of the Division of Personnel, who is in the midst of an extensive revision of the personnel rules.

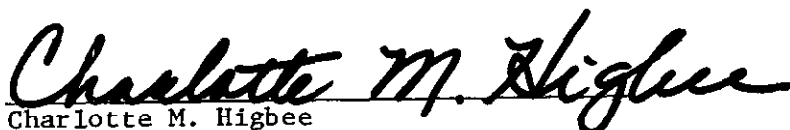
In addition to their argument that there is no legal barrier to regrade during probation, the appellants argue further that, with respect to the transactions set forth in the stipulation, they in any event were entitled to earlier effective dates.

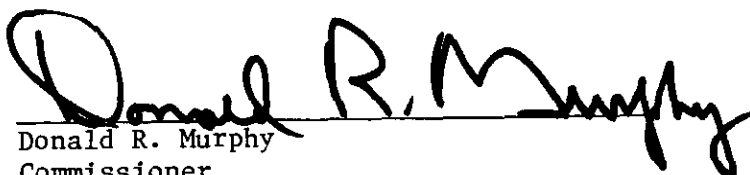
The Commission on this record cannot conclude that the transactions were not handled (with respect to effective date) in accordance with established agency policy as set forth in the findings, or that they were not handled in accordance with Subchapter II, Chapter 230, Wis. Stats., and Chapter Pers, Wis. Adm. Code.


ORDER

The respondents' actions are affirmed and this appeal is dismissed.

Dated: August 19, 1980. STATE PERSONNEL COMMISSION


Charlotte M. Higbee
Commissioner


Donald R. Murphy
Commissioner


Gordon H. Brehm
Commissioner

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5/20/80

STATE OF WISCONSIN

STATE PERSONNEL COMMISSION

* * * * *
 MARTHAJO KLUTTERMANN v. DHSS *
 Case No. 78-12-PC *
 DARLENE RATZLAFF v. DHSS & Div. of Pers. *
 Case No. 78-22-PC *
 DARLENE RATZLAFF v. DHSS & Div. of Pers. *
 Case No. 78-91-PC *
 KATHRYN ULEKOWSKI v. DHSS & Div. of Pers. *
 Case No. 78-69-PC *
 ROBERT MAJESKI v. DHSS & Div. of Pers. *
 Case No. 78-70-PC *
 MARY YURG v. DHSS & Div. of Pers. *
 Case No. 78-88-PC *
 MARGARET TIEDEMAN v. DHSS & Div. of Pers. *
 Case No. 78-100-PC *
 RAYMOND DECKER v. DHSS & Div. of Pers. *
 Case No. 78-167-PC *
 DALE F. GAUERKE v. DHSS & Div. of Pers. *
 Case No. 78-166-PC *
 * * * * *

STIPULATION
OF
FACTS

IT IS HEREBY STIPULATED BY AND BETWEEN THE PARTIES HERETO AS FOLLOWS:

1. That MarthaJo Kluttermann, Darlene Ratzlaff, Kathryn Ulekowski, Robert Majeski, Mary Yurgs, Margaret Tiedeman, Raymond Decker, and Dale F. Gauerke, are employed by the Department of Health and Social Services' Division of Corrections or Division of Community Services and have been so employed at all times material hereto;
2. (a) That MarthaJo Kluttermann was hired as an LTE Teacher 1 on October 18, 1976; was hired on permanent status on January 31, 1977; acquired ten months experience on August 18, 1977; completed probation on November 30, 1977; and pursuant to the Manual of Instructions and Administrative Orders - Personnel, Ch. V, p. 12, (effective December 14, 1977) (Exhibit A), was reclassified to a Teacher 2 effective December 4, 1977.

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(b) That Darlene Ratzlaff was hired as an LTE Teacher 1 on February 9, 1977; was hired on permanent status on April 11, 1977; acquired ten months experience on December 9, 1977; completed ten months of probation on February 10, 1978; and pursuant to Exhibit A was reclassified to Teacher 2 effective March 26, 1978.

(c) That Kathryn Ulekowski had acquired 120 hours of relevant teaching experience while substitute teaching in the Milwaukee Public Schools; was hired as an LTE Teacher 1 on March 14, 1977; was hired on permanent status on June 20, 1977; acquired ten months experience on December 23, 1977; was taken off probation on January 28, 1978; and pursuant to Exhibit A was reclassified to Teacher 2 effective March 12, 1978.

(d) That Robert Majeski was working as a Teacher 5 and obtained enough credits to acquire his reclassification to Teacher 6; submitted his transcripts on January 19, 1978; reclassification was requested by the institution on February 26, 1978; and pursuant to Exhibit A was reclassified to Teacher 6 effective March 12, 1978.

(e) That Mary Yurgs was hired as an LTE Teacher 1 on February 15, 1977; was hired on permanent status on August 24, 1977; completed probation and acquired ten months experience on February 24, 1978; and pursuant to Exhibit A was reclassified to Teacher 2 effective April 9, 1978.

(f) That Margaret Tiedeman was working as a Teacher 2 and acquired enough credits to be reclassified to Teacher 3; requested reclassification and turned in transcripts on January 4, 1978; and pursuant to Exhibit A was reclassified to Teacher 3 effective February 12, 1978.

(g) That Raymond Decker was hired as an LTE Teacher 1 on September 12, 1977; was hired on permanent status on October 10, 1977; completed probation on April 3, 1978; acquired ten months experience on July 12, 1978; and pursuant to Exhibit A, was reclassified to Teacher 2 effective July 30, 1978.

(h) That Dale F. Cauerke was appointed to a permanent position on February 27, 1978; submitted transcripts demonstrating the completion of course requirements for a masters of science in education degree on May 30, 1978; received the masters degree on August 4, 1978; submitted proof of receipt of the masters degree on August 21, 1978; completed probation on August 26, 1978; and pursuant to Exhibit A, was reclassified to Teacher 5 effective September 10, 1978.

Dated:

February 8, 1978

David C. Whitcomb

David C. Whitcomb
Attorney for Respondent
Department of Health & Social Services

Dated:

February 4, 1979

Kathryn R. Anderson

Kathryn R. Anderson
Attorney for the Respondent
Department of Employment Relations