

STATE OF WISCONSIN

PERSONNEL COMMISSION

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ALICE GRANT AND FREDERICK PROFT, *

Appellants, *

v. *

ADMINISTRATOR, DIVISION OF *

PERSONNEL, *

Respondent. *

Case Nos. 78-147-PC, 78-145-PC *

* * * * *

ORDER

This matter is before the Commission for consideration of a proposed decision of the hearing examiner.

The proposed decision was submitted to the parties by letter dated September 5, 1979, which established a deadline of September 25, 1979, for the submission of objections. The attorney for the respondent subsequently obtained from the Commission an extension until October 3, 1979, in which to file objections. No objections were filed and no application was made to the Commission for a further extension until October 10, 1979, when the attorney for the respondent filed objections. On October 12, 1979, the attorney for the respondent filed amended objections along with a statement regarding the late filing, the appellant's representative having indicated on October 10th that he would object to the late filing of the objections. On October 18th he filed an objection to the late filing of the objection.

In her comments on the late filing, respondent's counsel argued the s.227.09(2), Stats., provides that a party adversely affected by a proposed decision shall be given an opportunity to file objections and

that objections arguably must be considered if they are filed before the Commission reaches a final decision in the case.

The Commission cannot accept this approach. It is axiomatic that statutory rights can be waived if they are not exercised in a timely fashion.

Respondent's counsel also states that she was prevented by her workload from filing the objections on time. The Commission is well aware of counsel's workload. The Division of Personnel was involved in approximately half of the Commission caseload of 262 cases as of June 30, 1979. Additionally, the Commission is aware that counsel has other duties in addition to representing the Division of Personnel in personnel appeals, and that she is the sole attorney for both the Department of Employment Relations and the Division of Personnel.

Although the Commission initially was inclined not to consider the objections due to the facts that one extension had been given and no further timely extension was requested, in light of the factors set forth in the foregoing paragraph the Commission will consider respondent's objections to the proposed decision.

However, it is appropriate to note that counsel's logistical problems have been in existence for a number of months. This situation presents problems for all concerned and is unfair to the other parties to proceedings before the Commission. The respondent should be on notice that in future cases this much latitude may well not be afforded, and the respondent should make an effort, or further effort, to secure additional legal representation.

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Having considered the respondent's objections to the proposed decision, the Commission does not find them persuasive and adopts the proposed decision, a copy of which is attached hereto, as the final decision of the Commission.

Dated Nov. 8, 1979

STATE PERSONNEL COMMISSION

Charlotte M. Higbee
Charlotte M. Higbee, Commissioner

AJT:mgd

to interpret, and frequently changing.

4. The TRA program is administered, in part, with the utilization of unemployment compensation (UC) data.

5. TRA does not have a separate processing system but must rely in part on the existing UC system.

6. While there is considerable overlap between the TRA and UC processing systems, there are many differences between the systems. For example, because of the extensive potential retroactivity of TRA claims, data is required in some cases which is not required by UC and has been deleted from the UC computer system. Also, while TRA claims are usually set up on a "piggyback" basis using a companion UC claim, in some cases, such as forced retirement, there is no UC claim and the TRA unit must set up a "dummy" UC claim in order to obtain access to the computer system and process the TRA claim. Another example of the relationship between the TRA and UC systems is that in some cases the basis for disqualification of a UC claimant for UC benefits also disqualifies the claimant for TRA benefits, but this is not so in all cases.

7. As a result of the interrelationship between the TRA and UC systems, the appellants must have substantial knowledge of both systems.

8. The TRA system is the most complex benefit system in DILHR.

9. Due to cyclical variations in the economic cycle and other factors the TRA workload is subject to a large degree of fluctuation.

10. The appellants work under general supervision.

11. The only set of guidelines or standard operating procedures

for processing claims and other transactions available to appellants is a TRA training handbook which was prepared by Ted Plautz, then supervisor of the TRA payment section, in the latter part of 1975 and 1976 as the TRA payment section was originally organized.

12. This manual was prepared for use with a manual, as opposed to a computerized, claims processing system, and was largely obsolete within about three months after its preparation, in part because of the conversion of the unit to computerized claims processing.

13. The absence of any current, comprehensive guidelines or standard operating procedures imposes the requirement that the appellants frequently make independent judgments regarding the application of the general principles provided by the general federal rules and regulations to problems encountered in claims and other transactions processing.

14. The potential financial consequences of an error in approving a TRA claim are very substantial in that a claim may total several thousand dollars and the employer does not have standing to request a review of a claim that has been granted, thus eliminating a more or less automatic review by the employer as exists in the UC area.

15. The Job Service Assistant position standards includes, in part, the following:

JOB SERVICE ASSISTANT 3

Definition

This is entry-level paraprofessional or highly responsible clerical job service work in the Department of Industry, Labor and Human Relations.

Under general supervision, clerical positions at this level 1) perform advanced clerical work characterized by the application of a wide variety of complex interrelated Job Service program policies and procedures and may train staff in area of specialty; 2) leads a medium unit of clerical employees engaged in complex, specialized clerical activities; or 3) leads a small unit of clerical employees engaged in complex and varied clerical activities. Clerical work at this level is performed in accordance with established Job Service program policies and procedures.

JOB SERVICE ASSISTANT 4

Definition

This is responsible paraprofessional job service work in the Department of Industry, Labor and Human Relations. Staff positions at this level provide direct services to clients and employers or support services to professional staff requiring the exercise of considerable discretion and judgement in tailoring services to meet client/employer needs and Job Service program objectives.

Lead work positions at this level guide: 1) a medium clerical unit in complex and varied Job Service program activities, 2) a large clerical unit engaged in complex specialized Job Service program activities. Major responsibilities include coordinating activities internally and with other work units, setting priorities and recommending new methods for accomplishing work.

General supervision is provided by a Job Service Office Director of Job Service Supervisor.

The following findings are made with respect to the appellant Grant:

16. Her duties and responsibilities include the following:

a. She reviews initial applications for TRA benefits that are forwarded by local job service offices, directs the submission of necessary information by employers, makes determinations as to approval of the claims for payment:

b. She provides critiques to local job service offices of the work they do in the TRA area and provides them with technical assistance and training.

c. She provides technical assistance regarding the provision of TRA data to employers.

d. In the case of multiple petitions (claimant eligible under more than one TRA petition or certification), she developed a process for handling these claims, instructed TRA staff in the procedures, and on an ongoing basis makes recommendations for the claimant as to which petition she believes would be most beneficial to the claimant.

e. She devised procedures and instructed TRA staff in the handling of the various options which are open to claimants with respect to credit for payments.

f. As the payment system has become computerized, she helps decide what functions the computer will perform and then provides suggestions to her supervisors and the computer staff as to problems with and changes in the claims processing system. These suggestions have resulted directly in a number of substantive changes in the computer operation.

g. She determines how to allocate vacation and holiday pay with respect to basic wages in the determination of benefits.

h. During the period when the head of the unit, Mr. Plautz, was preoccupied with the American Motors certification, he delegated to Ms. Grant all of the functions he had been carrying out as to other employees.

i. She has been leadworker for two permanent and one limited term employees on a relatively regular basis. However, during periods of heavy workload she could and did on her own authority require other employees in the TRA section to work under her direction processing initial claims.

j. She analyzes computer printout error messages and takes appropriate action such as to resubmit coverage following updating of the file, to order payment or other action to override the computer, .etc.

k. The appellant's duties and responsibilities are predominantly paraprofessional in nature.

17. Her request for reclassification to Job Service Assistant 4 was denied by the respondent on August 1, 1978.

The following findings are made with respect to appellant Proft:

18. His duties and responsibilities include:

a. Lead worker in the manual payments units processing TRA benefits that cannot be paid through the computer system. and all training payments to both trainees (certain laid-off employes eligible for training under TRA) and vendors (institutions providing the training).

b. He is responsible for the development and implementation of policies and procedures, in accordance with federal legal requirements, for the administration of the training payment system.

c. The size of appellant's unit has varied time to time from about 5 or 6 to about 12 employes, including usually 4 permanent, one seasonal, and the remainder limited term employes.

d. He is the contact person for TRA for contacts with individuals and institutions in and out of job service for questions regarding the training program

e. He analyzes codings in the UC computer printout to assess their effects on TRA payments.

f. He reviews contracts and other documents related to

training for accuracy of computations and compliance with federal standards, and corrects some errors on his own.

g. The appellant's duties and responsibilities are primarily paraprofessional in nature.

19. The request for reclassification of appellant's position from Job Service Assistant 3 to Job Service Assistant 4 was denied on August 1, 1978

CONCLUSIONS OF LAW

1. These appeals are properly before the Commission pursuant to §230.44(1)(a), Stats.

2. The burden of proof is on the appellants to establish that the respondent's decisions denying reclassification from Job Service Assistant 3 to Job Service Assistant 4.

3. The appellants have satisfied that burden.

OPINION

The respondent's decision on these reclassification requests are set forth in Respondent's Exhibit 5 (Grant) and 14 (Proft). Much of the analysis is similar or identical. See e.g. Respondent's Exhibit 5:

"...these types of [paraprofessional] duties would require the application of higher level of independent decision-making and would involve working with program criteria that are much less defined than would exist with functions which are more clerical in nature." p. 2

The respondent's decision was that the positions fit within the Job Service Assistant 3 definition as involving "highly responsible clerical work."

The Job Service Assistant position standard, Respondent's Exhibit 1,

contains the following in the Job Service Assistant 3 definition:

"Clerical work at this level is performed in accordance with established Job Service program policies and procedures."
(emphasis supplied)

In the opinion of the Commission, a key factor in these cases involves the above language and the fact that for the most part the appellants do not have established Job Service policies and procedures to work with and have to refer to general federal legal requirements to accomplish their work. This factor alone might compel the conclusion that the appellants' work is paraprofessional rather than advanced clerical. The facts that the appellants work very independently and are required to have substantial familiarity with the UC as well as the TRA system, and that the TRA system is the most complex system in DILHR, and the federal legal requirements for TRA are complex, difficult to interpret and frequently changing, add additional support to the conclusion.

The fact that TRA is a relatively new program raises a question as to whether these circumstances might be considered too temporary to support reclassification. However, the situation had been in this status for approximately two years at the time of respondent's decision. Although it is possible that the management and organization of the TRA unit might change in such a manner that the positions in question would function under more structured conditions, the Commission cannot characterize the situation as it existed prior to August 1, 1978, as temporary.

The respondent categorized Grant and Proft's unit as small and medium respectively. Even counting limited term employees, these units were not consistently at a size which would lead the Commission to conclude

that this categorization was in error.

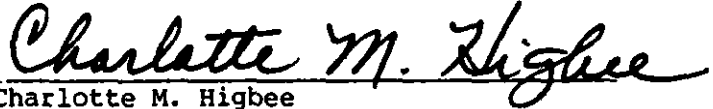
With respect to the effective date of the reclassification, in the absence of evidence that an earlier date would have been used if the respondent's decision had been to grant the reclassification, in the Commission's opinion August 1, 1978, is an appropriate effective date for reclassification. See Doll v. Div. of Personnel, Wis. Pers. Comm., No. 78-110-PC (7/5/79)

ORDER

The actions of the respondent denying appellants' reclassification are modified and these matters are remanded for action in accordance with this Decision.

Dated: Nov. 8, 1979.

STATE PERSONNEL COMMISSION


Charlotte M. Higbee
Commissioner

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9/5/79