

OFFICIAL

STATE OF WISCONSIN

PERSONNEL COMMISSION

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THOMAS J. MARX,

Appellant,

v.

Secretary, DEPARTMENT OF INDUSTRY,
LABOR AND HUMAN RELATIONS, and
Administrator, DIVISION OF
PERSONNEL.

Respondent.

Case No. 79-345-PC

* * * * *

INTERIM DECISION
AND ORDER

NATURE OF THE CASE

This is an appeal pursuant to §230.44(1)(b), Stats., of the effective date of a reclassification. DILHR has moved to dismiss for lack of subject-matter jurisdiction and the parties have filed written arguments. The facts relating to jurisdiction are not in dispute. The following findings are made solely for the purpose of resolving the jurisdictional issues.

FINDINGS OF FACT

1. On or about July 2, 1979, the DILHR personnel office received a request to reclassify appellant's position from Job Service Specialist 2 to Job Service Specialist 3.
2. The request was granted on a delegated basis, see §230.05(2), Stats., and in a letter dated August 2, 1979, Respondents' Exhibit 1, the appellant was informed that the requested reclassification was approved "effective July 15, 1979."

3. Appellant received this letter within a few days of its date.

4. The appellant's position is within the Professional Social Services and Professional Research Statistics and Analysis bargaining unit represented by AFSCME Council 24, Wisconsin State Employees Union, whose 1979 collective bargaining agreement with the state expired on June 30, 1979.

5. The 1979-1981 agreement was ratified by Chapter 71, Laws of 1979, which provision was effective November 9, 1979.

6. The 1979-1981 agreement contains, in part, the following:

"Section 1: WAGE ADJUSTMENTS

A. ***

1. First Fiscal Year

(a) The employer will, effective July 1, 1979, increase the then current wage of each employe by forty-one cents (.41) per hour or seven percent (7%) of his/her base pay whichever is greater."

7. The effect of the preceding provision on appellant was to accord him a retroactive increase in wages calculated on the basis of his base pay on July 1, 1979, prior to the reclassification of his position, and not on the basis of his actual pay on November 9, 1979, when the collective bargaining agreement became effective.

8. The first pay check reflecting the appellant's new rate of pay was paid on November 29, 1979, for the pay period beginning November 4, 1979. A check reflecting the lump sum of the bargained retroactive increase was paid on December 6, 1979.

9. The appellant filed an appeal with the Commission on December 7, 1979, in which he stated in part, as follows:

"Enclosed is a copy of my approved reclassification request. I wish to appeal the date of the reclassification based on the following facts:

My reclassification request was prepared by my immediate supervisor on June 5, 1979. The paperwork involved in the reclassification request was not approved by the Assistant Administrators office until June 29, 1979. This unnecessary delay was caused by the top management level in the Bureau of Tax and Accounting. It was not an error of oversight. On at least four different occasions I reminded the appropriate people of the situation.

This delay caused my reclassification request to be received in DILHR Personnel on July 2, 1979 rather than sometime in June. If my request had been received in DILHR Personnel one day sooner my reclassification would have been effective on June 30, 1979. The importance of this date is that the increase of 7% plus one step which went into effect July 1, 1979 would have been based on my reclassified salary, a difference of approximately .17¢ an hour.

This is the first possible time I could have known the monetary effects of the July 2, 1979 date (the date my reclassification was received in personnel), because my check dated November 29, 1979 was the first time my 7% percent increase was included. If my 7% increase had been shown on check dated July 12, 1979 I would have appealed at that time. Based on these facts I feel my appeal dated November 30, 1979 should be classified as timely.

CONCLUSIONS OF LAW

1. In the context of the requirements of §230.44(3), stats. the reclassification of appellant's position was not fully effective until December 6, 1979.
2. This appeal was timely filed pursuant to §230.44(3), stats.
3. This matter is appropriately before the Commission pursuant to §230.44(1)(b), stats. as an appeal of a delegated decision of the administrator with respect to the effective date of a reallocation.

OPINION

The respondent's first argument is that the Commission lacks

jurisdiction because the appellant failed to file a timely appeal with the Commission.

Section 230.44(3), stats., provides that an appeal may not be heard unless it is filed "... within 30 days after the effective date of the action, or within 30 days after the appellant is notified of the action, whichever is later." The respondent argues that the effective date of the action in question is July 15, 1979.

In Carlton v. Castranova, 11 Cal. Repr. 758, 261 (Cal. 1961), the court discussed the meaning of the word "effective:"

"The word 'effective' means 'in force, in effect' ... 'in actual operation'"

A reclassification is the "reallocation of a filled position to a different class and the subsequent regrading of the incumbent", see §Pers. 3.02(4), Wis. Adm. Code. A reallocation is the assignment of a position to a different class", see §Pers. 3.02(2), and a regrade is defined as the "action ... following 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." See §Pers. 3.02(3).

One central feature of the classification system is that it fixes an employe's base salary rate. See §230.14(1)(a), stats. Just as in this case, all reclassifications have to have effective dates. This fixes the date on which the salary differential begins to be paid. See §Pers. 5.03(2)(a), Wis. Adm. Code.

This case presents an unusual situation because of the fact that the WSEU collective bargaining agreement, which was not effective until

November 9, 1979, provided for compensation adjustments retroactive to July 1, 1979.

In the opinion of the Commission, the appellant's reclassification was not fully effective in the sense of "in actual operation," see Carlton v. Castranova, until the appellant realized the full pay for the pay range to which he was reclassified.

While the appellant commenced earning at a higher pay rate on July 15, 1979, he was not fully compensated at the higher level until December 6, 1979, when he was paid retroactively for work he performed during the period after July 15, 1979.

In previous cases the Commission has held that the time for appeal does not commence from the date the appellant learns of the fact that leads to the belief that the transaction in question was incorrect or unfair, see e.g., Bong & Seeman v. DILHR, Case No. 79-167-PC (11/8/79). The Commission believes that the instant case is distinguishable on two grounds. One is that this case does not present a question of notice but rather effective date. Second, in any event the appellant had no way of knowing on the date he received initial notice of his reclassification how the contract terms would affect his salary.

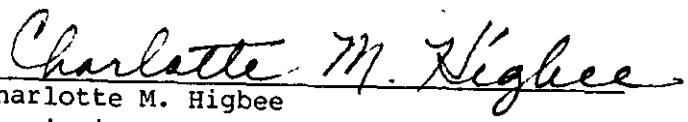
The respondent's second argument is that this appeal is actually a challenge to the wage provisions of the WSEU contract; and as such, the Commission lacks jurisdiction over the subject matter. The Commission does not interpret the appeal in this fashion and, therefore, does not conclude that it lacks jurisdiction over the subject matter of the appeal.

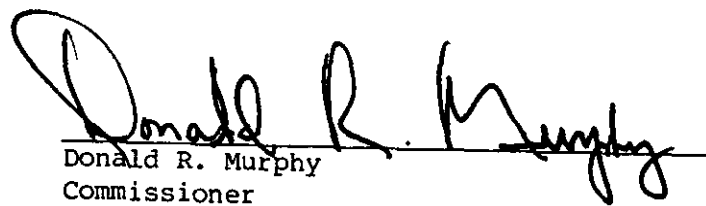
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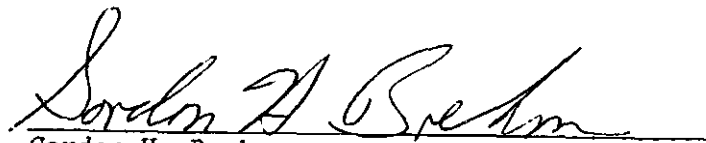
The respondent's motion to dismiss for lack of subject-matter jurisdiction is denied.

Dated: April 28, 1980.

STATE PERSONNEL COMMISSION


Charlotte M. Higbee
Commissioner


Donald R. Murphy
Commissioner


Gordon H. Brehm
Commissioner

AJT:jmg/ar1