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STATE OF WISCONSIN

PERSONNEL COMMISSION

 *
 CARMEN GERMANE, *
 *
 Appellant, *
 *
 v. *
 *
 DEPARTMENT OF INDUSTRY, LABOR, *
 AND HUMAN RELATIONS, *
 *
 Respondent. *
 *
 Case No. 79-50-PC *
 *

DECISION
AND
ORDER

NATURE OF THE CASE

This appeal involves a dispute as to the appropriate date for the regrade of the appellant, employed in a position classified as Attorney 12, to regrade point A on the Regrade Schedule for Attorneys, Pay Schedule #9 (Legal), State of Wisconsin Classification and Compensation Plan. This appeal is before the Commission as an appeal of the denial of a non-contractual grievance at the third step pursuant to §230.45(1)(c), Stats. (1977). The parties have submitted this case on an agreed statement of facts.

FINDINGS OF FACT

The Commission incorporates by reference and adopts as its findings of fact the fact stipulation filed April 16, 1979, a copy of which is attached hereto.¹

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over this appeal pursuant to §230.45(1)(c), Stats. (1977).
2. Time on layoff does not count as credible time in computing eligibility for regrade to the next higher regrade point with respect

¹Copies of the voluminous attachments to the stipulation are attached only to this original decision and not to copies of the decision.

to the State of Wisconsin Classification and Compensation Plan, Pay Schedule #9 (Legal) (Attorney's Pay Plan).

OPINION

The respondent has objected to the Commission's jurisdiction under §230.45(1)(c), Stats. (1977). This provides that the Commission shall:

"Serve as final step arbiter in a state employe grievance procedure relating to conditions of employment, subject to rules of the secretary providing the minimum requirements and scope of such grievance procedure."

It is argued that since the secretary has not yet promulgated such rules, the Commission lacks authority to act under §230.45(1)(c), Stats. In Kennel v. DOT, Wis. Pers. Commn. Nos. 78-263, 265, 266-PC (2/15/79), the Commission held and it now reiterates that holding, that in the absence of such rules a jurisdictional basis was provided by Chapter 196, Laws of 1977, §129(4q), and by §Pers. 25.01, Wis. Admin. Code.

The State of Wisconsin Classification and Compensation Plan, Pay Schedule #9 (Legal), provides in part:

"Upon completion of the first 1½ years of employment ... an employe with permanent status in class will be eligible for a regrade to the next higher regrade point in the pay range. Eligibility for subsequent regrades will be based on the employe's completion of the designated time frame (Note: the time frames are absolute). A regrade, as used in this schedule, is the movement of an employe to the next higher regrade point within the pay range based upon the appointing authority's evaluation that the employe has performed the duties and responsibilities assigned to the position in the manner expected by the appointing authority."

This appeal raises the question of what is meant by the terminology "1½ years of employment", and whether it includes time spent in layoff

status. In the Commission's opinion the terminology must be interpreted to include only time actually spent performing the duties and responsibilities of the job.

A person in layoff status is not "employed." He or she is not being paid and is not performing work for the state. Furthermore, the clear intent of the regrade system is that the regrades depend on satisfactory performance evaluations. Performance cannot be evaluated when work is not being performed.

The appellant argues in her brief that her period of time in layoff status counts as continuous service pursuant to §Pers. 18.02(2), Wis. Adm. Code. While it is correct that her time in layoff status did not interrupt her continuous service, this is not material to the issue in this case. As the respondent points out in his brief:

"It is one thing to continue an employe's service for purposes of computing relative seniority and eligibility for benefits such as insurance, length of service payments, amount of vacation and the like. It is quite another thing to count time on layoff toward eligibility for regrade when regrade depends upon satisfactory job performance."

The appellant also cites §Pers. 16.07(1), Wis. Adm. Code.:

"... an employe, when reinstated under one of the conditions listed below, shall be paid the last rate received plus intervening general pay adjustment(s) and, in pay schedules where applicable, shall also be eligible to receive an equity award."

In the opinion of the Commission an "intervening general pay adjustment" means just that and does not include attorney regrades for which the employe would have been eligible had she been continuously employed during this period. An "equity award" is defined by the 1978-1979 State

Classification and Compensation Plan, paragraph II B. 3., p. 4, of which the Commission takes official notice, as follows:

"3. Equity Award - Cumulative Awards may be granted to certain employes at the discretion of the supervisor to resolve pay inequities brought about through compensation plan or internal classification changes. These awards may be granted only on the administrative date closest to February 1 and are subject to the pay range maximum and the limit of 10% under B.1. These awards may only be funded through turnover monies generated by the agency's July Discretionary Performance Award fund. It is anticipated that such awards will be granted only under exceptional or in unique circumstances."

The term "equity award" cannot be construed to include attorney regrades.

ORDER

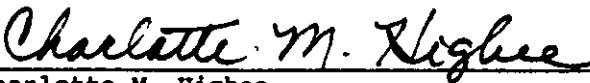
The decision of the respondent is sustained and this appeal is dismissed.

Dated: August 30, 1979.

STATE PERSONNEL COMMISSION



Joseph W. Wiley
Chairperson



Charlotte M. Higbee
Commissioner

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STATE OF WISCONSIN

PERSONNEL COMMISSION

APR 16 1979

CARMEN GERMANE,

Appellant, Personnel
Commission

STIPULATION

v.

Case No. 79-50-PC

DEPARTMENT OF INDUSTRY,
LABOR AND HUMAN RELATIONS,

Respondent.

IT IS STIPULATED by the parties to the above entitled proceeding that the Commission may decide the first sub-issue set forth in the March 29, 1979, Conference Report on the basis of the following facts:

1. Carmen Germane commenced employment with the Department of Industry, Labor and Human Relations on January 17, 1977.
2. Germane was and is classified as an Attorney 12.
3. Germane's position was and is in the bargaining unit represented by the Wisconsin State Attorneys Association (WSAA), and her employment was and is subject to the collective bargaining agreements between the State of Wisconsin and the WSAA.
4. Germane was and is subject to the State of Wisconsin Classification and Compensation Plan, particularly Pay Schedule #9 (Legal).
5. Germane was and is subject to Wisconsin civil service laws, ch. 230, Stats., and rules, Wis. Adm. Code Ch. Pers, except to the extent that such laws and rules were and are superseded by the State Employment Labor Relations Act, secs. 111.80-111.97, Stats., and/or the

collective bargaining agreements between the State of Wisconsin and the WSAA.

6. Germane completed her probationary period and acquired permanent status in class on January 16, 1978.

7. Germane was involuntarily laid off on June 2, 1978.

8. Germane recommenced employment on October 30, 1978.

9. Germane was entitled to seniority credit for the time spent on layoff.

10. Germane was regraded on December 17, 1978, to Regrade Point A on the Regrade Schedule for Attorneys, Pay Schedule #9 (Legal), State of Wisconsin Classification and Compensation Plan.

11. Attachment 1 is a true and correct copy of the 1977-79 collective bargaining agreement between the State of Wisconsin and the WSAA.

12. Attachment 2 is a true and correct copy of the 1977-78 State of Wisconsin Classification and Compensation Plan, Pay Schedule #9 (Legal).

13. Attachment 3 is a true and correct copy of 1978-79 State of Wisconsin Classification and Compensation Plan, Pay Schedule #9 (Legal).

14. Attachment 4 is a true and correct copy of Department of Employment Relations, Division of Personnel, Bulletin Number P-2 (March 7, 1978), entitled Clarification of Regrade Time Frames For Represented And Non-Represented Attorneys (Specifically As They Relate to Part-Time Permanent Employees).

CARMEN GERMANE

DATE:

April 12, 1979

BY:

Bruce D. Schrimpf
BRUCE D. SCHRIMPF
Wisconsin State
Attorneys Association

DEPARTMENT OF INDUSTRY,
LABOR AND HUMAN RELATIONS

DATE:

APRIL 10, 1979

BY:

David C. Rice
DAVID C. RICE
Assistant Attorney General

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APR 16 1979

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Commission