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LOY et al,

Appellants,

v.

President, UNIVERSITY OF
WISCONSIN; and Administrator,
DIVISION OF PERSONNEL,

Respondents.

Case Nos. 81-421, 422, 423,
424 & 425-PC

* * * * *

INTERIM
DECISION
AND
ORDER

These matters are before the Commission in an effort by the appellants to change the effective date of their reclassifications. The facts of the various appeals are substantially identical to those recited by Ms. Loy in her letter of appeal:

Ms. Pat Loy ... is employed as an RN II at the Student Health Center, UW-Oshkosh. She was reclassified from an RN I to RN II effective October 14, 1981. She learned of the reclassification on October 12, 1981. She was employed as an RN I for 13 years prior to the reclassification.

As an RN I Ms. Loy was at the maximum of her pay range. Because the effective date of the reclassification was October 14, she was not entitled to the step adjustments specified in the new collective bargaining agreement between United Professionals for Quality Health Care and the State of Wisconsin.

Ms. Loy believes that, due to the length of her services as an RN I and the change in the duties and responsibilities of her position, she should have been reclassified years ago. At the least, the effective date of her reclassification should have been on or before October 4, 1981, so that she might benefit from the step increases in the new contract.

At the prehearing conference, the parties agreed to the following issue for hearing:

Whether the policy of the Administrator setting the effective date for the reclassification of the appellants' positions at the start of the 2d pay period following the effective receipt of the reclassification requests was correct.

In addition, the appellants proposed the following issue:

Whether as a matter of public policy the appellants' positions should have been reclassified at sometime on or before October 4, 1981.

Respondent objected to the second issue, arguing that the Commission lacked subject matter jurisdiction over the question. Both parties filed briefs.

The Commission's jurisdiction is derived from ss.230.44 and .45, Wis. Stats. The only provision that arguably would provide jurisdiction over the instant appeal is s.230.44(1)(b), Wis. Stats., although it is helpful to read that provision in light of the preceding paragraphs:

(1) APPEALABLE ACTIONS AND STEPS. Except as provided in par. (e), the following are actions appealable to the commission under s.230.45(1)(a):

(a) Decision of administrator. Appeal of a personnel decision of the administrator, including but not limited to ... actions and decisions of the administrator under 230.09 ... shall be to the commission.

(b) Action delegated by administrator. Appeal of an action delegated by the administrator to an appointing authority under s.230.05(2) shall be to the commission.

It is undisputed that in the present case, the administrator had delegated the authority to make reclassification decisions over the Registered Nurse I and II classifications to the respondent University.

The only action taken by the respondent University was to grant the reclassification of the appellants' positions effective October 14, 1981, apparently in accordance with Chapter 334 (Attachment #2) of the Wisconsin Personnel Manual, which provides in part:

Both delegated and non-delegated reclassification actions will be made effective at the start of the second pay period following effective receipt of the reclassification request at a level within the agency that has the authority to approve the request (delegated actions) or the authority to recommend the action directly to the State Division of Personnel for final approval (non-delegated actions).

As a general matter, only a formal reclassification decision by the administrator (or, by the appointing authority in a delegated action) will trigger the Commission's jurisdiction over classification questions. An exception to this general rule occurs if the appointing authority refuses to act on an employe's reclassification request. Such a refusal would constitute a constructive denial of the request, thereby providing a basis for the exercise of the Commission's jurisdiction. No such constructive denial is alleged here.

As an alternative theory, appellants rely on the Commission's ruling in Kimball v. DP & DHSS, Case No. 79-236-PC (4/23/81). In that case, an employe's supervisor had submitted a reclassification request on something other than the proper form. The request had to be resubmitted and the resultant effective date was approximately one month later than if the original request had been acted upon. The Commission found that the delay in the effective date suffered by the employe was due to a ministerial mistake or error and ordered the respondents to use an earlier date. The Commission's ruling was based upon what is now s.Pers 29.05, Wis. Adm. Code, which provides:

Retroactive salary increase or decrease. Except for action in accordance with ss.230.43(4), 230.44(4)(c) and 230.45, stats., or to correct an error, no pay increases or decreases shall be retroactive.

The failure of the employe's supervisor to submit the reclassification recommendation on the correct form, and the failure of the personnel office to recognize the document as a reclassification recommendation were found to constitute clerical or administrative error, and therefore were correctable under the provisions of s.Pers 29.05, Wis. Adm. Code. The Commission went on to say that the one month delay in the effective date of the reclassification meant that for that period the employer had violated s.230.09(2)(a), Wis. Stats.,

which states that positions may be reclassified on the basis of "duties, authority, responsibilities or other factors recognized in the job evaluation progress."

In Kimball, the Commission's jurisdiction was premised on the written decision granting the reclassification and setting an effective date. The issue was not one of jurisdiction but was whether there was any way to remedy the acknowledged ministerial error on appeal. Although the Commission concluded that it could grant such relief, nothing in the decision can be read to confer jurisdiction over reclassifications where no request for reclassification has been submitted. The only application of the Kimball ruling to the present case is to determine whether the effective date of the reclassification should be at sometime on or after the date the request was first submitted but prior to October 14, 1981. That question is subsumed by the issue formulated at the prehearing conference and already agreed to by the parties.

If the Commission would adopt the appellants' arguments as to jurisdiction, the relative roles of the employe and appointing authority (or administrator of the Division of Personnel) would be substantially altered. The appointing authority would be required to constantly monitor every position within the civil service to determine whether the position is properly classified. If an employe was dissatisfied with his or her classification, s/he could appeal directly to the Commission, irrespective of the 30 day requirement set out in s.230.44(3), Wis. Stats., arguing that the employer had already made its (tacit) reclassification decision. On review, the Commission would be required to ascertain the precise moment that the duties of the position justified any reclassification. Such a result would be inconsistent with the current statutory scheme established in

Loy et al v. UW & DP
Case Nos. 81-421,422,423,424 & 425-PC
Page Five

ss.230.09(2) and 230.44(1)(a) and (b), Wis. Stats., which permit reclassification of a position based on "duties, authority, responsibilities or other factors" and allow for review by the Commission only when a final reclassification decision has been made.

The Commission concludes that the issue proposed by the appellants is beyond the scope of its subject matter jurisdiction.

ORDER

Any further proceedings in this matter shall be limited in scope to the following issue:

Whether the policy of the Administrator setting the effective date for the reclassification of the appellants' positions at the start of the second pay period following the effective receipt of the reclassification requests was correct.

Dated: March 11, 1982

STATE PERSONNEL COMMISSION

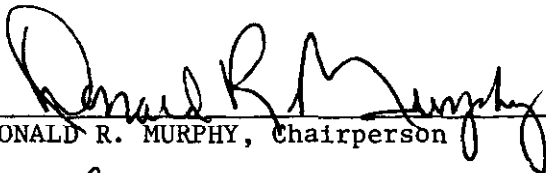
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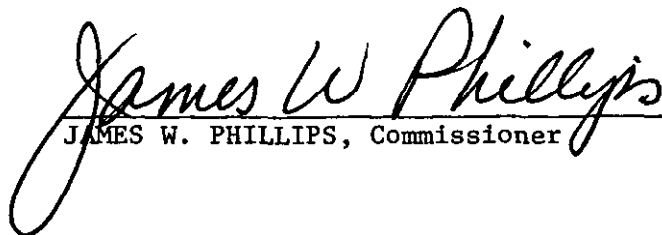
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