

STATE OF WISCONSIN

PERSONNEL COMMISSION

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ENID CRONIN, *

i *

Appellant, *

v. *

Secretary, DEPARTMENT OF *

HEALTH & SOCIAL SERVICES, *

Respondent. *

Case No. 82-118-PC *

* * * * *

DECISION AND
ORDER ON PETITION
FOR REHEARING

In an interim decision and order dated August 18, 1982, the Commission determined that the appeal as it had been filed was not properly before the Commission because of timeliness problems. However, the Commission noted that the appellant had a current request for reclassification of her position pending before DER, and it ordered that the file be held in abeyance pending a final decision, with the proviso that if the appellant was dissatisfied with the results of the reclassification decision she should so indicate.

On September 3, 1982, the Commission received a letter from Ms. Cronin requesting a rehearing with respect to the timeliness decision and initiating an appeal of the reclassification decision which had been made. As an administrative matter, the Commission opened a new file (No. 82-180-PC) with respect to the reclassification appeal, and will now address the petition for rehearing.

Ms. Cronin's letter of September 2, 1982, which requested rehearing, contains in part the following:

I was hired by the State of Wisconsin to serve as first line supervisor of the typist in the education office at Lincoln Hills School, according to my position description (see attachment #1) dated 5/1/70 and signed by me on August 8, 1970. There was ambiguity in this original position description in that Item #13 states the position was not supervisory, yet, in Item #15 (work performed) fifty percent of my time was allocated to first line supervision of typist assigned to education office. This position description was signed by Mr. Eugene Freiburger, LHS Personnel Manager, and Mr. James R. Wickman, LHS Director of Education, on 5/1/70. My subsequent position descriptions, with specific reference to supervision of, and writing annual evaluations for, the typist in the education office continued in that pattern until 1982.

In January of 1982 I requested reclassification to Program Assistant 2, which was denied by the Lincoln Hills School Personnel Department. However, at my request, my position was audited in February, 1982, by Ms. Jean Nichols of the Bureau of Personnel and Employment Relations. On March 38, 1982 Ms. Nichols communicated with Mr. Eugene Freiburger, stating "Since the Program Assistant 1 is not designated as a supervisory classification ... she is not a supervisor and therefore cannot be assigned or allowed to assume responsibility for performing supervisory functions." Mr. Freiburger was advised by Ms. Nichols to "please take action on this immediately to ensure that she is not performing such supervisory functions as indicated on her position description." (See copy of Ms. Nichol's letter, attachment #2.) Mr. Freiburger immediately deleted all reference to supervisory functions from my position description.

The attached copy of an April 6, 1982 memorandum (attachment #3) from my immediate supervisor (Mr. James R. Wickman, to Mr. Russel L. Leik, Superintendent of Lincoln Hills School (following Ms. Nichols' letter) protests the sudden elimination of my supervisory obligations after I had been a supervisor in the education office for the past 12 years. This letter is, I believe, evidence that I had continually been required to perform supervisory functions since the time of my initial employment as a Clerk 3 in August, 1970 until March of 1982, with full knowledge by Mr. Freiburger, LHS Personnel Manager, that I was performing these supervisory functions.

I believe that from August, 1970, until March 15, 1982 (the date of Ms. Nichols' communication to Mr. Freiburger) it was reasonable for me to assume that the Lincoln Hills School personnel manager, and the Department of Personnel had assigned me a job classification commensurate with the

duties required, and that I had no possible means of knowing that the duties assigned me were not normally assigned to my classification, and that I had been wrongly classified. Therefore, Ms. Nichols' memo, dated March 15, 1982, establishes that date as the first knowledge I could have had that I had been misclassified, and that discretionary powers had been abused by the appointing authority, in violation of the Wisconsin Administrative Code.

Therefore, since §230.44(3), .; APM §I.D. i.e., states "an appeal may be filed within 30 days after the appellant is notified of the action," and Ms. Nichols' communication of March 15, 1982 constitutes the first notification I had of my misclassification, my April 1, 1982 first step grievance was well within the 30-day limit of my initial notification. This grievance did not request reclassification, but did ask for back pay for supervising duties performed by me from August, 1970 until March, 1982.

The primary difficulty with the appellant's argument is that it blurs the distinction between receiving notice of a transaction and receiving notice or information which would lead the employe to believe that a transaction or state of affairs was improper and could or should be challenged.

Here, there is no question but that the appellant knew from the outset of her employment what her position classification was, what her salary was, and what duties and responsibilities she was expected to and did perform. The memo from Ms. Nichols was not "notice" of these "transactions" but rather it constituted, at least from Ms. Cronin's viewpoint, notice that there were defects in her prior employment status.

The time for appeal set forth in §230.44(3), stats., does not begin to run from the date the employe learns of facts that lead him or her to the belief that a prior transaction or state of affairs was improper, illegal, or unfair. See, e.g., Bong & Seeman v. DILHR, Wis. Pers. Commn., No. 79-167-PC (11/8/79), 51 Am Jur 2d Limitation of Actions, §146: "... the mere fact that a person entitled to an action has no knowledge of his right

to sue, or of the facts out of which his right arises, does not prevent the running of the statute or postpone the commencement of the period of limitation until he discovers the facts or learns of his rights thereunder ..."

ORDER

The appellant's petition for rehearing dated September 2, 1982, is denied and this appeal is finally dismissed.

Dated: Sept. 23, 1982

STATE PERSONNEL COMMISSION

Donald R. Murphy
DONALD R. MURPHY, Chairperson

Laurie R. McCallum
LAURIE R. McCALLUM, Commissioner

James W. Phillips
JAMES W. PHILLIPS, Commissioner

AJT:ers

Parties

Enid Cronin
603 E. First St.
Merrill, WI 54452

Donald Percy
Secretary, DHSS
P.O. Box 7850
Madison, WI 53707