

STATE OF WISCONSIN

PERSONNEL COMMISSION

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DEBORAH REIS,

Appellant,

v.

Secretary, DEPARTMENT OF  
TRANSPORTATION,

Respondent.

Case No. 83-0002, 0003-PC

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DECISION  
AND  
ORDER

NATURE OF THE CASE

This matter is before the Commission pursuant to the parties' agreement to submit it for decision on briefs and without evidentiary hearing, the material facts not being in dispute.

Case No. 83-0002-PC involves an appeal of the handling of the appellant's appointment to a Trooper 1 position as a reinstatement, the appellant contending that, as a matter of law, it was a promotion. Case No. 83-0003-PC involves an appeal of the determination that the appellant was required to serve a 12 month probationary period following the aforesaid transaction.

The respondent withdrew any jurisdictional objections and stated the issues as follows:

Appellant argues that appointment to Trooper 1 was incorrectly characterized as reinstatement, and that the more appropriate treatment was to call the appointment a promotion. Alternatively, appellant argues that if the appointment was characterized as a reinstatement, the appointing authority could not require appellant to serve the one-year probation for a Trooper 1.

FINDINGS OF FACT

1. The appellant commenced employment with the state on November 1, 1976, as an Officer 1, pay range 5-07 (PR5-07), in the Department of Health and Social Services (DHSS).

2. Thereafter, her position was reclassified to Officer 2 (PR5-08) on November 19, 1978, and to Officer 3 (PR5-09) on April 22, 1979. She successfully completed her Officer 3 probationary period as an Officer 3 on October 21, 1979.

3. Following successful competition, the appellant accepted a voluntary demotion to an Enforcement Cadet (PR5-08) position in the Wisconsin State Patrol, Department of Transportation (DOT), on or about February 22, 1982.

4. Following the successful completion of her training at the Wisconsin State Patrol Academy, the appellant was appointed to a Vehicle Inspector 1 (PR5-08) position, in June 1982.

5. Effective January 9, 1983, prior to the completion of her Vehicle Inspector 1 probation, the appellant was appointed to a Trooper 1 (PR5-09).

6. The appellant was required to serve a one-year probationary period as a Trooper 1 and the transaction was characterized by management as a reinstatement.

CONCLUSIONS OF LAW

1. This matter is properly before the Commission pursuant to §230.44(1)(d), Stats.

2. The appellant has the burden of proving that the respondent erred in handling her appointment to Trooper 1 as a reinstatement instead of a promotion (83-0002-PC) and, if not, in requiring a 12 month probationary period (83-0003-PC).

3. The appellant has satisfied her burden of proof as to 83-0002-PC and accordingly concedes the appropriateness of a 12 month probationary period in 83-0003-PC.

4. The respondent's decision to handle the appellant's appointment to Trooper 1 as a reinstatement was, on this record, erroneous, and it should have been handled as a matter of law as a promotion. The respondent's decision to require a 12 month probationary period was not incorrect in light of the previous conclusion.

#### OPINION

The respondent denominated this transaction a reinstatement. A reinstatement is defined in §Pers. 16.01, (1), Wis. Adm. Code, as follows:

Reinstatement and restoration mean the act of reappointment without competition of an employe or former employe (a) to a position in the same class in which the person was previously employed or (b) to a position in another classification to which the person would have been eligible to transfer had there been no break in employment or (c) to a position in a class having a lower pay rate or pay range maximum for which the person is qualified to perform the work after the customary orientation provided to new workers in the position.

Subsection (a) cannot apply to this transaction because the appellant had never been employed in the Trooper classification prior to her move thereto that triggered this appeal. The respondent in his brief argues as follows:

Pers. 1.01(5), Wis. Adm. Code, defined higher class as a 'class assigned to a higher pay range.' Pers. 1.01(8), Wis. Adm. Code, defined lower class as 'a class assigned to a lower pay range.' There was no definition for same class as used in Pers. 16.01, (1)(a), Wis. Adm. Code. Logically, however, it follows that same class must mean a class assigned to the same pay range.

In the opinion of the Commission, this does not follow. "Same" means "identical," See Webster's New World Dictionary, Second College Edition, (1972).

The respondent also points out that the appellant was eligible for reinstatement pursuant to §Pers. 16.03(1), Wis. Adm. Code, following a voluntary demotion. However, the fact that the appellant was eligible for reinstatement cannot make the instant transaction a reinstatement if it does not meet the definition set forth above.

The respondent has not argued that the transaction constitutes a reinstatement pursuant to §Pers. 16.01(1)(b) or (c), and it plainly does not. The appellant was not eligible to have been reinstated to Trooper 1 pursuant to subsection (b) on the basis of her Officer 3 status, because although it was at the same pay range, the appellant would not have been "qualified to perform the work after customary orientation provided for newly hired workers in such position," §Pers. 15.01, Wis. Adm. Code, since training at the State Patrol Academy was required. Her other positions in DOT (Enforcement Cadet and Motor Vehicle Inspector 1) were not at the same pay range as Trooper 1. The appellant was not eligible to have been reinstated pursuant to §Pers. 16.01(1)(c), because it was not a movement to a classification with a lower pay range.

The respondent in his brief concedes that the transaction in question was not an original appointment. It obviously was not a transfer or a demotion, because it was not a movement to a position classified in the same or a lower pay range.

A "promotion" is defined in the Wisconsin Administrative Code<sup>1</sup> as follows:

Promotion means the movement of an employe with permanent status in class from the employe's present position to a different position in a higher class. §PERS 14.01, Wis. Admin. Code.

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<sup>1</sup>This and all other references to the code, except as specifically noted, are to the code which was in effect at the time of the instant transactions, and prior to the extensive revision of Chapter PERS which was effective March 1, 1983.

The respondent DOT argues that the appellant's appointment to the Trooper 1 position was not a promotion:

Appellant had not achieved permanent status in class as a Motor Vehicle Inspector 1. In fact, when appellant was appointed to Trooper 1, she still had more than one month before she would have successfully completed required probation for her then current position.

Because appellant was still on probation, she did not have permanent status in class. (See Pers. 1.01(13), Wis. Adm. Code.) Without permanent status in class, appellant was excluded from promotion as that term was defined in Pers. 14.01, Wis. Adm. Code. The appointment of appellant to Trooper 1 cannot, therefore, be treated as a promotion. Respondent's Brief, p. 3.

The respondent's argument implies that the appellant's probationary status was inherently inconsistent with the status of "permanent status in class" for purposes of promotion. The definition of the term "permanent status in class" is set forth in §PERS 1.02(13) as follows:

'Permanent status in class' means the rights and privileges attained upon successful completion of a probationary period required upon appointment to permanent, seasonal or sessional employment.

This definition may be contrasted with the definition under earlier rules. See DHSS v. State Personnel Board, 84 Wis. 2d 675, 682, 267 N.W. 2d 644 (1978):

Pers. 13.11, Wis. Adm. Code defines permanent status in class as,  
\_ '... the status of an employe in a position who has served a qualifying period to attain a permanent position for that class.'

The Court went on to say: "This definition requires that status in class relate to a class in which the employe is then serving, not a position in which he has served in the past." (emphasis added) The current rule, §Pers. 1.02(13), Wis. Adm. Code, is not so limited.

Inasmuch as the current rule no longer relates permanent status in class to a position or classification in which the employe is then serving,

it does not follow that an employe automatically loses this status upon leaving a position or classification wherein that status may have been attained by the successful completion of probation.

It also should be noted that the definition of "promotion" has been changed. The earlier version of §Pers 14.01 read as follows:

DEFINITION. Promotion is the movement of an employe with permanent status in class in one class to a different position in a class having a greater pay rate or a greater pay range maximum, or to a higher classification for the same position where competition was deemed appropriate. (emphasis supplied)

The deletion of the underscored language is not inconsistent with an intent to remove at least any blanket requirement of permanent status in class in the classification of the position from which the movement was made.

It appears to the Commission that there is no reason under the civil service code why an employe should not retain permanent status in class, once attained, unless forfeiture of permanent status in class is required by specific provisions in the civil service code, or the circumstances are inherently inconsistent with the employe's retention of permanent status in class.

In the instant case, the appellant voluntarily demoted from Officer 3 (PR5-09) in DHSS to Enforcement Cadet (PR5-08) in DOT. She then was appointed to Vehicle Inspector 1 (PR5-08) and from there to Trooper 1 (PR5-09), all within DOT. The appellant had successfully passed probation in the Officer 3 position; all the other transactions occurred before the end of the probationary period.

The respondent has characterized as a transfer, without objection by the appellant, the move from Enforcement Cadet (PR5-08) to Motor Vehicle Inspector 1 (PR5-08). This appears, at least, to be consistent with the definition of a transfer set forth at §Pers. 15.01:

A transfer means the voluntary or involuntary movement of an employe from one position to a different position assigned to a class having the same pay rate or pay range maximum or to a position in a class assigned to a counterpart pay rate or pay range and for which the employe is qualified to perform the work after customary orientation provided for newly hired workers in such positions.

Therefore, the Commission will proceed on the presumption that this transaction was a transfer.

Section PERS 15.07(1) provides that employes serving a probationary period may be transferred, and the probationary time served before the transfer shall or may be carried over depending on whether or not the transfer is within the same employing unit. In any event, it is undisputed that the appellant had to serve a probationary period before her transfer and that she received credit for the period of probation she served as an Enforcement Cadet.

Section Pers. 15.04(2) provides:

If a probationary period resulting from the transfer is required, the appointing authority, at any time during this period, may remove the employe from the position to which the employe transferred, without the right of appeal. An employe so removed shall be restored to the employe's previous position or transferred to a position for which the employe is qualified in the same pay range or pay rate or a counterpart pay range or pay rate without a break in employment. Any other removal, suspension without pay or discharge during a probationary period resulting from transfer shall be subject to §230.34, Stats.

Thus, an employe serving a probationary period following a transfer may be removed, subject to three possible options at that point. The employe may be removed without right of appeal, if he or she is restored to his or her old position or transferred. Under the third option the employe is not restored or transferred, but in that case the removal is subject to §230.34, Stats., which states in pertinent part as follows:

(1)(a) An employe with permanent status in class may be removed, suspended without pay, discharged, reduced in base pay or demoted only for just cause. (emphasis supplied)

It seems clear that before the just cause requirement is imposed with respect to the third option, the employe must have permanent status in class. In the case of Ms. Reis, she did not acquire any permanent status in class as a result of her period of service as a Motor Vehicle Inspector 1 or an Enforcement Cadet, because she was not in those positions long enough to complete probation. This takes us back to the initial transaction, the voluntary demotion from Officer 3 in DHSS to Enforcement Cadet in DOT.

Section Pers. 17.04(4), Wis. Adm. Code, covers voluntary demotions between agencies, and provides in pertinent part as follows:

(a) The employe shall have no restoration rights to the previously held position or class.

(b) The employe may be required to serve a probationary period at the discretion of the appointing authority and during this period the employe may be separated from the service without the right of appeal. If the employe is not required to serve a probationary period, the employe immediately obtains permanent status in class in the class to which demoted.

Clearly, Ms. Reis never had permanent status in class in the classification to which she demoted, because she was required to serve a probationary period which she never completed. The remaining question is whether she "lost" the permanent status in class she had acquired as an Officer 3 as a result of her voluntary demotion.

Inasmuch as Sec. Pers 17.04(4)(a), Wis. Adm. Code, provides that the employe "shall have no restoration rights to the previously held position or class," it seems clear enough that the appellant has lost what might be called her "employment tenure" as an Officer 3. Once she accepted the



demotion to Enforcement Cadet, she lost the right to continue her employment in the Officer 3 position unless and until there was good cause for her removal. However, does this loss of employment tenure in the Officer 3 position compel the conclusion that she also lost "permanent status in class? It must be remembered that "permanent status in class" is not tied solely to employment tenure in a particular classification or position. It is defined as the "rights and privileges attained upon successful completion of a probationary period required upon appointment to permanent season or sessional employment." §Pers 1.02(13), Wis. Adm. Code.

Nor is permanent status in class tied solely to a particular class and/or position, as was the case before the rule change discussed above. Therefore, and in the absence of any specific provision in the civil service code requiring loss of permanent status in class, the Commission can find no reason to conclude that the appellant lost permanent status in class for the purposes of a subsequent promotion when she voluntarily demoted to Enforcement Cadet.

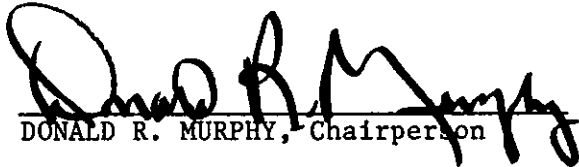
While this approach to deciding the issue may seem somewhat strained, the Commission is somewhat reinforced in this conclusion by the fact that the only alternative advanced by the respondent, that of denominating the transaction a reinstatement, seems so clearly incorrect under the rules.

Once it is determined that the transaction in question was, as a matter of law, a promotion, then it follows that a probationary period was required, see §Pers. 13.04(2), Wis. Adm. Code. The appellant concedes that if the transaction in question is as a matter of law a promotion, a one year probationary period is appropriate, as this is apparently set forth in the pay schedule for the Trooper classification.

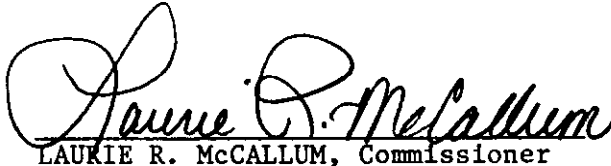
ORDER

The decision to characterize the transaction in question as a reinstatement is rejected and this matter (No. 83-0002-PC) is remanded for action in accordance with this decision and order. The decision to require a 12 month probationary period is affirmed and the appeal of that decision (No. 83-0003-PC) is dismissed.

Dated: September 20, 1983 STATE PERSONNEL COMMISSION

  
DONALD R. MURPHY, Chairperson

AJT:jmf

  
LAURIE R. McCALLUM, Commissioner

  
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