

5/13/87

STATE OF WISCONSIN

PERSONNEL COMMISSION

* * * * *

JAMES GUZNICZAK,
 ROBERT BROWN,

 Appellants,

 v.

 Secretary, DEPARTMENT OF
 EMPLOYMENT RELATIONS, and
 Secretary, DEPARTMENT OF
 HEALTH AND SOCIAL SERVICES,

 Respondents.

Case Nos. 83-0210, 0211-PC

* * * * *

DECISION
AND
ORDER

NATURE OF THE CASE

These cases involve appeals filed by James Guzniczak and Robert Brown challenging the effective date of the reallocation of their positions from Client Services Assistant 4 to Correctional Officer 3. The issues for hearing are set forth in a letter dated June 8, 1984, from Kurt Stege, Hearing Examiner, to the parties as follows:

1. What is the proper effective date for the reallocation of the appellants' positions?
2. Whether, if retroactive reallocation is granted, the appellants are entitled to a retroactive award of base-pay and/or overtime pay.

Hearing in the matter was scheduled for July 25, 1984, at the Commission's office in Madison, Wisconsin. Thereafter, the hearing was indefinitely postponed pending possible settlement of the appeals.

Settlement having failed, hearing in the matter was finally held on August 8, 1986, before Dennis P. McGilligan, Chairperson. The parties completed their briefing schedule on February 10, 1987.

FINDINGS OF FACT

1. At all times material herein, appellants James Guzniczak and Robert Brown have been employed in the classified civil service by the Bureau of Community Corrections in the Department of Health and Social Services (DHSS).

2. By memoranda dated October 10, 1983, respondent reallocated appellants' positions from Client Services Assistant 4 to Correctional Officer 3 effective June 12, 1983.

3. Appellants filed timely appeals of the aforesaid reallocation decisions challenging the effective date of their reallocation.

4. Appellants have performed Correctional Officer 3 work from July 14 1980, on.

5. At all times pertinent hereto, Luis Garza was the Personnel Manager of the Division of Corrections (DHSS) and involved in the receipt, administration and processing of reclassification or reallocation requests including appellants'.

6. From October, 1979 through some time in 1982, Margaret Breutzmann was appellants' immediate supervisor, and also was an administrative assistant to BCC Regional Chief Chase Riveland, where part of her duties included facilitating personnel matters with Luis Garza on behalf of the Milwaukee Region.

7. Between 1980 and early 1981 Margaret Breutzmann spoke with Luis Garza on at least a half dozen different occasions during which she requested reclass/reallocation of appellants' positions. Breutzmann testified that Garza's response to these requests was on one occasion: "Perhaps the Officer series was the proper classification for them," and on another occasion: "I don't know, maybe." Breutzmann got the impression

from these discussions with Garza that no action would be taken on appellants' requests apparently because it was felt that the appellants would be laid off during this time.

8. James Guzniczak had at least two conversations with Luis Garza during the approximately one-year period beginning in July, 1980, during which he specifically requested that his position be reclassified to Correctional Officer 3. In these conversations Garza took the position that the department was working on it. Garza never told Guzniczak at this time that he had to put his reclass request in writing.

9. On December 15 1980, a meeting took place in Oshkosh, Wisconsin which was attended by all CSA Transportation Specialists in the State and their supervisors (including Margaret Breutzmann). This meeting was also attended by Bob Capener, an administrative assistant in respondent's Personnel Office. Appellants' requests for reclassification/reallocation were specifically discussed at this meeting.

10. By memorandum dated January 23, 1981, Bob Capener acknowledged that appellants' request for reclass/reallocation to Correctional Officer 3 had been discussed at the December 15, 1980 meeting noted above and that said request was under consideration, "but no decision made."

11. On October 15, 1981, appellants wrote the following letter to Donald E. Percy, Secretary, DHSS:

We are deeply concerned over recent newspaper articles indicating that the Bureau of Community Corrections is studying a proposal to eliminate the CSA Transportation Unit. We feel that the Bureau should be aware that the transportation of felons has strong elements of danger to the public, especially in cases where the offender is assaultive or psychotic. In our experience, the CSA Transportation Unit has performed their duties with efficient professionalism and capably handle their necessary and often dangerous duties effectively.

The recent New York incident as reported in the press further substantiates the fact that this unit is vital in the law

enforcement system. We urge that the CSA Transportation Unit be retained and that the CSA's be reclassified to the Correctional Officer Series within the State Civil Service System.

Luis Garza reviewed the above letter and was aware of its contents.

12. During 1982 and 1983 James Guzniczak spoke with Luis Garza on at least several occasions regarding his request for reclassification to the Correctional Officer 3 level.

13. On May 31, 1983, Luis Garza received appellants' written reclassification/reallocation request and forwarded it to DHSS's Bureau of Employment Relations (BPER) who received it on or about June 7, 1983.

14. Thereafter, respondent DER approved appellants' reclassification/reallocation request. Respondent DER established an effective date for the reallocation of appellants' positions of June 12, 1983, pursuant to its effective date policy of making the change in pay effective at the beginning of the first pay period following receipt of the request.

15. Respondent DER reallocated appellants' CSA 4 position to Correctional Officer 3 in order to correct an error in the previous assignment of the position pursuant to ER-Pers 3.01(2)(e), Wis. Admin. Code.

16. Sec. 332.060 of the Wisconsin Personnel Manual reads as follows:

332.060 EFFECTIVE DATE POLICY

A. Regrades Resulting From Reclassification Actions and Reallocation Actions under ER-Pers 3.01(1)(e), (f) and (g), Wis. Adm. Code.

Both delegated and nondelegated reclassification regrade actions and reallocation regrade actions taken under ER-Pers 3.01(1)(e), (f) or (g) will be made effective at the beginning of the first pay period following effective receipt of the request...

Effective receipt of a request may be made by any office within the operating agency that has been delegated, in writing, effective receipt authority by the appointing authority. A request may be initiated in one of the following three ways through submission of appropriate documentation:

1. If the first line supervisor or above in the direct organizational chain of command requests that the position be reviewed for proper classification level or recommending a specific classification level change, the required documentation is an updated Position Description and written reasons for the request.
2. If a position incumbent requests his/her supervisor to review the level of the position and the supervisor takes no action or declines to initiate further action, the required documentation from the incumbent is a written request which includes a statement of the events (including the dates when the events took place) which have occurred in regard to the request for a classification review.
3. If a position incumbent has attained the specified education or experience required by the appointing authority for regrade in a position identified in a classification series where the class levels are differentiated on that basis; the documentation, as determined by the appointing authority, must be submitted by the incumbent and/or appropriate supervisor.

17. DHSS Personnel Directive Chapter 236, dated October, 1981, at

S. 236.1A2 provides as follows:

Formal Recognition of Changes in Position Status

The duties and responsibilities of a position may change to the point where the position may be more appropriately classified in a different job classification.

When a supervisor and/or an employe believe that a position should be classified in a different job classification, a request for reclassification should be submitted to the personnel office according to the procedure specified in section 236.1 B. A supervisor should consider the following points before recommending a position reclassification.

S. 236.1B provides:

236.1 B Reclassification Process

236.1 B 1 THE SUPERVISOR DEVELOPS THE POSITION DESCRIPTION &
(STEP 1) RELATED MATERIALS

The first step a supervisor must take to reclassify a position, if not already done so as recommended in section 236.1 A 1, is to develop an updated PD.

236.1 B 1 A current organization and Supervisor Analysis Form
(STEP 1) ("SAF") (DER-PERS-84), if appropriate, should also be
(Cont.) prepared as specified in Ch. 202.2 A1 (STEP 1). (Ref:

PERSONNEL FORMS SECTION)

236.1 B 2 THE SUPERVISOR INITIATES A REQUEST TO RECLASSIFY THE
(STEP 2) POSITION

A "Reclassification Request/Report" (DER-PERS-37) is used to request the reclassification of a position (Ref: PERSONNEL FORMS SECTION) A supervisor and/or employe may initiate a request by following the employing unit procedure. The personnel office will provide necessary instruction on preparing appropriate documentation for the request.

The following items of the Reclassification Request are normally completed by the supervisor. Other items will be completed by the personnel office.

<u>Item Title</u>	<u>Explanation</u>
Present Class Title & Pay Range	Self-explanatory.
Proposed Class	Indicate the job classification title & pay range of the class which the supervisor believes most appropriately describes the duties of the position.
Justification	A summary of the facts which warrant the proposed action are entered in this section including the following: - identification of changes in duties and responsibilities since the position was classified in its present class; - explanation of pertinent organization and/or program changes which have affected the duties and responsibilities of the position:

18. Section 236.2 B2 of the DHSS Personnel Directive provides:

Reallocation for Correction of an Error in Classification

Occasionally, a position is incorrectly classified because of incorrect information on the PD or judgmental error in the original classification decision. When an employe or supervisor has reason to believe that a position has been incorrectly classified, the possible error should be brought to the attention of the personnel office. The position will be reviewed and a

recommendation made to the BPER. If it is determined that an error has been made in the classification, a request for reallocation will be submitted to the Administrator, SDOP, for review. The SDOP will then determine the disposition of the request. The appointing authority, supervisor, and employe will be notified in writing of the decision.

19. During his discussions with James Guzniczak and Robert Brown, Luis Garza recommended that they put their requests in writing in order to establish proper documentation. However, at no time did Garza tell appellants that they were required to put said requests in writing in order to get them processed.

CONCLUSIONS OF LAW

1. This matter is properly before the Commission pursuant to §230.44(1)(b), Stats.
2. The appellants have the burden of proving that the respondent erred in establishing the effective dates of the reallocations of their positions.
3. The appellants have satisfied their burden of proof.
4. Respondent DER's establishment of the effective date for the reallocation of appellants' positions was incorrect.

DECISION

It is undisputed that the appellants were performing CO 3 work from July 14, 1980, on, and that their positions were reallocated to the CO 3 classification effective June 12, 1983, which is shortly after they first submitted a written request for reclassification. The Commission has found that beginning in 1980, the appellants made a number of verbal requests for reclassification to both their immediate supervisor, Ms. Breutzmann, and the DHSS personnel manager (Mr. Garza), and also that Ms. Breutzmann made repeated verbal requests for reclassification of their positions to Mr. Garza.

Section ER-Pers 29.03(3)(a), Wis. Adm. Code, provides:

"Pay adjustments resulting from regrading an employe shall be effective in accordance with schedules established by the administrator or on specific dates approved by the board when such approval is necessary." (emphasis added)

Respondent argues in his post-hearing brief, inter alia, as follows:

The effective date established for the reallocation of the CSA 4 position to the Officer 3 classification is correct. ER-Pers 29.03(3)(a), Wis. Adm. Code provides that the administrator (now Secretary) may establish effective dates for pay adjustments [emphasis added] based on the regrading of incumbents resulting from the reclassification or reallocation of positions. It is undisputed that the effective date policy for such adjustments is set forth in Chapter 332 of the Wisconsin Personnel Manual.

In this case, we are not dealing with the second part of this subsection ("specific dates approved by the board..."). It seems questionable whether whatever authority is granted the respondent by the first part of §ER-Pers 29.03(3)(a) which refers to "schedules established by the administrator" includes the establishment of the "policy" here in question. A "schedule" normally is defined as:

"... 2. a list, catalog, or inventory of details, often as an explanatory supplement to a will, bill of sale, deed, tax form, etc. 3. a list of times of recurring events, projected operations, arriving and departing trains, etc., timetable 4. a time plan for a procedure or project...." Webster's New World Dictionary (Second College Edition), p. 1272.

We are hard pressed to see how the concept of a "schedule", under any of these formulations can fairly be said to include the policy here in question, particularly when it is considered that what is in question is not really the policy dictating effective date, that provides that the effective date shall be "the beginning of the first pay period following effective date of the receipt," §332.060 A., Wisconsin Personnel Manual, Respondent's Exhibit 2, but the policy that reclassification requests be in writing. While the latter requirement has been promulgated as part of the policy concerning effective date, it is a step further removed from the

notion of "schedules" as set forth in §ER-Pers 29.03(3)(a), Wis. Adm. Code, than the policy of establishing the effective date as the beginning of the first pay period following effective receipt of the reclassification request.

However, even if it is assumed that the provision in the Wisconsin Personnel Manual regarding written reclassification requests does not need to have been issued pursuant to §ER-Pers 29.03(3)(a), Wis. Adm. Code, in order to have a role in the determination of the effective date of reclassification, the respondent is equitably estopped from applying this requirement.

The appellants worked actively on their reclassification with management in the person of their supervisor, Ms. Breutzmann, and the division personnel manager, Mr. Garza, for a considerable period of time. The appellants certainly had reason to believe they were doing everything they needed to do procedurally. They received repeated assurances their requests were being worked on or considered. Even when Mr. Garza finally brought up the matter of submitting their request in writing in 1981, he admitted he did not tell them this was a requirement. Rather, he simply recommended they do this to provide documentation of their request for their own protection. This is not simply a case where the appellants, in ignorance of the requirement, failed to submit their requests in writing. Rather, they were misled by management conduct into assuming they were proceeding correctly. Thus the appellants justifiably relied to their detriment on conduct by the respondent's agents which amounted to fraud or a manifest abuse of discretion, Sharpe v. DOA & DP, Wis. Pers. Commn. No. 82-117-PC (7/26/82), Porter v. DOT, Wis. Pers. Commn. No. 78-154-PC (5/14/79), affirmed, DOT v. Pers. Commn., Dane Co. Cir. Ct. No. 79CV3420

(3/24/80), and the respondent is equitably estopped from asserting against appellants the requirement that reclassification requests be in writing.

Finally, there is an additional, independent basis for rejecting the effective date established by the respondent. In Kimball v. DP & DHSS, Wis. Pers. Commn. No. 79-236-PC (4/23/81), the Commission held that §Pers 5.037, Wis. Adm. Code (now §ER-Pers 29.05), which includes the provision: "Except for action... to correct an error, no pay increases or decreases shall be retroactive..." provided authority for a retroactive pay increase -- i.e., a pay increase with an effective date earlier than had already been established under normal operating procedure -- when necessary to correct a ministerial error or mistake. In that case, the employe's supervisor did not use the right form to certify that the employe had attained the requisite training and experience for reclassification to the next higher level in the series, resulting in a delay of approximately two months in the effective date of the reclassification. In the instant case, the failure of Ms. Breutzmann and Mr. Garza to have informed the appellants they were required to submit their reclassification requests in writing, under circumstances which suggested the verbal requests were being acted on, also could be characterized as a ministerial error attributable to management.

The respondents state in their brief as follows:

The respondents concede that if the Commission determines that the reallocations herein should have occurred at an earlier date, that, if the provision of the apposite compensation plans and collective bargaining agreements so provide, the appellants would be entitled to an hourly wage rate adjustment and back pay computed thereon.


The Commission assumes that this effectively resolves the second issue set forth above, and that the appellants will be paid, on a retroactive basis, the difference in pay between what they were paid and what they

would have been paid had the reallocation of their to positions been effective at the beginning of the first pay period after December 15, 1980,¹ instead of on June 12, 1983.

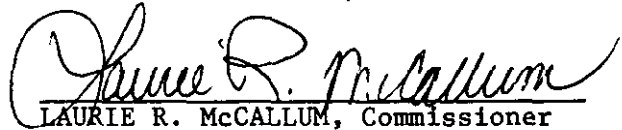
ORDER

The respondents' reallocation decision as to the effective date of the reallocations is rejected and this matter is remanded to respondents for action in accordance with this decision.

Dated: May 13, 1987 STATE PERSONNEL COMMISSION


DENNIS P. MCGILLIGAN, Chairperson


DONALD R. MURPHY, Commissioner


LAURIE R. MCCALLUM, Commissioner

DPM:jmf
ID6/3

¹The Commission has changed this date from July 14, 1980 (as listed in the proposed decision) to December 15, 1980, after consultation with the examiner. The latter date is the date of the meeting, attended by the appellants, where their requests were discussed and where Mr. Capener indicated the requests were under consideration. December 15, 1980, is the earliest specific date, based upon the record that is before the Commission, on which the elements of equitable estoppel were present. A date earlier than December 15th would only be based upon conjunction.

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