

* * * * *

KENNETH A. KELLING, *

Appellant, *

v. *

Secretary, DEPARTMENT OF HEALTH AND SOCIAL SERVICES [DEPARTMENT OF CORRECTIONS], *

Respondent. *

Case No. 87-0047-PC *

* * * * *

FINAL
DECISION
AND
ORDER

The subject matter of this appeal involves the determination of appellant's starting salary. The parties have submitted the case for decision on a written stipulation of facts¹ and briefs, and respondent also has interposed a motion to dismiss on the ground of untimely filing.

By way of background, this case was held in abeyance for a substantial period pending a final decision in a case raising a similar substantive issue, Siebers v. DHSS, 87-0028-PC. Following the court's decision in that matter respondent objected to subject matter jurisdiction on timeliness grounds and filed a motion to dismiss. The Commission denied this motion in a ruling entered May 30, 1990. The Commission prefaced its decision with the caveat that "the underlying facts material to timeliness do not appear to be in dispute These findings are made for the sole purpose of resolving the instant motion."

The Commission found for the purpose of deciding the motion that appellant's appointment letter advised him his starting salary would be \$7.481/hour; he began working at TCI on February 9, 1987; he was informed verbally on February 11 or 12, 1987, that his pay would be \$6.694; he received his first pay check on February 26, 1987, reflecting a salary of \$6.694/hour; by letter dated March 8, 1987, he asked the TCI business administrator to clarify in writing why his salary was not as stated in his appeal letter; by letter dated

¹ A copy of this stipulation is attached hereto and incorporated by reference. The attachments to the stipulation are a part thereof but will only be included in the original decision and the copies served on the parties.

March 24, 1987, the business administrator advised that the lower salary was due to the implementation of the revision of the pay plan that had been taken to implement comparable worth; and that appellant filed his appeal on April 1, 1987. The Commission's discussion included the following:

The parties disagree as to the date of notice. Respondent contends the date of notice was on February 11, 1987, when appellant was informed verbally what his pay rate was, and in any event no later than February 26, 1987, when he received his first paycheck which reflected his actual pay rate. Appellant contends the date of notice was when he received the March 24, 1987, letter from the institution business administrator which contained the reason for the change in pay rate that had been set forth in his appointment letter.

In the Commission's opinion, appellant did not have notice of the action for purposes of §230.44(3), stats., until he received the March 24, 1987, letter from the business administrator setting forth the basis for the salary rate change. The earlier notices simply informed appellant that his salary rate would be different than he had been advised initially by respondent. On the bases of those notices, appellant had no way of knowing whether that change was attributable to a clerical error or to some other reason that would not need to, or could not be appealed to, this Commission.

Respondent cites Bachman v. UW, 85-0111-PC (11/7/85). In that case, appellant was informed that he had not been selected for a position. He then sought an explanation for his nonselection and finally appealed, but more than 30 days after having been notified of his nonselection. The Commission held the appeal was untimely. The facts of the instant case are distinguishable from Bachman because there appellant knew or should have known there was an appealable transaction as soon as he became aware of his nonselection. Here, appellant had no idea whether the reduction in his pay was due to an appealable transaction until after he had received the explanation from the business manager. If, for example, appellant had received a notice of reallocation and downward regrade with his February 26th paycheck and then had sought an explanation and finally appealed more than 30 days after February 26th, presumably the appeal would be untimely, just as in Bachman. However, appellant can not be charged with notice of a transaction for appeal purposes when all he received was notice of the "bottom-line" effect of the transaction — i.e., his rate of pay had been changed from \$7.481 to \$6.694.

Respondent's renewal of its motion to dismiss is based essentially on the following paragraph from the stipulation of facts filed October 31, 1990:

9. On or about February 11, 1987, Nancy Kestin, Business Administrator at TCI told Appellant that pursuant to the Comparable Worth Study and new Pay Plan, his rate of pay effective immediately would be \$6.694 per hour. Appellant did not receive written notice of the pay change at that time.

Respondent contends that this part of the stipulation provides the ingredient that was missing when the Commission decided the initial motion — i.e., the February 11, 1987, verbal notice of the salary differential also advised appellant of the reason for the difference.

Before discussing the merits of the motion, the Commission must address appellant's contention that the motion is out of order because the Commission already has rejected respondent's earlier untimeliness motion.

Because the statute governing time for appeal provides that untimely appeals "may not be heard," §230.44(3), stats., this time limit is considered mandatory and jurisdictional in nature, Richter v. DP, 78-261-PC (1/30/79); State ex rel. DOA v. Personnel Board, 149-295 (Dane Co. Cir. Ct. 1976). It is a familiar principle that objections to subject matter jurisdiction may be raised at any time. Morgan v. Knoll, Wis. Pers. Bd. No. 75-204 (5/25/76); 2 AM JUR 2d ADMINISTRATIVE LAW §726, p. 627 ("objections to jurisdiction . . . may be raised for the first time on appeal regardless of prior exceptions or motions."); 20 AM JUR 2d COURTS §95, p. 456 ("an objection based on the ground of absence of jurisdiction over the subject matter must be considered and may be effectively raised at any time."). Furthermore, even if this renewed motion did not run to subject matter jurisdiction, it could be reconsidered on a discretionary basis while this matter remains pending before the Commission. See Castle v. City of Madison, 113 Wis. 346, 89 N.W. 156 (1902).

Turning to the merits of respondent's motion, when respondent verbally informed appellant on or about February 11, 1987, that his salary would be \$6.694/hour because of the implementation of the Comparable Worth study via the new pay plan, he had notice of essentially the same information as he later obtained through the March 24, 1987, letter. The only difference is that the latter information was in writing. The key question presented by this

motion is whether verbal notice of this particular transaction triggers the 30 day limitations period set forth in §230.44(3), stats. This subsection provides:

Any appeal filed under this section may not be heard unless the appeal is filed within 30 days after the effective date of the action, or within 30 days after the appellant is notified of the action, whichever is later (emphasis added)

Obviously, §230.44(3), does not by its terms require written notice. The general rule governing this type of situation is set forth in 66 CJS NOTICE §16, p. 655, as follows:

The word "notice" does not necessarily imply notice given in writing. When not otherwise required, a verbal or oral notice may be sufficient, and as effective as a written notice, provided it conveys the necessary information.

Whenever notice is required or authorized by statute, the question whether it must be in writing is one of intention, which intention depends on the language employed, the context, and the subject to which the term is applied.

Board of Education of Wurtland Independent School District v. Stevens, 88 S.W. 2d 3, 6, 261 Ky. 475 (1935), includes the following discussion:

Certain notices are required by our statute to be in writing, while no such requirement is expressly provided in respect to certain other notices, and had it been the intention of the Legislature, that all notices should be in writing, evidently it would have said so, instead of leaving it to speculation and conjecture of the courts to guess whether or not the Legislature intended a notice to be in writing when it is silent on the question.

In this vein, it is noted the civil service code Subchapter II, Chapter 230, stats. contains a number of requirements of written notice. For example, §230.34(1) (am) provides, in part:

If the appointing authority decides to treat the position abandonment as a resignation, the appointing authority shall notify the employe in writing that the employe is being treated as having effectively resigned as of the end of the last day worked.

Another provision which is even more material appears in the same section (230.44) which contains the subsection (230.44(3)) here under consideration. Section 230.44(2) provides: "All appeals filed under this section shall be in

writing." This supports the proposition that if the legislature had intended that the notice to the employe referred to in §230.44(3) had to be in writing in all cases, it would have so specified. Therefore, it must be concluded that §230.44(3), stats., itself does not require written notice of this transaction in order to trigger the period for filing. However, there remains the question of whether any specific provision in the civil service code requires written notice of this transaction. If so, notice would have had to have been in writing to constitute effective notice. See Kriedeman v. UW & DER, 85-0048-PC (10/23/85). In order to resolve this question, it is necessary to review the factual circumstances surrounding this transaction.

Appellant was interviewed for a Stock Clerk 2 position at TCI on February 3, 1987. By letter of February 6, 1987, his appointment was confirmed, with a starting date of February 9, 1987, and a salary of \$7.481 per hour. He began work on February 9, 1987, and then was verbally informed on February 11, 1987, that "his rate of pay effective immediately would be \$6.694 per hour." Stipulation, ¶9. He received his first pay check on February 26, 1987, and it was based on an hourly wage of \$6.694. After appellant requested written clarification of his salary situation, he received a letter dated March 24, 1987, that included the following information:

The Department of Employment Relations (DER) implemented a plan to correct pay inequities. This plan had been approved by the Legislative Joint Committee on Employment Relations. The approved plan established a new Master Pay Schedule and re-assigned certain classes to higher or lower pay ranges. This action was taken to implement the Comparable Worth Study.

You were hired as a Stock Clerk 2, pay schedule 03, range 05. Before the implementation of this plan the minimum starting salary for a Stock Clerk 2 was \$7.481 per hour. With the establishment of the new pay plan the starting salary for a Stock Clerk 2 became \$6.694.

The difference in the pay rate stated in your letter and the rate you were hired at was caused by the implementation of this new pay plan. The pay plan was made effective February 1, 1987. Appointments are effective when the employee actually reports for work based on s.ER-PER 1.02(1), Wis Adm Code). Because your starting date was after February 1, 1987, Taycheedah Correctional Institution had no option but to use the new pay rate.

Section ER-Pers 12.08, Wis. Adm. Code, provides as follows:

Confirmation of appointment shall be in writing by the appointing authority and shall be sent to the employe no later than the first day of employment. Such letter of appointment shall include conditions of employment such as starting date, rate of pay, and probationary period to be served. (emphasis added)

This provision of the civil service code imposes the requirement that rate of pay on appointment be specified in writing. Appellant received written notice in his letter of appointment that his starting pay would be \$7.481 per hour. In fact, appellant never earned at that rate. Rather, respondent changed his starting salary to \$6.694 per hour. It can be reasonably implied that since §ER-Pers 12.08, Wis. Adm. Code, requires a written letter of appointment that sets forth an employe's starting salary, then if the employer changes the starting salary, this also must be in writing. In other words, if the law requires that a particular notice be in writing, it would follow that an amendment of that notice also would have to be in writing. Since written notice of the change in appellant's starting salary was required, there was no effective notice thereof under §230.44(3), stats., until appellant received Ms. Kestin's March 24, 1987 letter, and his appeal filed April 1, 1987, was timely.

Turning to the merits of this matter, the stipulation of facts makes it clear that the relevant pay plan called for a starting salary for a Stock Clerk 2 of \$6.694 per hour. Therefore, the only question is whether equitable estoppel obtains so as to prevent respondent from effectuating the lower salary called for by the pay plan.

In City of Madison v. Lange, 140 Wis. 2d 1, 6-7, 408 N.W. 2d 763 (Ct. App. 1987), the Court discussed the basic principles of equitable estoppel against the government as follows:

Equitable estoppel has three elements: "(1) Action or non-action which induces (2) reliance by another (3) to his [or her] detriment." Before estoppel may be applied to a governmental unit, it must also be shown that the government's conduct would work a serious injustice and that the public interest would not be unduly harmed. Finally, the party asserting the defense of equitable estoppel must prove it by clear and convincing evidence. (citations omitted)

The Wisconsin Supreme Court also has held that:

[I]n order to estop the government, the government's conduct must be of such a character as to amount to fraud. But this court has noted that the word fraud used in this context is not used in its ordinary legal sense; the word fraud in this context is used to mean inequitable. (citations omitted) State v. City of Green Bay, 96 Wis. 2d 195, 202-203, 29 N.W. 2d 508 (1980).

In the instant case, the Commission is unable to conclude that appellant acted in reliance to his detriment with respect to respondent's initial representation that his salary would be \$7.481 per hour. The entire factual record in this case is the stipulation of facts. It reflects that "[a]ppellant had been laid off from a prior job and was not working at the time he was informed of the reduction in his rate of pay." (stipulation of facts, ¶14). His March 8, 1987, letter requesting written clarification of his salary stated that the "difference of \$.787 may have initially been a factor on whether or not he would have accepted the position." (emphasis supplied) (stipulation of facts, ¶7). The record does not reflect any way in which appellant altered his position to his detriment. This is not a situation akin to Siebers v. Wisconsin Personnel Commission, Outagamie Co. Circuit Court No. 89CV00578 (11/9/89), reversing Siebers v. DHSS No. 87-0028-PC (4/28/89). In that case, the employe, who also had been caught up in the change in pay plans following the implementation of comparable worth, actually had changed jobs: "[p]etitioner, in reliance on the State's representations about the job and its terms, including the salary term, gave up his current job which, although it was of a limited term, was a 'job in the hand.'" In the instant case, appellant was unemployed at the time he was offered the job in question, and the only possible detriment involved in going to work for respondent at \$6.694 per hour was in removing himself from the job market for a short period of time.² Since he was at least earning \$6.694 per hour rather than being unemployed during this period, it can not be said, on balance, that there was a "detriment." It might be argued that if he had never left the job market it is possible he would have been offered and have

² There is nothing on this record to suggest appellant could not have quit his job and returned to the job market, or have continued to hold his job while he began to look for new work, once he learned conclusively less than two months after he started work, that his salary would be \$6.694 rather than \$7.481 per hour, if he had been inclined to return to the job market at that point.

accepted a better job during this period. However, the elements of an equitable estoppel must be established by clear and convincing evidence, City of Madison v. Lange, 140 Wis. 2d at 7, and such a possibility is too hypothetical under this standard.

It also might be argued that appellant would suffer a detriment if respondent were not estopped from reducing his salary inasmuch as then his salary would be less. However, this argument in effect focuses on the end result of the litigation — if appellant loses his case and fails to establish estoppel, obviously he will be in a worse position than if he wins. Rather, the appropriate focus is on whether, if respondent is not estopped, appellant would be in a worse position than before he acted in reliance on respondent's original salary representation. See Wisconsin Telephone Co. v. Lehmann, 274 Wis. 331, 335, 80 N.W. 2d 267 (1957):

Estoppel *in pais* is an equitable doctrine, and in general does not operate against one unless his conduct has induced another to change his position to his prejudice.

Application of this principle to the evidence in the present case leads to the conclusion that there was no basis on which the jury could find for the plaintiff. There is no evidence in the record that plaintiff did anything it would not have done or refrained from doing anything that it otherwise would have done, had it known the true facts. (citations omitted)

As was discussed above, appellant had been unemployed and, at least on this record, had no identified job prospects, and could not be considered to have changed his position for the worse. An example of detrimental reliance would be a person who turns down an offer of employment at \$10 per hour to take a job at a purported \$11 per hour, only to learn subsequently that the latter representation was incorrect and the real salary was \$9 per hour.

This conclusion is also reinforced inferentially by City of Madison v. Lange, 140 Wis. 2d 1, 408 N.W. 2d 763 (1987). In that case, Ms. Lange applied for and received general relief payments after having been erroneously advised by a city employee that any repayment of the benefits would be voluntary. The court rejected her equitable estoppel defense against the city's subsequent action to recoup the payments. She argued that if she had been aware she ultimately could be required to repay the benefits, she would have made other arrangements rather than to have accepted the relief benefits. The court

rejected this argument, noting that she had used the benefits to pay for sustenance and medical care. Obviously, in failing to prevail on the estoppel issue, Ms. Lange suffered the "detriment" of having to repay the city, but under the circumstances it could not be said that she was in any worse a position than she would have been if she had not accepted the benefits.

The Court in Siebers, as appellant does here, also relied on the theory that a contract was created when the employe accepted the employer's offer and terms of employment. The decision of the Circuit Court, rendered in another proceeding, is not binding on this Commission on either a law of the case or a stare decisis theory, and the Commission respectfully disagrees with the Court's holding.

It might be the case that if Mr. Kelling had been dealing with a private sector employer instead of the state, some kind of contractual employment relationship might have resulted under the circumstances that occurred here. However, the state civil service system is entirely a statutory creation, and this comprehensive statutory structure can not be overridden by individual contracts of employment created by and between individual state employes and applicants for employment, see 15A AM JUR 2d CIVIL SERVICE §§27 ("Statutory provisions regulating appointments under civil service acts are mandatory and must be complied with strictly; they may not be waived . . . by contract."); 18 ("The salary of a civil service employe fixed by statutes and the rules of the board or commission may not be altered by contract."); Kizas v. Webster, 707 F. 2d 524, 31 FEP Cases 905, 910 (D.C. Cir. 1983) ("entitlement to pay and other benefits 'must be determined by reference to the statutes and regulations governing [compensation] rather than to ordinary contract principles." (citations omitted)); Shaw v. United States, 640 F. 2d 1254, 1260 (Ct. Cl. 1981) ("Federal officials who by act or word generate expectations in the persons they employ, and then disappoint them, do not ipso facto create a contract liability running from the Federal Government to the employee, as they might if the employer were not the government.") Wisconsin law is consistent with the foregoing authority. In State v. Industrial Commn. 250 Wis. 140, 144, 26 N.W. 2 273 (1947), the Supreme Court held:

By these statutory provisions the state has provided how one may become an employee of the state, which requires, in order for a valid appointment to be made, full compliance with the provisions of the civil-service law. These statutory provisions

leave no room for a person to become an employee of the state under an implied contract of hire.

Section 230.15(3), stats., provides that: "[n]o person shall be appointed, transferred, removed, reinstated, restored, promoted or reduced in the classified service in any manner or by any means, except as provided in this subchapter." Pursuant to §230.06(1)(b), stats., the compensation of classified civil service employees is established by the appointing authorities (here, respondent) "subject to this subchapter and the rules prescribed thereunder." The compensation of classified employees is governed by the compensation plan (or pay plan) established pursuant to §230.12, stats., which provides at §230.12(1)(a)3. that "administration of the compensation plan and salary transactions shall be provided in either the rules of the secretary or the compensation plan." Therefore, appellant's starting salary was governed by the relevant pay plan, and this could not be altered on the theory that he had a contract with the state as a result of the salary representation in his letter of appointment.

In conclusion, while the Commission believes it is unfortunate that respondent misrepresented to appellant the amount of his starting salary, in the absence of the elements for equitable estoppel, there is nothing the Commission can do that would assist appellant. Unlike the Claims Board³, for example, this Commission does not have authority to decide cases on broad equitable theories.

³ Section 16.007(5), stats., provides for the board to act positively on claims "which on equitable principles [the board concludes] the state should in good conscience assume and pay."


ORDER


Respondent's action in fixing appellant's starting salary at \$6.694 per hour instead of \$7.481 per hour is affirmed and this appeal is dismissed.

Dated: March 12, 1991 STATE PERSONNEL COMMISSION


LAURIE R. McCALLUM, Chairperson

AJT/gdt/2


DONALD R. MURPHY, Commissioner


GERALD F. HODDINOTT, Commissioner

Parties:

Kenneth A. Kelling
323 Fremont Street
Kiel, WI 53042

Patrick Fiedler
Secretary, DOC*
P.O. Box 7925
Madison, WI 53707

*Pursuant to the provisions of 1989 Wis. Act 31 which created the Department of Corrections, effective January 1, 1990, the authority previously held by the Secretary of the Department of Health and Social Services with respect to the position(s) that is the subject of this proceeding is now held by the Secretary of the Department of Corrections.

RECEIVED

OCT 31 1990

STATE OF WISCONSIN

PERSONNEL COMMISSION

***** PERSONNEL COMMISSION *****

KENNETH A. KELLING,

Commission
Appellant,

v.

STIPULATION OF FACTS

DEPARTMENT OF HEALTH AND
SOCIAL SERVICES,

Respondent.

Case No. 87-0047-PC

The Appellant and Respondent hereby stipulate to the following facts, which they agree are as stated herein:

1. Appellant Kenneth A. Kelling applied for a position as a Stock Clerk 2 at the Taycheedah Correctional Institution (TCI) and was interviewed for the position on February 3, 1987.

2. By a letter from Nona Switala, Superintendent of TCI, dated February 6, 1987, Appellant's appointment to Stock Clerk 2 position at TCI was confirmed. (Attachment 1.)

3. The appointment letter indicated that Mr. Kelling's wage would be \$7.481 per hour and advised Mr. Kelling that he should report for work on Monday, February 9, 1987. (Attachment 1.)

4. Mr. Kelling reported for work at TCI on Monday, February 9, 1987, and as of that day had received no notification from Ms. Switala or anyone else from the Department of Health and Social

Services that he would not be receiving pay at the rate of \$7.481 per hour.

5. The Stock Clerk 2 classification is assigned to Pay Schedule 03, Range 05.

6. The 1986-87 minimum hourly rate for Pay Schedule 03, Range 05 was \$7.481. (Attachment 2, excerpt from 1986-1987 Compensation Plan.)

7. The Department of Employment Relations (DER), subject to the approval of the Joint Committee on Employment Relations (JCOER), developed a Master Schedule Compensation Plan which modified the 1986-87 Compensation Plan and it was implemented with JCOER approval effective February 1, 1987. (Attachments 3 & 4.)

8. The new Compensation Plan set the base rate for Pay Schedule 03, Range 05 at \$6.694 effective February 1, 1987. (Attachment 5, excerpt from 1986-87 Compensation Plan [effective February 1, 1987].)

9. On or about February 11, 1987, Nancy Kestin, Business Administrator at TCI told Appellant that pursuant to the Comparable Worth Study and new Pay Plan, his rate of pay effective immediately would be \$6.694 per hour. Appellant did not receive written notice of the pay change at that time.

10. Appellant received his first pay check from TCI on February 26, 1987, compensating Appellant at the hourly rate of \$6.694. (Attachment 6.)

11. Not having received any written notification of a decrease in pay from DHSS, Appellant by letter dated March 8, 1987, wrote to Nancy Kestin requesting written clarification of why he had not received \$7.481 per hour on his paycheck. His letter to Ms. Kestin indicated that the difference of \$.787 per hour may have initially been a factor in whether or not he would have accepted the position for which he was hired. Mr. Kelling also requested that Ms. Kestin send her reply to him within ten (10) days. (Attachment 7.)

12. Ms. Kestin responded to Mr. Kelling's letter by a letter dated March 24, 1987, which advised that his pay was reduced based on implementation of the DER plan to correct pay inequities. (Attachment 8.)

13. The only reason for the change in Appellant's rate of pay was the implementation of the Comparable Worth Study. Respondent had no objection to or criticism of Appellant's performance at his job during the days that he had worked at TCI prior to the time he was informed of the reduction in his rate of pay.

14. Appellant had been laid off from a prior job and was not working at the time he accepted employment with TCI.

15. Appellant was employed and compensated at TCI as follows:

\$6.694 per hour from February 9, 1987 to August 1, 1987, for a total of 592 hours or \$3962.848.

\$6.895 per hour from August 2, 1987 through November 7, 1987, for a total of 335.85 hours or \$2315.686. (The Pay Plan provided a \$.201 step increase upon completion of probation.)

\$7.079 per hour from November 8, 1987 through December 5, 1987, for a total of 94 hours or \$665.426. (The new Collective Bargaining Agreement provided a \$.184 increase.)

16. Had the 1986-87 Pay Plan in effect prior to February 1, 1987 remained effect, Appellant as a Stock Clerk 2 would have been paid as follows:

\$7.481 per hour from February 9, 1987 to August 1, 1987, for a total of 592 hours or \$4428.752.

\$7.706 per hour from August 2, 1987 through November 7, 1987, for a total of 335.85 hours or \$2588.060. (The Pay Plan provided a \$.225 step upon completion of probation.)

\$7.890 per hour from November 8, 1987 through December 6, 1987 for a total of 94 hours or \$741.66. The new Collective Bargaining Agreement provided a \$.184 increase.)

17. By a letter dated March 26, 1987, Appellant informed the Personnel Commission of his disagreement with the reduction in rate of pay and requested reinstatement of the rate of pay of \$7.481 per hour and that he be paid backpay retroactive to February 9, 1987. By that letter Appellant appealed the reduction in his rate of pay.

10/30/90
Date

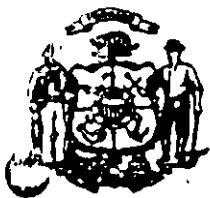
Kenneth A. Kelling
Kenneth A. Kelling, Appellant

October 30, 1990
Date

John I. Laun
LAUN LAW OFFICES
John I. Laun
Attorney for Appellant

Oct. 31, 1990
Date

Sheila C. Eliefson
Attorney for Respondent



State of Wisconsin \ DEPARTMENT OF HEALTH AND SOCIAL SERVICES

DIVISION OF CORRECTIONS
TAYCHEEDAH CORRECTIONAL INSTITUTION
971 City Hwy K
TAYCHEEDAH, WISCONSIN 54985

February 6, 1987

RECEIVED

OCT 31 1990

Personnel
Commission

Kenneth Kelling
323 Fremont Street
Kiel, WI 53042

Dear Mr. Kelling:

This letter is to confirm your appointment to a Stock Clerk 2 position at Taycheedah Correctional Institution.

Your wage will be \$7.481 per hour. You will be required to serve a six (6) month probationary period.

Please report to Ken Vander Zanden, Personnel Manager, on Monday February 9, 1987, at 8:00 AM. The Personnel Office is located in room 221 of Simpson Hall, on the institution grounds.

I would like to take this opportunity to welcome you to Taycheedah Correctional Institution. I know that you will make positive contributions and, with your help we will be able to successfully meet our correctional objectives here at Taycheedah.

Sincerely,


Nona Switala
Superintendent

cc: P-file

ION DESCRIPTION

(3)

DER-PERS-10 (Rev. 1-78)
State of Wisconsin
Department of Employment Relations
DIVISION OF PERSONNEL

1. Position No. 304108	Cert/Reclass Request No. 323-33	3. Agency No. 435
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4. NAME OF EMPLOYEE KELLING, Kenneth A. --	5. DEPARTMENT, UNIT, WORK ADDRESS H&SS Taycheedah Correctional Institution 971 Cty. Hwy. K Taycheedah, WI 54935
6. CLASSIFICATION TITLE OF POSITION Stock Clerk 2	8. NAME AND CLASS OF FORMER INCUMBENT Susan Mueller, Stock Clerk 2
7. CLASS TITLE OPTION (To be Filled Out By Personnel Office)	10. NAME AND CLASS OF EMPLOYEES PERFORMING SIMILAR DUTIES
9. AGENCY WORKING TITLE OF POSITION	12. FROM APPROXIMATELY WHAT DATE HAS THE EMPLOYEE PERFORMED THE WORK DESCRIBED BELOW?
11. NAME AND CLASS OF FIRST-LINE SUPERVISOR Nancy E. Kestin, Business Administrator	

13. DOES THIS POSITION SUPERVISE SUBORDINATE EMPLOYEES IN PERMANENT POSITIONS? AND ATTACH A SUPERVISORY POSITION ANALYSIS FORM (DER-PERS-84). Yes No IF YES, COMPLETE

14. POSITION SUMMARY - PLEASE DESCRIBE BELOW THE MAJOR GOALS OF THIS POSITION
Under general supervision, assist the Storekeeper in performing a variety of duties including estimating, requisitioning, receiving, storing, issuing and maintaining inventory records, local purchasing, and pick up of items from other institutions. Perform duties of Storekeeper in her absence.

15. DESCRIBE THE GOALS AND WORKER ACTIVITIES OF THIS POSITION (Please see sample format and instructions on back of last page.)
-GOALS: Describe the major achievements, outputs, or results. List them in descending order of importance.
-WORKER ACTIVITIES. Under each goal, list the worker activities performed to meet that goal.
-TIME %: Include for goals and major worker activities.

TIME %

GOALS AND WORKER ACTIVITIES

(Continue on attached sheets)

See attached

RECEIVED
OCT 31 1990
Personnel
Commission

16. SUPERVISORY SECTION - TO BE COMPLETED BY THE FIRST LINE SUPERVISOR OF THIS POSITION (See Instructions on Back of last page)

- a. The supervision, direction, and review given to the work of this position is [] close [] limited [] general.
- b. The statements and time estimates above and on attachments accurately describe the work assigned to the position (Please initial and date attachments)

Signature of first-line supervisor _____ Date 1-7-87

17. EMPLOYEE SECTION - TO BE COMPLETED BY THE INCUMBENT OF THIS POSITION

I have read and understand that the statements and time estimates above and on attachments are a description of the functions assigned my position. (Please initial and date attachments.)

Signature of employe Kenneth H. Kelling _____ Date 2-7-87

18. Signature of Personnel Manager _____ Date 2-9-87

For informational purposes only. The Official Hourly Rate is used for payroll purposes.

PAY RANGE #	MINIMUM	PSICM	MAXIMUM	RANGE WITHIN PAY STEP	MINIMUM	PSICM	MAXIMUM
3-01	6.255	6.443	6.923	0.188	500.40	515.44	553.84
3-02	6.508	6.704	7.243	0.196	520.64	536.32	579.44
3-03	6.859	7.065	7.706	0.206	548.72	565.20	616.48
3-04	7.203	7.420	8.104	0.217	576.24	593.60	648.32
3-05	7.481	7.706	8.475	0.225	598.48	616.48	678.00
3-06	7.796	8.030	8.854	0.234	623.68	642.40	708.32
3-07	8.111	8.355	9.305	0.244	648.88	668.40	744.40
3-08	8.522	8.778	9.867	0.256	681.76	702.24	789.36
3-09	8.929	9.197	10.433	0.268	714.32	735.76	834.64
3-10	9.306	9.586	10.992	0.280	744.48	766.88	879.36
3-11	9.811	10.106	11.623	0.295	784.88	808.48	929.84
3-12	10.378	10.690	12.363	0.312	830.24	855.20	989.04

OFFICIAL HOURLY BASIS

BIMEEKLY BASIS

PAY SCHEDULE #3: BLUE COLLAR AND NON-BUILDING TRADES (1986-87) HOURLY AND BIMEEKLY PAY RANGES

Personnel Commission

OCT 31 1990

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CORRESPONDENCE/MEMORANDUM

Date: January 21, 1987
To: All Appointing Authorities
From: Ken DePrey, Director
Bureau of Personnel and Employment Relations

File Ref:

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OCT 31 1990

Personnel
Commission

Subject: Implementation of the Department of Employment Relations Plan to Correct Pay Inequities as Approved by the Joint Committee on Employment Relations

The approved plan establishes a Master Pay Schedule and reassigns certain classes to higher or lower pay ranges to implement the Comparable Worth Study. The plan has three phases, but only the first phase is addressed here since the remaining phases are not effective this year. A summary of the specific actions which will be taken to implement Phase 1 is provided below:

1. The minimum, PSICM, and maximum amounts of schedules 01, 02, 03, 05, 06, 08, 11, 12, 13, 14, and 15 are modified as shown in the attached new pages 107-130 for the Compensation Plan. (Note that current pages 107 through 110 should be renumbered 131 through 134.) These new amounts are effective February 1, 1987.
2. Add-on amounts for Psychologist-Doctorate are modified, as shown in the attached replacement page. This change was necessitated by the changes in the range minimums of Pay Schedules 01 and 12. The DHSS will implement this change at the same time as implementation of the new pay schedules for the next fiscal year.
3. Certain classes are being reassigned to new pay ranges in order to correct pay inequities or to prevent pay range compression between leadwork/supervisory classes and subordinate classes which have been reassigned to correct pay inequities. These classes, and the new pay ranges to which they will be reassigned, are listed in Attachment A to this memo. These classes will be reassigned to the pay ranges indicated effective February 1, 1987.

Effect on Employee Pay Rates

The effect of these actions on employee pay rates is as follows:

1. Permanent and project appointment employees whose pay rates are below the minimum or permanent status in class minimum (PSICM) rates for the modified or reassigned pay range will have their rates increased to the new minimum or PSICM as appropriate.
2. Employees in classes which have been reassigned to a lower level will have no change in pay rate.

3. The new pay rates and pay range assignments will be effective for Limited Term Employees at the same time as implementation of the non-represented pay schedule for the next fiscal year. Until that time the current pay range assignment and pay range minimums shall be used for all LTE appointments. Therefore, a copy of the old pay ranges should be retained and filed as part of your LTE Schedule (Schedule 18).

The processing of any pay adjustments and the generation of notices of pay range reassignment and/or pay rate changes will be generated by DOA Central Payroll and distributed to employes with their February 26, 1987 paychecks. Where pay increases result from these actions, the increases will appear on the February 26 paychecks.

Additional Information

If class reassignments resulting from the Comparable Worth Study result in positions being reassigned to the same or a higher pay range than the position which leadworks or supervises the affected position, a reallocation of the leadwork or supervisory position may be necessary at a later date. Therefore, each employing unit should identify all positions where the pay range reassignments listed in Attachment A result in subordinate positions being assigned to the same or higher pay ranges as the leadworker or supervisory position. A list of positions so affected should be submitted to the appropriate BPER Team Leader by March 20, 1987. This listing should be alpha by class title and indicate the name of the position's incumbent and the class title and incumbent of one of the subordinate positions which are now at the same or higher level.

If you have any questions, please contact Steve Christenson at 266-8999.

KWD:ts

Attachments

cc: Timothy F. Cullen
Jeffrey R. M. Kunz, MD
Jennifer Donnelly
Julie Strong
Employing Unit Personnel Managers
Employing Unit Payroll Assistants
BPER Staff

State of Wisconsin

DEPARTMENT OF EMPLOYMENT RELATIONS BULLETIN

Date January 30, 1987

Subject

Processing Instructions for
Implementation of Pay Equity
Adjustments

Number CC 105

This bulletin is provided to assist appointing authorities in determining and processing the pay adjustments required by phase 1 of the Department of Employment Relations (DER) Secretary's plan to correct pay inequities. Implementation of these adjustments will be effective February 1, 1987.

A. Coverage

1. Pay Equity Reassignments. Employees covered by the reassignment of classes to higher or lower pay ranges include permanent, project, and limited term employees occupying positions allocated to the classes listed in attachment A of DER Bulletin OS-36/CC-104, dated December 23, 1986.
2. Master Schedule. Employees covered by the Master Schedule include:
 - a. Represented and nonrepresented classified employees except:
 - (1) Limited term employees (LTE's) in positions allocated to LTE specific classes (p. 134 of Compensation Plan),
 - (2) Attorneys,
 - (3) Physicians, and
 - (4) Crafts employees
 - b. Unclassified employees occupying positions assigned to Executive Salary Groups.

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B. Appointments and Adjustments Effective February 1, 1987

Person
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1. Appointments Effective February 1
 - a. All movements between positions which are effective February 1 must be categorized as a promotion, transfer, demotion, or other type of appointment according to the pay range assignment of the position the employee is moving from on January 31 and the pay range assignment of the position the employee is moving to on February 1.

For example, assume the position occupied on January 31 is allocated to a classification in PR 2-09 and that classification is scheduled to be reassigned to PR 2-10 on February 1. Also assume that the employee will be moving in a position allocated to a classification assigned to PR2-10

promotion and competition is required. If the employe was offered the appointment on a transfer basis without competition the appointment must be rescinded. See also b. below.

- b. To avoid the administrative difficulties and potential legal issues which will be created by making certain appointments effective February 1, no appointments (promotions, demotions, transfers, etc.) of employes covered by the pay equity reassignments should be made effective February 1, 1987. Agencies should make appointments effective on some day other than February 1 (e.g. January 31 or February 2). Effective dates should be based on s. ER-Pers 1.02 (1) Wis. Adm. Code and the need to provide for the equitable and reasonable treatment of affected employes.

2. Calculating Pay Adjustments Effective February 1

All pay rate determinations and adjustments affecting covered employes effective February 1 must be based on the pay equity range reassignments effective on February 1 using the minimum, PSICM, and maximum amounts for the appropriate schedule as provided below. (This includes pay rates for LTE's, contrary in part to information provided in DER bulletin OS-36/CC-104 dated December 23, 1986. The State's policy which permits LTE's to be paid below the minimum remains in effect for the biennium.)

Pay adjustments that have the same effective date as the Master Schedule adjustments are to be applied in the following order:

Use "FY 86-87" Pay Schedules (Pages 82 through 106 of the 85-87 Compensation Plan) and pay equity range reassignments for:

- a. Probationary/trial period adjustment
- b. Reallocation/regrade adjustment
- c. Reclassification/regrade adjustment
- d. Promotion/upward movement adjustment
- e. Demotion/downward movement adjustment
- f. Transfer/lateral movement adjustment
- g. Reinstatement
- h. Restoration

Use Master Schedule (page 17 and pages 107 through 130 of the Compensation Plan*) and pay equity range reassignments for:

- i. Adjustment resulting from implementation of the Master Schedule

NOTE: Pay adjustments for employees covered by the pay equity reassignments will not be applied until the Master Schedule adjustments are applied unless one of the transactions listed in a. through h. occurs on February 1.

J. Original Appointment

*These pages were distributed with DER Bulletin OS-36/CC-104.

. Adjustments Resulting from Implementation of the Master Schedule

1. Eligibility. Effective February 1, 1987, all classified pay schedules are adjusted except the pay ranges and rates for Attorneys, Physicians, Crafts employees, and Schedule 18 LTE classes. Additionally, effective February 1, 1987, Executive Salary Group Salary Ranges are adjusted. Employees must be in pay status to be eligible for an adjustment. Employees eligible for adjustments include:
 - a. All permanent and project employees (position types 01, 02, 03, 05, and 06), except trainees, in the classified service who are paid below the new pay range minimum or in some cases PSICM.
 - b. All unclassified employees occupying positions assigned to an executive salary group pursuant to s.20.923(4), Stats. who are paid below the adjusted ESG minimum and who are not serving a fixed term. This includes employees with position "class codes" of 98401 through 98420 who are paid below the new minimum.
 - c. Trainees paid below the new pay range minimum if the new minimum is higher than the old minimum.
 - d. Employees whose positions are allocated to the Psychologist-Doctorate classifications. This adjustment is discretionary except when the current add-on amount exceeds the new supplemental pay maximum.
 - e. LTE's appointed to positions allocated to classes used for permanent positions and who are paid below the Master minimums. This adjustment is discretionary.

2. Amount of Pay Adjustment

NOTE: No employees will receive a pay decrease as a result of implementation of the Pay Equity Reassignments or Master Schedule with the possible exception of certain employees identified under C.2.d.

- a. Employees who must receive an increase to the master minimums, if paid below these minimums after the adjustments listed under B. 2. a. through h. are processed, include:

- (1) Permanent classified employees (except trainees) who are serving the first six months of any type of probationary

period or Career Executive trial period on February 1 and who are not entitled to the six month increase pursuant to ss. ER-Pers 29.03(2) or 30.06(2) Wis. Adm. Code effective February 1 (i.e., will not have completed this six month time period on or before February 7, 1987.)

(2) Project employes (except trainees) who are serving the first six months of a project appointment who would have been serving a probationary period on February 1 if the project appointment had been a permanent appointment and who are not entitled to the six month increase pursuant to s. ER-Pers 34.05(3) Wis. Adm. Code effective February 1 (i.e., will not have completed this six month time period on or before February 7, 1987).

(3) Unclassified employes identified in C.1.b. above

- b. Employes who must receive an increase to the Master PSICM's if paid below these PSICM's include permanent and project employes in the classified service other than trainees and other than employes identified under a. (1) and (2) above.
- c. Trainees paid below the master minimum must have their pay increased to the master minimum or by the percent differential between old January 31 minimum (prior to pay equity reassignments) and the Master minimum (after pay equity reassignments), whichever is less. For example, trainee A is paid \$5/hour and the "FY 86-87" minimum for the objective classification on January 31 is \$6/hour. If the master minimum for the objective classification on February 1 is \$7/hour, trainee A would receive a pay increase of \$.834 to \$5.834/hour. If trainee B occupies a position in the same objective class as trainee A and is paid \$6.10/hour, trainee B would receive a pay increase of \$.90/hour to \$7/hour.
- d. Employes whose positions are allocated to the Psychologist-Doctorate classifications are subject to new supplemental pay maximums as a result of the implementation of the master schedule. These employes are eligible for adjustments in their add-on amounts at the discretion of the appointing authority. An adjustment is mandatory for any employe in PR1-20 if the current add-on exceeds the new supplemental pay maximum.
- e. LTE's appointed to positions allocated to classes used for permanent positions, other than Attorneys, Physicians, and Crafts employes, who are eligible to be paid at the new minimums, and who are paid below these rates may receive increases up to the new pay range minimums at the discretion of the appointing authority. No supplemental funds are provided for these increases.

D. Corrective Action When Employes Have Received Inappropriate Pay Rate Information

have been offered pay rates upon appointments effective on or after February 1 which are inconsistent with the pay equity reassignments and the Master Schedule amounts. *The pay rates actually received by these employees must be consistent with the pay equity reassignments and the Master Schedule amount despite the misinformation unless equitable estoppel applies, even if this means that the employees will receive a lower rate than previously communicated.*

Equitable estoppel applies if an employee can demonstrate that the misinformation induced a reasonable reliance by the employee to take an action to the employee's financial detriment. If an employee cannot provide evidence that he or she made an employment decision which is financially adverse to himself or herself in reliance on the higher rate of pay, such as the employee cannot provide evidence that he or she gave up a higher salaried position for a lesser salaried position, equitable estoppel does not apply.

In order to expedite the analysis of situations where the principle of equitable estoppel may apply, we are directing agencies to conduct the analysis, including the decision to permit certain employees to be paid at a rate which is different from the correct pay rate. Each such decision must be supported by written documentation including the pertinent facts and evidence which led to the determination that the principle of equitable estoppel is applicable. Such documentation should be placed in the employee's personnel file and be available for review by the Department of Employment Relations upon request. See DER Bulletin P-131 dated March 30, 1982 and P-102 dated August 31, 1981.

Agency authority to permit employees to be paid at an incorrect pay rate based on equitable estoppel is limited to formal pay rate communications made prior to the date of this bulletin for appointments effective on or after February 1.

E. Payroll Processing Instructions for Agencies on Central Payroll

I. Automated Adjustments.

Adjustments resulting from implementation of the master schedule and pay equity reassignments will be calculated automatically for:

- a. Eligible permanent and project employees in the classified service (except trainees),
- b. Eligible unclassified employees, and
- c. Eligible LTE's upon written request by affected agencies. Such adjustments are discretionary. Requests must be received in Central Payroll by February 4.

Employee notices will be computer generated for all employees receiving automated structure adjustments and/or whose position classifications are reassigned. Adjustments will be processed only for employees in pay status.

2. Manual Adjustments.

Adjustments resulting from implementation of the master schedule and pay equity reassignments must be processed manually for:

- a. Trainees.
- b. Employees whose positions are allocated to the Psychologist-Doctorate classifications if the employing agency determines that a change in the add-on amount is necessary or desirable pursuant to Section A, III., E. of the Compensation Plan as revised effective February 1.
- c. LTE's unless a request has been submitted to Central Payroll and the adjustments are automated.

3. Salary Change Report

A salary change report will be issued by Central Payroll showing the adjustments for eligible employees. The report should be reviewed for accuracy and any corrections submitted the following pay period.

F. Agencies Not on Central Payroll

University of Wisconsin System employees shall have their pay equity adjustments processed in accordance with the policies contained in this bulletin and the procedures published by the University System.

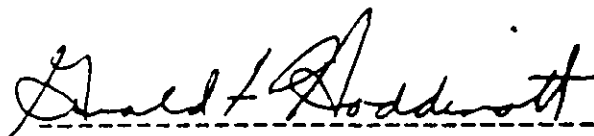
G. Referral of Questions

If you have any policy questions regarding this bulletin please contact the Department of Employment Relations. The specific contact persons are listed below:

Jean Whitcomb (compensation policy questions)	(608) 266-0363
Jessica O'Donnell (compensation policy questions)	(608) 267-2859
Chuck McDowell (classification policy questions)	(608) 266-3621

If you have any questions regarding payroll processing, please contact:

Elaine Gerber (Central Payroll)	(608) 266-9950
Julie Syvrud (WARF Payroll Processing Center)	(608) 263-4375
Kay Schoenherr (Peterson Payroll Processing Center)	(608) 262-5654



GERALD HODDINOTT, ADMINISTRATOR
DIVISION OF CLASSIFICATION AND COMPENSATION

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OCT 31 1990

PAY SCHEDULE #3: BLUE COLLAR AND NON-BUILDING TRADES (1986-87)
(effective 2/1/87)

Personnel
Commission

HOURLY AND BIWEEKLY PAY RANGES

PAY RANGE #	OFFICIAL HOURLY BASIS			WITHIN RANGE PAY STEP	BIWEEKLY BASIS*		
	MINIMUM	PSICH	MAXIMUM		MINIMUM	PSICH	MAXIMUM
3-01	4.983	5.133	6.478	0.150	398.64	410.64	518.24
3-02	5.365	5.526	7.012	0.161	429.20	442.08	560.96
3-03	5.775	5.949	7.590	0.174	462.00	475.92	607.20
3-04	6.218	6.405	8.217	0.187	497.44	512.40	657.36
3-05	6.694	6.895	8.897	0.201	535.52	551.60	711.76
3-06	7.206	7.423	9.634	0.217	576.48	593.84	770.72
3-07	7.758	7.991	10.433	0.233	620.64	639.28	834.64
3-08	8.352	8.603	11.300	0.251	668.16	688.24	904.00
3-09	8.991	9.261	12.239	0.270	719.28	740.88	979.12
3-10	9.680	9.971	13.259	0.291	774.40	797.68	1060.72
3-11	10.421	10.734	14.365	0.313	833.68	858.72	1149.20
3-12	11.219	11.556	15.564	0.337	897.52	924.48	1245.12

* For informational purposes only. The Official Hourly Rate is used for payroll purposes.

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 Personnel
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STATE OF WISCONSIN EMPLOYE PAY AND LEAVE BALANCE STATEMENT
 THIS IS NOT A CHECK. RETAIN THIS STATEMENT. IT IS A RECORD OF YOUR EARNINGS AND DEDUCTIONS.

B 0441749

PIP Ending Date 02-14-87 Check Sort 00023

Soc Sec No	Agency	Sec Level	Name				P/P	Check Date
	435	323	KENNETH A KELLING				04	02-26-87
Base Salary	Regular Hrs	Regular Pay	OT Hrs	OT Pay	Night Hrs	Night Pay	Pay Adjustment	
6.694	40.00	267.76						
Federal Tax	State Tax	Soc Sec Tax	Retirement	Tax Shelter	Def Comp	Gross Pay		
21.48	5.27	19.14				267.76		

DEDUCTIONS

Total Deductions
45.89

YEAR TO DATE	Gross	Federal Tax	State Tax	Soc Sec Tax	Tax Shelter/Def Comp	Net Pay	
	267.76	21.48	5.27	19.14		221.87	
Transactions Processed Thru	BALANCE	Sick Leave	Vacation	Term/Sabb	Pers Hol	Sat Hol	Comp Time
10-16-81		-1.05	*PR08*		-4.00	30.00	

A-Health Ins B-Life Ins C-Other Ins D-Union Dues E-Credit Union F-Charity G-U.S Bonds
 H-Maintenance I-Deferred Comp J-Miscellaneous K-Income Ins L-Parking M-Van Pool

STATE PAYS ALL

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OCT 31 1990

Personnel
Commission

227 West Street
Apt. 1 53042
March 8, 1997

Nancy M. Kostin, Business Administrator
Taycheedah Correctional Institution
971 Cty. Hwy. K
Taycheedah, WI 54935

Dear Nancy M. Kostin:

Could you please clarify in writing why I did not receive \$7.401 per hour as stated in my appointment letter from Superintendent Lona Switala. I did receive \$6.694 per hour on my first check number B 0441749.

The difference of \$.707 may have initially been a factor on whether or not I would have accepted the position of Stock Clerk 2. Would you please send your reply within 10 days

Sincerely,

Kenneth A. Kelling



State of Wisconsin \ DEPARTMENT OF HEALTH AND SOCIAL SERVICES

DIVISION OF CORRECTIONS
TAYCHEEDAH CORRECTIONAL INSTITUTION
971 City Hwy K
TAYCHEEDAH, WISCONSIN 54935

March 24, 1987

RECEIVED

OCT 31 1990

Personnel
Commission

Mr. Kenneth A. Kelling
323 Fremont Street
Kiel, WI 53042

Dear Mr. Kelling:

This letter is in response to your letter of March 8, 1987, in which you inquired about the change in the beginning pay for your position at Taycheedah Correctional Institution.

The Department of Employment Relations (DER) implemented a plan to correct pay inequities. This plan had been approved by the Legislative Joint Committee on Employment Relations. The approved plan established a new Master Pay Schedule and reassigned certain classes to higher or lower pay ranges. This action was taken to implement the Comparable Worth Study.

You were hired as a Stock Clerk 2, pay schedule 03, range 05. Before the implementation of this plan the minimum starting salary for a Stock Clerk 2 was \$7.481 per hour. With the establishment of the new pay plan the starting salary for a Stock Clerk 2 became \$6.694.

The difference in the pay rate stated in your letter and the rate you were hired at was caused by the implementation of this new pay plan. The pay plan was made effective February 1, 1987. Appointments are effective when the employee actually reports for work (based on s. ER-PER 1.02(1), Wis Adm Code). Because your starting date was after February 1, 1987, Taycheedah Correctional Institution had no option but to use the new pay rate.

It is unfortunate that your career at TCI has started in this disappointing way. However, this is an area in which the institution has no leeway at all. Every new state employee hired to start as a Stock Clerk 2 after February 1, 1987 must receive the same rate of pay.

Sincerely,

Nancy E. Kestin
Nancy E. Kestin

Business Administrator

cc. FT