

STATE OF WISCONSIN

PERSONNEL COMMISSION

\* \* \* \* \*

DIANE WARDA, \*

Appellant, \*

v. \*

President, UNIVERSITY OF \*

WISCONSIN SYSTEM (Milwaukee), \*

and Secretary, DEPARTMENT OF \*

EMPLOYMENT RELATIONS, \*

Respondents. \*

Case No. 87-0071-PC \*

\* \* \* \* \*

DECISION  
AND  
ORDER

NATURE OF THE CASE

This is an appeal pursuant to §230.44(1)(b), Stats., of the effective date of a reclassification from PA 1 (Program Assistant 1) to PA 2. In an interim decision and order dated November 4, 1987, the Commission overruled respondent UW-M's objection to subject-matter jurisdiction.

FINDINGS OF FACT

1. Appellant at all relevant times has been employed in the classified civil service.
2. Appellant began state employment on March 19, 1979, in a position classified as Stenographer 3 in the UW Extension Department of Engineering. This position was reallocated to PA 1 shortly thereafter in 1979 as a result of the "Hayes survey."
3. At the time she commenced her employment with the state as aforesaid, the duties and responsibilities of appellant's position were, in summary, to act as personal and program secretary to the Associate Department Chairman with particular emphasis on dealing with logistical and

administrative aspects of seminars, short courses, etc., such as processing forms for arrangements for AV equipment, for seminars, and textbooks, keeping records of enrollment, answering questions about programs, assisting in registration, etc.

4. Over the years since 1979, the duties and responsibilities of appellant's position changed in a logical and gradual manner in summary as follows:

a. A 1983 departmental reorganization required reassignment of PA duties with increased responsibilities in support of program directors;

b. On July 1, 1985, the department was transferred from the UW Extension Division into the UW-M College of Engineering and Applied Science. This transfer resulted in a number of changes with respect to appellant's position (the record does not reflect how long after the merger took for these changes to become fully operational), including the following:

1) Appellant became responsible for many marketing activities which before the transfer had been performed by academic staff in Madison;

2) Appellant has had to become familiar with UW-M campus personnel and purchasing rules and regulations;

3) Appellant became responsible for directing the work of LTE and student employes, who now perform many of the routine clinical tasks she formerly performed. She also evaluates their performance and recommends personnel actions to the program assistant supervisor;

c. Since 1983, limited FTE's in the department budget have required work in more functional program areas, requiring a broader knowledge base;

d. Since 1985, an increased automation of the office has contributed to the complexity of the position with respect to organizing and keeping track of departmental records. Computerization also increased the amount and type of instructional materials required by program directors and speakers;

e. An increase in the number of courses held off campus resulted in increased complexity due to the unfamiliarity of staff at remote locations with departmental needs and operations and the requirements of UW regulations (the record does not reflect the time frame for this change);

f. Increased complexity has resulted from the addition to staff of two additional program directors and a marketing specialist/evening class coordinator (the record does not reflect the time frame for these changes);

g. The change in supervision that resulted when Ms. Krotchie was replaced by Ms. Butkovic as the immediate supervisor of this position in March 1985 resulted in more independence and program involvement for appellant's position. Ms. Butkovic was less directly involved in marketing and working with the programs than Ms. Krotchie had been.

5. Prior to 1984, appellant told management on a number of occasions that in her opinion her position was underclassified and should be at the PA 2 level. Management neither took any action to review or change the

classification of her position nor advised her how to submit a formal written reclassification request.

6. In 1984, appellant and her then supervisor, Sandra Krotchie, developed a revised position description (PD) (Appellant's Exhibit 1) at the request of someone in line management in the UW Extension in Madison. For reasons which do not appear of record, this PD was never signed by Ms. Krotchie and never reached appellant's official personnel file.

7. On July 1, 1984, John T. Snedeker became Unit Chair, Department of Engineering and Applied Science, UW Extension (Milwaukee). On July 2, 1984, appellant sent him a letter (Appellant's Exhibit 2) which stated:

"I would formally like to request an audit of my position classification. I feel that the nature of my work is not, and never has been, in line with my title of Program Assistant 1 and therefore, respectfully request that an audit be done as soon as possible."

Appellant submitted this document at Mr. Snedeker's request.

8. After submitting the aforesaid letter, appellant frequently (as often as monthly) checked with Mr. Snedeker regarding the status of this request. He typically would say things like he "was working on it." He never told her she had to do something other than what she already had done to request a reclassification of her position.

9. After Sue Butkovic replaced Ms. Krotchie as appellant's immediate supervisor in April 1985, she (Ms. Butkovic) said she had been in personnel for many years, she knew how to go about getting reclassifications, and she would make the PA 2 reclassifications a top priority. The matter of this reclassification effort was discussed several times at staff meetings between May 1985 and July 1986.

10. In July, 1985, after the department's merger into UW-M, appellant attended an orientation presented by Management regarding UW-M policies and procedures. At that time she was presented with a UW-M classified employe

handbook which contained the following information regarding classification:

"An employe in the classified service who has reason to believe that the classification title of his/her position is not correct has the right to have the position formally reviewed. Your department may request a reclassification or a formal position audit of your position." (Appellant's Exhibit 6)

11. Based on the foregoing excerpt from the employes' handbook, as well as on respondent's prior course of conduct regarding the question of reclassification of her position, appellant believed she was doing everything necessary to request reclassification of her position.

12. Appellant's belief as aforesaid was reasonable under the circumstances.

13. After further lack of action on the classification of her position, appellant sent a letter dated March 9, 1987, to Laura Langman, Personnel Services, UW-M (Appellant's Exhibit 7). This letter reiterated appellant's attempts at reclassification and directed a formal request for reclassification to Ms. Langman.

14. Ms. Langman audited appellant's position and caused it to be reclassified, and appellant regraded, to PA 2 with an effective date of March 15, 1987.

15. The aforesaid effective date was based on Department of Employment Relations (DER) policy on effective date as set forth in its Classification and Compensation manual at Para. 332.060 A. (Respondent's Exhibit 3) which contains, in part, the following:

"...reclassification regrade actions...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...."

16. Under the circumstances of this case, respondents are equitably estopped from relying on the aforesaid policy.

17. The PA 1 and PA 2 class descriptions as set forth in the official PA position standard (Respondent's Exhibit 4) are as follows:

PROGRAM ASSISTANT 1

(PR2-06)

This is work of moderate difficulty providing program support assistance to supervisory, professional or administrative staff. Positions allocated to this level serve as the principal support staff within a specific defined program or a significant segment of a program. Positions at this level are distinguished from the Clerical Assistant 2 level by their identified accountability for the implementation and consequences of program activities over which they have decision-making control. Therefore, although the actual tasks performed at this level may in many respects be similar to those performed at the Clerical Assistant 2 level, the greater variety, scope and complexity of the problem-solving, the greater independence of action, and the greater degree of personal or procedural control over the program activities differentiates the Program Assistant functions. The degree of programmatic accountability and involvement is measured on the basis of the size and scope of the area impacted by the decision and the consequence of error in making such decisions, which increases with each successive level in the Program Assistant series. Work is performed under general supervision.

PROGRAM ASSISTANT 2

(PR2-07)

This is work of moderate difficulty providing program support assistance to supervisory, professional or administrative staff. Positions are allocated to this class on the basis of the degree of programmatic involvement, delegated authority to act on behalf of the program head, level and degree of independence exercised, and scope

and impact of decisions involved. Positions allocated to this level are distinguished from the Program Assistant 1 level based on the following criteria: (1) the defined program area for which this level is accountable is greater in scope and complexity; (2) the impact of decisions made at this level is greater in terms of the scope of the policies and procedures that are affected; (3) the nature of the program area presents differing situations requiring a search for solutions from a variety of alternatives; and (4) the procedures and precedents which govern the program area are somewhat diversified rather than clearly established. Work is performed under general supervision.

18. Appellant was unable to satisfy her burden of proving that the duties and responsibilities of her position were at the PA 2 level at any date prior to the effective date granted by respondent (March 15, 1987), and therefore the Commission must find that she was not performing PA 2 duties and responsibilities prior to March 15, 1987.

#### CONCLUSIONS OF LAW

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

2. Appellant has the burden of proof, which means that she must establish the facts necessary for her to prevail "to a reasonable certainty, by the greater weight of the credible evidence...." Reinke v. Personnel Board, 53 Wis. 2d 123, 137, 191 N.W. 2d 833 (1971).

3. The elements of equitable estoppel against a state agency are reasonable reliance by an employe to his or her detriment on conduct by the agency or its agents which amount 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. 75-154-PC (5/14/79), affirmed, DOT v. Pers. Commn., Dane Co. Cir. Ct. No. 79CV3420 (3/24/80).

4. Appellant having satisfied her burden of proof with respect to establishing the elements of equitable estoppel against respondents, they

are estopped from relying on the effective date policy set forth in Finding No. 15, above.

5. Appellant having failed to sustain her burden of proof with respect to establishing that she was performing duties and responsibilities at the PA 2 level prior to the date she submitted her reclassification request to Ms. Langman (March 9, 1987), it must be concluded that respondents did not err in the establishment of the effective date for this transaction.

#### DISCUSSION

The stipulated issue for hearing as set forth in the prehearing conference report dated September 16, 1987, was as follows:

"Whether or not respondent's decision, setting the effective reclassification date of appellant's position from a Program Assistant 1 to a Program Assistant 2, as of March 15, 1987, instead of July 1, 1985, was correct."

This issue can be broken down into two basic questions:

(1) Is the effective date of this transaction controlled by the DER policy set forth in the Wisconsin Personnel Manual at Para. 332.060 A. (Respondent's Exhibit 3)?

(2) If not, can it be determined from this record that appellant was performing at the PA 2 level at some time before her formal written reclassification request was submitted to the UW-M personnel office on or immediately after March 9, 1987?

With respect to the first question, in Guzniczak & Brown v. DER & DHSS, Nos. 83-0210-PC, 83-0211-PC (5/13/87), the Commission discussed the effect of the DER's effective date policy as follows:

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.

In this case, essentially the same remarks are called for. This is a clear-cut case of equitable estoppel because appellant repeatedly voiced her concerns about the classification of her position, initially verbally and then in a letter to her department head in July 1985. Throughout this process, management gave her every indication that her concerns would be addressed by management, and never suggested there was any need for her to submit a written request to the personnel office, as it now asserts. This procedure was not even mentioned in the section on reclassification in the UW-M employees' handbook. Clearly, appellant reasonably relied on respondent's representations and course of conduct in pursuing her attempt at reclassification, and respondent's posture amounted to a manifest abuse of discretion, which is underscored when its conduct is juxtaposed to its current insistence that she should have filed a written reclassification request with the UW-M personnel office. Therefore, respondent is estopped from now arguing that an earlier effective date for appellant's reclassification/regrade is precluded by the fact that she did not submit a written reclassification request to the UW-M personnel office before March 9, 1987.

With respect to the second question, the appellant has the burden of establishing the necessary facts "to a reasonable certainty, by the greater weight of the credible evidence...." Reinke v. Personnel Board, 53 Wis. 2d 123, 137, 191 N.W. 2d 833 (1971). There are a number of difficulties associated with the evidentiary aspect of this question.

In the first place, the difference between the PA 1 and PA 2 levels as set forth in the PA position standard is expressed in relatively general terms:

PROGRAM ASSISTANT 1

(PR2-06)

This is work of moderate difficulty providing program support assistance to supervisory, professional or administrative staff. Positions allocated to this level serve as the principal support staff within a specific defined program or a significant segment of a program. Positions at this level are distinguished from the Clerical Assistant 2 level by their identified accountability for the implementation and consequences of program activities over which they have decision-making control. Therefore, although the actual tasks performed at this level may in many respects be similar to those performed at the Clerical Assistant 2 level, the greater variety, scope and complexity of the problem-solving, the greater independence of action, and the greater degree of personal or procedural control over the program activities differentiates the Program Assistant functions. The degree of programmatic accountability and involvement is measured on the basis of the size and scope of the area impacted by the decision and the consequence of error in making such decisions, which increases with each successive level in the Program Assistant series. Work is performed under general supervision.

PROGRAM ASSISTANT 2

(PR2-07)

This is work of moderate difficulty providing program support assistance to supervisory, professional or administrative staff. Positions are allocated to this class on the basis of the degree of programmatic involvement, delegated authority to act on behalf of the program head, level and degree of independence exercised, and scope and impact of decisions involved. Positions allocated to this level are distinguished from the Program Assistant 1 level based on the following criteria: (1) the defined program area for which this level is accountable is greater in scope and complexity; (2) the impact of decisions made at this level is greater in terms of the scope of the policies and procedures that are affected; (3) the nature of the program area presents differing situations requiring a search for solutions from a variety of alternatives; and (4) the procedures and precedents which govern the program area are somewhat diversified rather than clearly established. Work is performed under general supervision.

When comparing a position's duties and responsibilities at two points in time -- e.g., by looking at two PD's -- it may be difficult to ascertain whether the second position description has sufficiently evolved in terms of the degree of scope and complexity of the defined program area for which the position is accountable, the degree of impact of decisions made in terms of the scope of the policies and procedures that are affected, etc., to justify reclassification to the PA 2 level, in light of the generalized

distinctions between the two levels. However, it may well be even more difficult to ascertain, with respect to a position which has been determined to be at the PA 2 level, whether it had reached that level at some prior point in time. In this case, this difficulty is indeed present.

Respondent contends that although appellant's position had evolved to the PA 2 level as of the time the formal reclassification request was submitted in March 1987, based on the position description that was submitted then, it was impossible to ascertain with any degree of certainty that the evolution of the position had reached the PA 2 level at any point in time before March 1987. Based on the record made at the hearing of this matter, the Commission is compelled to agree.

Many of the changes that affected appellant's position and contributed to its reclassification to PA 2 occurred prior to the July 1, 1985, effective date, which appellant seeks. However, the key reclassification factor identified by respondent was the merger of the department into UW-M in July 1, 1985. The record does not contain sufficient evidence to support a finding that the changes in appellant's position which occurred as a result of the merger and which were referred to in respondent's "reclassification justification," Appellant's Exhibit 9, were implemented immediately on July 1, 1985. Looking solely at the other changes that can be identified at an earlier point in time -- e.g., the change in appellant's immediate supervision in April 1985 -- it is impossible to say that they would have been sufficient to have supported a reclassification at some point before merger.

The main difficulties with appellant's evidence is that it tended to be conclusory and overstated or inherently contradictory. Appellant testified basically that her job was misclassified more or less from the

start and that there were very few changes in it between 1979 and 1985. For example, in her testimony concerning the merger, she downplayed any changes and provided no testimony about when the changes identified by respondent in its reclassification justification were implemented.

The problem with appellant's testimony is that regardless of what she may have thought about the class level of her position, and the insignificance of the changes that occurred, it was those changes that were instrumental in respondent's decision to reclassify her position, and there is no way that the Commission could find that, without those changes identified by respondent, her job should have been classified at the PA 2 level. For example, neither the 1979 PD (Respondent's Exhibit 2) nor the 1984 PD (Appellant's Exhibit 1) provides an adequate basis for a conclusion that the duties and responsibilities in support of the academic programs are sufficiently greater in scope and complexity, have a sufficiently greater impact, etc., than PA 1 level duties and responsibilities to justify a PA 2 classification.

Ms. Krotchie, appellant's supervisor in 1984, first testified that the 1984 PD was at the PA 2 level, but then in effect recanted that testimony, pointing out that she was not familiar with the PA position standard.

In the 1987 position description submitted with the request for reclassification (Appellant's Exhibit 8), appellant's supervisor answered the question in Box 12 "From Approximately What Date Has the Employee Performed the Work Described Below?" inserting 1983. However, this is clearly at odds with the fact that a number of the key changes for classification purposes occurred after 1983, particularly the merger which occurred in 1985, as was acknowledged by Ms. Butkovic in her February 27,

1987, memo supporting the reclassification. This greatly undermines the credibility of the 1983 date in Appellant's Exhibit 8.

In conclusion, there is insufficient credible evidence on which to base a finding utilizing the standard set forth in Reinke v. Personnel Board, supra, that the duties and responsibilities of appellant's position were at the PA2 level at any date prior to March, 1987.

ORDER

Respondents' decision establishing March 15, 1987, as the effective date for the reclassification of appellant's position from PA 1 to PA 2 is affirmed and this appeal is dismissed.

Dated: June 2, 1988 STATE PERSONNEL COMMISSION

AJT:rcr  
RCR02/3

  
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