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DIANE WARDA, *

Appellant, *

v. *

President, UNIVERSITY OF *

WISCONSIN SYSTEM (Milwaukee) *

and Secretary, DEPARTMENT OF *

EMPLOYMENT RELATIONS, *

Respondents. *

Case No. 87-0071-PC *

* * * * *

INTERIM
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 Program Assistant 1 (PA 1) to Program Assistant 2 (PA 2). Respondent University of Wisconsin-Milwaukee (UW-M) has objected to subject matter jurisdiction, and the parties have submitted written arguments. The factual background as it relates to subject matter jurisdiction is as follows:

FACTUAL MATTERS RELATED TO JURISDICTION

1. Appellant was employed in the classified service by the UW-Extension (UWEX) from 1979 until June 23, 1985, when she became a classified employe of UW-M as a result of a merger of certain UWEX programs with other institutions and a transfer of her department to UW-M. At that time her position was classified as PA 1.

2. On July 2, 1984, appellant had sent the following letter to the Unit Chairman, Department of Engineering & Applied Science, UWEX:

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.

3. No action was ever taken on this request by UWEX.

4. Appellant alleges that after a number of inquiries about the status of her request that were never satisfactorily answered, in April, 1985, a new supervisor told appellant she knew how to go about getting a reclassification and that she would make this a priority.

5. Appellant further alleges that after the transfer of her position to UW-M she repeatedly inquired about the status of her request until in January 1987 the department chairperson requested that appellant's immediate supervisor update appellant's position description (PD).

6. Appellant alleges she signed a revised position description on February 10, 1987, and then after waiting four weeks without hearing about the status of her reclassification request, she submitted a formal written request for reclassification dated March 9, 1987, to Laura Langman, Personnel Services, UW-M. This letter summarized her attempts over the years to have her position reclassified and concluded as follows:

Needless to say, I have felt much frustration and anger over the years because of the procrastination of this department in getting the paperwork submitted in spite of the fact that the department head and supervisor always agreed that the reclassification was warranted.

I would appreciate whatever you can do to expedite this matter.

7. Ms. Langman advised appellant by letter dated April 20, 1987, that her position was reclassified to PA 2 effective March 15, 1987.

8. Appellant filed an appeal of the effective date of this reclassification with this Commission on May 13, 1987. She contends the effective date of said transaction should be July 1, 1985.

DISCUSSION

In support of its objection to subject matter jurisdiction, respondent UW-M argues that this appeal is "...in reality, a claim against UWEX, a different appointing authority...."

Under the circumstances involved here, this argument does not run to subject matter jurisdiction. Respondent UW-M made a decision on or about April 10, 1987, to reclassify appellant's position from PA 1 to PA 2 with an effective date of March 15, 1987. Appellant filed an appeal of that decision as to the effective date. The effective date she seeks, July 1, 1985, does not precede the date respondent UW-M became responsible for her position as appointing authority. Assuming for the sake of argument that appellant's claim for the July 1, 1985, effective date, rests to some extent on what she did and what management did or didn't do when UWEX was her appointing authority, the relationship between those facts and the correctness of UW-M's decision as to effective date may give rise to various legal issues, but these issues do not run to the Commission's subject matter jurisdiction over that decision by UW-M. For example, assuming, again solely for the sake of argument, that UW-M had no authority to consider what might have transpired when the position was under UWEX control, this might tend to support its decision as to effective date, but it has nothing to do with the authority of this Commission to review that decision.¹

¹ The Commission does not address the respondent's apparent proposition that as a matter of law UWEX and UW-M are totally distinct entities with respect to appointing authority responsibilities.

Respondent also argues that the appeal is untimely filed, arguing that:

The appellant knew or should have known continuously since 1984 what her classification was, and that her position was not audited or reclassified until Ms. Langman's 1987 actions. Yet she took no appeal at any time during the period of her employment at UWEX, and did not act to commence any new classification action until this year. More than three years elapsed between the audit request and this appeal, while nearly two years passed between the day she now claims should be the effective date of her reclassification -- July 1, 1985, the day she joined UW-Milwaukee -- and the filing of this appeal. It is now clearly more than 30 days after the events which might have triggered an appeal....

While appellant conceivably could have attempted to have appealed the employer's inaction on her reclassification request at some earlier date, the fact remains with respect to the subject matter of this appeal -- the effective date of reclassification -- that she did not know what the effective date would be until she received the April 20, 1987, notice of reclassification. Her appeal was timely with respect to this notice.

ORDER

Respondent UW-M's objection to subject matter jurisdiction as set forth in its letter-brief filed October 2, 1987, is overruled.

Dated: November 4, 1987 STATE PERSONNEL COMMISSION

AJT:jmf
JMFO7/2


DENNIS P. MCGILLIGAN, Chairperson


DONALD R. MURPHY, Commissioner