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KATHERINE A. VOLLMER,
 Appellant,

v.

President, UNIVERSITY OF
 WISCONSIN SYSTEM (Stevens Point),
 and Secretary, DEPARTMENT OF
 EMPLOYMENT RELATIONS,
 Respondents.

Case No. 89-0056-PC

* * * * *

DECISION
AND
ORDER

NATURE OF THE CASE

This is an appeal of the effective date of the reclassification of appellant's position. A hearing was held before Gerald F. Hoddinott, Commissioner.

FINDINGS OF FACT

1. Effective February 14, 1977, appellant was appointed to a Graphic Artist 2 position in the Instructional Media Service unit of the University of Wisconsin-Stevens Point. Prior to 1981, the name of this unit was changed to the Educational Media Center (EMC).

2. The position standard for the Graphic Artist series states as follows, in pertinent part:

Graphic Artist 2

Class Description

Definition:

This is difficult and responsible work in the graphic arts. Employees in this class create artistic designs, plan the composition and layout of illustrations and execute illustrations through the use of tone, shading, perspective, color harmony, figure drawing and other techniques. Employees in this class may create their own designs, utilize the client's design or established designs. Work involves

discussing the theme with clients to decide what type of design is needed and what the limitations of various reproductive processes may be. The work may involve guiding professional assistants but is normally not an important part of the work. The work is subject to the approval of the client and may also be approved by superiors in the section.

Examples of Work Performed:

Acts as the artist for a department.

Consults with clients to ascertain the purpose and requirements of the art and the appropriate style and type of illustration.

Executes designs, layouts for booklets, publications, promotional materials, posters, signs, maps, graphic charts, letters and reports.

Makes pasteups, arranging type art and other design elements into a logical whole and indicates whatever marks or instructions are necessary for the printer.

Keeps records and makes reports.

Graphic Artist 3

Class Description

Definition:

This is responsible, lead and technical work in the graphic arts. Employees in this class carry the responsibility for planning and guiding the work of a unit of professional artists. The work involves discussing the art work to be done with the clients, determining what the needs of the particular piece of art work are, assigning the job to a subordinate artist, reviewing the work of the artist and giving final approval to the job. Employees in this class may also do difficult art work themselves, involving the creation of new designs where there are not past guidelines to follow, and preparing the illustrations and layouts. The work is performed under limited supervision with work subject to the final approval of the client. The work involves guiding professional artists.

Examples of Work Performed:

Executes designs, layouts and mockup, including rough and final copies.

Makes artistic layouts for booklets, publications, promotional materials, posters, signs, maps, graphic charts, letters and reports.

Expedites production in cooperation with production supervisors.
Appraises art jobs and gives time estimates.
Assigns and guides the production of work in the art unit.
Assumes responsibility for final checking of art work before duplicating.
Attends staff meetings and acts as art consultant.

This position standard was first effective in April of 1973.

3. In a memo to John Ellery, the Director of the EMC and appellant's first-line supervisor, dated October 15, 1980, appellant requested a reclassification of her position to Graphic Artists 3 or Graphic Arts Supervisor 3. In a memo to appellant dated October 21, 1980, Dr. Ellery stated as follows, in pertinent part:

. . . I cannot identify your position as a lead position in which you "carry the responsibility for planning and guiding the work of a unit of professional artists," nor do you assign and guide the production work in the graphics arts area.

Perhaps you see your relationship to Mark Pohlkamp, the only other graphic artist in the unit, as a supervisory relationship. If so, this is an error. He is not your subordinate, and it is not your responsibility to assign, review, or give final approval to his work.

Under the circumstances, I see no grounds for recommending reclassification to Graphic Artist III or Graphic Arts Supervisor III.

4. In late 1980 or early 1981, as the result of a planned audit of certain positions, including appellant's, appellant was asked to prepare an updated position description. Dr. Ellery did not approve the position description prepared by appellant primarily due to the fact that it indicated that appellant's position had lead work responsibilities. On July 28, 1981, appellant signed the position description for her position prepared by Dr. Ellery but indicated at the time that she did so "under protest" primarily due to the fact that this position description did not indicate that she performed lead worker duties.

5. In a memo to Dr. Ellery dated January 6, 1981, appellant again requested the reclassification of her position to Graphic Artist 3 or Graphic Arts Supervisor 3. In a memo to appellant dated January 9, 1981, Dr. Ellery stated, in pertinent part:

Your position is equivalent to that held by Mr. Pohlkamp; I see no justification for reclassification, as you requested in your memorandum of January 6, to either Graphic Artist III or Graphic Arts Supervisor III. Neither classification is appropriate to your present position.

6. Some time after January 9, 1981, but prior to March 3, 1981, Ronald Juhnke, Director of Personnel Services for the University of Wisconsin-Stevens Point, audited appellant's position. In a memo dated March 3, 1981, Mr. Juhnke stated as follows, in pertinent part:

My conclusion subsequent to the audit of your position is that it is properly classified as a Graphic Artist II. The specifications for the classification of Graphic Artist III states, "this is responsible, lead and technical work in the graphic arts." It is clear from my discussions with you, Jim Pierson, and your supervisor Dr. John Ellery, that you have not been assigned as leadworker nor do you function as leadworker in the Graphic Arts area of EMC. Because your duties and responsibilities do not include the function of leadworker, your position does not identify at the Graphic Artist III level.

I am returning your Position Description with those areas identified with leadwork crossed out because they have not been assigned to you, and Dr. Ellery indicates aren't likely to be in the foreseeable future. I request that you revise your Position Description to accurately reflect your duties and responsibilities exclusive of any leadworker role.

This memo went on to advise appellant that, if she disagreed with Mr. Juhnke's conclusion, she had the right to request a review of his decision by the UW-System Central Personnel Office.

7. In a letter to the UW-System Central Personnel Office dated March 24, 1981, appellant requested a review of Mr. Juhnke's conclusion. In response to appellant's letter, appellant's position was audited by Gary Martinelli of the UW-System Central Personnel Office who concluded, in a letter to appellant dated July 1, 1981, that her position was correctly classified at the Graphic Artist 2 level. In this letter, Mr. Martinelli advised appellant that, if she disagreed with his decision, she could appeal it to the Commission.

8. Appellant appealed Mr. Martinelli's decision to the Commission. (Vollmer v. UW & DP, Case No. 81-327-PC). Appellant claims that, in a conversation with Dr. Ellery after the filing of this 1981 appeal, appellant was told that, if she went forward with the appeal, she would not be able to obtain a

reclassification of her position in the future and that it would be a very intimidating process since the respondent would be represented by an attorney and most of the commissioners were attorneys; and claims that she felt this was an effort on Dr. Ellery's part to intimidate her and to prevent her from obtaining a reclassification of her position or from requesting a reclassification of her position in the future. Based on advice from her union representative, appellant withdrew this appeal and it was dismissed by the Commission on June 7, 1982. The position description accompanying this 1981 reclassification request describes a position appropriately classified at the GA 2 level.

9. In July of 1980, Dr. Ellery was appointed as Director of the EMC.

10. Some time after May 28, 1981, two positions at the University of Wisconsin-Milwaukee were reclassified to the Graphic Artist 3 level. Although neither of these positions functioned as a lead worker of permanent positions, they were reclassified to the Graphic Artist 3 level based on the technical complexity of the art work performed, the responsibility for project conceptualization as well as production, the broad range of media, and the performance of work not considered traditional graphics work. It was concluded by the Department of Employment Relations (DER) that the duties and responsibilities of these positions did not fit within the language of the classification specifications for either the Graphic Artist 2 or the Graphic Artist 3 classifications but, based on general classification factors such as complexity and scope, these positions were more closely comparable to positions classified at the Graphic Artist 3 level than those classified at the Graphic Artist 2 level.

11. In or around November of 1981, a position at the University of Wisconsin-La Crosse which did not have responsibility for leading the work of any permanent positions was reclassified to the Graphic Artist 3 level based primarily on the performance of highly technical and specialized graphic art work and the responsibility for serving as the coordinator of the graphic arts unit.

12. The reclassification of the UW-Milwaukee and the UW-La Crosse positions to the Graphic Artist 3 level did not require the modification of the language of the Graphic Artist position standard. Notice of these reclassifications was not disseminated by DER to the personnel units of the UW campuses or to any other entities but was retained by DER in a manner

consistent with information relating to the reclassification of any position. This information is available to any person who requests it.

13. In September of 1982, Dr. Ellery retired. Until his position was filled, the EMC was supervised by Helen Godfrey, the Assistant Chancellor for University Relations. In June of 1983, James Pierson, who had functioned as the lead worker of the EMC since at least at least 1980, died. As the result of vacancies in both the Ellery and Pierson positions, Ms. Godfrey solicited input from the EMC staff relating to how those positions should be utilized. In a memo to Ms. Godfrey dated August 9, 1983, appellant suggested that the Pierson position become a photographer position and that the coordination, supervision, and planning responsibilities previously assigned to the Pierson position be assigned to appellant's position. In this memo, appellant also stated as follows:

By acknowledging this responsibility and being assigned these duties I believe my position could be reclassified in line with the state Civil Service System to a Graphic Artist III.

14. In February of 1984, Michael Brisson was appointed as the Director of the EMC.

15. In a memo to appellant dated January 14, 1985, Mr. Brisson stated as follows:

I am responding to your memo dated 1/7/85 concerning our discussion in November 1984. First of all, I would like to point out I have been and will continue to inquire into having all positions changed to Academic Staff appointments. I feel EMS is a professional group of people and it would allow me as Director options of providing financial rewards as well as job title changes as related to job performance and responsibilities. As I have indicated I am only in the preliminary stages of exploring this possibility.

Concerning your request for reclassification, I cannot recommend this change at this time based on (1) the staff size; (2) the production load; (3) practical needs and; (4) current EMS staff structure. I am not aware of criteria that may prove differently, if so please inform me.

I am requesting the UWSP Personnel Office to conduct individual job audits of each position in EMS.

16. In a memo dated December 10, 1985, to Mary Williams, UW-Stevens Point Affirmative Action Officer, appellant stated as follows, in pertinent part:

In Educational Media Services under the direction of Mike Brisson, it appears there are arrangements being made and duties being assigned, either by intention or by default, that would qualify Mark Pohlkamp, Graphic Artist II, for a reclass to Graphic Artist III. I believe this to be discriminatory.

I am interested in qualifying for a reclass to Graphic Artist III and have asked Mike to inform me of additional training that I may seek, books to read, or special classes that would help me qualify for this reclass.

17. Appellant based the suspicions she expressed to Ms. Williams in this memo on the assignment to Mr. Pohlkamp of responsibility for monitoring certain work flow in the graphic arts area, and on her impression that Mr. Brisson's supervision of her work activities had changed to "close supervision." Appellant's impression that Mr. Brisson was now closely supervising her work was based on requests by Mr. Brisson that she record how she used her work time each day, that she explain certain projects to him, and that she explain her overtime use to him. When appellant told Mr. Brisson that she had worked overtime to complete a project that Mr. Pohlkamp had failed to complete, Mr. Brisson told her she was being a troublemaker by trying to get Mr. Pohlkamp in trouble. During the time period relevant to this appeal, Mr. Pohlkamp's GA 2 position in the EMC was not reclassified nor the subject of a reclassification request. During the time period relevant to this appeal, Mr. Pohlkamp was never designated as the lead worker for the graphic arts area of the EMC and he and appellant were assigned the same types of projects, both supervised student graphic arts assistants in the completion of these projects, and were regarded by their supervisors as co-equals.

18. In early 1986, appellant was offered a transfer to a Graphic Artist 2 position in the Office of News and Publications (ONP) at the UW-Stevens Point. Although appellant accepted the transfer, she did not feel that she had the choice to refuse it. Appellant took many of the projects she had been working on in the EMC position with her to the ONP position. A new or updated position description was not prepared for appellant's ONP position at the time of the transfer. Appellant's first-line supervisor in the ONP position was John Anderson.

19. In a memo dated April 20, 1987, to Mr. Juhnke, appellant stated as follows, in pertinent part:

In reference to the information given at the "Brown Bag" meeting of April 7, 1987, you addressed the issue that leadwork duties and responsibilities (functioning as a "leadworker") could no longer be used as a criterion to justify reclassification to a higher level of a classified position. . . .

* * * * *

Lead work was obviously used as a criterion, maneuvered, to keep me from a reclassification in 1981. Now you state it is removed as a justification completely. This appears to make it impossible for a Graphic Artist II to reach a Graphic Artist III level.

* * * * *

Knowing the state system as you do, and being personnel director as you are, you may have various solutions to this situation. Please inform me of procedures and any alternate possibilities.

20. In a memo to appellant dated May 19, 1987, Mr. Juhnke stated as follows, in pertinent part:

I have reviewed your letter of April 20 carefully and have given thought to your comments as well as what may be done to resolve the position you find yourself in. First let me clarify the "leadworker" issue you mention in your letter. The classification specifications for Graphic Artist 3 require that a person be a leadworker to hold the classification - that has not changed since 1981. What has changed in recent years is that a person cannot be assigned leadwork responsibility and be reclassified into a leadworker positions. We are required to have an examination to fill a leadworker position from among the eligible employees in the work unit (there has to be more than one employee to have a leadworker.)

I believe that I did not state that leadworker activities were no longer required to be a Graphic Artist 3 but that I felt that it was an unreasonable criteria when a person cannot get to a more responsible level unless they are a leadworker. I stated that I feel that the definition of what a Graphic Artist 3 should allow for a person to get to that level based on performing highly technical and complex work alone.

Two courses of action appear to be available to you. One is to request a reclassification based on the highly technical and complex nature of the work you perform and if that is not approved appeal the decision to the State Personnel Commission. The second option is to request a review of the classification specification on the grounds that it is too restrictive and that it discriminates against highly skilled personnel because they don't work in a unit large enough to require a leadworker. I feel the first course of action is the one that will get the fastest response

(please be prepared for it to take several months in either case). Vicki Kubisiak and I are available to assist you in processing a request to review your position for reclassification or to prepare a petition to have the Graphic Artist 3 classification reviewed.

Please let me know what you decide to do.

21. In or around April of 1987, appellant requested that Mr. Juhnke provide to her position descriptions of all Graphic Artist 3 positions in the UW-System and Mr. Juhnke provided these to appellant.

22. In early 1987, approximately one year after the effective date of her transfer, appellant prepared a position description for her position in the Office of News and Publications. This position description was modified by Mr. Anderson. This position description, as modified, was signed by appellant and Mr. Anderson on April 28, 1987, and describes a position appropriately classified at the GA 2 level.

23. In early 1988, appellant discussed with Mr. Juhnke the position descriptions for the Graphic Artists 3 positions at the UW-Milwaukee which did not function as lead workers (See Finding of Fact 10, above). As a result of this discussion, Mr. Juhnke contacted Mr. Martinelli to request additional information on these positions and DER's approval of their reclassification to the GA 3 level. Mr. Martinelli provided this information to Mr. Juhnke on or around April 27, 1988. Mr. Juhnke had not been aware of the GA 3 classification of these non-lead worker positions at UW-Milwaukee until this time. In a memo to Mr. Martinelli dated July 21, 1988, Mr. Juhnke recommended that appellant's position be reclassified to the GA 3 level based on the revised allocation pattern applied to these GA 3 positions at the UW-Milwaukee. In a memo to Mr. Juhnke dated September 7, 1988, Mr. Martinelli advised that, before appellant's position could be reclassified to the GA 3 level based on this revised allocation pattern, DER needed to be provided an updated position description for appellant's position, a formal reclassification request with attached justification, and a variety of work samples.

24. Appellant had submitted a draft of an updated position description approved by Mr. Anderson to Mr. Juhnke on or around May 16, 1988. Mr. Juhnke reviewed this position description, recommended several modifications based on his earlier audit of appellant's position, and returned it to appellant. The final draft of the updated position description, which incorporated many of Mr. Juhnke's recommended modifications, was signed by appellant and Mr.

Anderson on July 21, 1988, and received in the UW-Stevens Point personnel office accompanied by a written request for the reclassification of appellant's position to the GA 3 level on July 21, 1988. This position description and written reclassification request were forwarded to Mr. Martinelli along with descriptions of appellant's work some time after September 7, 1988. One of these descriptions was provided by Mr. Anderson and stated as follows, in pertinent part:

This position was elevated about two years ago when it was moved out of the Office of Educational Media Services and into the Office of News and Publications. The incumbent was given responsibilities of addressing university-wide image concerns as opposed to projects she handled earlier that were planned for more limited audiences.

* * * * *

Vollmer has been called upon in my office to step above her former role of creating things for specific publications to actually participate with high level administrators in planning far-reaching campaigns.

25. In a memo to Mr. Juhnke dated March 17, 1989, Mr. Martinelli recommended the reclassification of appellant's position to the GA 3 level with an effective date of July 31, 1988, rather than the effective date of October 1, 1986, recommended by Mr. Juhnke; and advised that an appeal of the July 31, 1988, effective date could be filed with DER. Such an appeal was filed by appellant. On or around April 20, 1989, DER approved the reclassification of appellant's position to the Graphic Artist 3 level with an effective date of July 31, 1988. Appellant filed a timely appeal of the effective date determination with the Commission.

26. The Wisconsin Personnel Manual, Chapter 332, §332.060(a), states as follows, in pertinent part:

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.

This written policy has been consistently applied by DER. The office within the UW-System with delegated authority to effect receipt of reclassification

requests filed by UW-Stevens Point employees is the UW-Stevens Point personnel office. July 31, 1988, is the first day of the first pay period following July 21, 1988.

27. It is not unusual for an employee of the UW-Stevens Point to file a reclassification request directly with the UW-Stevens Point personnel office. Appellant did not file a reclassification request with the UW-Stevens Point personnel office between 1981 and July 21, 1988.

CONCLUSIONS OF LAW

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

2. The appellant has the burden to prove that respondents erred in establishing July 31, 1988, as the effective date of the reclassification of her position from GA 2 to GA 3.

3. The appellant has failed to sustain this burden.

4. July 31, 1988, is the correct effective date of the reclassification of appellant's position from GA 2 to GA 3.

OPINION

In its Interim Decision and Order issued April 12, 1990, the Commission established the following issue in this appeal:

Whether the respondent's decision setting July 31, 1988, as the effective date for reclassifying the appellant's position was correct.

If not, what is the correct effective date after July 27, 1981.

The record clearly shows and it does not appear to be disputed by the appellant that a written request for the reclassification of her position was not submitted to the UW-Stevens Point personnel office until July 21, 1988. The determination of July 31, 1988, as the effective date of the reclassification of appellant's position was in keeping with DER policy as set forth in its personnel manual (See Finding of Fact 26, above), i.e., July 31 was the first day of the first pay period following July 21, 1988. The Commission has upheld as a general proposition the appropriateness of this approach to effective date. Grinnell v. DP, 81-101-PC (4/29/88); Locke et al. v. DHSS & DER, 90-0384-PC (7/11/91). However, the Commission has also recognized, in cases where

management misleads an employee into not filing a written reclassification request because of representations that something is being done about the employee's classification, the employer can be equitably estopped from relying on the formal policy.

The basic elements of equitable estoppel are: "(1) Action or inaction which induces (2) reliance by another (3) to his or her detriment." Gabriel v. Gabriel, 57 Wis. 2d 424, 204 N.W. 2d 494 (1973). In order for equitable estoppel to be applied against the state, "the acts of the state agency must be established by clear and distinct evidence and must amount to a fraud or manifest abuse of discretion." Surety Savings & Loan Association v. State, 54 Wis. 2d 438, 195 N.W. 2d 464 (1972). However, "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." State v. City of Green Bay, 96 Wis. 2d 1951, 291 N.W. 2d 508 (1980). The Supreme Court also has held that: "where a party seeks to estop the Department of Revenue and the elements of estoppel are clearly present, the estoppel doctrine is applicable where it would be unconscionable to allow the state to revise an earlier position." DOR v. Moebius Printing Co., 89 Wis. 2d 610, 179 N.W. 2d 213 (1979).

Warda v. UW-M & DER, 87-0071-PC (6/2/88), involved the application of equitable estoppel to a situation involving the determination of the effective date of a reclassification:

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.

A similar fact situation was present in Locke, infra, where the Commission stated:

Appellants were continually reassured by their supervisor that management was taking care of their classification concerns. It was not unreasonable to have assumed that what was required to have been done was being done.

* * * * *

If an employee has been led to believe by his or her supervisor that management supports a reclassification and is working on getting it done, why should the employee assume that this is a case where he or she should initiate a reclass request on his or her own behalf?

In Guzniczak and Brown v. DER, 83-0210, 0211-PC ((5/13/87), the Commission applied the doctrine of equitable estoppel and concluded as follows:

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. 79CV4320 (3/24/80), and the respondent is equitably estopped from asserting against appellants the requirement that reclassification requests be in writing.

The facts here are distinguishable. First of all, appellant was well aware, through her filing and prosecution of the 1981 reclassification request to the Commission level, what steps were required to get a reclassification request formally recognized and reviewed. Moreover, it should be noted that this 1981 reclassification request was pursued by appellant without the

support of her supervisor. Second, appellant was well aware, through written and oral communication with her supervisors prior to the filing of the 1988 request, that her desire to have her position reclassified had not been translated by them into a written reclassification request and was not being processed as such. This was acknowledged by appellant in her memo to Ms. Godfrey dated August 9, 1983 (See Finding of Fact 13, above); by Mr. Brisson in his memo to appellant dated January 14, 1985 (See Finding of Fact 14, above); by appellant in her memo to Ms. Williams dated December 10, 1985 (See Finding of Fact 16, above); and by Mr. Juhnke in his memo to appellant dated May 19, 1987 (See Finding of Fact 20, above).

Appellant contends that Dr. Ellery's representations to her some time prior to June 7, 1982, (See Finding of Fact 8, above) induced her not to file subsequent requests for the reclassification of her position. However, the record shows that Dr. Ellery retired in September of 1982, i.e., three months after the appeal of the denial of appellant's 1981 reclassification request was dismissed by the Commission and two months after the July 27, 1981, date stated in the issue for hearing of the instant appeal. In addition, the record shows that appellant stated a desire to be reclassified to Ms. Godfrey in August of 1983. It appears from this chronology that appellant did not attribute to Dr. Ellery's successor a similar attitude toward the reclassification of her position. As a result, the appellant has failed to show that the comments made to her by Dr. Ellery served in any significant way as an inducement to her not to pursue a request for the reclassification of her position.

Appellant also argues that the failure of her supervisors not to recognize the lead work duties she was performing induced her not to file requests for the reclassification of her position since she had been led to believe that lead worker duties were necessary for classification of a position at the GA 3 level. The problem with this argument is that none of appellant's supervisors during the relevant time period assigned her to serve as lead worker and they made this clear to her in their communications with her. It is management's right to assign duties and an employee may not usurp this right through self-assignment.

Appellant also contends that Mr. Brisson's assignment of lead work-type duties to Mr. Pohlkamp's position, closer supervision of appellant's work activities, and designation of appellant as a "troublemaker" induced her not to pursue a reclassification of her position. The record shows that, although Mr.

Brisson assigned some work flow monitoring duties to Mr. Pohlkamp, Mr. Pohlkamp's position was never designated as a lead worker and was never the subject of a reclassification request during the relevant time period; that appellant has failed to show that Mr. Brisson ever formally changed the level of supervision of appellant's position and that the questions Mr. Brisson asked of appellant appear to be questions every supervisor should ask to determine how unit resources are being used; and that Mr. Brisson served as appellant's supervisor for only a few months after the "troublemaker" statement was made and that appellant acknowledges that her subsequent supervisor was receptive to her desire to upgrade her position. The appellant has failed to show that it would have been reasonable for her to rely on any of the stated factors as an inducement not to file a request for the reclassification of her position.

Appellant contends that misrepresentations made to her by management and by the UW-Stevens Point personnel office that it was necessary to have been assigned lead work responsibilities in order to be classified at the GA 3 level induced her not to file a request for the reclassification of her position. However, the Commission does not agree that these communications constituted "misrepresentations." These communications correctly stated that the language of the specifications for the GA 3 classification requires "lead and technical work in the graphic arts." What appellant is actually contending is that management or the UW-Stevens Point personnel office failed to also advise her of the exceptions that DER makes to the language of a position standard when it creates an alternative allocation pattern, such as the exceptions carved out in 1981 for Graphic Artist positions at the UW-Milwaukee and the UW-LaCrosse, and that such failure induced her not to file a request for the reclassification of her position. However, it is unrealistic to impose upon program managers or campus personnel directors the duty to maintain up-to-date knowledge of each new interpretation of a position standard made by DER. The failure to acquire such knowledge and communicate it to appellant does not constitute fraud or a manifest abuse of discretion. Appellant also argues that §230.09(2)(a), Stats., requires that DER notify appointing authorities such as the UW-System whenever an alternative allocation pattern is developed. However, an alternative allocation pattern results not from a change in the language of the classification specifications, which would clearly require formal action and notice by DER pursuant to §230.09, Stats., but from an interpretation by DER of

the existing language of classification specifications where such language does not literally describe the duties and responsibilities of a given position. Such an interpretation is not required to be formally promulgated or disseminated by DER as a change in the classification specifications. Although, as appellant cites in her argument, §ER 2.04(1), Wis. Adm. Code, states that class specifications may include "allocation patterns of representative positions," this quoted language refers to the language stated in a classification specification describing specific (but not all) positions properly classified at that level based on the definitional language of the specifications. This language does not refer to interpretations by DER of the language of classification specifications resulting in an alternative allocation pattern. The Commission concludes that appellant has failed to show that the doctrine of equitable estoppel should be applied to the circumstances of this appeal.

Even if the Commission were to conclude that the doctrine of equitable estoppel should be applied here, the appellant would also have to show that her position was appropriately classified at the GA 3 level prior to 1988 in order to justify an earlier effective date. See Warda, *infra*. This appellant has failed to do. The record here paints a picture of a position which, although working on many of the same types of projects since 1981, fulfilled a much different role in regard to assigned projects, particularly after her transfer to ONP in 1986, i.e., appellant's position originally involved the production of difficult but not unique or advanced art work based on concepts developed by clients for projects of narrow scope, and ultimately evolved into a position characterized by the conceptualization, design, and production of unique and advanced art work for projects of greater scope and complexity. While it is not apparent from the record when this metamorphosis was finally achieved, the appellant has not shown that she performed work that would have justified movement to the GA 3 level prior to her transfer to ONP in 1986.¹ It is clear from the record that the scope and complexity of appellant's job changed after her transfer based both on her testimony and that of Mr. Juhnke. In fact, Mr. Juhnke

¹ The fact that another employe, Mr. Pohlkamp, shared the work assigned to the EMC with appellant and that after appellant's transfer to ONP she was the only graphic artist in the office impact both on the level and complexity of work performed and the independence with which appellant operated in ONP versus EMC.

recommended an early effective date (October 1, 1986) based on the duties and responsibilities of appellant's position in ONP.

The Wisconsin Administrative Code requires that an employee cannot be regraded to a higher classification level (in this case GA 3) until they have "performed the permanently assigned duties and responsibilities for a minimum of 6 months." (ER 3.015(3)(b)) Applying this rule to the instant case would mean that appellant would have had to have started performing the higher level duties and responsibilities a majority of the time almost from the date of her transfer in order to make October 1, 1986 a cognizable effective date. Appellant's testimony was that she took many of her projects with her to the position in ONP and she has not shown that these projects were at the GA 3 level or that they constituted less than a majority of her time. Additionally, the Commission notes that movement of an employee to a position at one classification and then to almost immediately assign the employee higher level duties and responsibilities leaves open questions regarding how the position was filled and the appropriateness of the classification level at the time it was filled.

The effective date of July 21, 1988, established for reclassification of appellant's position means that the higher level duties and responsibilities would have had to have been performed since at least January of 1988. If the Commission were to assume that the April 28, 1987, position description identifies GA 3 level work as appellant argues, the "6 month" rule would mean the higher level work had been performed in October 1986. However, this scenario would still result in an effective date on or after April 28, 1987.


Although the appellant disputes the accuracy of the 1987 position description, she has failed to specify in any detail her basis for disputing its accuracy which prevents the Commission from assessing the nature of her duties and responsibilities at that time other than as they are represented in this position description signed both by appellant and her supervisor. This coupled with the fact that more than cosmetic revisions occurred to the May 1988 position description, which subsequently served as the basis for reclassification (See Finding #24), indicate that changes in appellant's duties and responsibilities had occurred since the April 28, 1987, position description was written. The Commission concludes that appellant has failed to show that she was performing GA 3 level duties prior to January 1988.

Appellant also asks the Commission to reconsider its Interim Decision and Order issued April 12, 1990. Based on the record before it, the Commission concludes that such Interim Decision and Order was properly decided.

ORDER

The action of respondents is affirmed and this appeal is dismissed.

Dated: March 19, 1993 STATE PERSONNEL COMMISSION


LAURIE R. McCALLUM, Chairperson

LRM/GFH:rcr


DONALD R. MURPHY, Commissioner


GERALD F. HODDINOTT, Commissioner

Parties:

Katherine Vollmer
2249 Main Street
Stevens Point, WI 54481

Katharine Lyall
President, UW
1700 Van Hise Hall
1220 Linden Drive
Madison, WI 53706

Jon Litscher
Secretary, DER
P.O. Box 7855
Madison, WI 53707

**NOTICE
OF RIGHT OF PARTIES TO PETITION FOR REHEARING AND JUDICIAL REVIEW
OF AN ADVERSE DECISION BY THE PERSONNEL COMMISSION**

Petition for Rehearing. Any person aggrieved by a final order may, within 20 days after service of the order, file a written petition with the Commission for rehearing. Unless the Commission's order was served personally, service occurred on the date of mailing as set forth in the attached affidavit of mailing. The petition for rehearing must specify the grounds for the relief sought and supporting authorities. Copies shall be served on all parties of record. See §227.49, Wis. Stats., for procedural details regarding petitions for rehearing.

Petition for Judicial Review. Any person aggrieved by a decision is entitled to judicial review thereof. The petition for judicial review must be filed in the appropriate circuit court as provided in §227.53(1)(a)3, Wis. Stats., and a copy of the petition must be served on the Commission pursuant to §227.53(1)(a)1, Wis. Stats. The petition must identify the Wisconsin Personnel Commission as respondent. The petition for judicial review must be served and filed within 30 days after the service of the commission's decision except that if a rehearing is requested, any party desiring judicial review must serve and file a petition for review within 30 days after the service of the Commission's order finally disposing of the application for rehearing, or within 30 days after the final disposition by operation of law of any such application for rehearing. Unless the Commission's decision was served personally, service of the decision occurred on the date of mailing as set forth in the attached affidavit of mailing. Not later than 30 days after the petition has been filed in circuit court, the petitioner must also serve a copy of the petition on all parties who appeared in the proceeding before the Commission (who are identified immediately above as "parties") or upon the party's attorney of record. See §227.53, Wis. Stats., for procedural details regarding petitions for judicial review.

It is the responsibility of the petitioning party to arrange for the preparation of the necessary legal documents because neither the commission nor its staff may assist in such preparation.