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MICHELLE ABING, *

Appellant, *

v. *

President, UNIVERSITY OF *

WISCONSIN SYSTEM (Superior), *

Respondent. *

Case No. 89-0142-PC *

* * * * *

DECISION
AND
ORDER

Nature of the Case

This is an appeal of the starting pay offered to appellant as part of an offer to her of a Program Assistant 2 (PA 2) position at the University of Wisconsin-Superior. The parties waived their right to an evidentiary hearing and submitted the case to the Commission on the basis of stipulated facts and written briefs. The final brief was filed on May 8, 1990.

Findings of Fact

The parties stipulated to the following facts:

(1) Appellant Michelle Abing has been, at all times relevant to this appeal, employed in the Wisconsin classified civil service as a Program Assistant (PA) 1 with the Department of Health and Social Services at Gordon Correctional Center, serving a permissive probationary period. Her position as a PA 1 is in pay range 8, with an hourly salary of \$11.526.

(2) Ms. Abing was previously employed as a Motor Vehicle Supervisor 6, in pay range 13, with the Department of Transportation. Her hourly rate of pay in this position was \$12.455. Ms. Abing resigned this position in July, 1988.

(3) On August 26, 1989, while still on permissive probation as a PA 1 at the Gordon Correctional Center, Ms. Abing took a civil service examination for the PA 2 classification level. She received a score of 85.56, and her name was placed on the PA 2 register of certified eligibles for employment. In October, 1989, a PA 2 position with UW-Superior Division of Education became available. Because Ms. Abing was on the DER register through

the examination process, she was certified for the UW-Superior position. She was interviewed on October 23, 1989 by Amy Sharpe, PA 2, and Michael Wallschlaeger, Division of Education Chairman.

(4) Dr. Wallschlaeger determined, following the interview of Ms. Abing, that he was interested in employing her. He contacted her on October 25, 1989. Dr. Wallschlaeger did not, however, know what salary he could offer Ms. Abing, and he suggested she call the UW-Superior personnel office for that information.

(5) On October 26, 1989, Larry Selin, UW-Superior Director of Personnel, informed Ms. Abing by telephone that the salary for the PA 2 position with Dr. Wallschlaeger would be \$10.00 per hour. Mr. Selin advised appellant that this pay rate was chosen because it met the university's budgetary needs, because it was consistent with the pay rates of other PA 2 positions on the campus, and because at that rate she would not be receiving a higher wage than other PA 2 positions on the campus. Based on the rate of pay offered, Ms. Abing declined the PA 2 position offer.

(6) UW-Superior had received a reinstatement request from Ms. Abing on April 24, 1989.

(7) If UW-Superior had employed Ms. Abing in the PA 2 position on a promotional basis, she would have received a three-step pay increase, to \$12.336 per hour.

(8) On November 15, 1989, Ms. Abing filed a timely appeal to the Personnel Commission. She contends, in essence, that respondent's decision not to offer her a promotional pay increase as part of the offer of employment was illegal or an abuse of discretion.

Conclusions of Law

1. The Commission has jurisdiction over this matter pursuant to §230.44(1)(d), Stats.
2. Appellant has the burden to prove that respondent's action in offering her a starting salary of \$10.00 per hour as part of the offer of the subject PA 2 position was illegal or an abuse of discretion.
3. Appellant has failed to sustain this burden.

Decision

Appellant's sole contention is that the subject appointment to the PA 2 position which she was offered by respondent should have been regarded as a promotional appointment and she should have been offered a promotional pay increase as a result.

Section ER 1.02(36), Wis. Adm. Code, defines a "promotion" as follows, in pertinent part:

- (a) the permanent appointment of an employe to a different position in a higher class than the highest position currently held in which the employe has permanent status in class;

Section ER-Pers 14.02, Wis. Adm. Code, provides as follows:

- (1) The appointment of an employe to a different position in a higher classification while the employe is serving a probationary period on an original or promotional appointment shall be considered a new original appointment or new promotional appointment, respectively.

- (2) The appointment of a former employe who previously had permanent status in class to a position in a higher classification than the employe's former class, after a break in service not covered by leave of absence provisions of ch. ER 18 or a collective bargaining agreement, or the layoff provisions of ch. ER-Pers 22 or a collective bargaining agreement, shall be considered an original appointment.

- (3) The permissive appointment of an employe to a different position in a higher class than the highest position currently held in which the employe has permanent status in class, when the employe has reinstatement eligibility to the higher class, is a reinstatement, except as provided in sub. (5)

- (4) The appointment of an employe to a different position in a higher class than the highest position currently held in which the employe has permanent status in class, when the employe has restoration rights to the higher class, is a restoration.

- (5) The permissive appointment of an employe to a different position in a higher class than the highest position currently held in which the employe has permanent status in class, when the employe has been certified from a register as eligible for appointment, is a promotion when the position is in a class, class subtitle or progression series in which the employe has not previously attained permanent status in class. Such appoint-

ments are reinstatements when the employe is appointed on the basis of qualifying for the position other than as a result of being certified as eligible for appointment from a register.

(6) For provisions relating to the appointment of persons or employes to positions classified as trainee, see s. ER-Pers 6.12.

Appellant contends that §ER-Pers 14.02(5), Wis. Adm. Code, governs the transaction under consideration here and, as a result, the transaction should have been regarded as a promotion. However, §14.02(5) applies to the "permissive appointment of an employe to a different position in a higher class than the highest position currently held in which the employe has permanent status in class. (emphasis added) Therefore, in order to invoke the application of §14.02(5), appellant must show that she had permanent status in class in the PA 1 position she held at the time she was offered the subject PA 2 position. Section ER 1.02(23), Wis. Adm. Code, defines "permanent status in class" as follows:

"Permanent status in class" means the rights and privileges attained upon successful completion of a probationary period required upon an appointment to permanent, seasonal or sessional employment.

It was stipulated by the parties that appellant was, at the time she was offered appointment to the subject PA 2 position, still serving a probationary period in the PA 1 position she held. (See Finding of Fact 1, above). As a consequence, appellant had not attained permanent status in class in this PA 1 position and respondent's offer to appoint her to the subject PA 2 position could not, therefore, qualify as an offer of a promotion within the meaning of §ER-Pers 14.02(5), Wis. Adm. Code, or §ER 1.02(36), Wis. Adm. Code.

Respondent acknowledges that the transaction under consideration here could have been regarded as a reinstatement. Pay upon reinstatement is governed by §ER 29.03(6), Wis. Adm. Code, which keys the minimum pay upon

reinstatement to the minimum of the pay range for the position if the employee is placed on probation or to the PSICM level of the pay range if the employee is not placed on probation. Since the parties have stipulated that the \$10.00 per hour pay rate offered by respondent to appellant was consistent with the pay rate of other PA 2's on the UW-Superior campus, the Commission will assume that this pay rate was not less than the minimum or the PSICM level of the pay range for the PA 2 classification and that, as a result, respondent offered appellant a rate of pay consistent with the rate required by §ER 29.03(6) for a reinstatement.

Appellant has failed to show that respondent acted illegally or abused its discretion in offering appellant a starting rate of pay of \$10.00 per hour as part of its offer of the subject PA 2 position.

Order

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

Dated: June 15, 1990 STATE PERSONNEL COMMISSION

Laurie R. McCallum
LAURIE R. McCALLUM, Chairperson

LRM:gdt/2

Donald R. Murphy
DONALD R. MURPHY, Commissioner

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