

respondents' reply on November 22, 1995, and appellant's reply on November 27, 1995. Neither party disputed the additional facts.

The stipulated facts are shown below. The information in brackets was added by the Commission for clarification of matters evident from the face of exhibits attached to the stipulation. A section follows entitled "Additional Undisputed Facts", which includes information from an affidavit (with attachments) submitted by respondents; as well as information provided in appellant's written arguments. As noted above, the information recited from these additional sources is undisputed.

STIPULATED FACTS

1. Mr. Enghagen began permanent employment with the Department of Public Instruction (DPI) as an Education Specialist 4 (PR 13-06) on May 27, 1984.
2. Mr. Enghagen was reclassified to an Education Specialist 5 (PR 13-07) on June 2, 1991.
3. On June 22, 1994, Mr. Enghagen submitted to Dean Gagnon [Director of the Bureau for Vocational Education] a request for reclassification to Education Program Specialist. His request included a position description written by Mr. Enghagen, written reasons for the request, and an unsigned Executive Approval Form. [These documents are attached to the fact stipulation as Exh. A.] Copies of this request were directed [by Mr. Enghagen] to Katherine Knudson [Director of the Bureau for Human Resource Services], Michael Moore [Executive Director of "SPEIC #1 in WEAC"], Eunice Bethke [Leader of the Instructional Strategies Team] and Pauli Nikolay [Assistant State Superintendent in the Division for Learning Support - Instructional Services].
4. At the time of Mr. Enghagen's request, his hourly salary was \$16.667 per hour.
5. Mr. Enghagen was reallocated from Education Specialist 5 to Education Specialist-Senior (PR 13-73) on June 26, 1994.
6. On June 26, 1994, Mr. Enghagen received an increase from \$16.667 per hour, to \$17.985 per hour as a result of the grid implementation.
7. Following Mr. Enghagen's request for reclassification, Dr. Eunice Bethke, his first-line supervisor, wrote a memo to Katherine Knudson of

- the Human Resources Office on September 28, 1994, recommending the reclassification of Mr. Enghagen's position. [This letter is attached to the fact stipulation as Exh. B.]
8. Dr. Bethke's September 28, 1994, memo included a position description signed by Dr. Bethke and written reasons for the reclassification recommendation. [This position description is attached to the fact stipulation as Exh. C.]
 9. On September 30, 1994, Pauli Nikolay, Assistant State Superintendent/ Division Administrator, signed the Executive Approval Form. [This form is attached to the fact stipulation as Exh. D.]
 10. The first pay period following September 28, 1994, began on October 2, 1994.
 11. Mr. Enghagen's position was reclassified to Education Program Specialist (PR 13-82) effective October 2, 1994, and he received an increase from \$17.985 per hour to \$18.318 per hour.
 12. If the effective date of Mr. Enghagen's reclassification should have been June 26, 1994, as he alleges, he would have received an increase to \$21.227 per hour as a result of the grid implementation and contract provisions.

ADDITIONAL UNDISPUTED FACTS

13. Effective April 22, 1993, Secretary Litscher of the Department of Employment Relations (DER), delegated part of DER's reclassification authority to DPI's Bureau for Human Resources. Such delegation included effective receipt authority for reclassification requests.
14. DPI's Bureau for Human Resources received its copy of the materials described in par. 3 above, on or about June 22, 1994.
15. As noted in par. 2 above, Mr. Enghagen had been reclassified in 1991. His statement that he followed the same procedures for the 1991 reclassification request as he did in 1994, was undisputed by respondents. He submitted the 1991 reclassification request to his Bureau Director by letter dated May 31, 1991, which was received by the personnel office the same day (per Attachment 2 of Mr. Enghagen's brief dated Oct. 4, 1995). Also undisputed is that Mr. Enghagen's supervisor signed the revised PD submitted with his 1991

reclassification request on June 1, 1991, one day prior to the effective date assigned to the transaction.¹

16. Mr. Enghagen's supervisor, Eunice Bethke, confirmed that there was no intent on the part of management to reclassify Mr. Enghagen's position prior to her receipt of his reclassification request on June 22, 1994. (See attachment to "Statement of Appellant, Bob Enghagen", dated September 5, 1995.)²
17. By memo dated May 12, 1995, Katherine Knudson provided Mr. Enghagen with an explanation of the October 1994, effective date for his reclassification request. The memo referenced Ch. 332 of DER's Classification and Compensation Manual as authority. There is no reference to any written DPI authority. The full text of her memo is shown below.

We have reviewed the circumstances regarding the reclassification of your position to determine the appropriate effective date. Chapter 332 of the Classification and Compensation Manual written by the Department of Employment Relations states reclassification will be effective at the beginning of the pay period following receipt of all materials necessary to begin the reclassification process. Those materials are a position description signed by both the employe and the employer indicating the duties assigned by management, the Executive Approval form and an analysis of how the position has changed over time.

The Bureau for Human Resource Services received a copy of a memo from you to Dean Gagnon dated June 22, 1994 in which you requested a review of your position. It was not until September 28, 1994 that your supervisor, Eunice Bethke, forwarded to us a new position description and the necessary analysis of change. Pauli Nikolay's signature on the Executive Approval Request form was obtained on September 30, 1994.

Following the Department of Employment Relations guidelines, the effective date of the reclassification was properly determined to be October 2, 1994. Unfortunately, the amount of the increase

¹ The wording of this paragraph was changed to accurately reflect the undisputed facts.

² The finding in paragraph 17 also is undisputed by the parties. The information is added to the Commission's final decision as an additional relevant fact.

you were to receive as a result of the reclassification and regrade was improperly calculated resulting in an overpayment of back wages. The proper hourly rate of pay after reclassification should have been \$18.318. Your payroll documents have been updated to reflect this corrected amount. It will be necessary for you to repay \$2,575.04 which was incorrectly paid to you as back wages. Helen Gullickson of our payroll office will work with you to set up a mutually agreeable repayment schedule.

We are very sorry for the error which resulted in the overpayment. Please accept our apologies for the inconvenience this has undoubtedly caused you. If you have other questions regarding the effective date or the hourly rate, please contact me.

18. DER has a Classification and Compensation Manual which contains a chapter (Ch. 332) explaining how the effective date of reclassifications are determined. DPI relied on DER's document in determining the effective date for Mr. Enghagen's reclassification request. The pertinent sections from the DER Manual are shown below. The noted emphasis appears in the original document.

332.060 EFFECTIVE DATE POLICY dated 3/83

A. Regrades Resulting From Reclassification Actions and Reallocation Actions under ER-Pers 3.01 (1)(e), (f) and (g), Wis. Adm. Code.

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. However, a later effective date may be designated by the appointing authority when the conditions which warrant the reclassification/regrade (e.g., attainment of required education or experience, performance of duties and responsibilities for six months, etc.) will not occur until such later date.

Effective receipt of a request may be made by an 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.
 3. If a position incumbent has attained the specified education or experience required by the appointing authority for regrade in a position identified in a classification series where the class levels are differentiated on that basis; the documentation, as determined by the appointing authority, must be submitted by the incumbent and/or appropriate supervisor.
19. The brief filed by respondents in relation to this motion mentioned the existence/content of DPI bulletin #53.74, relating to reclassification requests. Mr. Enghagen searched for a copy of the bulletin in the Personnel Policies and Procedures binders of the individuals listed below. None of the binders had a copy of the referenced bulletin.

Bob Enghagen, Education Program Specialist
Marilyn Bachim, Program Assistant III
Marlene Klug, Administrative Asst. IV
Eunice Bethke, appellant's supervisor
Dean Gagnon, Division Director
Pauli Nikolay, Asst. State Superintendent.

20. The Department of Public Instruction (DPI) issued bulletin #53.74 on November 5, 1980, which sets forth the procedures for requesting reclassification. Relevant portions of the bulletin are recited below.

I. Policy

* * *

4. Requests for position reclassification may be submitted at any time. Both delegated and nondelegated reclassification actions will be made effective at the start of the second pay period following receipt of all properly completed reclassification documents.
5. The request for reclassification review usually does not include a recommendation from the supervisor for a specific classification level, since that is the function and responsibility of the Personnel Office and/or the State Division of Personnel. . .

* * *

II. Procedures

A. Immediate Supervisor

1. When the immediate supervisor determines a situation exists which clearly warrants reclassification review, the following steps should be taken:
 - a. Review the current position description with the employee and update it to reflect current responsibilities and duties.
 - b. Develop a memo to his/her immediate supervisor and division administrator. The memo should include information on the historical development of the position, specifying the changes in the duties and responsibilities of the position that have occurred, the time period in which they occurred, and identifying where in the new position description these changes may be found. Include an up-to-date work unit organization chart and a supervisory analysis form if applicable.
2. If a reclassification review is requested by the employee, the immediate supervisor should:
 - a. Review and discuss the materials submitted with the employee. If approved, forward the reclassification request informational memo and supplemental materials to his/her immediate supervisor and division administrator within ten working days.
 - b. If reclassification is not approved, send written reasons for disapproval within ten working days to the person originating the request with a copy to the Personnel Office.

B. Division Administrator

1. Review the request for reclassification.
 - a. If approved, forward the reclassification request to the Personnel Office for action.
 - b. If not approved, send written justification for disapproval to the person originating the request with a copy to the Personnel Office.
2. Written approval or disapproval at the division level must be given within ten working days of receipt of the reclassification request.

C. Personnel Office

1. A personnel specialist will review the approved request. . . .
* * *

D. Employee

- The following steps should be followed when an employee requests a review of his/her position for reclassification consideration:
- a. update the position description to reflect the current responsibilities and duties.
 - b. Develop a memo to the immediate supervisor. The memo should include information on the historical development of the position, specifying changes in duties and responsibilities that have occurred, the time period in

- which they occurred, and identifying where in the new position description these changes may be found.
- c. Submit materials to the immediate supervisor for review.
 - d. If the request for reclassification review is denied by the supervisory staff, a written grievance may be filed on designated grievance forms as specified in DPI policy and procedure bulletin 53.40.

BRIEF SUMMARY OF THE PARTIES' ARGUMENTS

Respondents argue that the DER and DPI manual sections shown above result in an effective date of October 2, 1994, as the first pay period following September 28, 1994 -- the date upon which Mr. Enghagen's supervisor submitted a signed PD to DPI personnel. (See pars. 7 and 8 above.)

Respondents argue that the PD previously submitted by Mr. Enghagen on June 22, 1994, was insufficient because it was unsigned by his supervisor and because the time percentages for tasks changed from the PD submitted by Mr. Enghagen as compared to the PD submitted several months later by his supervisor. Respondents further contend the circumstances presented could not be considered as an employe-initiated reclassification request because (contrary to the conditions required in s. 332.060(A)2., of DER's manual), Mr. Enghagen's supervisor took action (albeit not until September 28, 1994). Respondents contend these circumstances warrant a conclusion that DPI initiated the reclassification request on September 28, 1994. Mr. Enghagen maintains he initiated the reclassification by his request dated June 22, 1994. (See par. 3 above.)

DISCUSSION³

Appellant, not his supervisors, initiated the subject 1994 reclassification request. The record fails to show that respondents did not follow the provisions relating to employee-initiated requests of either the DER Classification and Compensation Manual or the applicable DPI bulletin in establishing the effective date for appellant's reclassification. Although the provisions of these two documents relating to the processing of employee-initiated reclassification requests are not identical, appellant has failed to show that this lack of identity affected in any way his filing or monitoring of

³ The wording of the Discussion section was changed to reflect the legal analysis supported by the Commission.

the subject reclassification request. In fact, the record does not show that he consulted either of these sources, that he attempted to consult either of these sources, or that he made inquiry of respondents relating to the provisions of either of these sources.

One of the essential underpinnings of appellant's argument here is that, because the effective date of his 1991 reclassification was keyed to the pay period immediately following the submission of his reclassification request to his supervisor but the effective date of his 1994 reclassification was keyed to a pay period several months removed from the date of submission, a necessary conclusion is that respondent followed a different procedure in 1994 for establishing the effective date of appellant's reclassification than it did in 1991. However, under the facts present here, this is not a necessary conclusion. Respondents assert that, consistent with DPI's usual procedure, the effective date is keyed to the date that the necessary reclassification request materials, including a position description signed by the supervisor, are received by the DPI personnel unit; and that, in 1991, these materials were received by the personnel unit within a day of appellant's submission of his request to his supervisor, but that, in 1994, these materials were not received for several months. Appellant has not successfully rebutted this assertion. Appellant has failed to show that this was not DPI's usual procedure; that this procedure was not followed in 1991 and 1994; or that it was not possible or believable that the process of approving a revised position description or a request for reclassification could take one day in 1991 but three months in 1994. It should also be noted that, had appellant felt that an unreasonably long period of time had passed without learning the outcome of his reclassification request, he could have inquired as to its status or, consistent with applicable procedures, forwarded his request directly to DPI's personnel unit. The record does not show that appellant did this.

The elements of equitable estoppel are not present here.⁴ The record does not show that appellant was misled to his detriment by action or inaction

⁴ The equitable estoppel standard applied in the proposed decision and order was not compatible with the more stringent standard established by Wisconsin courts. See, State v. City of Green Bay, 96 Wis.2d 195, 201-3, 291 N.W. 2d 508 (1980), Department of Revenue v. Moebius Printing Co., 89 Wis.2d 610, 638-41, 279 N.W. 2d 213 (1979) and City of Madison v. Lange, 140 Wis.2d 1, 7, 408 N.W.2d 763 (1987).

of DPI. Appellant made certain assumptions based on the experience he had in 1991 in submitting a reclassification request and relied on these assumptions in filing his 1994 request. These assumptions, which turned out to be incorrect, are attributable not to respondents but to appellant, and respondents should not be held accountable for them.

ORDER

The respondents' action of setting October 2, 1994, as the effective date for the reclassification of Mr. Enghagen's position is affirmed and this case is dismissed.

Dated February 15, 1996.

STATE PERSONNEL COMMISSION


LAURIE R. McCALLUM, Chairperson


DONALD R. MURPHY, Commissioner


JUDY M. ROGERS, Commissioner

JMR

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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 (except an order arising from an arbitration conducted pursuant to §230.44(4)(bm), Wis. Stats.) 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.

Pursuant to 1993 Wis. Act 16, effective August 12, 1993, there are certain additional procedures which apply if the Commission's decision is rendered in an appeal of a classification-related decision made by the Secretary of the Department of Employment Relations (DER) or delegated by DER to another agency. The additional procedures for such decisions are as follows:

1. If the Commission's decision was issued after a contested case hearing, the Commission has 90 days after receipt of notice that a petition for judicial review has been filed in which to issue written findings of fact and conclusions of law. (§3020, 1993 Wis. Act 16, creating §227.47(2), Wis. Stats.)

2. The record of the hearing or arbitration before the Commission is transcribed at the expense of the party petitioning for judicial review. (§3012, 1993 Wis. Act 16, amending §227.44(8), Wis. Stats.)

2/3/95