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RICHARD F. STEBER,

Appellant,

v.

Secretary, DEPARTMENT OF  
HEALTH AND SOCIAL SERVICES, and  
Secretary, DEPARTMENT OF  
EMPLOYMENT RELATIONS,

Respondents.

Case No. 96-0002-PC

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DECISION  
AND  
ORDER

This matter is before the Commission on the following issue for hearing:

Whether respondents' decision with respect to the effective date of the reclassification to [Youth Counselor] 2 was correct.

In order to be reclassified from Youth Counselor (YC) 1 to 2, an employe of respondent Department of Health and Social Services (DHSS) must have been employed a minimum of two years as a YC 1, must have completed 40 hours of classroom training, must have performed at the YC 2 level for a minimum of 6 months, and, as part of a correspondence course, must pass an open book examination conducted under the auspices of the American Correctional Association (ACA). All YC 1s are informed of these requirements during their initial orientation period.

Appellant was first employed at Ethan Allen School as a YC 1 on July 6, 1993, he completed the 40 hours of classroom training in May of 1995 and took the ACA exam in approximately late June and early July of 1995 but did not receive a passing grade. The ACA notified DHSS of the exam results in August of 1995, appellant took the exam a second time, his answer sheet was submitted to ACA in September and the results were graded. DHSS and appellant were notified that appellant had passed the exam on his second attempt. DHSS received this notification on or about October 16th. Respondents reclassified the appellant's position to the YC 2 level effective October 29, 1995, which was the be-

ginning of the pay period following notification that appellant had met all the reclassification requirements.

The appellant contends that he should have been reclassified as of July 6, 1995, exactly two years after his hire as a YC 1. This contention is inconsistent with the various reclassification requirements set forth above. The testimony established that the respondents' policy was to not reclassify a position until all of the requirements had been successfully completed. The exceptions to this policy were when 1) the employer had been negligent in providing the ACA course and exam materials to an employe who then successfully completed that exam, or when 2) the employer had been negligent in forwarding the completed exam materials to the ACA. If either of these two circumstances were to occur, they would result in a delay in the procedure attributable to the conduct of respondents. Testimony established that it was up to the employe to request the ACA course and exam materials, although the Ethan Allen School training officer often did remind the employes of the requirement.

It is clear that had the appellant passed the ACA examination on his first attempt, the effective date of the reclassification of his position would have been earlier than October 29, 1995. However, the appellant was unsuccessful when he first took the exam and he was required to take it a second time. Although he passed the test on the second attempt, the procedure resulted in a delay in the effective date of the reclassification.

The appellant could have requested the ACA course and exam materials on an earlier date, such as six months prior to July of 1995, so that if he did fail the exam on the first attempt and passed it on the second, he still could have completed all of the reclassification requirements by July 6th, the two year anniversary of his hire date. He did not do so.

The appellant has failed to meet his burden of establishing that October 29, 1995 was not the correct effective date for the reclassification of his position from YC 1 to 2.

At the hearing in this matter, the appellant also advanced the contention that even if he was properly denied reclassification of his position until October 29, 1995, respondent improperly calculated his rate of pay for the period before the reclassification took effect. Respondent specifically acceded to consideration of this second issue, even though the appellant had failed to

identify it during the period specified in the prehearing conference report dated March 21, 1996.

Even though the parties may wish to have the Commission decide the issue relating to appellant's rate of pay, it is outside of the Commission's authority. A decision to change an employee's rate of pay is not among those personnel actions listed in §230.44(1), Stats., that are appealable to the Commission when there is no reduction in base pay for reasons of discipline<sup>1</sup> and the pay rate decision is not part of the initial hiring process.<sup>2</sup> The Commission has repeatedly held that it lacks the authority or jurisdiction to consider issues relating to an employee's rate of pay under these circumstances. Bauer v. DATCP & DER, 91-0128-PC, 4/1/92; Garr et al. v. DER, 90-0177-PC, etc., 1/11/91; Marquardt v. DHSS & DER, 89-0106-PC, 10/4/89; Olson v. DHSS, 88-0087-PC, 12/5/88; Thorn v. DHSS, 81-459-PC, 6/9/83. Compare, Schmidt v. DER, 89-0058-PC, 2/26/91; Dusso v. DER & DRL, 94-0490-PC, 12/22/94; Meschefske v. DHSS, 88-0057-PC, 7/13/88. Appellant's position is also within a bargaining unit,<sup>3</sup> and §111.93(3), Stats., would preclude any exercise of jurisdiction by the Commission in this area. Heath & Mork v. DOC & DER, 94-0550-PC, 12/22/94

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<sup>1</sup>Section 230.44(1)(c), Stats.

<sup>2</sup>Section 230.44(1)(d), Stats.

<sup>3</sup>The exhibits offered by the parties relating to the appellant's rate of pay include portions of various collective bargaining agreements.


ORDER

Respondents' decision setting October 29, 1995, as the effective date for the reclassification of the appellant's position from Youth Counselor 1 to 2 is affirmed and this appeal is dismissed.

Dated: June 25, 1996 STATE PERSONNEL COMMISSION

  
LAURIE R. MCCALLUM, Chairperson

KMS:kms  
K:D:Merits-eff date (Steber)

  
DONALD R. MURPHY, Commissioner

  
JUDY M. ROGERS, Commissioner

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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