

STATE OF WISCONSIN

BEFORE THE STATE BOARD OF PERSONNEL

Wisconsin State Employees Association,)
Council 24, AFL - CIO, and others,)
Appellants,)

vs.)

MEMORANDUM DECISION

C. K. Wettengel, Director, Bureau of)
Personnel,)
Respondent.)

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These are appeals by a number of state employees claiming that they have not been paid the full salary to which they were entitled under the 1969-1970 Pay Plan as a consequence of action taken by the Respondent Director in ordering salary adjustments under said plan.

WSEA, Council 24 has joined with these employees and has taken this appeal on behalf of its members.

This s.16.05 Wis. Stats. appeal was presented on the briefs of the parties. In order to reach this decision it has been necessary for the Board to go beyond the contents of the briefs. It has availed itself of foundation materials, reviewed pertinent documentation and has recalled its own participation in the subject process.

It should be noted that in this administrative review, the Board is not only passing judgment on the Director's action, but as well re-examining matters with which it always has had intimate knowledge and in which it has had a measure of direct participation.

techniques by which the system operates. For this reason, much of the content of the decision will treat with materials that afford background.

Every employe in the state's classified service is an incumbent of a well described position. Accordingly, we deal with positions and not people. Positions are placed in one of several salary schedules. Schedule 1 embraces "general employment": Schedule 3 embraces "crafts, labor and domestic". There are other schedules for teachers, lawyers and physicians. Most, if not all, of the positions involved in this appeal are in Schedule 1. The application is identical, so, for simplicity the Board will generally confine its discussion to Schedule 1.

Each position in the schedule is assigned to a salary range. In the schedule there are 23 salary ranges. Each salary range contains a minimum salary at which a new employe usually enters (hereafter this will be called "Min."). The range contains a fixed amount an employe is paid when he satisfactorily completes probation and becomes a permanent employe. (This is called "Permanent Status In Class") and will hereafter be referred to as "PSICM"). The range also contains a maximum salary to which the employe as an incumbent may progress if accorded periodic merit increases in pay. The salary ranges are not interlocked and do contain a large measure of overlapping. It is not unusual for an employe in a position in a lower salary range to be earning a larger salary than an employe in a higher salary range.

For demonstration, look at salary ranges 1-6 and 1-7 as they existed prior to June 29, 1969.

	Min.	PSICM	Max.
Salary Range 1-6	\$450	\$475	\$586
Salary Range 1-7	\$492	\$517	\$640

Pursuant to statute, each fiscal year a sum is made available to each department or agency to give deserving employes a merit increase in pay. The sum is sufficient to give each employe a merit increase of 80% of one step (a step in range 1-6 being \$25). Merit increase cumulate and added to PSICM establish an employe's base pay.

Hence, many employes in salary range 1-6 had moved off of PSICM and even reached the Max. Many in salary range 1-6 obviously were being paid more than the PSICM of salary range 1-7.

The assignment of positions to salary ranges is a process of pricing of positions. Because of changes in the market place, changes of duties and responsibility of positions and changes in the program significance of positions, this matter of assignment is an ongoing process. The responsibility for this assignment is placed on the Director by statute and he works it up by surveys in depth usually of groups or series of positions. If he should conclude that a position should be repriced, either upward or downward, the Director recommends a range change to the Board. If the recommendation is approved by this Board, it is immediately effective if funding of the change is available. If funding is not available, implementation of the change is delayed until the Board On Government Operations of the Legislature (BOGO), if the legislature is not in session, or the Joint Committee on Finance of the legislature, if the legislature is in session, makes funds available by registering its approval.

These recommendations for changes in range assignment are made by the Director at varying times. He has come in immediately at the start of a biennium, in the middle or near the end. There is no pattern.

Suppose that there be no question as to what valuation of salary ranges was, and the Director obtained approval of reassigning a position from salary range 1-6 to salary range 1-7 as the same are above set forth, what would be the effect of that reassignment on an incumbent employe's salary?

If he were on probation, he would move from \$450 per month to \$492; if he were a permanent employe making less than \$517; the Psicm of range 1-7, he would move up to \$517; if he were making \$517 or more, there would be no change, but only the potential to go to \$640, the Max. of salary range 1-7.

According to statute, every biennium the compensation of classified state employees becomes subject to change. Under the law, the Director proposes a plan. He conducts a public hearing on his proposals and then submits them to this Board. If this Board approves the proposals, they are submitted to the Joint Committee on Finance of the Legislature. If approved by the Joint Committee, it becomes the Pay Plan for the next biennium. The proposals are purely the Director's. This Board and the Joint Committee cannot modify the proposals. The Board and the Joint Committee can only approve or withhold approval. Pay Plans take effect as of July 1, the beginning of the state's fiscal year and are usually developed during the months of the calendar year in which a fiscal year begins.

For many consecutive bienniums, the Pay Plans have provided pay increases for all state employee's for the appreciation of our economy has dictated such an economic adjustment. The adjustments have either been a flat dollar increase or a percentage increase across the board or a combination thereof. When

such an adjustment of individual salaries is made, of course, there must be an adjustment of the Min., the PSICM and Max. of each salary range to accommodate the salary adjustments. This range adjustment is usually a part of the Pay Plan.

We can now proceed to the specifics of these appeals.

In January, 1969, the Director brought several surveys to this Board that involved the reassignment of several positions to a higher salary range. Included were the Officers' series, the Youth Counselors series, certain professional and related classes in the Department of Natural Resources, Laundry Workers and Supervisors and employees in the Medical Services. At that time there was no recommendation for a range change for the Institution Aids. At that meeting there initially was nominal support for the recommendations, but the principal emphasis of the witnesses was an attack upon the Director for not recommending a change of salary range for the Institution Aid series. This so troubled the chairman of this Board that he stated that due to the dissatisfaction he was at the point of urging his colleagues to withhold any approvals. This comment changed the tenor of the meeting and the representatives of the employees whose positions had been recommended for range change abandoned the case of the aids. The Board was told that then action was mandatory and that there could be no delay for further review or an attempt to defer the matter to the legislature or its boards or committees.

This Board on that day in January, 1969 approved the recommendations, but warned the meeting that BOGO or the Joint Committee might have to fund the effects of the range change. This, at least, in the cases of the Officers and Youth Counselors series implementation was delayed pending such legislative action.

Later and in March, 1969, this Board engaged in lengthy discussion with the WSEA and the Director to try to arrive at a mutually agreeable pay plan for

the 1969-70 Biennium. Several initial roadblocks had to be resolved before progress could be made. One of them was the ranging of the Institution Aid series. This Board urged that the aids be moved up one salary range. This resulted in a reluctant recommendation from the Director to that effect which the Board immediately approved.

Subsequently a Pay Plan for the 1969-70 Biennium was developed that provided for a 4% or \$25, whichever was the most to each employe on the basis of his actual salary. The plan also provided that instead of the discretionary merit increase, that as of July 1, 1969, there be an automatic increase of 80% of one step to each employe in or below salary range 1-9 and 3-10. This increase was to be repeated for the second year of the Biennium. Because of the across the board salary adjustment, the plan also included a revision of each salary range by increasing the Min., PSICM and Max. thereof the 4% or \$25, together with technical revisions to maintain appropriate spread between ranges. This plan was approved by this Board and transmitted to the Joint Committee on Finance.

On April 3, 1969, the Joint Committee took two separate and distinct actions.

The first is fully described in a letter to the Director from the Joint Committee dated April 7, 1969, a copy of which is attached hereto as Exhibit A. It approved the following range assignments to become effective June 29, 1969:

Officers 1 through 5 shall be moved up one salary range.

Youth Counselors 1 through 5 shall be moved up one salary range.

Institution Aids 1 through 5 shall be moved up one salary range.

The class of Institution Aid 6 was approved in salary range 1-11.

The second action is fully described in a letter to the Director from the Joint Committee dated April 7, 1969, a copy of which is attached hereto as Exhibit B. The letter confirms the approval of the Pay Plan for the 1969-1970 Biennium, effective July 1, 1969.

Because of accounting problems, the Department of Central Payroll of the Department after April 7, 1969, requested permission of the Joint Committee to make the Pay Plan effective on June 29, 1969, the start of a pay period. The minutes of the Joint Committee indicate that such permission was granted on March 1, 1969. This request was not made by the Director, but by an operating division.

This has eventually brought us to a consideration of the Appellant's contention. While the effected positions are in several salary ranges, let us use the Officer 1 as a general illustration.

Under the Pay Plan for the Biennium 1968-1969 an Officer 1 was in salary range 1-6, which we will call "old salary range 1-6":

	Min.	PSICM	Max.
<u>Old Salary Range 1-6</u>	\$450.	\$475	\$586

Under the Pay Plan for the Biennium 1968-1969 salary range 1-7 which we will call "new salary range 1-7" was as follows:

	Min.	PSICM	Max.
<u>Old Salary Range 1-7</u>	\$492	\$517	\$640

Under the Pay Plan for the Biennium 1969-1970 salary range 1-7 which we will call "new salary range 1-7" was as follows:

	Min.	PSICM	Max.
<u>New Salary Range 1-7</u>	\$516	\$542	\$672

After the approvals of the Joint Committee, the Director moved the salary of an Officer 1 who had been at PSICM of old range 1-6:

To PSICM of <u>old</u> salary range 1-7	\$517.00
Salary Plan Adjustment	25.00
80% of one step	<u>20.00</u>
Total	\$562.00

This represents a salary increase of \$87 per month to an Officer 1 who had been at PSICM of old salary range 1-6.

Officers 1 on probation were moved as follows:

To Min. of <u>old</u> salary range 1-7	\$492.00
Salary Plan Adjustment	<u>25.00</u>
Total	\$517.00

This represents a salary increase of \$67.00

Officers 1 in old salary range 1-6 who were above \$475 were moved enough to bring them to \$517, PSICM of old salary range 1-7, plus \$25 and \$20.

Officers 1 in old salary range 1-6 who were at \$517 per month or more received only the \$25 and \$20.

Appellants contend that the adjustments in the illustration should have been as follows for the Officer 1 at PSICM of old salary range 1-6.

To Psicm of <u>new</u> salary range 1-7	\$542.00
Salary Plan Adjustment	25.00
80% of one step	<u>20.00</u>
Total	\$587.00

This would represent an increase of \$112 per month.

Officers 1 on probation would be moved as follows:

To min. of <u>new</u> salary range 1-7	\$516.00
Salary Plan Adjustment	<u>25.00</u>
Total	\$541.00

This would be a monthly increase of \$91.00

Officers 1 in old salary range 1-6 who would be below \$542, would be moved to \$542 plus \$25 and \$20.

Officers 1 in old salary range 1-6 and receiving \$542 per month or more would receive only \$25 and \$20 as an increase.

The basic issue is should the positions approved for elevation to higher range have been assigned to the "old" salary ranges or the "new" ones.

It should be clear at this point that a reassignment of positions is not a device that has as its purpose giving the incumbent of any position an increase in pay. It is a device for the proper pricing of a position in view of prevailing circumstances. Its end-point is to determine a more appropriate Min. at which recruiting is done; to set a more appropriate PSICM for one in permanent status to be assured; to establish a greater salary potential for the position. It may incidentally have the effect of increasing salaries, but only to those who are below the PSICM of the higher range. The device has the effect of compressing salaries. For example a new permanent employe in old salary range 1-6 or a marginal employe who had received no merit increases by virtue of the range change to old range 1-7 would go to a monthly salary of \$475 which would be within \$111 of the salary of an employe with years of service and consistent merit increases that had brought him to the top of old salary range 1-6. On the basis of Appellants' contention that new or marginal employes would move to within \$86 of the senior good employe.

Appellants contention must be based on one or more of three arguments that are not clearly distinct from each other.

1. That the range reassignment of the effected positions was a part of the Pay Plan for 1969-1970.
2. That the old range 1-7 had ceased to exist at the time of the reassignments.
3. That the legislature intended that the effected positions move to new salary ranges.

1. The Board cannot say that range reassignments have never been a part of a pay plan. If they have been, they should not have been. Such reassignments are peculiarly the prerogative of the Director. His reassignment is subject only to the approval of this Board. That BOGO or the Joint Committee ever becomes involved is to provide the funding that is incidental to the reassignment.

The Chairman of this Board who has written this decision can recall only one instance of the Joint Committee ever becoming involved in the assignment of positions to salary ranges in fourteen years of experience with seven pay plans. That instance involved the Joint Committee moving the Sanitarians up one range. The Chairman of this Board has always been of the opinion that said action was illegal and should have been challenged.

2. The old range 1-6 had not ceased to exist at the time of the reassignment. The reassignment of salary ranges and the 1969-1970 Pay Plan were separate and distinct actions, with the reassignment antecedent to the Pay Plan. While the actions of the Joint Committee were on the same day, sequentially the reassignments were considered first. Factually, the reassignments were made effective as of June 29 and the Pay Plan that created new range 1-7 was made

effective July 1, 1969. That the Joint Committee subsequently permitted an operating division to back-up the Pay Plan two days to simplify payroll preparation was not a personnel action. In truth, the Chairman of this Board who took the lead in the presentations to the Joint Committee on April 3 was not aware that there had been such backing-up until these appeals were filed. Certainly old ranges existed when the reassignments were implemented.

3. The Board does not believe that legally the Legislature as represented by BOGO or the Joint Committee can have any intent on the reassignment of positions to salary ranges, or can this Board. Both bodies at best approve what the Director has planned; neither the Legislature nor this Board can frame proposals. The Director intended to reassign the effective positions to the old salary ranges. He can never intend anything else for all he has to work with at the time he makes his recommendations to this board is the then current salary ranges. Salary range changes for positions is a definitive present action, not a tentative action conditioned upon something that may not materialize.

It is true that the Legislature may have an "understanding" of what the Director intended. While an "understanding" may not traverse an "intent", it is possible to comment on understandings.

The Chairman of this Board was very much a participant in the series of events. When it approved the several reassignments, except Aids in January 1969, the Board knew that the Director intended to assign to the old ranges. This was made clear to all present at that time. Recall is good, for the late Richard Jarvis emphatically wanted assurance that the matter be finalized and not woven into a pay plan.

When the reassignment for the aid positions was approved by the Board

In March 1969, the Board understood that it was to be a reassignment on the basis of the then existing salary ranges. Kubista and King, WSEA representatives and WSEA committeemen Pease, Gremier and Leonhardt were given such understanding and agreed that such was the way it should be.

The Chairman well recalls the meeting of the Joint Committee on April 3, 1969. He was there to take the lead in presenting the 1969-1970 Pay Plan and was rather surprised to have the matter of the reassignment of positions to salary ranges called for public hearing. The Chairman was the only appearance and told the Joint Committee that this was an antecedent action that must be finalized before any consideration be given to the Pay Plan and that if approved, the Director would be able to make all appropriate salary range changes to which the Pay Plan would apply. There can be little doubt that the legislature understood that the reassignments were to be to the old salary ranges.

It is realized that this decision contains more testimony than reasoning, but such was indicated to support the conclusions.

The several appeals considered herein should be dismissed.

Dated March 19, 1971

STATE BOARD OF PERSONNEL

BY

James H. [Signature]
William [Signature]
[Signature]
[Signature]
[Signature]

*Exhibit A*

WISCONSIN LEGISLATURE
JOINT COMMITTEE ON FINANCE
113 South State Capitol
Madison, 53702

April 7, 1969

Mr. Carl K. Wettengel, Director
State Bureau of Personnel
144 State Office Building
Madison, Wisconsin 53702

Dear Mr. Wettengel:

Pursuant to Sub-section 16.105(4) of the Wisconsin Statutes, the Joint Committee on Finance in executive session April 3, 1969, adopted the following proposed salary range reassignments, submitted to the Joint Committee on Finance by the Director of Personnel.

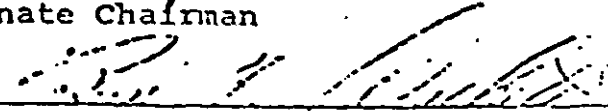
By vote of the Committee, the following reassignments are to become effective as of June 29, 1969:

1. Officers 1 through 5 shall be moved up one salary range.
2. Youth Counselors 1 through 5 shall be moved up one salary range.
3. Institution Aids 1 through 5 shall be moved up one salary range.

By vote of the Committee, the establishment of the class of Institution Aid 6 is approved in SRI-11.

Sincerely yours,


WALTER G. MOLLANDER
Senate Chairman


BYRON F. WACKETT
Assembly Chairman

cc: Wayne F. McGown, Secretary
Department of Administration



Exhibit B

WISCONSIN LEGISLATURE
JOINT COMMITTEE ON FINANCE
113 South, State Capitol
Madison, 53702

April 7, 1969

Mr. Carl K. Wettengel, Director
State Bureau of Personnel
144 State Office Building
Madison, Wisconsin 53702

Dear Mr. Wettengel:

Pursuant to Sub-section 16.105(4) of the Wisconsin Statutes, the Joint Committee on Finance in executive session April 3, 1969, adopted the State of Wisconsin Proposed 1969-71 Compensation Plan for the Classified Service, submitted to the Joint Committee on Finance by the Director of Personnel and the Personnel Board:

This approval includes the following proposals as set forth on page 25 of the proposed 1969-70 compensation plan for the classified service as submitted to the Joint Committee on Finance:

1. Proposal 1 (excluding item g.)
2. Proposal 2

Approval action has also been granted by this Committee on the following compensation matter which will require enactment by the full Legislature:

Amendment of the merit increase provisions of s.s.16.105(2) (c) to provide a guaranteed full 80% dollar amount of the intermediate salary step to eligible employes in salary ranges 9 and below in salary schedule 1, and 10 and below in salary schedule 3, but not to exceed proposed salary range maximums.

The Compensation Plan for classified

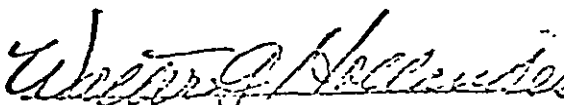
Mr. Carl K. Wettengel
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April 7, 1969

Civil Service employes as approved herein is authorized as effective July 1, 1969 and further it is authorized that Proposal 1 as adopted be repeated on July 1, 1970. The net effect of this action is that authorization is given to repeat Proposal 1 of the 1969-70 plan for the year 1970-71.

Sincerely yours,

JOINT COMMITTEE ON FINANCE



WALTER G. HOLLANDER
Senate Chairman



BYRON F. WACKETT
Assembly Chairman

cc: Wayne F. McGown, Secretary
Department of Administration

WGH/BFW/ng