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 BONNIE HIPPI AND JUNE CONNER,
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 Appellants,
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 v.,
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 C.K. WETTENGEL, Director,
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 State Bureau of Personnel,
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 Respondent.
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 Case No. 74-84
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OFFICIAL

OPINION AND ORDER

Before: JULIAN, Chairperson, STEININGER and WILSON, Board Members.

NATURE OF THE CASE

This is an appeal from a decision of the Director upholding the refusal of the Department of Transportation to grant Appellants an increase in salary upon their appointment to positions as Trainee - Drivers License Examiner 1's.

FINDINGS OF FACT

Appellants were permanent employes in the classified service employed as Driver's License Examiner Aids in the Department of Transportation prior to November 5, 1973. On that date they were appointed to positions as Trainee - Drivers License Examiners 1. After serving three months training periods and six months probationary periods, they assumed the "objective level" positions -- i.e., Driver's License Examiners 1. Prior to their initial appointment to the trainee positions, Appellants' salaries were in excess of the maximum starting salary for the trainee position.¹ Appellants did not receive any salary increase

¹The maximum starting salary for the trainee position was \$652 per month. This was also the minimum for the objective level classification.

until they completed the nine months training/probationary period, at which time they received step pay increases. The Appellants were aware of this salary structure no later than November 15, 1973.

The primary function of the three month training period requirement was the Appellants' lack of experience conducting road tests.

A fellow worker of Appellants, Robert Donnelly, was promoted from Driver's License Examiner to Driver Improvement Analyst without being required to serve in a formal trainee status. The Appellants pointed out, and we find, that this was inconsistent with informational material found in the Drivers License Examiner Survey prepared by the Bureau and dated February, 1972, Appellant's Exhibit 1. This survey provided under the heading "Classification Development" certain information about the various classification series:

The following information is a review of the rationale used to develop the various individual classification series and the primary relationships and comparisons which were taken into consideration when assigning salary ranges. (p. 6)

Under this heading the Driver Improvement Analyst classification was discussed in part as follows:

All persons entering the Driver Improvement Analyst Classification have previously served a period as a Trainee Driver Improvement Analyst. This training includes formal departmental course work and on-the-job experience. Upon completion of the one year period as a trainee, employees become Driver Improvement Analysts. (p. 9)

The actual class specifications for Driver Improvement Analyst contain the following training and experience:

Three years of experience as a Drivers License Examiner 1; or an equivalent combination of training and experience; and satisfactory completion of the entry Driver Improvement Analyst training program. (Unnumbered page in Appellant's Exhibit 1.)

After requesting and receiving clarification of their pay status from their personnel department, the Appellants on June 14, 1974, wrote to the Director appealing their failure to receive a step increase at the completion of the three month training period. In a letter dated July 17, 1974, the Director analyzed the action taken and indicated his agreement with it. The Appellants on July 25, 1974, wrote to the Director restating their position and their disagreement with his letter of July 17th and stating that his position was inconsistent with past practice, and requesting a hearing pursuant to S. 111.91 (2) (B), Wis. Stats. The Director replied in a letter dated July 31, 1974, reaffirming his position and suggesting that S. 111.91 (2) (B) did not apply to their appeal, but that an appeal must be taken to the Personnel Board. The Appellants then filed an appeal with the Board which was received August 12, 1974. Copies of this correspondence, which was marked Respondent's Exhibits 2 - 6, are attached hereto as Appendix A.

CONCLUSIONS OF LAW

TIMELINESS OF THE APPEALS

As found above, Appellants' appeals were received by the Board on August 12, 1974. Their appeal is from a decision of the Director.² The letter of the Director dated July 17, 1974, in response to Appellants' letter of June 14, 1974, the Director states:

I have asked members of my staff to investigate your claim. They inform me that your pay was adjusted properly. (Respondent's Exhibit 3).

²Even if their appeal were construed to be taken pursuant to S. 16.05 (e), it would clearly be out of time (15 days) since the latest possible construction of the "effective date of the decision," S. 16.05 (2), would be the end of their training period when they allege they should have received step increases. This would have been in February, 1975.

The Director went on to explain the rationale for this decision. The Appellants' letter of July 25, 1974, states that the decision is contrary to past and present promotional practices, and goes on to request a S. 111.91 (2) (B) hearing by an impartial hearing officer. The Respondent's letter of July 31, 1974, reviews the previous correspondence and goes on to explain that the application of the policy involved to Appellants is not contrary to past and present promotional practices.

We conclude that for timeliness purposes the decision of the Director is contained in the July 31st letter and that therefore the appeal is timely. This letter does respond in kind to the point regarding past practice raised in Appellants' July 25th letter and advises Appellants of their appeal rights to the Board. The Respondent's letter of July 17th, while defending the decision on Appellants' pay increase, was essentially informative, reciting the findings of the Director's staff, and leaving the door open to further contact with that staff.

This interpretation is consistent with a recent decision of the Dane County Circuit Court, Van Laanen v. State Personnel Board, No. 145-395, August 26, 1975. There the Board had analysed an exchange of correspondence between an employe and her personnel office concerning a reclassification request. The court reversed our conclusion that a certain memo constituted notice of a decision denying reclassification.

The memo had stated in part:

With regard to this request I have contacted Mr. Szymanski of the Division office, who has indicated to me that his position of October 1972, remains unchanged with regard to allowing your eight credits of student teaching to be considered in this reclassification action.

The court held:

The memo . . . did not say that a decision had been made in the matter, but only that Mr. Szymanski 'indicated' that his position was unchanged. It is consistent with the possibility that the matter was still pending, and that the final decision would come from Mr. Szymanski, as it had in response to petitioner's previous application for reclassification.

Similarly, the correspondence in the case before us is consistent with the theory and we conclude that the first letter of the Director, dated July 17th, was a review of the information available to his staff, and the matter was still open. Then, after the Appellants' response of July 25th the Director finally decided the matter in his letter of July 31st.

LEGALITY OF THE DIRECTOR'S DECISION

The following sections of the Wisconsin Administrative Code, set forth in pertinent part, control:

S. Pers. 20.03 (2) (b):

The maximum of such (trainee pay) range shall not exceed the minimum pay of the objective classification for which the employe is trained unless a higher maximum is determined by the Director to be in the best interests of the civil service.

S. 20.03 (4) (a):

When the employe's pay rate is above the maximum for the trainee pay range, his rate may be reduced to the maximum of such range or, with the approval of the Director, established at a point above the maximum rate in the range not to exceed the employe's previously earned rate.

S. 20.03 (5) (c):

The appointment of an employe who has qualified at the objective classification following completion of the training program shall not be considered a promotion for salary purposes. The employe shall be paid the initial rate in the objective class which shall be the minimum of the pay range for such class. However, if

an employe earned a higher rate of pay in a class in which he or she had permanent status in class immediately prior to entry in the training program, the appointing authority may set the employe's pay at any rate in the pay range, not to exceed the previously earned rate. Determination of this rate shall be made at time of appointment in the objective class and reported to the Director.

These provisions are consistent with the Respondent's handling of Appellants' cases. Their rate was above the maximum range for trainees and therefore their rate could be reduced to the maximum for trainees or frozen at their previously earned rate. The latter course was followed. Pursuant to S. 20.03 (5) (c), their attainment of the objective level following completion of the training period did not constitute a promotion for salary purposes.

The Appellants argued that because of their qualifications they should not have been required to have served as trainees at all, but could have learned any needed additional skills during their probationary period. They also point to the case of a fellow employe who was promoted to a somewhat comparable position without being required to serve a formal period as a trainee and further point out that this promotion was at odds with the "Classification Development" section of the Bureau survey (Appellants' Exhibit 1, p. 9).

These facts do not require the conclusion that the Respondent or the Department of Transportation incorrectly handled the Appellants' cases.

While Appellants might have been able to learn the necessary skills for road testing during the probationary period, they did not sustain their burden of showing that the use of a trainee classi-

fication pursuant to S. Pers. 20.03, Wisconsin Administrative Code, was improper. Once a position has been authorized for a trainee classification, an agency is not required to consider waiver of the classification on a case by case basis. The agency designated this position as a trainee classification before recruitment began. The Appellants presented no evidence that would have challenged the correctness of this initial designation.

In the case of Mr. Donnelly, he began at the objective level. This fact might be probative to the Appellants' argument that they should have been allowed entry at the objective level had they demonstrated a sufficient correlation between the two positions, but they did not. They allege that Mr. Donnelly's position should have been a trainee classification if administered in accordance with the requirements found in the Bureau of Personnel survey. If this were true, it would have established a mistake by the Bureau in Mr. Donnelly's case, not in Appellants'. In any event, the Bureau or agency did not necessarily violate its own rules in Mr. Donnelly's case.

The preliminary material contained in the survey is intended as informational and as "a review of the rationale" for the personnel actions taken as a result of the survey. This material, while probative with regard to an interpretation of relevant and related Bureau enactments, does not have the force of law. The establishment and modification of classifications are subject to Board approval, S. 16.07 (2), Wis. Stats., and class specifications

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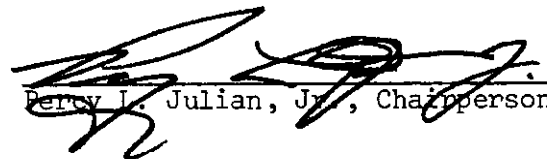
must be approved by the Board. Thus the class specifications control in the event of a conflict with unofficial material such as is the case here.

ORDER

IT IS HEREBY ORDERED that the acts of the Director are affirmed.

Dated October 17, 1975.

STATE PERSONNEL BOARD


Percy L. Julian, Jr., Chairperson

Verifed
Copy given
Actual
COPI
cc: [unclear]
me: [unclear]
Paul Wright
answer

June 14, 1974

C. K. Wettengel, Director
State Bureau of Personnel
One West Wilson Street
Madison, Wisconsin

A P P E N D I X "A"

Dear Mr. Wettengel,

On November 5, 1973 we were promoted from D.L.E. Aide (SRI-06) to D.L.E Trainee (SRI-07). Per correspondence from Chief Examiner Milo Hodgson dated October 31, 1973, we were told our hourly rate of pay would remain at \$4.031 for the duration of our three month training period and six month probationary period (a total of nine months).

We asked the Driver Control Personnel Dept. for clarification of our position and received alletter dated 5-20-74 stating that ours is a trainee position and as such, pay administration is governed by Wis. Administrative Code, Chapter twenty (20) which provides that an employee appointed to a trainee position whose rate of pay is above the minimum pay of the objective level classification, does not receive a pay increase until after successfully completing the training and probationary periods.

We feel that we been unfairly discriminated against by the Personnel Board as a recent promotional announcement for D.I. Analyst I (SRI-10) states that immediately upon promotion the successful applicant will recieve a one step increase in pay with a further one step increase upon completion of a six minth probationary period.

According to the State Personnel Driver License Survey--February, 1972 page 17 "A D.L.E. with 3 years examining experience is eligible to compete for Trainee D.I. Analyst (SRI-10) positions. Successful completion of a nine month training program would place the D.I. Analyst (SRI-10) on probation for 6 months for further evaluation by his supervisor, at the Trainee D.I. Analyst level, recent college grauates in the appropriate major may also qualify to apply.

The same survey - page 10 - states "The classification of D. I. Analyst was assigned to SRI-10 with the Trainee D.I. Analyst being compensated at a rate equivalent to SRI-09."

RESPONDENT'S

EXHIBIT # 2

We have successfully completed our 3 month training program on Feb. 5, 1974 and we are now serving our 6 month probationary period as Drivers License Examiner I. The wages we are now receiving were for 4 years of satisfactory work as D.L.E. Aide and should have no bearing on our promotion.

Our personnel board has stated we do not receive a raise because of our Trainee classification but they do not apply the same theory to the D.I. Analyst Trainee program.

We hereby ask the State Personnel Board to rule on this matter as we feel that we should have received a one step increase at the completion of our three month training program.

Your prompt consideration of this matter will certainly be appreciated.

Bonnie J. Hipp

June M. Connor

Bonnie J. Hipp D:L:Examiner, 7023 W. Coldspring Rd. Greenfield, Wis.
June M. Connor D.L.Examiner, 311 N. 95 St., Milwaukee, WS. 53226

cc: James C. Devitt, Senator
Wayne F. Whittow, Senator
Milo Hodgson, Chief Examination & Improvement
Jerrold R. Bratkovich



July 17, 1974

STATE BUREAU OF PERSONNEL
C. K. WETTENGEL, DIRECTOR
1 WEST WILSON STREET
MADISON, 53702

Bonnie J. Hipp
7023 W. Coldspring Road
Greenfield, WI

Dear Ms. Hipp:

We are happy to respond to your letter of June 14, 1974 in which you requested a review of your promotional pay adjustment as a Drivers License Examiner Trainee. I have asked members of my staff to investigate your claim. They inform me that your pay was adjusted properly. Pay provisions for an employe promoted to a Trainee classification is determined in accordance with Wisconsin Administrative Code, Chapter 20 (Trainee).

We consider the training process to be an integral part of the total employe development picture. Training programs like that which you have recently completed are designed to do two things: 1) prepare the employe for higher level duties and responsibilities and 2) to satisfy the minimum training and experience requirements for movement to a higher classification level.

As a Drivers License Examiner Aid (PR5-06) you did not possess the minimum training and experience required to compete for a promotion to the Drivers License Examiner 1 (PR5-08) classification level. By designating this classification as a Trainee, all employes possessing similar training and experience were considered equally. Without this designation you could not have been considered for promotion.

The pay range of the Drivers License Examiner Trainee classification at the time you were appointed was \$3.743/hr. to \$4.008/hr. Inasmuch as you were already earning \$4.031/hr. your hourly rate of pay was above the maximum of the Trainee classification and as such had to be frozen or reduced as requested by your agency, in accordance with Chap. Pers. 20, Wis. Adm. Code, Rules of the Director. Pers. 20 takes precedent over Pers. 14 in personnel actions relating to Trainees.

RESPONDENT'S

EXHIBIT # 3.

June M. Connor

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July 17, 1974

The vacancy announcement you allude to as a comparable situation (Drivers License Analyst) is to fill a position at the objective level and is not governed by Pers. 20. Had this vacancy been filled as a Trainee the same procedure as described above would apply.

Thank you for your interest in this matter and if you have further questions, please contact Paul W. Wright at (608) 266-1699 of my staff for assistance.

Sincerely,



C. K. WETTENGEL
DIRECTOR

cc: James C. Devitt, Senator
Wayne F. Whitton, Senator
Milo Hodgson
Jerrold R. Bratkovich
Edward D. Main
Paul W. Wright

Bonnie Hipp DLE I
June Connor DLE I
Milw., Wi.

C.K. Wettengel
State Bureau of Personnel
1 West Wilson St.
Madison, Wi. 53702

Dear Mr. Wettengel:

As stated in our previous correspondence, we feel we have been unfairly discriminated against by the arbitrary interpretation of Wisconsin Administrative Code, Chapter 20 (Trainee), as applied to our promotion from DLE Aide (P R-06) to Driver License Examiner (PR5-08).

This decision has resulted in no pay increase upon promotion, which appears to be completely contrary to past and present promotional practices.

Because of this arbitrary reversal of position on promotion, we are sustaining a monetary loss each month of employment and feel that this situation must be rectified or fully explained and cross referenced to other promotions past and present.

Since your letter of July 17, 1974, adds nothing to clarify this matter, but merely seems to be a re-statement of Mr. Bratkovich's letter of May 10, 1974, we are asking for an impartial hearing at this time. See Article X Section 1 of the A.F.S.C.M.E. Union Contract with the State of Wisconsin: "An impartial hearing officer may be appointed to hear appeals from actions taken by the Employer under Section 111.91 (2)(B) 1 and 2 of Wisconsin Statutes".

Your prompt attention to this matter will be greatly appreciated.

Sincerely,

cc: Milo Hodgson
Jerrold R. Bratkovich

Bonnie Hipp 7/25/74
Bonnie Hipp DLE I
7011 W. Coldspring Rd.
Greenfield, Wi. 53220

June Connor 7-25-74
June Connor DLE I
313 N. 95 St.
Milwaukee, Wi. 53226

RESPONDENT'S



State of Wisconsin \ DEPARTMENT OF ADMINISTRATION

STATE BUREAU OF PERSONNEL
C. K. WETTENGEL, DIRECTOR
1 WEST WILSON STREET
MADISON, 53702

July 31, 1974

Ms. Bonnie Hipp
7011 West Coldspring Road
Greenfield, WI 53220

Ms. June Connor
313 North 95th Street
Milwaukee, WI 53226

Dear Ms. Hipp and Ms. Connor:

On July 25, 1974, you wrote to me as a follow-up on my letter of July 17, 1974. In your original correspondence of June 14, 1974, you objected to the fact that on your promotion from Drivers License Education Aide to Drivers License Examiner Trainee you received no increase and that your pay would remain at \$4.031 for the duration of the three-month training period.

At that time you were informed that your pay was governed by Wis. Adm. Code Chapter 20 which provided that an employee appointed to a trainee position whose rate of pay is above the minimum of the objective class level does not receive a pay increase until after successfully completing the training and probationary periods. You felt that this was improper and you wrote to me. On July 17, 1974, I wrote to you and again outlined the provisions of Chapter Pers 20 of the Wis. Adm. Code and indicated that this particular section of the rules governed in personnel action relating to trainees.

In your letter of July 25, you again took exception to my analysis and decision and questioned the timeliness of my decision as far as past actions are concerned. For your information this policy on no pay increase upon promotion is not contrary to past and present promotional practices and has been in effect for some time. Provision applies as indicated to these trainee positions and has been effective for a number of years.

In your letter you cited the request for an impartial hearing officer to hear your appeal under Section 111.91(2)(B), Wis. Stats. This particular section of the statutes merely indicates that such things as promotions are not bargainable and hence do not come under any provisions of the union contract. This is clearly stated in Section 111.91(2)(B) 1 and 2, Wis. Stats.

RESPONDENT'S

EXHIBIT # 5

Ms. Bonnie Hipp
Ms. June Connor

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July 31, 1974

If you wish to take any appeal from my decision in this particular matter, your rights are explained elsewhere in the statutes and rules, and the appeal must be taken within 15 days to the Wisconsin State Personnel Board, William Ahrens, Chairman, Room 244, State Office Building, 1 West Wilson Street, Madison, Wisconsin 53702.

Sincerely,

C. K. Wettengel

C.K. WETTENGEL
DIRECTOR

August 8, 1974

PERSONNEL BOARD
STATE OF WISCONSIN
MADISON

1974 AUG 12 AM 11 06

Wisconsin State Personnel Board
William Ahrens, Chairman
Room 224, State Office Building
1 West Wilson St.
Madison, WI 53702

Dear Sir:

On November 5, 1973, we were promoted from D.L.E. Aide (SRI-06) to D.L.E. Trainee (SRI-7). Per correspondence from Chief Examiner Milo Hodgson dated 10-31-73, we were told our hourly rate of pay would remain at \$4.031 for the duration of our three month training period and six month Probationary period (a total of nine months).

We have contacted both the Driver Control Personnel Dept. and the State Bureau of Personnel for clarification in light of recent job announcements for D.I. Analyst I (SR-10) and D.L.E.I - Trainee Bilingual, both of which seem to contradict their position that ours was a "trainee position" and as such, pay administration is governed by Wis. Adm. Code, Chapter 20.

Because of this arbitrary decision, we are sustaining a monetary loss each month of employment and feel this situation should be rectified or fully explained and cross referenced to other promotions, past and present.

We are therefore asking for an impartial hearing at this time under Chapter 16.05, Duties of the Personnel Board, Sub Section F of the Wis. State Statutes, so that we may present the facts regarding the apparent discrimination shown in this matter.

Thank You,

Bonnie Hipp
Bonnie Hipp D.L.E.I
7011 W. Coldspring Rd.
Greenfield, WI 53220

June Connor
June Connor D.L.E.I
313 North 95th
Milwaukee, WI 53226

cc: C.K. Wettengel
Milo Hodgson
Jerrold R. Bratkovich

RESPONDENT'S

EXHIBIT # 6.