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 MARY RUNKEL, \*  
 \*  
 Appellant, \*  
 \*  
 v. \*  
 \*  
 Administrator, DIVISION OF \*  
 PERSONNEL, \*  
 \*  
 Respondent. \*  
 \*  
 Case No. 79-298-PC \*  
 \*  
 \* \* \* \* \*

ORDER

**OFFICIAL**

The Commission, having considered the arguments of the parties and consulted with the hearing examiner, adopts the Proposed Decision and Order, which is attached hereto, as the Final Decision and Order in this matter, subject to the following revisions:

- 1. Proposed Finding of Fact #4 is amended by addition as follows:

"4. Historically, the old and new pay schedules for classified civil service employes were phased out and in, respectively, on the closest administrative date to July 1st of each year."

- 2. The last sentence of the Opinion is amended by deletion as follows:

"Clearly this was not intended."

Dated Feb. 13, 1981

STATE PERSONNEL COMMISSION

Parties:

Ms. Mary Runkel  
 309 Palomino Lane  
 Madison, WI 53705

Mr. Charles Grapentine  
 Division of Personnel  
 149 E. Wilson St.  
 Madison, WI 53702

  
 Charlotte M. Higbee, Chairperson

  
 Donald R. Murphy, Commissioner

  
 Gordon H. Brehm, Commissioner

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PROPOSED  
 DECISION  
 AND  
 ORDER



NATURE OF THE CASE

This is a proceeding under Ch. 230, Wisconsin Statutes, to hear an appeal of a July 1, 1979, personnel decision of the Division of Personnel. The appellant Mary Runkel filed an appeal with this Commission on October 24, 1979, alleging, in brief, that her salary was computed incorrectly and in violation of Department of Employment (DER) Bulletin P-28, dated September 11, 1978, and Pay Schedule 09 (Legal) of the State Pay Plan. A full hearing was later convened, during which counsel for the appellant filed a brief. In accordance with Ch. 227, Wis Stats, the hearing examiner has determined the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

1. Appellant Mary Runkel is an Attorney 13, Confidential, employed by the Department of Transportation (DOT).

, 2. She had been assigned an annual regrade date of July 1, annually by the respondent. Her salary on June 30, 1979, was \$10.090/hr, which was between regrade Point A (\$9.533/hr) and regrade Point B (\$10.664/hr). On July 1, 1979, she was eligible under the Attorney Pay Plan to advance from regrade Point A to regrade Point B. On July 1, 1979, appellant's salary was computed by using the 1978-1979 pay schedule regrade point of \$10.664 and adding the 1979-1980 general economic pay schedule adjustment of 7%, for a new hourly rate of \$11.411.

3. Under the 1978-1979 DER pay schedule for attorneys, regrade Points A and B for the Attorney 13 classification were valued as follows:

- a. Point A - \$9.533/hr
- b. Point B - \$10.664/hr

In the component 1979-1980 pay schedule, regrade Points A and B had the following values:

- a. Point A - \$10.186/hr
- b. Point B - \$11.405/hr

Pertinent instructions for processing the 1979-1980 pay adjustments with the same effective date were promulgated in DER Bulletin P-28 (Respondent's Exhibit 1). They were as follows:

Pay adjustments resulting from personnel transactions, or the negotiated agreement that have the same effective date, shall occur in the following order:

1. Reallocation
2. Regrade
3. Probationary Increase
4. Promotional Increase
5. Economic Increase
6. Merit Increase

4. Historically, the old and new pay schedules for classified civil service employees were phased out and in, respectively, on July 1st of each year. In instances of simultaneous pay transactions, the new pay schedule was inserted concurrently with granting the economic increase, and after the computation of any regrades.

5. The administration of simultaneous pay increases described in the preceding Findings of Fact has been in effect since the regrade pay schedule for attorney classifications was initiated in 1978.

#### CONCLUSIONS OF LAW

1. This commission's authority to hear this matter is provided under Section 230.44(1)(a), Wisconsin Statutes (1977).

2. The burden of proof is on the appellant to establish that respondent did not compute appellant's salary in accordance with pay schedules in effect on July 1, 1979.

3. The appellant has not sustained that burden.

4. The appellant's salary was computed in accordance with the pay schedules in effect on July 1, 1979.

OPINION

The appellant argues that respondent's computations of her salary violates the "plain meaning" of the relevant provisions of DER Bulletin P-28, and Pay Schedule #9; that if the provisions are ambiguous, post-enactment testimony of the drafter regarding legislative intent is inadmissible; and that respondent may not compute salary under "un-written rules".

The appellant's arguments appear to be based upon the assumption that DER Bulletin P-28 and Pay Schedule #9 are laws or have the effect of laws and should be given statutory interpretation. This may be correct. Section 230.12 (1) (a) provides: ". . . Provisions for administration of the compensation plan and salary transactions shall be provided in either the rules of the administrator or the compensation plan." While it is clear that DER Bulletin P-28 and Pay Schedule #9 are not rules, the legislature may have intended that they have the effect of law. It remains as to whether or not it was intended that such official statements and schedules withstand the rigors of statutory interpretation. However, the issue is at what point in time on July 1, 1979, did DER Bulletin P-28 and attendant Pay Schedule #9 become effective. Nothing in either document speaks directly to that point, and interpretation is necessary. The respondent's witness testified that agency practice was to insert the new pay schedule concurrently with granting the general economic increase.

Further, that simultaneous pay increases for attorneys, including regrades, have been administered in this fashion since 1978. The process was developed and used in the state civil service long before implementation of it into the pay plan for attorneys.

Appellant's argument against admitting the testimony of a witness who drafted the attorney plan is misapplied. The drafter's testimony does not deal with legislative intent, but agency interpretation, application and practice.

We are convinced that appellant's interpretation of DER Bulletin P-28 and Pay Schedule #9 would result in computations of simultaneous pay increases not intended. To compute appellant's salary using the 1979-1980 regrade Point B, would result in a double, across the board, economic increase. Clearly this form of "double-dipping" was not intended.

Mary Runkel v. DP  
Case No. 79-298-PC  
Page 6

ORDER

The actions of the administrator are affirmed and this appeal is  
hereby dismissed.

Dated \_\_\_\_\_, 1980

STATE PERSONNEL COMMISSION

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CHARLOTTE M. HIGBEE  
Chairperson

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DONALD R. MURPHY  
Commissioner

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GORDON H. BREHM  
Commissioner

DRM:nwb  
9/30/80