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 CHARLES RUMPEL,
 Appellant,
 v.
 Administrator, DIVISION OF
 PERSONNEL,
 Respondent.
 Case No. 81-396-PC
 * * * * *

DECISION
 AND
 ORDER

NATURE OF THE CASE

This is an appeal pursuant to §230.44(1)(a), stats., of a decision of the administrator as to the effective date of a reclassification. The parties have agreed to submit this matter for decision on the basis of a written stipulation of facts in lieu of an evidentiary hearing. That stipulation, without the attached documents, is set forth as the following findings of fact.

FINDINGS OF FACT

1. The appellant, Charles Rumpel, is employed as an Educational Services Intern at the University of Wisconsin-Eau Claire.
2. The appellant filed a timely appeal to the Personnel Commission from a decision reclassifying his position from Program Assistant 3, to Educational Services Intern (PR1-10) effective November 1, 1980, challenging the correctness of the effective date.
3. On or before May 23, 1980, the appellant's supervisor submitted a request for reclassification of the appellant's position; the request was received in the Eau Claire Personnel Office on May 27, 1980. The request was acknowledged by Cyneth Dahm in a memorandum to Johannes Dahl dated May 29,

1980. Ms. Dahm indicated that a backlog of similar requests would cause a delay in the review of the appellant's position.

4. The reclassification request was received in the UW-System Administration Office on June 4, 1981.

5. The request for reclassification of appellant's position from PA3 to ESI involved movement of the position based on an allocation pattern other than that previously identified in the UW-System allocation pattern for the proposed class; the UW-System Administration did not have delegation from the Division of Personnel to approve such a reclassification. Final disposition of the request had to be handled by the Division of Personnel. The Division of Personnel received the reclassification request on July 5, 1981.

6. By memorandum to Randy Parker, UW-Eau Claire Personnel Manager, dated September 11, 1981, the Division of Personnel approved the request for reclassification of the appellant's position with an effective date of November 1, 1980.

7. On May 6, 1980, the Department of Employment Relations issued DER Bulletin P-43 which outlined the new reclassification effective date policy for both delegated and non-delegated reclassification requests.

8. The effective date of the reclassification of appellant's position based on the effective date policy would have been June 28, 1981, since the reclassification documents were received and logged in by the UW-System Administration Office on June 4, 1981.

9. A November 1, 1980 effective date was assigned to the approved reclassification of appellant's position because Charles McConnell of the UW-System Administration, by memorandum to Marian Walluks of the Division of Personnel, dated October 10, 1980, requested approval by the Administrator of

the Division of Personnel to use the date of a supervisor's request for reclassification of a position at the campus level to constitute "effective receipt" for purposes of computing effective dates for reclassification approvals. The proposal of McConnell was approved by the Administrator on October 22, 1980, and became effective November 1, 1980.

CONCLUSIONS OF LAW

1. This matter is properly before the Commission pursuant to §230.44(1)(a), stats.
2. The appellant has the burden of proving that the respondent's decision establishing the effective date for the reclassification of appellant's position as November 1, 1980, was not correct.
3. The appellant has not satisfied his burden of proof.
4. The respondent's decision establishing the effective date for the reclassification of appellant's position as November 1, 1980, was not incorrect.

OPINION

The basic legal authority for the determination of the effective date of reclassifications derives from §Pers 29.03(3)(a), Wis. Adm. Code:

"Pay adjustments resulting from regrading ^{FN} an employe shall be effective in accordance with schedules established by the administrator ..."

^{FN} A "regrade" is the determination of the administrator that the incumbent of a filled position which has been reclassified or reallocated should remain in the position. §Pers 3.01(4), Wis. Adm. Code.

In this case, the administrator's policy when the appellant submitted his reclassification request at the campus level in May, 1980, provided for an effective date the beginning of the second pay period following the receipt of the reclassification request and supporting documentation in the UW-System Administrative Office.

The appellant's reclassification request and supporting documentation was received by the UW-System Administration Office on June 4, 1981. However, in the interim, the administrator's effective date policy was changed to the beginning of the second payroll following receipt of the reclassification request and supporting documentation in the institutional personnel office. The effective date of this new policy was established as November 1, 1980, and it contained no provisions for retroactive application to reclassification requests received in institutional personnel offices prior to that date. The respondent decided to establish November 1, 1980, as the effective date of the reclassification (and consequential regrade):

"... the earliest date that this reclassification may be made effective is November 1, 1980, because the establishment of an effective date prior to this would be in conflict with the policy which was in place at the time."

It is the general rule that in the absence of an express provision for retroactivity, statutes granting or rescinding substantive rights are to be considered to have prospective effect only. See, e.g., Davison v. St. Paul Fire and Marine Ins. Co., 75 Wis. 2d 190, 200,248, N.W. 2d 433 (1977). The general rule with respect to administrative regulations is that before a retroactive effect can be given "... an intention that the regulation shall operate retrospectively must unequivocally appear." 2 Am Jur 2d

Administrative Law §309. Therefore, on this record the administrator cannot be faulted for his interpretation of his effective date policy.

The only remaining question is whether the policy itself, as here applied, is somehow improper.

Section Pers 29.03(3)(a), Wis. Adm. Code, quoted above, clearly gives the Administrator the right to establish "schedules" or a policy for determining the effective dates of reclassifications. This administrative code implicitly recognizes, as has this Commission, that "ministerial demands" constitute a legitimate factor to be considered in establishing effective dates, and a transaction in accordance with a policy recognizing such demands normally will be upheld unless it is affected by administrative or clerical error or mistake. See Grinnell v. DP, 81-101-PC (4/27/81); Kimball v. DP & DHSS, 79-236-PC (4/23/81); Ulanski v. DP & DHSS, 82-2,6,7,9-PC (9/7/82). In this case there has been no showing of a clerical or administrative "error."

Mr. Rumpel alleges in his brief that:

"UW Personnel office staff understood the 10/27/80 memo from Charles McConnell discussing reclass effective date to mean that all reclasses (whether delegated or non-delegated) processed after 11/1/80 would adhere to the new effective date policy regardless of log-in-date. Had they known the new policy would be interpreted differently extra effort would have been made to process non-delegated action expeditiously so employe would not be penalized for office backlogs."

However, this point is immaterial in light of the fact that the reclassification was made effective as of November 1, 1980, only four days after the date of the memo. The appellant's pay status was not affected by the amount of time after November 1, 1980, that the UW-Eau Claire personnel office took to process his reclassification request. Similarly, it cannot be said that any "mistake" that may have been made by the UW-Eau Claire personnel office in

interpreting the October 27, 1980, memo, had any bearing on the appellant's salary status.

ORDER

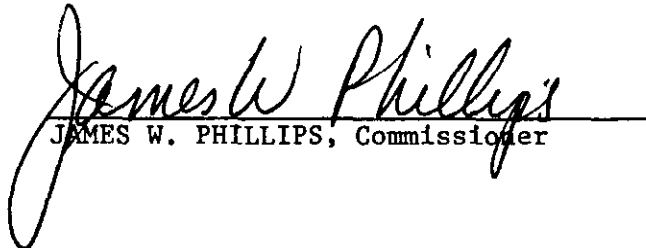
The respondent's decision as to the effective date of the reclassification of appellant's position is sustained and this appeal is dismissed.

Dated: November 15, 1982

STATE PERSONNEL COMMISSION


DONALD R. MURPHY, Chairperson


LAURIE R. McCALLUM, Commissioner


JAMES W. PHILLIPS, Commissioner

AJT:ers

Parties

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