

* * * * *
 *
 JEFFREY ULANSKI, *
 RICHARD L. ZYNDA, *
 RUTH HASE, *
 BERTRAND E. BLUMA, *
 *
 Appellants, *
 *
 v. *
 *
 Secretary, DEPARTMENT OF *
 HEALTH AND SOCIAL SERVICES, *
 and Administrator, DIVISION *
 OF PERSONNEL, *
 *
 Respondents. *
 *
 Case Nos. 82-2, 6, 7, & 9-PC *
 *
 * * * * *

DECISION
 AND
 ORDER

NATURE OF THE CASE

These are consolidated appeals pursuant to §230.44(1)(a) and (b), Stats., of the effective dates of certain reclassifications. The parties have submitted these cases on the basis of stipulated facts and briefs. The parties agreed to the following issue for decision:

Whether or not the respondents' decision as to the July 26, 1981, effective date of the reclassification of the appellants' positions was correct.

FINDINGS OF FACT

The Commission incorporates as its findings the stipulation among the parties, a copy of which is attached hereto.

CONCLUSIONS OF LAW

1. This case is properly before the Commission pursuant to §§230.44(1)(a) and (b), Stats.
2. The appellants have the burden of proving that the respondent administrator erred in establishing the effective date of the reclassification of their positions.

3. The appellants have established that the respondent administrator erred in establishing the effective dates for the reclassification of these positions by failing to take into consideration the ministerial error committed by respondent DHSS while handling the reclassification requests pursuant to §Pers. 3.03(2), Wis. Adm. Code, wherein said reclassification requests were lost and their processing was delayed accordingly.

OPINION

Kimball v. DP & DHSS, Wis. Pers. Comm. No. 79-236-PC (4/23/81), involved a reclassification from Registered Nurse 1 to Registered Nurse 2. The effective date was delayed approximately four weeks due to a ministerial error at the employing institution, as a supervisor had submitted the certification that the appellant met the requisite training and experience on the wrong form and it consequently had been misfiled by the institutional personnel office.

The Commission held that under the circumstances the appellant was entitled to an earlier effective date of reclassification, citing §Pers. 5.037, Wis. Adm. Code: "Except ... to correct an error, no pay increases or decreases shall be retroactive." (emphasis supplied) The Commission rejected the argument that the reliance by DHSS on the policy of the Division of Personnel of the establishment of effective dates for reclassification was conclusive, noting that such an approach could negate §Pers. 5.037 in certain of its applications.

A subsequent case, Grinnell v. DP, 81-101-PC (4/29/82), involved a reclassification from Registered Nurse 2 to Nursing Clinician. There was no indication that the time involved in processing the request was delayed by any kind of administrative or ministerial error, or was of an unusually extended duration. The Commission's decision included the following:

Under Pers. 29.03, Wis. Adm. Code, respondent was given specific authority to establish effective dates for pay adjustments resulting from reclassifying employes. With deductive evidence to the contrary--which was absent in the instant case--the schedules provided by respondent for setting effective reclassification dates may be construed to effectuate the state policy of matching pay with services.

Administrative convenience and uniformity are rational bases for respondent's actions. While other pay adjustment formulas may be devised, it cannot be said the current pay adjustment schedule, regarding the effective date of reclassification, violates state policy. The effective date established for the reclassification of the appellant's position does not include a ministerial 'error' as defined in Kimball v. DHSS, No. 79-326-PC, which distinguishes Kimball from this case. Also, the time period between the request and granting of the reclassification is not of a duration sufficient to violate state policy, considering ministerial demands.

The determination of the effective date of a reclassification is an integral part of the reclassification. It is a determination that a position will be at one classification and level rather than another for a particular period of time. As was pointed out in the Kimball case, §230.09(2)(a), Stats., requires that positions be classified and reclassified on the basis of their "duties, authority, responsibilities or other factors recognized in the job evaluation process." A decision on effective date presumably should be made with these factors in mind. However, since reclassification is based on a "logical and gradual change to the duties or responsibilities of a position," §Pers. 3.01(3)(a), Stats., it usually would be difficult to ascertain with any degree of precision the exact date that the duties and responsibilities of a position had changed to the extent to warrant a reclassification. At the same time, there is an interest in the state having a relatively uniform approach in establishing such dates, and in placing some responsibility on the employe to come forward with a reclassification request in the event of changes in his or her job.

The administrator's policy recognizes these factors by providing a uniform approach to establishing effective dates, as the Commission acknowledged in the Grinnell case.

However, inasmuch as the civil service code does provide both a mandate that positions be correctly classified, and for the payment of back pay to correct errors, this provides a limitation on the extent to which a policy designed to secure administrative uniformity can be relied on to delay an effective date of reclassification solely because of a ministerial error.

The argument that the Division of Personnel should not have to take into consideration, in setting effective dates, administrative problems in the handling of reclassification requests by agency management before they reach the agency personnel shop is not without force. There are obvious logistical difficulties involved in ascertaining the facts as to such matters and in determining whether there was any unreasonable delay in the handling of the documents before they reach the personnel area. However, there are countervailing factors which must be considered.

First, there is no indication in these cases on this record that the delay was attributable in any respect to the appellants. Second, the handling of the documents by DHSS management prior to the time they reached BPER was, on this record, a part of the classification process. The Commission must assume, in the absence of countervailing evidence, that these documents were handled by DHSS management prior to their submission to BPER because such handling was in accordance with normal procedures established within DHSS. The personnel rules require that non-delegated reclassification requests be reviewed and a recommendation made by the appointing authority prior to submission to the Division of Personnel. See §Pers. 3.03(2), Wis. Adm. Code. Therefore, in the processing of such requests the appointing authority

is playing a role mandated by the administrator's rules. If, as here, the appointing authority requires such requests to be handled by line management before being submitted to the agency personnel office, it is nonetheless a part of that process. Therefore, it cannot be argued that what occurs between the time that employees submit their position descriptions and other documents to their supervisors and the time this material reaches the employing agency's personnel office is divorced from the classification process.

Third, hearings on appeals of reclassification denials are de novo. They are not restricted to the "record" that was before the administrator at the time of the decision, but rather the parties can bring in whatever evidence they wish in support of their positions, subject, of course, to considerations of relevancy and other rules of admissibility. The Division may choose, for purposes of administrative economy or otherwise, to restrict its inquiry as to appropriate date of reclassification to the point in time at which reclassification requests reach the agency personnel office, but such an approach cannot serve to restrict the scope of inquiry in a hearing on an appeal.

In the instant case, the Commission is restricted to the stipulated facts. As is set forth in that stipulation, the appellants submitted their reclassification requests during the week of March 30, 1981.

These documents were handled administratively within DHSS. Action within that agency was delayed for a period of time because of what apparently was a tentative decision to hold matters in abeyance pending a reorganization, and, following a determination to proceed notwithstanding the reorganization, by the loss of the position descriptions and accompanying documents. It was discovered that the documents were missing on May 24, 1981, but no action was taken to advise the appellants to prepare new ones until June 30, 1981. This was then done and the documents were submitted to the Bureau of Personnel and Employment Relations (BPER) within DHSS on July 8, 1981. Subsequently, the effective date of July 26, 1981, was established by the Division of Personnel pursuant to their policy which was discussed above.

On this record, the only part of the delay in handling the documents prior to their receipt at BPER which can be ascribed to "error" or mistake would be the period between May 24, 1981, when the documents were discovered missing, and July 8, 1981, when they were filed. Prior to that time, DHSS was involved in making a decision with respect to the reclassification requests--i.e., whether their processing should be delayed pending the occurrence of a reorganization. There is no suggestion on this record that this facet of the delay could be attributable to "error", as this term has been applied by the Commission.

The Commission must conclude on this record that the period of delay between May 24 and June 30, 1981, is attributable to ministerial error or mistake and that the appellants are entitled to have the effective date of their reclassification changed to reflect that period--i.e., to change the effective date from July 26, 1981, to June 19, 1981.

ORDER

The decision of the administrator establishing July 26, 1981, as the effective date of the instant reclassifications is modified, and this matter is remanded for action in accordance with this decision.

Dated: Sept 7, 1982 STATE PERSONNEL COMMISSION

AJT:jmf

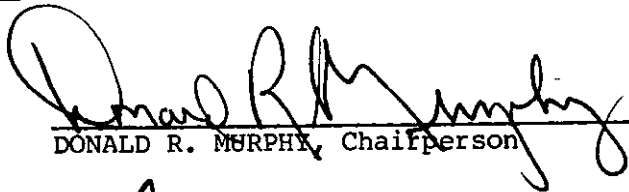
Parties:

Jeffrey Ulanski
449 Orchard Drive
Madison, WI 53711

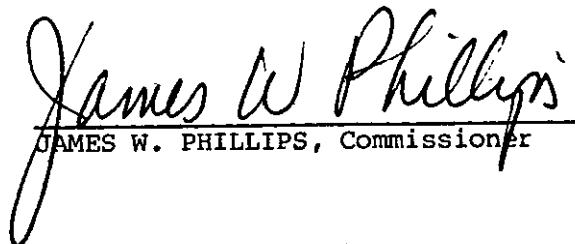
Richard L. Zynda
Div. of Economic Assist.
18 S. Thornton Avenue
Madison, WI 53708

Ruth Hase
7411 Tree Lane
Madison, WI 53717

Bertrand E. Bluma
217 Evergreen Lane
De Forest, WI 53532


DONALD R. MURPHY, Chairperson


LAURIE R. McCALLUM, Commissioner


JAMES W. PHILLIPS, Commissioner

Donald Percy, Secretary
DHSS
1 W. Wilson Street
Madison, WI 53702

Charles Grapentine, Administrator
DP
P. O. Box 7855
Madison, WI 53707

JEFFREY ULANSKI, et al,
Appellants,

v.

Case Nos. 82-2, 6, 7 and 9-PC

Secretary, DEPARTMENT OF
HEALTH AND SOCIAL SERVICES
and Administrator,
DIVISION OF PERSONNEL,

Respondents.

STIPULATION OF FACTS

1. The Appellants in the instant appeal are Bertrand Bluma, Ruth Hase, Jeffrey Ulanski, and Richard Zynda.

2. The Appellants are employed in the Division of Economic Assistance, Department of Health and Social Services.

3. The Appellants are appealing the effective date of the reclassifications of their positions; the effective date is July 26, 1981.

4. On Friday, March 27, 1981, the Appellants signed updated Position Descriptions for their positions; this occurred at a regular meeting of the Section in which Appellants are employed; Appellants then requested reclassifications.

5. The Appellants gave their updated and signed Position Descriptions to their supervisor, Steve Dow, who gave them to his supervisor, Lowell D. Trewartha, sometime during the week of March 30, 1981, so that the reclassification requests could be processed.

6. Lowell D. Trewartha signed the documents and forwarded them to the Deputy Administrator of the Division, Charles Holton, on or before April 10, 1981.

7. Subsequent to April 10, 1981 but prior to May 10, 1981, Mr. Holton returned the Position Descriptions to Mr. Trewartha with a request to hold action on the reclassifications until after reorganization of the Office of Operations and Management (OOM).

APPELLANTS' EXHIBIT #1

Division of Personnel

Dated: 4/15/82

Gwen P. Feit

Dept. of Health & Social Services

Dated: 4/12/82

Barbara J. O'Mara