

* * * * *
 *
 TRINA TIFFANY, CHRISTINE *
 HASSETT, DOROTHY GRIEBEL *
 and MARSHA HALL, *
 *
 Appellants, *
 *
 v. *
 *
 Secretary, DEPARTMENT OF *
 HEALTH AND SOCIAL SERVICES *
 and Secretary, DEPARTMENT OF *
 EMPLOYMENT RELATIONS, *
 *
 Respondents. *
 *
 Case No. 83-0225-PC *
 *
 * * * * *

DECISION
 AND
 ORDER

NATURE OF THE CASE

This is a joint appeal pursuant to §230.44(1)(a), Stats., of the effective date of the reclassification of appellants' positions from Therapist 2 to Therapist 3.

FINDINGS OF FACT

1. The appellants at all relevant times have been employed in the classified civil service at the Central Wisconsin Center (CWC) for the Developmentally Disabled by respondent DHSS.

2. In May, 1982, the appellants' supervisor recommended to the CWC personnel manager that their positions be reclassified from Therapist 2 to Therapist 3. These recommendations were based on her stated rationale that in her opinion they were performing at the Therapist 3 level.

3. These requests were not processed immediately, apparently due to a "freeze" effected by the institutional superintendent on certain personnel transactions, including reclassifications.

4. Authority to approve or disapprove reclassification from Therapist 2 to Therapist 3 resided in the Bureau of Personnel and Employment Relations (BPER) in DHSS.

5. The CWC Personnel Manager prepared requests for reclassification of the appellants' positions from Therapist 2 to Therapist 3 and forwarded the same to BPER with current position descriptions attached, and containing a written rationale for the reclassifications.

6. The aforesaid requests were received by BPER on the following dates: Hall and Tiffany - November 26, 1982; Hassett and Griebel - December 15, 1982.

7. After having evaluated the aforesaid reclassification requests and related materials, BPER determined that the positions, as therein described, were properly classified at the Therapist 2 level, and were not appropriate for reclassification to the Therapist 3 level.

8. On February 8, 1983, BPER advised the CWC personnel manager of the aforesaid determination at a meeting held in the BPER office. The CWC personnel manager took the position descriptions with him back to the institution in order to get further information or clarification with respect to the positions for further consideration by BPER.

9. Following this meeting, new position descriptions were prepared, addendums dated "4/27/83" were typed in the "justification" sections of the reclassification request/report forms, and these revised forms and revised position descriptions were submitted to BPER on May 12, 1983.

10. The main thrust of the aforesaid revisions was to point out that each of the positions had total clinical responsibility, and was the institutional authority for, a particular area of specialized expertise.

11. The duties and responsibilities of appellants' positions had not changed since the reclassification requests were submitted on November 26 and December 15, 1982, and in fact, had been the same for at least six months prior to these dates.

12. On the basis of the revised materials submitted by CWC, BPER determined that the positions should be reclassified to the Therapist 3 level and effected the reclassifications with an effective date of May 10, 1983. The appellants were notified of these transactions on January 3, 1984.

13. The DHSS policy on reclassification effective dates is as follows (Respondent's Exhibits 16 and 17):

"The effective date of a reclassification action is the start of the first pay period following effective receipt of the Reclassification Request by the BPER."

14. On November 10, 1983, the appellants filed a joint appeal with this Commission, alleging that the delay to that date in processing their reclassification requests constituted an effective denial of their requests.

15. Following their receipt on January 3, 1984, of the notice of the effective date of their reclassifications, none of the appellants filed within 30 days thereafter a written appeal of the effective date.

16. A second prehearing conference was held on February 28, 1984, at which time the following issue for hearing was established:

"Whether or not the decision of the respondent to reclassify appellants' positions effective May 5, 1983 [sic] was correct; if not, what are the correct effective dates."

CONCLUSIONS OF LAW

1. This matter is properly before the Commission pursuant to §230.44(1)(a), Stats.
2. The appellants have the burden of proving that the respondent erred in establishing the effective dates of the reclassifications of their positions.
3. The appellants have satisfied their burden of proof.
4. The respondents erred in establishing the effective dates of the reclassifications, which should have been November 26, 1982 (Hall and Tiffany) and December 15, 1982 (Hassett and Griebel).

OPINION

The respondent objected to the Commission's jurisdiction over this matter on the grounds that no appeal was filed within 30 days of January 3, 1984, when the appellants received notice that the effective date of their reclassifications would be May 10, 1983. See §230.44(3), Stats.

However, as of January 3, 1984, there already was an appeal on file. The appellants had filed, on November 10, 1983, an appeal which alleged that their reclass requests had been effectively denied due to the respondents' failure to have rendered a decision. Compare, Loy v. UW & DP, 81-241-PC, etc. (3/19/82):

"As a general matter, only a formal reclassification decision by the administrator (or, by the appointing authority in a delegated action) will trigger the Commission's jurisdiction over classification questions. An exception to this general rule occurs if the appointing authority refuses to act on an employee's reclassification request. Such a refusal would constitute a constructive denial of the request, thereby providing a basis for the exercise of the Commission's jurisdiction."

Inasmuch as the appellants had an appeal pending on January 3, 1984, their failure to act thereafter cannot be deemed a jurisdictional defect,

but rather was procedural in nature, amounting to a failure by the appellants, who have been unrepresented throughout this proceeding, to amend their original appeal. However, any procedural difficulty was cured at the prehearing conference held February 28, 1984, when the parties agreed to the following statement of issue for hearing:

"Whether or not the decision of the respondent to reclassify appellants' positions effective May 5, 1983 [sic], was correct; if not, what are the correct effective dates."

There can be no question that the respondent had notice of the matters asserted by the appellants.

With respect to the merits, the Commission is of the opinion that the respondent DHSS erred in its establishment of the effective date for these reclassifications. The department's own policy on effective dates, as set forth on this record (see Respondent's Exhibits 16 and 17) is keyed to the "effective receipt of the Reclassification Request by BPER."

In this case, the reclassification requests were received by BPER from the CWC personnel office in November and December, 1982. Each request was accompanied by a position description, the institution's recommendation that the position be reclassified, and a written rationale for this recommendation. BPER then determined that these materials did not support reclassification and facilitated the submission of revised materials. This was done, and the positions, which had not undergone any change in job content throughout the entire period, were reclassified. This is not a case where the initial reclassification requests were incomplete in the sense that they were not accompanied by position descriptions or the institutional rationale for its recommendation. Rather, the supporting materials which were there were felt to be inadequate to support a reclassification, and further or revised information was sought from the institution.

In the opinion of the Commission, the respondent has not advanced any convincing reasons why the term "effective receipt of the Reclassification Request" should be interpreted to mean "receipt of the reclassification request accompanied by supporting materials sufficient in themselves to warrant reclassification of the positions as requested." Such a reading of the provision in question appears to the Commission to go beyond its plain language and to be unnecessarily restrictive. What BPER did in this case in requesting information from CWC was functionally analogous to conducting audits of the positions. The Commission can take official notice of the fact that many reclassification decisions are made only after audits of the positions in question. In all or many of such cases, the respondent's interpretation of the effective date policy would lead to a delay in the effective date until after an audit.

As part of its case, DHSS offered testimony to the effect that it was not proper to give an employe "credit" for additional duties and responsibilities, in the sense of a reclassification/regrade, unless the additional duties and responsibilities were reflected in the employe's position description. The Commission does not believe that there is authority for such an approach. Position classifications are based on "... duties, authority, responsibilities or other factors recognized in the job evaluation process." §230.09(2)(a), Stats. There is nothing in the law that requires that these factors be reflected in a position description before they can be recognized in the context of position classification.

Also, to the extent that the BPER determination of the effective date of these reclassifications may have been based in whole or in part on the inference that the duties and responsibilities of these positions were augmented after the reclassification requests were initially submitted,

this basis is incorrect. If for no other reason, the Commission notes that appeals of this nature are de novo¹ in nature, and the record is clear that the duties and responsibilities of the appellants' positions did not change.

Finally, with respect to relief, the respondent argues that a number of court decisions have held that the Commission lacks the authority to require that back pay be awarded in cases of reclassification denials. While the Commission will not require back pay per se, it reiterates what was stated in McGrew v. UW & DP, 81-443-PC (1/7/83):

The question of whether or not the Commission has the authority to issue an order requiring back pay in a reclassification appeal is not determinative as far as the issue of relief in the present case. The Commission must assume that the respondent agencies are aware of and comply with the requirements set out in the Wisconsin Personnel Manual as developed by the Division of Personnel. Pursuant to Ch. 335 (Attachment #2) of that manual:

Both delegated and non-delegated reclassification actions will be made effective at the start of the second pay period following effective receipt of the reclassification request at a level within the agency that has the authority to approve the request (delegated actions) or the authority to recommend the action directly to the State Division of Personnel for final approval (non-delegated actions).

This provision would appear to apply to all reclassification requests including those instances where an appeal was taken to the Commission which then rejected the agency's decision.

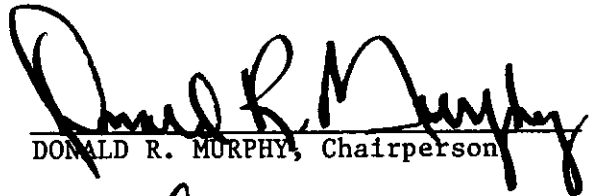
The Commission also assumes that the respondent would take appropriate action in connection with the establishment of the correct effective date in accordance with this decision, regardless of whether the Commission has the authority to require the result.

¹I.e., the Commission is not restricted to reviewing the facts and circumstances considered by the respondent when it made its decision.

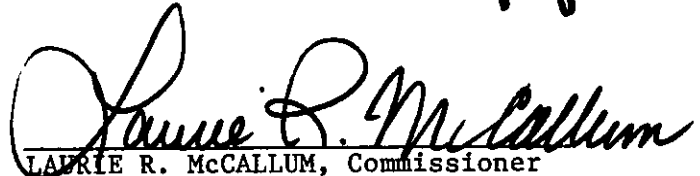
ORDER

The respondents' decision is rejected and this matter is remanded for action in accordance with this decision.

Dated: July 6, 1984 STATE PERSONNEL COMMISSION


DONALD R. MURPHY, Chairperson

AJT:jat


LAURIE R. McCALLUM, Commissioner


DENNIS P. MCGILLIGAN, Commissioner

Parties:

Trina Tiffany, Christine
Hassett, Dorothy Griebel,
and Marsha Hall
Central Wisconsin Center
317 Knutson Drive
Madison, WI 53704

Linda Reivitz
DHSS, Secretary
1 W. Wilson St.
P.O. Box 7850
Madison, WI 53707

Howard Fuller
DER, Secretary
149 E. Wilson St.
P.O. Box 7855
Madison, WI 53707