

KATHERINE VOLLMER,

Appellant,

v.

President, UNIVERSITY OF  
WISCONSIN SYSTEM, and  
Secretary, DEPARTMENT OF  
EMPLOYMENT RELATIONS,

Respondents.

Case No. 89-0056-PC

INTERIM  
DECISION  
AND  
ORDER

This appeal arises from the decision to reclassify the appellant's position from Graphic Artist 2 to 3 effective July 31, 1988. In her letter of appeal, the appellant stated, in part:

I wish to appeal the State Department of Employee Relations recommended reclassification date and request an effective date of 3/13/80. This reflects a date six months after a significant change in my job duties.

During a prehearing conference held on June 26, 1989, respondent University of Wisconsin System (UW) requested that it be removed as a party to the proceeding. In an interim decision and order issued on August 24, 1989, the Commission denied the UW's request and stated:

The appellant, who filed her arguments pro se, appears to allege that employees of the UW acted to interfere with and delay her efforts to obtain a reclassification of her position. Under these circumstances it is appropriate to have the UW continue as a named respondent in this matter, even though the final authority for setting the effective date for reclassifying the appellant's position rested with DER [Department of Employment Relations]. The actions of UW employees appear to be the focus of the appellant's claim that the effective date of the reclassification of her position should have been earlier. Given the direct involvement of the UW's employees, the UW should remain as a party in this matter.

On February 6, 1990, the UW filed an "objection to jurisdiction and motion to limit issues." The UW seeks to preclude any issues or evidence relating to: 1)

an effective date prior to July 21, 1988, and 2) alleged interference by the UW with the appellant's efforts to have her position reclassified. The parties filed briefs.

### FINDINGS OF FACT

1. At all times relevant to this appeal, the appellant has been employed as a graphic artist at the University of Wisconsin- Stevens Point.

2. In 1980, the appellant requested reclassification of her position from Graphic Artist 2 to Graphic Artist 3. The request was denied and on July 27, 1981, the appellant filed a letter appealing the denial to the Personnel Commission. The letter of appeal stated, in part:

I wish to appeal the findings of the audits on my position. The last audit having been conducted by UW-System, Central Personnel Office, June 5, 1981. I do not agree with the findings and request a hearing in this matter.

The appeal was assigned case no. 81-327-PC.

3. In response to a memo from the Commission inquiring as to the appellant's readiness to proceed, the appellant's union representative wrote on December 21, 1981: "We wish to drop subject appeal without prejudice."

4. On January 7, 1982, the Commission issued an order which stated: "At the request of the appellant, this case is dismissed."

5. From 1982 until May of 1989, the appellant never sought to reopen or refile the 1981 appeal.

6. On July 21, 1988, the appellant presented a formal request for reclassification to the personnel office at UW-Stevens Point. That request was ultimately granted and the appellant's position was reclassified from Graphic Artist 2 to 3, effective July 31, 1988. On May 22, 1989, the appellant filed an appeal of the effective date with the Personnel Commission.

7. On or about October 30, 1989, respondent DER served interrogatories and a request for documents on the appellant. Interrogatory #4 reads as follows:

Have you ever filed a written request or made an oral request which asked that the classification of your Graphics Artist position be reviewed and/or changed? If so, for each such request,

please state whether it was oral or written, the time that it was made or filed, and the name of the person who in fact received it. Please provide a copy of each written request.

8. Appellant's response to the interrogatory includes 14 entries between the dates of February 12, 1979 and July 24, 1981. The remaining entries commence with August 9, 1983 and are set out below. Citations to documents have been deleted.

8/9/83 Memo to Helen Godfrey (Assistant Chancellor and my immediate supervisor at this time. I suggested a reclassification of my position.

11/84 I verbally requested reclassification support from the new (approx. 1/84) department director, Mike Brisson.

1/14/95 Brisson requested the UW-SP personnel department to conduct individual job audits and was inquiring into changing all positions to Academic Staff appointments.

7/19/85 In the Job analysis Questionnaire for the State of Wisconsin Task Force on Comparable Worth, which I perceived as a request for review and/or change, I wrote a description of some of the flaws in the system, shown in question 138. It went to the Wisconsin Task Force on Comparable Worth.

12/9/85 I had my job review with Brisson I asked support for ascertaining the possibility of reclassification and help for setting up career guidelines.

12/10/85 Memo to Mike Brisson and Mary Williams (Affirmative Action Officer) expressing my interest in qualifying for a reclassification.

\*date approx. end of 1985 [sic] beginning of 1986 My name appeared on a memo from higher administration that the UW-SP personnel office, requiring my position and I be interviewed/audited for supervisory potential. The interview was held by one of Roland Juhnke's students. I expressed my interest in being reclassified and my interest in a supervisory position. I was promised a report of the results. This never happened. I was also not given a copy of the memo.

3/13/86 Meeting With Helen Godfrey. She told me about the move of my position to News Service and Publications. I expressed my desire for the position I held to be reclassified and expressed my concern about the problems inherent in going into a department with fewer employees.

7/1/86 My position moved to News Service and Publications under the direction of John Anderson. I expressed my desire for a reclassification and requested his support.

4/7/86 Verbal in a "brown bag" meeting for classified employees, I questioned Roland Juhnke about the procedures to follow in getting my position reclassified. He stated my position was dead ended.

4/20/86 Memo questioning Roland Juhnke about requirements of "leadwork" in reclassification of my position and asking for help in changing the "Classification Specifications"

4/28/87 At my request, John Anderson asked Vicki Kubisiak (personnel specialist) for a description of the position held by Bertrum Sasse, La Crosse Graphic Artist III.

5/19/87 I again made a verbal request to John Anderson, for reclassification of my position. He then told me of his intent to change four positions, including mine, to Academic Staff.

10/21/87 I prepared the UW-System Academic Staff Position Description Questionnaire and it was submitted to the personnel office (Roland Juhnke), with a request to change the position to Academic Staff.

12/22/87 I requested of Roland Juhnke and the Hayes Hill Advisory Board either a change to academic staff or a reclassification in the classified system that would describe the extent of the duties I was performing. Mr. Juhnke stated my position was dead ended. I then requested all Graphic Artist III position descriptions in the state system.

3/88 In my job review with John Anderson I requested that my attempts to reclassify be recorded in the review. He thought it was not appropriate.

5/17/88 Memo to John Anderson asking for retroactive reclassification from the point in time I had qualifying responsibilities, October of 1979.

6/6/88 In a meeting with Helen Godfrey, we again discussed the difficulties in -- and my requests for -- getting my position reclassified.

6/28/88 An audit of my position by Roland Juhnke. Of course I again requested a reclassification.

7/21/88 Letter from Juhnke to University System Personnel Relations asking for a reclassification.

7/21/88 Date the UW-SP Personnel Office claims to have received reclassification request.

## DISCUSSION

Respondent UW's objection and motion seek to establish an issue for hearing as follows:

Whether the decision of the DER Secretary establishing the effective date of appellant's reclassification from Graphic Artist 2 to Graphic Artist 3 as July 31, 1988, is correct?

Sub-issue: If this decision of the DER Secretary is not correct, should the effective date be established as some other date between July 21, 1988 and July 31, 1988.

In addition, the UW seeks an order limiting the scope of the proceeding to exclude consideration of: 1) Whether the correct effective date should be on or before March 13, 1980 or any other date between March 13, 1980 and July 21, 1988; and (2) Whether UW-Stevens Point or UW System acted to interfere with or delay appellant's efforts to obtain a reclassification of her position.

In Popp v. DER, 88-0002-PC, 5/12/88 and 3/8/89, the Commission addressed the jurisdictional basis for reviewing a decision establishing the effective date of a reclassification. In its March 8th decision, the Commission stated:

The Commission views the decision as to the effective date of a classification as more than merely a procedural adjunct of the underlying classification decision, akin to matters such as the kind of form that should be used to make a reclassification request. Rather, the decision as to effective date is in effect a decision as to the appropriate classification for a certain period of time. It is DER's decision in this case, for example, that a position should be classified at the PA 2 level on and before May 9, 1987, and at the PA 3 level on and after May 10, 1987. This is in effect a decision that it is not appropriate to classify the position at the PA 3 level prior to May 10, 1987. Presumably, DER could base such a decision on one of two premises - one, that the duties and responsibilities of the position were not at the PA 3 level prior to May 10, 1987, or two, that for administrative reasons, as opposed to the actual relationship between the duties and responsibilities of the position and the class specifications, DER should limit the reach of its reclassification decision to the date that the reclassification review was requested. In this case, the decision was grounded on the second basis. Notwithstanding, it has exactly the same effect on the position in question and the incumbent/employee as if it were based on the first premise. Furthermore, it is no less a deci-

sion under §230.09(2)(a), because respondent is refusing the request of the appellant/incumbent to reclassify or reallocate the position "on the basis of its duties, authority, responsibilities or other factors recognized in the job evaluation process" at an earlier point in time, and this failure or refusal to act can be just as much an appealable decision under §230.44(1)(b), Stats., as an affirmative decision. Therefore, the issue of effective date is part of the reclassification decision under §230.09(2)(a), Stats., and is appealable under §230.44(1)(b), Stats., as the Commission previously recognized in Baggott v. DNR & DER, 87-0012-PC (4/29/87).

While it is true that "reclassification interference" is not one of those personnel actions specifically listed in §230.44(1), Stats., as being appealable to the Commission, the conduct alleged by the appellant in the instant appeal does fit within in scope of the Commission's jurisdiction over a decision establishing a reclassification date. Over the years, the Commission has issued several decisions addressing the merits of appeals in which the appellants have sought to advance the effective date of a reclassification due to alleged inappropriate conduct on the part of the personnel office or supervisor. Warda v. UW-Milwaukee & DER, 87-0071-PC, 6/2/88; Baggott v. DNR & DER, 87-0012-PC, 12/23/87; affirmed by Dane County Circuit Court, Baggott v. Wis. Pers. Comm., 88-CV-0366, 8/11/88; Guzniczak & Brown v. DER, 83-0210, 0211,-PC, 5/13/87; petition for rehearing granted and decision reaffirmed, 6/11/87; Spilde v. DER, 86-0040-PC, 10/9/86. For example, in Warda, the Commission held that the respondent was estopped from arguing that an earlier effective date was precluded by the fact the appellant did not submit an earlier written reclass request where the appellant had repeatedly voiced her concerns about the classification of her position, she had written a letter to her department head and management gave every indication that the appellant's concerns would be addressed and never suggested a need to submit a written request.

In the present case, the appellant's answers to the DER's interrogatories show that she is making very similar arguments to those considered by the Commission in Warda. The allegations are clearly relevant to the review of a decision establishing an effective date for a reclassification, a decision which falls within the scope of §230.44(1)(b), Stats. The Commission therefore declines to accept the UW's contention that the Commission lacks jurisdiction over such types of allegations.

The UW also raises an objection based on the 30 day time limit for filing appeals:

Moreover, she should not be permitted to place in issue any effective date following the 1982 dismissal of her appeal, and prior to the 1988 request for reclassification leading to the decision to classify her position at the Graphic Artist 3 level. It is settled that, under s. 230.44(3), Wis. Stats., filing an appeal more than 30 days after the decision being appealed deprives the Commission of jurisdiction in the matter. Although--as she indicates in her Responses to Interrogatories--Ms. Vollmer may have discussed the matter of reclassification informally on many occasions, she was continuously aware that reclassification was not forthcoming and took no action to pursue the matter. On none of these occasions did she seek formal consideration by the UW-Stevens Point personnel office, nor did she attempt to take any type of appeal to the UW System, DER or the Commission. Her only formal appeal--the instant case--concerns the correct effective date of the reclassification she requested July 21, 1988 and received in 1989. This appeal was filed May 22, 1989. Under the circumstances, any claim on this appeal that the reclassification should have occurred before the initiation of the July 21, 1988 request is time-barred by s. 230.44(3), Stats., and the Commission is without jurisdiction to entertain the matter.

The respondent's theory does not take into account the conclusion reached in Baggott, supra, that the decision establishing the effective date of a classification is really a decision as to the appropriate classification for a certain period of time. In the present case, the respondent's effective date decision amounted to a determination that the appellant's position was properly classified at the Graphic Artist 2 level on and before July 30, 1988, and at the Graphic Artist 3 level on and after July 31, 1988. This is in effect a decision that it is not appropriate to classify the position at the Graphic Artist 3 level prior to July 31st. If the respondent's timeliness theory were followed, employees would lose any substantive review of decisions establishing an effective date because the Commission's review would be restricted to the 30 days preceding the date adopted by the respondent, however that date may have been determined.

While the Commission is not restricted to analyzing the 30 days preceding the effective date established by the respondents, the scope of the instant appeal is limited by the existence of the 1981 reclassification appeal filed by the appellant which was dismissed by the Commission at her request. Even if the Commission had expressly designated its January 7, 1982 order as a dis-

missal without prejudice, the failure of the appellant to reopen or refile the appeal during the next 6 years acts as a bar to reopening that claim now.

In the absence of statute, a party cannot deduct from the period of the statute of limitations applicable to his case the time consumed by the pendency of an action in which he sought to have the matter adjudicated, but which was dismissed without prejudice as to him, and if before he commences a new action after having become nonsuited or having had his action abated or dismissed, the limitation runs, the right to a new action is barred. (Citations omitted.)

51 Am Jur 2d *Limitation of Actions* §311 (1970). Therefore, the appellant is precluded from seeking an effective date earlier than July 27, 1981, which is the date of the decision which served as the basis for the appellant's 1981 appeal.

ORDER

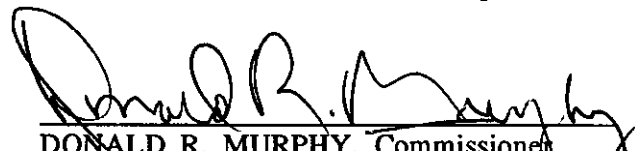
Respondent UW's objection to jurisdiction and motion to limit issues are denied. The parties will be contacted for the purpose of scheduling a hearing. The issue for hearing, agreed to by the parties during a prehearing conference held on June 26, 1989, is modified to read:

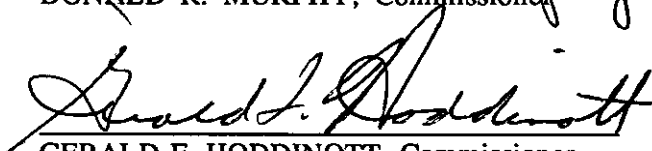
Whether the respondent's decision setting July 31, 1988, as the effective date for reclassifying the appellant's position was correct. If not, what is the correct effective date after July 27, 1981.

Dated: April 12, 1990 STATE PERSONNEL COMMISSION

  
LAURIE R. MCCALLUM, Chairperson

KMS:kms

  
DONALD R. MURPHY, Commissioner

  
GERALD F. HODDINOTT, Commissioner