

STATE OF WISCONSIN

PERSONNEL COMMISSION

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LANGE et al.,
JANET LANGE, BERNHART ZIBOLSKY,
CRYSTEL J. SCHROEDER, NEIL SCHROEDER,
ROBERT A. GUNDERSON, JOHN H. JOHNSON,
JOSE A. PEREZ, PATRICIA WEIGERT, LARRY
L. WIEBERDINK, DAVID L. ZIMMERMANN,
A. KATHY JORGENSEN, PATRICIA A. PENN,
NANCY WILMS, LINDA M. KREBSBACK,
ROSE M. PERRY, JAMES E. KONEN, DAVID P.
BROCKMANN, JANET CUMBER, THOMAS J.
HARRISON, MARY L. POPELKA, GARY L.
BRETZMANN, DEBRA L. RILEY, DOUG
RETTMANN, EVA WALL, PHILIP R. REICH,
PATRICIA A. BROWN, A. L. BORG, STEVEN J.
BOLEN, BETTY ABBOTT, CARLOTTA HANSON,
NOLA N. WENZEL, WARREN D. JAHNS

Appellants,

v.

Secretary, DEPARTMENT OF EMPLOYMENT
RELATIONS, and Secretary, DEPARTMENT
OF TRANSPORTATION,

Respondents.

Case Nos. 90-0118, 119, 123, 124, 128,
144, 145, 146, 147, 148, 150
151, 153, 156, 157, 164, 170,
177, 178, 179, 180, 183, 185,
186, 187, 189, 193, 196, 215,
223, 224, 225-PC

* * * * *

DECISION
AND
ORDER

Nature of the Case

These are appeals of the effective dates of classification actions. A hearing was held on February 12, 1992, before Laurie R. McCallum, Chairperson, to address the effective date issue as well as the respondent's Motion to Dismiss based on untimely filing in the Wenzel, Hanson, and Abbott appeals. The parties were required to file briefs and the briefing schedule was completed on April 20, 1992.

Findings of Fact

1. Some time prior to November of 1989, respondent DOT received approval from respondent DER to do an informal survey of certain classifications, including the Motor Vehicle Services Specialist (MVSS) classifications, and to propose to respondent DER revisions in the language of the MVSS position standard. Respondent DOT initiated this study in November of 1989.

2. DOT's proposed revisions in the MVSS position standard were approved by the Secretary of DER by letter dated January 25, 1990, effective January 23, 1990.

3. After the new MVSS positions standard was approved, DOT obtained updated position descriptions for all MVSS positions and changed the classifications of each of these positions based on the new position standard. After this process was completed, DOT prepared a Reclassification Request/Report form for each MVSS position to implement the classification changes and the related changes in pay range and pay rate. These forms were completed by DOT's central personnel unit on March 29, 1990. The classifications of appellants' positions within the MVSS series were changed based on the new MVSS position standard and these changes were effective January 28, 1990. January 28, 1990, was the first day of the first pay period following January 25, 1990.

4. On March 15, 1990, the DOT Central Office sent an "electronic mail" message to all district offices indicating that all positions classified within the MVSS series had new classifications; including a chart which explained that MVSS 2 positions were now classified at the MVSS 4 level, MVSS 3 positions at the MVSS 5 level, and MVSS 4 positions at the MVSS 5 or 6 levels; and stating that backpay adjustments could be reflected in paychecks as early as April 19, 1990. The record does not indicate whether these messages were posted or circulated to the staff within the district offices. The record does not indicate when appellants first received such backpay adjustments.

5. Appellants Wenzel, Hanson, and Abbott were employed in MVSS positions in district offices at all times relevant to these matters.

6. Reclassification Request/Report forms were completed for the Wenzel, Hanson, and Abbott positions and signed by an official of DOT's central personnel unit on March 29, 1990. Attached to such forms were the face sheets

of the updated position descriptions which indicate that their updated position descriptions were signed by appellants Wenzel and Hanson on March 16, 1990, and by appellant Abbott on March 20, 1990. Appellants Wenzel, Hanson, and Abbott testified that they did not recall receiving copies of or seeing copies of the Reclassification Request/Report forms completed for their positions during 1990 other than the copy of the face sheet of their position description which they recall seeing at the time they signed the updated position descriptions for their positions.

7. On May 21, 1990, appellant Wenzel received a call from an employee of the Fond du Lac District Office advising her that certain employees were filing appeals of the changes in the classifications of their MVSS positions. Appellant Wenzel communicated this information to appellant Hanson. As a result of this call, appellants Wenzel and Hanson each drafted a letter appealing the change in classification of her MVSS position. These letters of appeal were received by the Commission on June 13, 1990.

8. Appellant Abbott became aware on March 26, 1990, that the classification of her position had been changed to the MVSS 5 level. She prepared a letter of appeal after learning from an employee of the DOT district office in Appleton that appeals had been filed by other employees. Appellant Abbott's letter of appeal was filed with the Commission on June 1, 1990.

Conclusions of Law

1. Appellants Wenzel, Hanson, and Abbott have the burden to prove that their appeals were timely filed.
2. Appellants Wenzel, Hanson, and Abbott sustained this burden.
3. The appeals filed by Wenzel, Hanson, and Abbott were timely filed.
4. The appellants have the burden to show that the effective date of the subject changes in the classifications of their positions established by respondents was incorrect.
5. The appellants have failed to sustain this burden.
6. The January 28, 1990, effective date established by respondents for the subject changes in the classifications of appellants' positions was correct.

Opinion

In a Ruling by Hearing Examiner issued January 27, 1992, it was noted that four of these appeals had been withdrawn (Case Nos. 90-0146-PC, 90-0150-PC, 90-0156-PC, 90-0223-PC). The hearing examiner also ruled as follows in regard to two additional appeals (Case Nos. 90-0145-PC, 90-0145-PC) to which respondent DOT had filed a Motion to Dismiss for lack of subject matter jurisdiction:

Respondent DOT's objection, set forth in its February 18, 1991, letter, is premised on the assertion that these six appellants reached the MVSS 7 level by competitive examination; that, since the dates of their promotions, there have been no classification actions reclassifying or denying reclassification of their positions; and, hence, there have been no appealable transactions. Ms. Schroeder's May 24, 1990, letter does not dispute any of these underlying facts or offer any arguments in support of subject matter jurisdiction. Therefore, the motion should be granted and this will be reflected in a proposed decision and order. The parties can assume that no evidence concerning these six cases will be admitted at the hearing scheduled on a consolidated basis for February 12, 1992.

The Ruling also stated as follows in regard to respondent DER's objections to certain of appellants' proposed issues:

Respondent DER objects to the following proposed issues:

- 1) The 1983 position standard for MVSS classification impacted negatively on our pay scales because MVSS were compared to MVR series.
- 2) The updated standard study was done by DER/DOT and the committee was made up of Madison people and management. Only two field people were our representatives on that committee. The study was log-jammed when DER decided management should be reclassified also, thus prolonging the study several months.
- 3) We wish to have the fairness of the study investigated and include the whole study--MVSS series including teamleaders and the gains supervisors and managers made from a study initiated to fairly compare pay rates of MVR versus MVSS series.

The examiner agrees with respondent's characterization that these issues "question the fairness and correctness of DER's review of the MVSS classification standards and the current MVSS

standards." The actions which these issues seek to challenge were taken pursuant to DER's authority to "establish, modify or abolish classifications." The Commission has authority pursuant to §230.44(1)(b), Stats., to hear appeals of decisions rendered under §230.09(2)(a), Stats., regarding the reclassification or reallocation of positions, but has not been given the statutory authority to hear appeals of actions taken under §230.09(2)(am), Stats., regarding the conduct of surveys and the establishment, modification or abolition of classifications. Therefore, these three issues are outside the scope of the Commission's jurisdiction and will not be considered. The sole substantive issue for hearing will be whether the effective date of the reallocations of the appellants' positions was correct. Pursuant to the parties' agreement reflected in the November 18, 1991, prehearing conference, the parties may also present evidence on the timeliness of the Abbott, Hanson, and Wentzel appeals. Respondent's motion in limine to prohibit introduction of any evidence solely relevant to the excluded issues is granted.

The Commission agrees with and adopts these rulings of the hearing examiner.

Timeliness of Wenzel, Hanson, and Abbott appeals

Although respondents offer several arguments which urge the Commission to attribute actual notice to appellants Wenzel, Hanson, and Abbott of the subject classification changes, the record simply does not show when, if ever, these appellants received actual written notice of these changes. The record does not show when, if ever, they received copies of the Reclassification Request/Report forms or any other writing notifying them of the subject changes; and does not show that any such forms or writings were ever personally delivered to them or mailed to them or placed in their mail slot at work. As the Commission found in Piotrowski v. DER, Case No. 84-0010-PC (3/16/84), pursuant to §3.04, Wis. Adm. Code, the time limit for filing an appeal of a reallocation or reclassification decision does not commence until the appellant has received written notice of the decision. Respondents have failed to successfully rebut appellant Wenzel's, Hanson's, and Abbott's showing that they did not receive written notice of the subject change in classifications of their positions during 1990.

Effective Date

Although appellants had the burden to show that the January 28, 1990, effective date for the reallocations of their positions was incorrect, not only did appellants fail to introduce any evidence at hearing on this issue but counsel for appellants failed to file a brief, as required by the hearing examiner. As a result, the Commission has no idea what appellants' theory of this case in regard to the effective date issue might be. It is clear from the record that the new position standard upon which the subject classification changes were based was not approved by the Secretary of DER and, as a result, could not have become effective, until January 25, 1990; and that January 28, 1990, the effective date of the reallocations, was the first day of the first pay period following January 25, 1990. It strains credulity for appellants to argue that the effective date of the subject changes in the classifications of their positions should precede the effective date of the position standard upon which such changes were based. Respondents would not have had the authority to authorize changes in classifications based on the new position standard until the new position standard had been approved and made effective. In addition, appellants have failed to cite any authority for their conclusion that the effective date should have been some date prior to January 28, 1990, or any requirement that the study conducted by DOT have been completed or its results made effective earlier.

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Order

Case Nos. 90-0146-PC, 90-0150-PC, 90-0156-PC, and 90-0223-PC are dismissed pursuant to the request by these appellant to withdraw their appeals. Case Nos. 90-0145-PC and 90-0164-PC are dismissed based on lack of subject matter jurisdiction. Respondents' Motion to Dismiss Case Nos. 90-0215-PC, 90-0224-PC, and 90-0225-PC based on untimely filing is denied. Respondents' action in establishing January 28, 1990, as the effective date of the subject changes in classifications is affirmed and all appeals not dismissed on some other basis are hereby dismissed.

Dated: June 11, 1992 STATE PERSONNEL COMMISSION


LAURIE R. McCALLUM, Chairperson

LRM/lrm/gdt/2


DONALD R. MURPHY, Commissioner

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NOTICE

OF RIGHT OF PARTIES TO PETITION FOR REHEARING AND JUDICIAL REVIEW OF AN ADVERSE DECISION BY THE PERSONNEL COMMISSION

Petition for Rehearing. Any person aggrieved by a final order may, within 20 days after service of the order, file a written petition with the Commission for rehearing. Unless the Commission's order was served personally, service occurred on the date of mailing as set forth in the attached affidavit of mailing. The petition for rehearing must specify the grounds for the relief sought and supporting authorities. Copies shall be served on all parties of record. See §227.49, Wis. Stats., for procedural details regarding petitions for rehearing.

Petition for Judicial Review. Any person aggrieved by a decision is entitled to judicial review thereof. The petition for judicial review must be filed in the appropriate circuit court as provided in §227.53(1)(a)3, Wis. Stats., and a copy of the petition must be served on the Commission pursuant to §227.53(1)(a)1, Wis. Stats. The petition must identify the Wisconsin Personnel Commission as respondent. The petition for judicial review must be served and filed within 30 days after the service of the commission's decision except that if a rehearing is requested, any party desiring judicial review must

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serve and file a petition for review within 30 days after the service of the Commission's order finally disposing of the application for rehearing, or within 30 days after the final disposition by operation of law of any such application for rehearing. Unless the Commission's decision was served personally, service of the decision occurred on the date of mailing as set forth in the attached affidavit of mailing. Not later than 30 days after the petition has been filed in circuit court, the petitioner must also serve a copy of the petition on all parties who appeared in the proceeding before the Commission (who are identified immediately above as "parties") or upon the party's attorney of record. See §227.53, Wis. Stats., for procedural details regarding petitions for judicial review.

It is the responsibility of the petitioning party to arrange for the preparation of the necessary legal documents because neither the commission nor its staff may assist in such preparation.