

JOYCE NESSE, and
CHRISTINE A. CLEARY-HINZ,

Appellants,

v.

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

Respondents.

Case Nos. 90-0126, 0127-PC

DECISION
AND
ORDER

These matters are before the Commission as appeals from decisions establishing the effective date of reclassifications of the appellants' positions. The parties agreed to the following issue for hearing:

Whether respondents' decision establishing June 18, 1989 as the effective date for reclassification of appellants' [positions] to Program Assistant 2 is correct.

Subissue: If not, what is the correct effective date for the reclassification of appellants' positions to Program Assistant 2.

At the commencement of the hearing, the respondents admitted that their decision was in error and that the proper effective date was November 15, 1988, rather than June 18, 1989. The appellants contend that the proper effective date was prior to November 15th while the respondents contend that any date prior to November 15th would be improper.

FINDINGS OF FACT

1. At all times relevant to these proceedings, the appellants have been employed in the Registrar's Office of the University of Wisconsin-Madison. On October 4, 1981, the appellants were first classified as Program Assistant 1's.

2. The appellants are supervised by Scott Hardie Grover, who serves as the supervisor for the fee section in the Registrar's Office.

3. Beginning in 1986, the process in the Registrar's Office for reclassifying individuals within the office was to obtain approval from each of the following levels: 1) the employee's immediate supervisor; 2) an associate or assistant registrar; 3) a committee comprised of the "executive staff" of the Registrar's Office; 4) the Registrar and, 5) the Director of Academic Services. The request then was to be forwarded to the UW-Madison's Classified Personnel Office.

4. In October of 1987, the fee section was reorganized. The appellants acquired certain duties which previously had been performed by a Student Status Examiner 1 position. At the time of the reorganization, the appellants discussed the possibility of reclassification with Mr. Grover. Mr. Grover advised them, in part, that in order to be reclassified, new duties had to be assigned to a position for a minimum of six months before reclassification would be considered.

5. In approximately March of 1988, the appellants again spoke with Mr. Grover about the reclassification of their positions. At Mr. Grover's request, they submitted to him an up-to-date summary of their duties. Mr. Grover reviewed the materials, revised the description of duties to better reflect his view of them and, no later than April 1, 1988, submitted them to his supervisor, Thomas Johnson, Associate Registrar, for further informal review.

6. By memo dated April 1, 1988, Mr. Johnson wrote a memo to Mr. Grover which stated, in part:

Regarding the draft PD's - I think both are good in describing current duties of the respective positions. As Touch-Tone begins to take shape, of course, we can expect to [make] further modifications.

Does the PA-2 draft apply to the positions currently held by Chris Cleary-Heinz and Joyce Nesse? Are you proposing a reclass to PA-3 for Creola?

Have you analyzed the changes in duties for each position?
Duties eliminated
Duties added

7. During the Spring of 1988, Mr. Johnson was uncertain whether the duties performed by the appellants were strong enough to justify reclassification of the appellants' positions to the PA 2 level.

8. During the period commencing in February of 1987, the Registrar's Office was actively preparing for the implementation of what is referred to as Touchtone Registration, a method of registering for classes via telephone, rather than in person. This represented a major change from the earlier registration procedures and during the period including April through August 15, 1988, the Registrar's Office was very busy in preparing for and conducting a pilot Touchtone Registration for graduate students and college seniors.

9. During the period between April 1 and November 15, 1988, Mr. Grover and Mr. Johnson met on several occasions and discussed the appellant's reclassification of the appellant's positions. Over the period of 6 and 1/2 months between April 5, 1988 and November 15th, the joint position description for the appellant's positions was revised until the final form was reached on November 15th and submitted to Mr. Johnson. The only substantive change in the position description during this period was the addition of a second entry in the category of other general office duties. The new entry referred to assisting others to answer questions about the Touchtone Registration via a hotline and to maintain updated resource material about both Touchtone and In-Person Registration.

10. After having received the final documentation on November 15th, Mr. Johnson submitted the appellants' reclassification to the Executive Committee for consideration on December 29, 1988.

11. Commencing on January 1, 1989, the Registrar's Office had instituted a "freeze" on reclassifications within the office except for persons who were hired on a trainee basis. For those positions, the respondent had received permission when a vacancy occurred to fill the positions at a lower classification level with the expectation that upon attaining experience with the duties of the position, the positions could then be reclassified. The appellant's positions were not filled on the same basis as this.

12. The Registrar's Office Executive Staff had not issued a formal response to the appellants' reclassification request by May 18, 1989.

13. In June of 1989, the complainants contacted Virginia Richert of UW-Madison's Classified Personnel Office, explained that they had requested reclassification and that they were dissatisfied as a consequence of the lack of a response from the Registrar's Office.

14. On March, 13, 1990, Ms. Richert granted the appellant's request to reclassify their positions to the Program Assistant 2 level, with an effective date of June 15, 1989, which was established based on the date Ms. Richert's office first obtained the position descriptions for the appellants' positions.

15. Other reclassification requests arising from within the Registrar's Office have sometimes taken more than 7 months to process from the date of the original request for reclassification and have taken more than 7 months from the date of the request until the effective date of the resulting reclassification.

16. Chapter 332 of the Wisconsin Personnel Manual establishes the following policy regarding the effective date of reclassification actions:

Both delegated and nondelegated reclassification regrade actions and reallocation regrade actions ... will be made effective at the beginning of the first pay period following effective receipt of the request.

* * *

Effective receipt of a request may be made by any office within the operating agency that has been delegated, in writing, effective receipt authority by the appointing authority. A request may be initiated in one of the following three ways through submission of appropriate documentation:

1. If the first line supervisor or above in the direct organizational chain of command requests that the position be reviewed for proper classification level or recommending a specific classification level change, the required documentation is an updated Position Description and written reasons for the request.

2. If a position incumbent requests his/her supervisor to review the level of the position and the supervisor takes no action or declines to initiate further action, the required documentation from the incumbent is a written request which includes a statement of the events (including the dates when the events took place) which have occurred in regard to the request for a classification review.

17. The UW-Madison Classified Personnel Office is the office within the UW which has been delegated effective receipt authority for reclassification requests arising from the Registrar's Office.

18. There were no significant changes in the appellants' duties between April and mid-November of 1988.

CONCLUSIONS OF LAW

1. This matter is properly before the Commission pursuant to §230.44(1)(b), Stats.
2. The appellants have the burden of proving that the respondent erred in not establishing an effective date earlier than November 15, 1988, with respect to the reclassification of their positions from Program Assistant 1 to Program Assistant 2.
3. The appellants have failed to sustain their burden of proof.
4. The respondents' action of establishing November 15, 1988, rather than an earlier date, as the effective date for the reclassification of the appellants' positions was correct.

DISCUSSION

The net effect of the stipulation made by the respondent at the commencement of the hearing in this matter is that instead of the appellants having the burden to show that the proper effective date was prior to June 18, 1989, the appellants' burden was to show that the effective date for the reclassification of their position should have been prior to November 15, 1988. There are three distinct theories which, given the proper facts, could result in a finding favorable to the appellants. The first theory is that the respondents improperly applied the provisions of Chapter 332 of the Wisconsin Personnel Manual. The second theory is that the respondents are estopped from using an effective date as late as November 15th because the appellants were misled which caused them to not to file appropriate documentation with the Classified Personnel Office until a date after November 15th. The final theory is that the delay between the April 1st memo from Mr. Johnson to Mr. Grover and November 15th was unreasonable and excessive.

The first question is whether the announced policy required an earlier effective date than the November 15th date which was stipulated to by the respondent. According to the effective date policy which is found in Chapter 332 of the Wisconsin Personnel Manual, the determination of the effective date

depends on the submission of "appropriate documentation" to, in this case, the Classified Personnel Office:

1. If the first line supervisor or above in the direct organizational chain of command requests that the position be reviewed for proper classification level or recommending a specific classification level change, the required documentation is an updated Position Description and written reasons for the request.
2. If a position incumbent requests his/her supervisor to review the level of the position and the supervisor takes no action or declines to initiate further action, the required documentation from the incumbent is a written request which includes a statement of the events (including the dates when the events took place) which have occurred in regard to the request for a classification review.

Because it is clear that the Classified Personnel Office rather than the Registrar's Office had been delegated effective receipt authority for reclassification requests arising from the Registrar's Office, and the Classified Personnel Office did not receive any documentation prior to November 15, 1988, it cannot be said that the applicable policy required an earlier effective date than the November 15th date which was stipulated to by the respondent.¹

There is still a question whether the respondents took some action which would cause the respondents to be estopped from asserting an effective date as late as November 15th. For example, in Guzniczak & Brown v. DER, 83-0210, 0211-PC, 5/13/87; petition for rehearing granted and decision reaffirmed, 6/11/87, the respondents were required to reclassify the appellants' positions with an effective date of more than two years earlier than when respondents received appellants' written request where appellants were misled by management's conduct into assuming their verbal reclassification requests were adequate. The circumstances suggested to the appellants that their verbal request was being considered. Also, in Warda v. UW-Milwaukee & DER, 87-0071-PC, 6/2/88, the respondents were estopped from arguing that an earlier effective date was precluded by the fact she had first submitted a written reclass re-

¹ Pursuant to the holding in Popp v. DER, Wis. Pers. Commn. 88-0002-PC (3/8/89), the effective date decision must be reviewed to determine whether there was an abuse of discretion. The effective date policy in Chapter 332 of the Wisconsin Personnel Manual, upon which respondents relied, has a rational basis in administrative certainty and convenience and does not constitute an abuse of discretion.

quest to the personnel office on March 9, 1987, where the appellant had repeatedly voiced her concerns about the classification of her position, including a letter to the 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. Here, in contrast, the appellants' request was in fact being acted upon by management during the period in question. The appellants' first and second level supervisors discussed the request on several occasions and developed an updated description of duties and a justification for the request. This is not a situation such as that in Guzniczak & Brown, where the agency did not act on a verbal request even though the circumstances suggested that they were acting on it.

At some point during the process, the appellants asked Mr. Johnson about the length of time the reclassification was taking. Mr. Johnson did not advise the appellants of any procedure by which they could speed up the process, such as by directly submitting reclassification materials to the Personnel Office², because Mr. Johnson understood that all of the steps outlined in finding of fact 3 had to be followed. Even if it could be concluded that Mr. Johnson mislead the appellants by not telling them they could directly contact the Personnel Office, there is nothing on the record in this matter that suggests this conversation occurred before, rather than after, November 15, 1988.

This appeal also raises the issue of whether the amount of time taken to process the transaction was excessive. In Michalski v. DOT & DP, 82-228-PC, 6/9/83, the Commission held that the 43 days used by the deputy administrator to refuse to approve the reclassification request was not unreasonable or excessive simply because another request was handled in 12 days. The Commission specifically noted that "many factors can contribute to the length of time needed to process a reclassification, including the workload within an agency." Here, the respondent has effectively conceded that appellants' reclassification request should have reached the Classified Personnel Office no later than November 15, 1988, or approximately 6 and 1/2 months after the ap-

² Virginia Richert, the personnel specialist who ultimately granted the appellants' reclassification, testified that if an employe is concerned that a particular department within the university is taking too long to process a particular reclassification request, the employe can take their concern directly to the Classified Personnel Office as long as they have first contacted the supervisor.

pellants first filed what amounted to a written request with their supervisor. The internal procedure in the Registrar's Office called for review by the supervisor, the second level supervisor, the "executive staff", the Registrar and the Director of Academic Services before the request reached the personnel office³. Given this very involved process and the pendency of the Touchtone Registration pilot program during the same period, it cannot be said that 6 and 1/2 months for the request to reach the personnel office was unreasonable or excessive. The registrar also described several other reclassification requests which took more than 6 and 1/2 months to get through the "executive staff" stage of the process.


Because the appellants did not show that the proper effective date for the reclassification of their positions was earlier than November 15, 1988, the Commission enters the following

³ Mr. Grover testified that he had "numerous" discussions with Mr. Johnson between the time the appellants first submitted their request and November 15th, when Mr. Johnson received the final documentation, regarding the appellants' request and the duties they were assigned. Mr. Grover suggested that there was a great deal of revision in the draft position description during this period. An examination of the two position descriptions indicates that with one exception, the revisions were simply a matter of style and grammar, rather than of a substantive nature. However, the focus of this case, in light of the respondent's stipulation of a November 15th effective date, has to be on whether it would have been an unreasonable or excessive delay if it had taken until November 15th for the necessary documentation to reach the Classified Personnel Office, not whether Mr. Grover or Mr. Johnson were unreasonably or excessively slow in not finalizing the materials until November 15th.

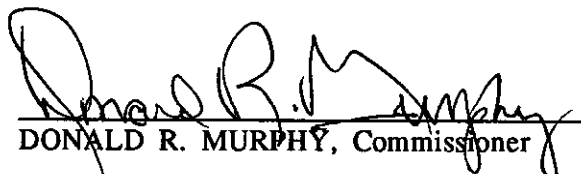
ORDER

Pursuant to the stipulation entered on the record, the respondents are directed to amend the effective date of the reclassification of the appellants' positions from June 18, 1989, to November 15, 1988.

Dated: October 4, 1990 STATE PERSONNEL COMMISSION


LAURIE R. MCCALLUM, Chairperson

KMS:kms


DONALD R. MURPHY, Commissioner


GERALD F. HODDINOTT, Commissioner

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