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TERRENCE J. REGAN
and HELEN M. BLUMER,

Appellants,

v.

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

Respondents.

Case Nos. 92-0211-PC
92-0256-PC

* * * * *

DECISION
AND
ORDER

This matter is before the Commission pursuant to §230.44(1)(b) on appeal of respondents' decisions regarding the effective date of reclassification of appellants' positions. The following findings are based on a hearing held on the issue of correct effective date.

FINDINGS OF FACT

1. In late 1987 or 1988 several original appointees to respondent's newly established district chief positions requested reclassification of their positions to Administrative Officer (AO) 1.
2. The position of Arnold Mohlman, District 1, was selected for submittal to the Department of Employment Relations (DER) for review.
3. DER rejected the Mohlman reclassification request in a letter to the Personnel Director of respondent, dated July 18, 1989.
4. Mohlman did not appeal DER's decision.
5. Other original district chief appointees, including Richard Walsh - District 5, Barbara Lund - District 8, and Edward Jones - District 3, received notices of denial of their 1987 reclassification in May 1991.
6. Edward Jones retired. Walsh and Lund appealed the reclassification decisions to this Commission.
7. Shortly afterwards, Walsh and Lund in July and August 1991, respectively, again requested reclassification of their positions to the AO 1 level.

8. On February 3, 1992, respondent DOT, having gained authority from DER to reclass AO 1 level positions, granted their reclassification requests, effective on their request dates.

9. Walsh and Lund appealed the effective date of their reclassifications. However, these appeals, together with their prior appeals, were settled before hearing.

10. Appellant Terrence Regan replaced the former incumbent District Chief of District 3 in Green Bay, WI, Edward Jones, on March 14, 1988.

11. Appellant Helen Blumer replaced the former District Chief of District 6 in Eau Claire, WI, on February 29, 1988.

12. On May 6, 1991, respondent DOT's central personnel office received a request to reclassify Regan's position from Administrative Assistant (AA) 5 - Confidential/Supervisor to AO 1 - Confidential/Supervisor.

13. On April 25, 1991, respondent DOT's central personnel office received a request to reclassify Blumer's position from AA 5 - Confidential/Supervisor to AO 1 - Confidential/Supervisor.

14. On March 17, 1992, Regan's reclassification was granted, effective May 19, 1991, the beginning of the first pay period following receipt of the request.

15. On March 23, 1991, Blumer's reclassification was granted, effective May 5, 1991, the beginning of the first pay period following receipt of the request.

16. Within 30 days of receiving notice of reclassification of their positions to the AO 1 Confidential/Supervisor level, Regan and Blumer filed appeals with this Commission contesting the effective date of their reclassifications.

CONCLUSIONS OF LAW

1. The Commission has authority to hear this matter pursuant to §230.44(1)(b), Stats.

2. Appellants have the burden of proving respondents' decisions regarding the effective reclassification date of their positions were incorrect.

3. Appellants have failed to meet that burden of proof.

4. Respondents' decisions regarding effective reclassification date of appellants' positions were correct.

DISCUSSION

The issue in this matter is: Whether respondents' decisions setting May 19, 1991, as the effective reclassification date for Terrence Regan's position (Case No. 92-0211-PC) and setting May 5, 1991 as the effective reclassification date for Helen Blumer's position (Case No. 92-0256-PC) was correct or whether the date of July 1, 1990 is more appropriate. Section ER3.03(4), Wis. Adm. Code provides:

Requests for reallocation, reclassification or regrade are cancelled when an employer resigns, retires or is terminated from pay status in the position prior to the effective date of the requested action. The effective date of the requested action shall be determined in accordance with §ER29.03(3).

Section ER29.03(3) provides:

PAY ON REGRADE. (a) Pay adjustments resulting from regrade. Pay adjustments resulting from regrading an employe shall be effective in accordance with the policies established by the secretary.

Chapter 332 Wisconsin Personnel Manual provides in part:

§332.060 EFFECTIVE DATE POLICY

A. Regrades Resulting from Reclassification Actions and Reallocation Actions under ER-Pers. 3.01(1)(e), (f) and (g), Wis. Adm. Code

Both delegated and nondelegated reclassification regrade actions and reallocation regrade actions taken under ER-Pers. 3.01(1)(e), (f) and (g) will be effective beginning of the first pay period following effective receipt of the request. However, a later effective date may be designated by the appointing authority when the conditions which warrant the reclassification/regrade or reallocation/regrade (e.g., attainment of required education or experience, performance of duties and responsibilities for six months, etc.) will not occur until such later date.

Appellants argue that respondents were aware or should have been aware of material changes in appellants' positions and knew the basis for Mohlman's reclassification denial, but respondents did not act in a reasonable and timely manner in carrying out the mandate of §230.09(2)(am), Stats., which provides:

"The Administrator shall maintain and improve the classification plan ... using methods and techniques which may include ... individual position reviews. Such reviews may be initiated by the Administrator after ... recommendation of the appointing authority or at his or her own discretion...."

Also appellants argue that position descriptions in evidence (Appellants' Exhibits 1 and 2) show that they performed duties at the AO 1 level beginning in May, 1989 and December 1989 respectively and it is undisputed that they were responsible at the AO 1 level on or before July 1, 1990. Also appellants argue that DER's long delay in responding to the Walsh and Lund reclassification request effectively prevented their request from going forward in a more timely manner. Finally appellants argue that their positions are the same as Walsh and Lund, who submitted reclassification requests after appellants, but were approved retroactively to July 1, 1990.

In brief, appellants do not take issue with the stated reclassification effective date policy. Instead, appellants refer to respondent DER's failure to make a timely response to the Walsh and Lund reclassification requests, which caused them to delay their requests, and respondent DOT's failure to treat them the same as Walsh and Lund.

The Commission considered similar arguments in Popp v. DER, Case No. 88-0002-PC. Regarding the questions of respondents' responsibility with respect to reclassifications and reallocations, in Popp, the Commission said that under §230.09(2)(a) the secretary was provided discretionary authority to delay the effectuation of a reallocation or reclassification until the date of a request for such action and that it would uphold a decision setting an effective date unless it constituted an abuse of discretion. Later, in further discussion on this point, the Commission said: DER's policy on effective date ultimately puts the onus on the employe to come forward with a reclassification or reallocation request if he or she believes reclassification or reallocation is warranted and sees nothing forthcoming from the appointing authority or DER.

With regards to the questions of abuse of discretion and equitable estoppel, the facts in this case do not warrant such findings. There is no evidence on record that appellants were not aware of their rights regarding reclassification and again in Popp the Commission said that under Jabs v. State Board of Personnel, 34 Wis. 2d 245, 251 (1967) the state has no legal obligation to so advise unless required by specific statute or rule.

Finally, regarding the questions of equity, this Commission is not empowered with authority to make decisions on the basis of the principles of equity.

ORDER

Respondents' decision establishing the effective date for reclassification of appellants' positions is affirmed and these appeals are dismissed.

Dated: April 23, 1993 STATE PERSONNEL COMMISSION


LAURIE R. McCALLUM, Chairperson

DRM:rcr


DONALD R. MURPHY, Commissioner


GERALD F. HODDINOTT, 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 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.