

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

SHEILA FORREST-DE SMITH, Appellant,

vs.

**PRESIDENT, UNIVERSITY OF WISCONSIN SYSTEM and
SECRETARY, DEPARTMENT OF EMPLOYMENT RELATIONS**, Respondents.

Case 603
No. 62885
PA(der)-64

Decision No. 30769

Appearances:

Sheila Forrest-DeSmith, 761 South White Ash Court, Balsam Lake, Wisconsin 54810, appearing on her own behalf.

Virginia Richert, Human Resources Specialist, UW System Administration Office of Human Resources, P.O. Box 8010, Madison, Wisconsin 53708-8010, appearing on behalf of Respondents.

DECISION AND ORDER

This matter is before the Commission on a dispute as to the proper effective date of a decision to reallocate the Appellant's position from Risk Management Specialist (RMS) 2 to RMS 3. Appellant appealed from Respondents' decision setting the date as May 5, 2002. Appellant filed her appeal with the Personnel Commission on January 15, 2003. While the matter was pending, the Personnel Commission was abolished pursuant to 2003 Wis. Act 33, effective July 26, 2003, and the authority for processing this matter was transferred to the Wisconsin Employment Relations Commission (WERC). The same legislation reorganized and renamed the Department of Employment Relations (DER) which is now known as the Office of State Employment Relations.

Appellant seeks an effective date of November 8, 1998. Jurisdiction is based on §230.44(1)(b), Stats. The parties agreed to submit the matter to the Commission on the basis of written arguments, having concluded there were no disputed material facts.

At all relevant times, the Appellant has worked for the University of Wisconsin-Stout (UW-Stout) in risk management.

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A new Risk Management Specialist (RMS) classification series was established effective November 8, 1998, after a statewide survey of related positions. Those specifications included the following language:

DEFINITIONS

There are two types of positions allocated to the Risk Management Specialist 1-4 classification series.

The first type are staff positions within the Department of Administration . . .

The second type are non-supervisory staff positions in a state agency or a university campus. Such staff positions report to a Risk Management Officer or Health and Safety Manager who has overall responsibility for the agency's or university campus's Risk Management Program or portion thereof. Such agency or campus positions perform professional coordinative activities for one or more risk management programs. . . .

RISK MANAGEMENT SPECIALIST 2

. . .

Representative Positions:

Environment Health And Safety, UW Stout: Performs administrative and operation duties associated with the state's self-funded (liability) and proprietary insurance programs. Assists with or perform loss control and safety functions. Administer related programs in environmental health and safety.

Risk Management And Safety, UW Whitewater: Designated as Assistant to the Director of Environmental Health, Risk Management, Safety and Loss Control. Functions as worker's compensation coordinator for campus and manages the campus owned art inventory and loss accounts.

The Appellant's position is the position described in the first of these two descriptions, and her position was reallocated to the Risk Management Specialist 2 level effective November 8, 1998. Appellant received notice of the right to appeal the reallocation decision and she did not file an appeal. "Reallocation" refers to the "assignment of a position to a different class . . . based upon: (a) A change in concept of the class or series; (b) The creation of new classes; (c) The abolishment of existing classes; . . . [or] (e) The correction of an error in the previous assignment of a position." §ER 3.01(2), Wis. Adm. Code.

The two positions performing risk management specialist responsibilities at UW-Stout and UW-Whitewater remained classified at the RMS 2 level until 2002.

Early in 2002, Sherry Guequierre, the incumbent of the risk management specialist position at UW-Whitewater, submitted a request to be reclassified to the RMS 3 level. The reclassification request was granted, effective on a date in March of 2002, because of a “reinterpretation by DER of the original series specifications”:

After discussion between the Department of Employment Relations analyst and the Director of the UW System Office of Risk Management, with input from the professional staff at the Department of Administration’s Risk Control, it was decided that the specifications for the Risk Management Specialist 3 classification should have included campus allocations. Ms. Guequierre’s position was reclassified to the “3” level. . . . (Attachment 3 to Respondent’s initial brief)

The term “reclassification” is defined in §ER 3.01(3), as “the assignment of a filled position to a difference class . . . based upon a logical and gradual change to the duties or responsibilities of a position. . . .”

On April 26, 2002, Appellant’s supervisor initiated a reclassification request for the Appellant’s position. The request included an updated position description and written reasons for the request. Respondents concluded that the Appellant’s position had not undergone any change in duties so as to justify a reclassification of the position. However, in a memorandum dated September 19, 2002, Respondents

determined that the UW-Stout position was mistakenly placed at the ‘2’ level of the series. To correct this error her position will be reallocated according to Chapter #ER 3.01(2)(e) of the Wisconsin Administrative Code. (Attachment 3 to Respondent’s initial brief)

Respondents concluded that Appellant’s position fell within the following language in the definition statement for the RMS 3 level:

Agency: In an agency with a complex organizational **and** occupational structure, positions at this level perform advanced level claims management work including investigation and resolution of a wide variety of lawsuits and claims.

In addition to reallocating the Appellant's position to the RMS 3 level, the Respondents regraded the Appellant pursuant to §ER 3.015 and relied on various written policies issued by the Secretary of the Department of Employment Relations to establish the effective date for the transaction under authority referenced in §ER 29.03(3)(a). The term "regraded" refers to a "determination . . . that the incumbent of a filled position which has been reallocated or reclassified should remain in the position without opening the position to other candidates." §ER 3.01(4)

DER issued bulletin CLR/POL-57 on October 9, 2000, (Attachment 5 to Respondents' initial brief) regarding "Effective Dates for Classification Related Actions." The bulletin identifies different categories of reallocations for purposes of establishing the effective dates for the reallocation of a position and the regrade of the incumbent employee. The policy provides that the effective date for reallocations made pursuant to §ER 3.01(2)(e), i.e., due to the "correction of an error in the previous assignment of a position," is to be established the same way as the effective date upon a reclassification of a position and the regrade of the incumbent. The relevant language of the policy for determining the effective date for a reclassification is as follows:

[R]eclassifications of positions and regrades of employees resulting from reclassifications will become effective on the first day of the first pay period following effective receipt of the request by the Agency Human Resources Office. . . .

Effective receipt of a reclassification request may be made by any office within the 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 the submission of appropriate documentation:

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

On April 26, 2002, Appellant's supervisor submitted the required documentation for reclassification of the Appellant's position. The first day of the pay period following April 26th was May 5, 2002.

DER's written policy dictates the result in this case. Nothing indicates that the policy found in CLR/POL-57 is contrary to statute. *GRINNEL V. DP, PERS. COMM.*, 81-101-PC, 4/29/82. It has existed since at least March of 1983, when it was set forth in ch. 332 of the Wisconsin Personnel Manual. (Attachment 6 to Respondents' initial brief.) Nothing indicates the policy has not been applied uniformly within the state civil service.

The result reached by Respondents in this case is consistent with *POPP v. DER*, 88-0002-PC, 3/8/89, where the Personnel Commission held that a decision granting reclassification of the Appellant's position to Program Assistant (PA) 3 in 1987, with an effective date in 1987, was not an abuse of discretion even though the letter setting forth the decision stated that the position should have been assigned to the PA 3 level in 1985, which was when it had been reclassified to the PA 2 level. The Commission held that the Respondent's policy establishing effective date was premised on administrative convenience and, not inappropriately, placed the onus on the employee to come forward with a reclassification or reallocation request if he or she feels such an action is warranted. The Commission upheld that policy which is essentially identical to the policy now reflected in CLR/POL-57.

The present case can be distinguished from *BEANE v DP*, 82-0140-PC, 81-84-PC, 7/21/83, where, during the course of preparing for hearing on an appeal from its 1981 reallocation decision, Respondent obtained additional information and decided, in 1982, to reallocate the Appellant's position to a lower class level, effective on the same date as the 1981 decision. In that case, the original reallocation decision made at the time of the 1981 classification survey was still the subject of a pending appeal.

Respondent argues that the Appellant could have appealed from the decision in 1998 to reallocate her position to the RMS 2 level. Appellant responds by suggesting that such an appeal would have been futile because of the reference in the specifications to her collection of duties as a representative position. It is certainly possible that the Appellant would not have prevailed had she taken an appeal in 1998, but it is also possible that DER's decision would have been overturned on review. The opportunity to determine that question has long passed. The question now before the Commission is the proper effective date for the Respondents' classification decision made in 2002.

Appellant also states that she

can see absolutely no reference [in Bulletin CLR/POL-57] to errors made when setting up the classification and campus allotments. I only see a process for a "normal error in reallocations." I do not feel that this case is the normal circumstance.

The Commission is unaware of any basis on which the reference to "correcting an error" in §ER 3.01(2)(e), would not be interpreted to include the circumstances relating to the appellant's position.

ORDER

Respondents' decision is affirmed and this matter is dismissed.

Given under our hands and seal at the City of Madison, Wisconsin, this 16th day of January, 2004.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Judith Neumann /s/

Judith Neumann, Chair

Paul Gordon /s/

Paul Gordon, Commissioner

Susan J. M. Bauman /s/

Susan J. M. Bauman, Commissioner

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