

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

JUDITH A. TRELEVEN, Appellant,

v.

**Secretary, WISCONSIN DEPARTMENT OF CORRECTIONS, and
Director, OFFICE OF STATE EMPLOYMENT RELATIONS**, Respondents.

Case 46
No. 65120
PA(der)-117

Decision No. 31754

Appearances:

Judith A. Treleven, appearing on her own behalf.

Kathryn R. Anderson, Assistant Legal Counsel, P. O. Box 7925, Madison, WI 53707-7925, appearing on behalf of the Department of Corrections and the Office of State Employment Relations.

ORDER GRANTING MOTION TO DISMISS¹

This matter, which at this point revolves around the Appellant's rate of pay subsequent to a reallocation decision, is before the Wisconsin Employment Relations Commission (the Commission) on Respondent's motion to dismiss the appeal for lack of subject matter jurisdiction. The final date for submitting written arguments was July 19, 2006.

Having reviewed the record and being fully advised in the premises, the Commission makes and issues the following

FINDINGS OF FACT²

1. Ms. Treleven was hired by the Department of Corrections (Department) as a Medical Record Technician 11 (PR 06-09) on August 21, 1995. She passed probation and attained permanent status in class on or about February 18, 1996. Ms. Treleven transferred to a Program Assistant 2 position (PR 02-09) on May 25, 1997. The Program Assistant 2 position was reclassified to Program Assistant 3 (PR 02-10) on January 27, 2002. Because the transaction was a reclassification, Ms. Treleven immediately attained permanent status in class

¹ Upon the issuance of this Order, the accompanying letter of transmittal will contain the names and addresses of the parties to this proceeding and notices to the parties concerning their rehearing and judicial review rights. The contents of that letter are hereby incorporated by reference as a part of this Order.

² The Findings are the subject of a Stipulation of Facts that was submitted by the parties.

at the higher pay range. The position was reallocated to Medical Program Assistant – Associate (PR 02-10) on May 2, 2004. Ms. Treleven voluntarily demoted to a Program Assistant 2 position (PR 02-09) on March 6, 2005.

2. Ms. Treleven's last rate of pay as a Medical Program Assistant – Associate (PR 02-10) prior to her voluntary demotion on March 6, 2005 was \$13.199/hour. Her rate of pay upon her voluntary demotion to Program Assistant 2 was \$12.258/hour.

3. The Office of State Employment Relations (OSER) conducted an occupational survey of administrative support positions (ASU Survey). The effective date of the ASU Classification Survey and the resulting classification changes was July 24, 2005. Ms. Treleven's position was included in the survey. Initially, based on the position description submitted during the survey process, Ms. Treleven's position was reallocated to Financial Specialist 1 (PR 02-09).

4. On or about September 7, 2005, Ms. Treleven filed a civil service appeal with the Wisconsin Employment Relations Commission, alleging that the decision to reallocate her position to Financial Specialist 1 was incorrect.

5. As a result of her appeal the Department conducted a field audit of her position and found that her position description was inaccurate. A revised position description which accurately reflected the duties and responsibilities of her position was prepared and signed.

6. The Department and the OSER reviewed the revised position description and determined that the position should be classified as an Office Operations Associate (OOA) (PR 02-10). As part of the ASU Classification Survey the position was reallocated to an OOA, effective July 24, 2005. Since Ms. Treleven had previously attained permanent status in class at the Pay Range 02-10 level, the Department and the OSER determined that Ms. Treleven would be reinstated to that level with her position, effective July 24, 2005. Her pay upon reinstatement was established at \$13.199/hour, which was her last rate of pay prior to her voluntary demotion.

7. The State of Wisconsin and the Wisconsin State Employees Union entered into an agreement which provided for a one percent (1%) increase and for employees whose rate of pay was below \$13.00/hour an additional twenty five cents (\$0.24) per hour increase. The effective date of these wage adjustments was July 24, 2005.

8. The Department and the OSER determined that implementation of the contract wage adjustments under Article XII of the Agreement should occur sequentially before the implementation of the ASU Classification Survey under Negotiating Note 82.

9. Under the terms of the WSEU Agreement, an employee's base pay rate shall be the last rate received in the position from which reinstatement eligibility is derived. The contract does not provide for the rate of pay to include any intervening pay increases.

10. Absent the effect of the ASU Classification Survey, Ms. Treleven's rate of pay would have been adjusted to reflect the 1% increase and the additional \$0.25/hour increase because her rate of pay was under \$13.00/hour, with a resultant total rate of pay of \$12.63/hour.

11. Ms. Treleven's reinstatement occurred within 5 months of her demotion.

12. Ms. Treleven did not leave state service between March 6, 2005 and July 24, 2005.

13. Ms. Treleven is a classified state employee who is represented by AFSCME, Council 24, Wisconsin State Employees Union.

Based on the above and foregoing Findings of Fact, the Commission makes and issues the following

CONCLUSIONS OF LAW

1. The Appellant has the burden of establishing that the Commission has subject matter jurisdiction over her appeal.

2. The Appellant has failed to sustain that burden.

Based on the above and foregoing Findings of Fact and Conclusions of Law, the Commission makes and issues the following

ORDER

Respondent's motion is granted and this matter is dismissed.

Given under our hands and seal at the City of Madison, Wisconsin, this 8th day of August, 2006.

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

DOC & OSER (Treleven)

MEMORANDUM ACCOMPANYING ORDER GRANTING MOTION TO DISMISS

At dispute in this matter is the Appellant's appropriate rate of pay following any applicable contractual wage adjustments and the implementation of a classification survey, both on the same day. As reflected in Statements of Positions that were filed by the parties:

Appellant argues that her rate of pay as of July 24, 2005 should have reflected intervening pay increases from \$12.258/hour as follows:

- 1%
- \$0.10/hour if over \$13.00/hour; \$0.25/hour if under \$13.00/hour
- New pay range (PR 02-10): \$1.020/hour
- New pay should be \$13.65/hour

Respondents argue that Appellant's rate of pay was properly set at \$13.199/hour following implementation of the contract wage adjustments and implementation of the ASU Survey.

Ms. Treleven does not disagree with the Respondents' decision to reallocate her position from Program Assistant 2 to Office Operations Associate, effective July 24, 2005. However, she differs with the action to set her rate of pay at \$13.199/hour rather than \$13.65/hour as a consequence of the reallocation.

Respondents have raised a jurisdictional objection to Commission review of the dispute, arguing that the Commission lacks subject matter jurisdiction "to hear a represented employee's appeal concerning the determination of the rate of pay upon the implementation of a classification survey."

Irrespective of an employee's status within or outside of a bargaining unit, the Commission has held that it lacks statutory authority to hear an appeal arising from salary adjustments due to reallocation. DER (ALLEN), DEC. NO. 30772 (WERC, 1/2004). To the extent that salary upon reallocation is the issue before the Commission and given the fact that the Respondents have already changed their original decision and have reallocated her position to the requested classification of Office Operations Associate, the DER (ALLEN) decision would require dismissal for lack of subject matter jurisdiction.

However, the Respondents did not simply revise their original decision to reallocate Appellant's position to Financial Specialist 1 (PR 02-09). The relevant stipulated fact reads:

The Department and the OSER reviewed the revised position description and determined that the position should be classified as an Office Operations Associate (OOA) (PR 02-10). As part of the ASU Classification Survey the position was reallocated to an OOA, effective July 24, 2005. Since Ms. Treleven had previously attained permanent status in class at the Pay Range 02-10 level, the Department and the OSER determined that Ms. Treleven would

be reinstated to that level with her position, effective July 24, 2005. Her pay upon reinstatement was established at \$13.199/hour, which was her last rate of pay prior to her voluntary demotion.

Respondents' corrective action reallocated Appellant's position, but Ms. Treleven was not regraded³ to the new classification. Respondents decided it was appropriate to reinstate Ms. Treleven into the newly reallocated OOA position because its pay range (01-10) was identical to that of the Medical Program Assistant – Associate classification from which she had demoted only four months earlier. Respondents' action of setting Ms. Treleven's pay at \$13.199 established her pay upon reinstatement, rather than her pay upon reallocation.

However, to the extent that the remaining dispute can properly be characterized as relating to pay on reinstatement, the Appellant's positions have at all relevant times been within a collective bargaining unit and any jurisdiction the Commission might have pursuant to ch. 230, Stats., is superseded by Sec. 111.93(3):

[If a collective bargaining agreement exists between the employer and a labor organization representing employees in a collective bargaining unit, the provisions of that agreement shall supersede the provisions of civil service and other applicable statutes . . . related to wages, fringe benefits, hours, and conditions of employment whether or not the matters contained in those statutes, rules, and policies are set forth in the collective bargaining agreement.

Given these circumstances, the appeal must be dismissed. DOC & DHFS (ESLINGER), DEC. No. 31416 (WERC, 8/2005).

Dated at Madison, Wisconsin, this 8th day of August, 2006.

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

³ "Regrade" is the determination that "the incumbent of a filled position which has been reallocated . . . should remain in the position without opening the position to other candidates." Sec. ER 3.01(4), Wis. Adm. Code.