

1 BEFORE THE CIVIL SERVICE COMMISSION FOR THE CITY OF SEATTLE

RECEIVED
CITY OF SEATTLE
02 MAR -1 AM 11:01

2 CIVIL SERVICE COMMISSION

3 IN RE THE APPEAL OF:

4 PATRICE LUNDQUIST

5 Appellant

6 v.

7 SEATTLE CITY LIGHT
8 City of Seattle

9 Respondent.

MEMORANDUM OPINION
AND ORDER

CSC Appeal No. 00-04-013

10
11 THIS MATTER having come before the Seattle Civil Service Commission upon the
12 Petition of Respondent Seattle City Light (the "Department") for a review of the Hearing
13 Examiner's Determination dated October 17, 2001 in the above-captioned appeal.

14 PROCEDURAL AND FACTUAL BACKGROUD

15 On October 17, 2001, the Hearing Examiner issued a decision awarding appellant
16 \$16,635.92 in back pay and necessary adjustments for retirement contributions for a period of time
17 that appellant Lundquist had been performing work equivalent to a coworker, Alan Budman,
18 whose position was at that time in a different classification and paid at a higher rate. The hearing
19 examiner described appellant's claim as a "wage parity" claim. In an earlier issued order, the
20 hearing examiner concluded that the claim was one properly brought under the Seattle Charter and
21 Personnel Ordinance.¹

22
23
24 ¹ The Department had previously moved to dismiss appellant's claim for lack of jurisdiction, arguing that the claim
25 alleged violations of the Equal Pay Act of 1963, Title VII of the Civil Rights Act of 1964, or the City's Unfair
Employment Practices Ordinance. Appellant responded, submitting that her claim was not based on discrimination,
but rather, raised an issue of improper administration of the personnel rules relating to classification and compensation
with regard to equity as afforded by the City Charter and Personnel Rules.

ORDER ON MOTION
LUNDQUIST
CSC Appeal No. 00-04-013

City of Seattle Civil Service Commission
Room 360 Arctic Building
700 Third Avenue
Seattle, Washington 98104
(ph.) 206-366-1301/(fax) 206-684-0755

1 In its Petition for Review of the hearing examiner's decision, the Department argues that
2 this Commission has no jurisdiction pursuant to the Charter or Personnel Ordinance to hear
3 appeals alleging "wage parity" or "pay inequity." The Department argues that the hearing
4 examiner's ruling was in error and that an award of back pay under the circumstances here
5 exceeds the authority of the Commission. The Department also argues that the Commission lacks
6 jurisdiction over this claim because the appellant failed to exhaust the intradepartmental grievance
7 procedure prior to bringing her appeal.
8

9 The facts relevant to this review are somewhat complicated. In early 1997 the Emergency
10 Management Services Division within the Department contemplated reorganization. As a result,
11 the Department compiled a list of positions that it believed should be considered for
12 reclassification by City Personnel. At that time, appellant Lundquist held the position of EMA
13 Supervisor. A coworker, Alan Budman, held the position of Senior EMA Supervisor, a higher
14 classification commanding a higher wage. The appellant's position was not on the list proposed
15 by the Department for potential reclassification. However, appellant was advised at that time by
16 her supervisor to prepare a position description questionnaire ("PDQ") and submit an employee
17 request for reclassification in accordance with the Personnel Rules.
18

19 In January 1998, the Emergency Management Services Division was reorganized and the
20 appellant's manager submitted to City Personnel a PDQ and request that appellant's position,
21 EMA Supervisor, be reclassified to Sr. EMA Supervisor.² At the direction of City Personnel, a
22 classification review took place, resulting in a recommendation that the position of Sr. EMA
23

24 ² The parties have stipulated throughout these proceedings that despite holding positions in different classifications
25 with different rates of pay, both appellant Lundquist and Alan Budman were performing equivalent work since
January 12, 1998.

1 Supervisor, then held by Alan Budman, be downgraded to the classification of EMA Supervisor,
2 the position held by appellant Lundquist. City Personnel also recommended revisions to the EMA
3 Supervisor class specification. Pursuant to the Personnel Rules, the parties requested
4 reconsideration of the findings of the initial classification and compensation review.

5 The Reconsideration Panel issued its decision to maintain the classification of EMA
6 Supervisor, revise the class specification to add additional duties to the position to reflect an
7 increase in responsibilities, and increase the salary of the EMA Supervisor position. On June 15,
8 1999, classification determination reports were issued abrogating the classification of Sr. EMA
9 Supervisor, updating the class specifications for the position of EMA Supervisor, and establishing
10 a new, higher salary rate. The position held by appellant Lundquist remained classified as EMA
11 Supervisor. The ordinance enacted to establish the new salary range for the EMA Supervisor
12 classification did not authorize retroactive pay for appellant Lundquist. Appellant Lundquist
13 received a prospective increase in salary effective October 8, 1999. Mr. Budman's salary was
14 "incumbency rated" pursuant to the Personnel Rules.
15

16 On January 3, 2000, Mr. Budman appealed to this Commission the reclassification
17 decision which had resulted in downgrading his position and, in effect, freezing his salary.
18 Appellant Lundquist joined that appeal on February 3, 2000. (CSC Appeal No. 00-04-001). Both
19 claimed that the classification report determinations were in error and did not follow correct
20 personnel practice. They further alleged that the outcome of the review violated the Charter and
21 Personnel Ordinance because errors were made and the reconsideration process did not follow
22 established procedures. They argued that the outcome did not reflect equitable or correct
23 administration of the City's Personnel Rules. Appellant Lundquist made an additional claim that
24

1 the process did not address known and longstanding salary inequities between the position that she
2 held and that held by Mr. Budman. She sought compensation for the period of time when she had
3 been paid less, but had performed the same work as Mr. Budman

4 After allowing appellant Lundquist to join Mr. Budman's appeal (CSC Appeal No. 00-04-
5 001), the executive director issued an order on May 26, 2000 severing the portion of appellant's
6 claim seeking compensation. Labeling this claim a separate "wage parity" claim, the order
7 assigned the claim a new cause number (CSC Appeal No. 00-04-013) and set forth a statement of
8 issues reflecting the parties' stipulation that appellant Lundquist had performed work equivalent to
9 that performed by Mr. Budman and that she should be entitled to some compensation.

10
11 After a three-day hearing in the Budman-Lundquist appeal (CSC No. 00-01-04), the
12 hearing examiner issued findings of fact, conclusions of law, and a decision on July 17, 2001. The
13 issues presented in that appeal included whether: 1) the City developed its classification
14 specifications and related compensation survey for the positions in accordance with its usual and
15 customary procedures; 2) the job summary used for the compensation survey properly reflected
16 the duties and responsibilities; 3) the reconsideration process was conducted in accordance with
17 the Personnel Rules; 4) the City had made a commitment to the appellants to conduct the
18 classification and salary review in a manner that was different from the usual practice, and if so,
19 whether the studies were in keeping with that commitment; and finally 5) whether the use of the
20 alleged alternative methodology to which the Classification and Compensation Unit had
21 committed itself would have yielded a different result than that which had been utilized. The
22 hearing examiner concluded that although there were a number of errors, discrepancies and
23 contradictions in the testimony of the classification/compensation analyst who conducted the
24 review, the procedures followed by Personnel in conducting the classification and salary review
25

1 for the EMA Supervisor and Sr. EMA Supervisor positions were not outside the customary and
2 usual practice and industry standards. The hearing examiner concluded that the procedures
3 followed by Personnel did not violate the Charter, Personnel Ordinance or Personnel Rules. The
4 Budman-Lundquist appeal was dismissed. Neither party petitioned the Commission for review of
5 that decision.

6
7 On May 23, 2001, appellant Lundquist brought a motion for summary judgment in her
8 appeal (CSC Appeal No. 00-04-013) arguing that back pay should be awarded based on the
9 difference in wages between the EMA Supervisor and the Sr. EMA Supervisor classification
10 beginning February 3, 1997. The Department responded and cross-moved, arguing among other
11 things, that the Commission lacked jurisdiction and that the Department had followed all proper
12 procedures.

13 On August 6, 2001, the hearing examiner issued a decision holding that as for the period
14 prior to January 12, 1998, issues of fact existed as to whether appellant Lundquist had been
15 performing work equivalent to that performed by Mr. Budman. As such, a hearing would be held
16 to determine the facts for that period of time. The hearing examiner also held that no issues of fact
17 existed for the time period beginning on January 12, 1998 -- the time when the parties stipulated
18 that both appellant Lundquist and Mr. Budman were performing the same work for different
19 wages. The hearing examiner ordered the Department to calculate and propose an amount for
20 back pay and benefits owing to appellant Lundquist for the period of time dating back to January
21 12, 1998.

22
23 Upon reviewing the proposals and calculations of both appellant Lundquist and the
24 Department, the hearing examiner issued her Order Regarding Back Wages, dated October 17,
25 2001, which is the subject matter of the Department's Petition for Review to the Commission.

1 There, the hearing examiner ordered the Department to pay appellant Lundquist \$16,635.92 in
2 back pay and make the necessary adjustments to appellant's retirement contributions. The hearing
3 examiner's calculation and order were based on the difference between the salary actually paid
4 appellant Lundquist and that actually paid Mr. Budman when he held the position classified as Sr.
5 EMA Supervisor, for the period beginning January 12, 1998 through October 8, 1999 when the
6 salary increase for the EMA Supervisor position became effective.

7
8 The Department timely petitioned the Commission for review of the hearing examiner's
9 October 17, 2001 order.

10 DISCUSSION

11 Article XVI, Section 1 of the City Charter directs that the City's Personnel system be
12 established by ordinance and requires that such ordinance establish uniform procedures for the
13 maintenance of an effective and responsible personnel system, including uniform procedures for
14 job classification and salary administration. The Charter further mandates that the personnel
15 system be administered by the Personnel Director. The Personnel Ordinance, SMC 4.04.130(A)
16 provides that "[t]he Personnel Director shall classify positions of employment in City government
17 so as to group together positions sufficiently similar that the same title may equitably be applied to
18 all, and may establish such classifications according to wage and salary structure." SMC 4.04.140
19 establishes the Personnel Director as administrator of employee compensation and requires the
20 Director to promulgate rules for the administration of employee benefits.

21
22 The Personnel Rules, revised in December 1998, govern the classification procedure
23 within the City's civil service. Rule 2.2.100(A) provides as follows:

24 The appointing authority of each employing unit, or his or her designated representative,
25 will report to the Personnel Director:

- 1 1. any organizational changes which will abolish or change existing positions or
2 establish new positions; and
- 2 2. any substantive changes to the duties and responsibilities of existing positions.

3 Rule 2.2.100(A) also authorizes the Personnel Director to classify each position in the classified
4 service and requires that all classification changes be legislated. Rule 2.2.100(C) expressly allows
5 an employee to request a classification review:

6 An incumbent of or the appointing authority for the position in question may request a
7 classification review of the position when either party reasonably believes that the
8 position's assigned duties and responsibilities have undergone a change sufficient to affect
its classification.

9 Rule 3.2.200 provides for compensation reviews:

10 The Personnel Director will conduct an evaluation of the appropriateness of the salary
11 range to which a class is assigned when the appointing authority or a designated
12 representative, or the position incumbent(s) in the class, notifies the director of recruiting
and retention difficulties, or when otherwise deemed necessary by the Director.

13 In the event a position is reclassified by the Personnel Director, back pay is authorized
14 back to the time the reclassification request was submitted. Rule 2.4.100. The personnel rules,
15 however, do not provide for back pay when a compensation review simply establishes a new
16 salary range for an existing position.

17 The rules also provide for a reconsideration process under which an employee may appeal
18 a classification determination. A Reconsideration Panel is convened and the employee has the
19 opportunity to present information regarding the appropriateness of the classification or
20 compensation review. In the event the reconsideration process is conducted in violation of the
21 Charter, Personnel Ordinance, or Personnel Rules, an employee may then appeal to the Civil
22 Service Commission pursuant to Personnel Rule 2.5.200:

23
24 The reconsideration process is the final appeal of the actual classification determination.
25 However, any classified employee who feels that his or her position is improperly
allocated as a result of the misapplication or violation of the provisions of this Chapter,

1 Seattle Municipal Code Title IV (Personnel), published personnel policies, or City Charter
2 Article XVI may initiate a grievance under Personnel Rule 5.8.100. Upon exhausting
3 these administrative grievance procedures, the employee may file an appeal with the Civil
4 Service Commission in accordance with Seattle Municipal Code Section 4.4.260.

5 In early 1997, when the Energy Management Services Division within the Department
6 contemplated reorganization, the Department submitted to Personnel a list of positions to be
7 considered for reclassification in compliance with Personnel Rule 2.2.100(A). Appellant's EMA
8 Supervisor position was not on the list submitted to Personnel. However, appellant Lundquist was
9 advised at that time to prepare a PDQ in order to submit her own request for reclassification
10 expressly allowed by Rule 2.2.100(C). Appellant did not submit a request for reclassification at
11 that time.

12 After the Division's reorganization was effective in January 1998, appellant's manager
13 submitted to City Personnel a PDQ and request that appellant Lundquist's position of EMA
14 Supervisor be reclassified to Sr. EMA Supervisor. Pursuant to Rule 2.2.100(C), a classification
15 review subsequently took place resulting in a recommendation that the Sr. EMA Supervisor
16 position be downgraded to the EMA Supervisor position. The parties requested a reconsideration
17 of the classification and compensation review pursuant to Rule 2.5.100(A). The Panel convened
18 and considered the materials submitted by both the Department and appellant Lundquist and Mr.
19 Budman.

20 While the personnel rules do not dictate a timeline for the completion of the
21 reclassification and compensation review process, it was not until eighteen months later that new
22 classification determination reports were issued on June 15, 1999. During this entire time,
23 Appellant Lundquist had been performing work equivalent to that performed by Mr. Budman -- at
24 a lower wage. The new classification determination reports memorialized the decision of the
25

1 Panel to abrogate the Sr. EMA Supervisor classification, update the classification specification for
2 the EMA Supervisor position to reflect additional duties assigned to that position, and establish a
3 new salary range for the EMA Supervisor position. The EMA Supervisor position was not
4 reclassified; indeed, it was the decision of the Reconsideration Panel to retain the original EMA
5 Supervisor classification. The Personnel Rules authorize retroactive pay only when a position is
6 in fact reclassified following a classification and compensation review. There is no similar
7 provision for retroactive pay when a position is assigned a new salary range, but is not
8 reclassified. The ordinance effecting the establishment of a new salary range for the EMA
9 Supervisor position did not provide for retroactive pay.
10

11 The jurisdiction of the Commission to hear employee appeals is established by the Charter
12 and the Personnel Ordinance. Article XVI, Section 5 of the City Charter establishes the Civil
13 Service Commission to hear appeals involving the administration of the personnel system.
14 Section 6 of that Article gives the Commission the power to issue such remedial orders as it deems
15 appropriate. The Personnel Ordinance, SMC 4.04.260, gives civil service employees the right to
16 appeal to the Commission violations of SMC Chapter 4.04 or the rules passed pursuant thereto,
17 provided the employee first exhausts his/her departmental grievance remedies.
18

19 Neither the Charter nor SMC 4.04.260 confers jurisdiction on the Commission to hear
20 appeals over "wage parity" or "wage inequity" claims when no violation of the Charter, Personnel
21 Ordinance, or Personnel Rules has occurred. Appellant Lundquist did claim that the
22 reclassification and compensation review process were conducted in violation of the Charter,
23 Personnel Ordinance and Personnel Rules. Appellant had an opportunity then to claim that her
24 position should have been reclassified. A hearing was held on the merits of her claim over the
25 course of three days and was dismissed after the hearing examiner found that neither the

1 Department nor City Personnel had violated the Charter, ordinance or rules. That order was not
2 appealed. While the Charter gives the Commission the power to issue such "remedial orders" as it
3 deems appropriate, the Commission is not authorized to issue such remedial orders, whether based
4 on an independent "wage equity" claim or some other theory, when there has been no violation of
5 the Charter, Personnel Ordinance, or rules. The Commission has no jurisdiction over appellant's
6 "wage parity" claim when the reclassification and compensation review process that gave rise to
7 her claim were not conducted in violation of the Charter, Personnel Ordinance or rules.³
8

9 The measures in place to protect the personnel system and civil service employees against
10 classification and compensation inequities -- the classification and compensation review
11 procedure, the reconsideration process and the appeal rights afforded employees -- did not
12 adequately address the undisputed fact that appellant Lundquist was paid less for performing the
13 same work as Mr. Budman from January 12, 1998 through October 8, 1999. Had the EMA
14 Supervisor position been ultimately reclassified by City Personnel, appellant Lundquist would
15 have been entitled to retroactive pay back to the time when the request was made.⁴ Unfortunately
16 for appellant Lundquist, the Personnel Rules do not authorize retroactive pay under the
17 circumstances presented here.

18 Despite its belief that the Personnel Rules should provide for back pay in circumstances
19 like these to avoid inequitable results, the Commission may not simply substitute its judgment for
20 that of the Personnel Director. SMC 4.04.250(L)(5) does provide however that the Commission
21 may introduce legislation for lost wages and benefits, and may make recommendations to the
22

23
24 ³ The Commission need not reach the issues of whether it lacks jurisdiction over appellant's claim based on appellant's
25 failure to file an appeal within 20 days of the alleged failure to reclassify her position or appellant's alleged failure to
exhaust the intradepartmental grievance procedure.

1 Mayor and City Council. While the Commission lacks jurisdiction to award back pay as a remedy
2 under these circumstances, it intends to make a recommendation to the City Council that
3 legislation be enacted providing for retroactive pay for appellant Lundquist pursuant to the
4 authority granted it under SMC 4.04.250(L)(5).

5 This memorandum constitutes the Commission's findings of fact and conclusions of law.

6 ORDER

7 The October 17, 2001 Decision of the Hearing Examiner is VACATED. Appellant
8 Lundquist's "wage parity" claim (CSC Appeal No. 00-04-013) is dismissed for lack of jurisdiction.
9

10
11
12 
13 Kenneth R. Morgan, Chair
Seattle Civil Service Commission

3/1/02
Date

14 Being duly authorized by the Commission during
15 executive session of its February 26, 2001 regular
16 meeting to execute this order on behalf of the full
17 Commission.

24
25 ⁴ Personnel Rule 2.4.100 establishes the effective date for reclassifications and provides that when there has been a reclassification to a higher level position, retroactive pay is authorized.