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 *
 LARRY HALTER, *
 *
 Appellant, *
 *
 v. *
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 THE DEPARTMENT OF INDUSTRY, LABOR, *
 AND HUMAN RELATIONS, *
 *
 Respondent. *
 *
 Case No. 78-144-PC *
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ORDER

This matter is before the Commission on the request of the respondent filed February 28, 1979, to withdraw certain dicta in its order of February 12, 1979, relative to representations made to the appellant by his supervisor Mr. Murphy about the appellant's reclassification. The argument is made that that exchange:

"... was immaterial to the basic issue of whether Halter's assumption of those duties had been logical and gradual. Since Mr. Murphy's testimony would, in all other relevant respects, have been cumulative ... he was not called as a witness. If the Commission wishes to make findings on the issue of what Mr. Murphy told Mr. Halter, a question I submit is not properly before it, fairness to Mr. Murphy requires that he be permitted to state his side of the story. In the alternative, since the record in this matter is closed, I request that the Commission's discussion on this point be withdrawn."

In an interim decision in this matter dated November 22, 1979, the Commission ordered that the main issue for hearing would be:

"Whether the decisions of DILHR to deny appellant's request for reclassification to Job Service Specialist III and to utilize a competitive promotional examination process pursuant to DILHR policy JSD 41-76 to fill Job Service Specialist 3 position were correct or incorrect."

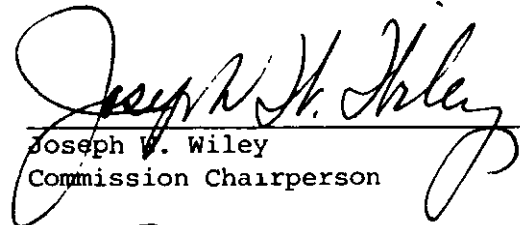
Although the Commission did not explicitly address the issue because

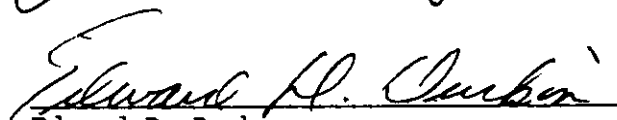
of the lack of other elements, the exchange referred to above could have been an element in an equitable estoppel running against the agency. The Commission cannot conclude that the finding in question was immaterial to the issue in this case.

However, the Commission recognizes the respondent's point and the rationale behind the decision not to call a witness to rebut testimony about a transaction that ultimately had no direct bearing on the decision on the merits.

The Commission will not withdraw the dicta relative to the aforesaid communication nor reopen the hearing for additional testimony. However, the Commission does note that the finding and dicta relative to the representations made to Mr. Halter about his reclassification are based solely on the testimony of the appellant, and the respondent did not present contrary evidence on this point for the reasons set forth by counsel in her letter filed February 26, 1979.

Dated: Mar 13, 1979. State Personnel Commission


Joseph W. Wiley
Commission Chairperson


Edward D. Durkin
Commissioner


Charlotte M. Higbee
Commissioner

AJT:skv

3/8/79