
 DONNA KREWSON, et al,
 Appellant,
 v.
 THE DIVISION OF PERSONNEL,
 Respondent.
 Case No. 78-23-PC

INTERIM
DECISION

NATURE OF THE CASE

This is an appeal from a reallocation decision decision wherein the above-named appellant together with Susanne Maxwell, Diane Butts, Joyce Moehlman, A. Rita Conklin, Dorethea Bernhard, and Delores Erickson were appealing parties. At a prehearing conference held on September 28, 1978, all parties were represented by Donna Krewson and Daniel Roberts, WSEU, Council 24, Madison, Wisconsin. Subsequent to the prehearing conference Daniel Roberts, by copy of a letter to the Commission dated November 20, advised all parties that he was representing only Krewson and Maxwell.

At a December 12, 1978 hearing, appellants Butts, Moehlman, Conklin, Bernhard, and Erickson were not present, and they had not arranged to be represented by someone other than Daniel Roberts. The respondent moved that the appeals of those persons who were neither present nor represented be dismissed for lack of prosecution. Decision on the motion was deferred and the unrepresented appellants were given until January 8, 1979, to provide written response to the respondent's motion. Various written responses were received from the appellants and the respondent gave oral argument in support of the motion at a hearing before the Commission on

January 18, 1979. This interim decision deals only with the motion to dismiss as addressed by the appellants in their letters and by the respondent in the oral argument on January 18. Some of the findings of fact are based on uncontroverted information in the case file.

FINDINGS OF FACT

1. The seven appellants in this case are similarly situated employees of the respondent and were similarly affected by a March 7, 1978, reallocation of their positions from Licensing and Vehicle Registration Representative (LVRR) 2 to LVRR 1.
2. A March 17, 1978, letter to the Personnel Board appealing the reallocation action was signed by all seven appellants.
3. Prior to November 20, 1978, all seven appellants were represented by Daniel Roberts, Research and Classification Specialist, AFSCME - Council 24, Wisconsin State Employees Union.
4. In a letter dated November 20, Mr. Roberts notified the Commission that he was representing only appellants Krewson and Maxwell. The letter did not state why he was no longer representing the other five employees.
5. The appellants other than Krewson and Maxwell were neither present nor represented at the hearing but have submitted letters objecting to the respondent's motion that they be dismissed as parties in the case.
6. The appellants believed that Mr. Roberts was not representing them because they were not union members and that he withdrew representation "as a lever to make us join the union."
7. The appellants alleged that Mr. John Buchen of the DOT personnel office told them that the union "had to" represent them. They indicated that they relied on this. In a letter signed by all five, they said:

"Had we been aware that Mr. Buchen's information was not correct, we would certainly have had legal representation at the hearing or have requested postponement until such time that legal representation could be obtained."

"It was certainly not our intent to allow the dismissal of our appeals."

8. In separate letters, both Conklin and Moehlman asserted that there was insufficient time to retain counsel.

9. Moehlman believed that "what one got all would get."

10. The respondent argued that the reasons propounded by the appellants were not adequate and that they had a responsibility to either be present themselves or to ask the Commission what steps they should take to be represented. The respondent also felt that the time available after Mr. Roberts' notice was sufficient to allow the appellants to obtain other counsel.

OPINION

It is clear from the foregoing facts in this case that the five "unrepresented" appellants do not want their cases dismissed and have not abandoned their quest for any remedy or recompense that might flow to them as a result of the case having been filed.

The respondent's argument that the five should be dismissed as appellants because they did not inquire of the Commission what alternatives were available to protect their interests is not persuasive. They did inquire of the personnel office and did get an answer. Whether or not Mr. Buchen's answer (par. 5 of the findings) was correct, it did lead them to one of several alternatives which was available and was not injurious. It is beyond cavil that any decision affecting the "represented" parties would also be applicable to the rest of them because their classifications, relationships to the transaction in question and relationships

to the proceeding are the same. It may have been Mr. Roberts' privilege to decline to represent some of the appellants, but his exercise of that privilege did not change the fact that their status in the proceeding was, under the circumstances, the same as that of the persons he was representing. Thus, the only thing waived by the absence of the five was their right to add to evidence otherwise presented.

The respondent contends its motion to dismiss should be granted because of Commission precedents established in prior cases; notably, Keruchten v. Division of Personnel, Case No. 78-8-PC, 9/13/78, and four others (78-36-PC, 78-57-PC, 78-146-PC, and 78-191-PC). None of the cited cases squares with the instant case. All of those cases were dismissals for "failure of prosecution" and involved fact situations in which the appellant had not pursued the case to any extent whatever. They failed to appear and were not represented at the prehearing conference, and failed to respond to Commission correspondence advising of the respondent's motion to dismiss. Without exception the appellants' abandonment of the cited cases was complete and unequivocal.

CONCLUSIONS OF LAW

1. The appellants, Butts, Moehlaman, Conklin, Bernhard, and Erickson were properly joined as co-appellants in this proceeding.
2. Their status as appellants was not terminated as a result of Mr. Roberts' letter of November 20, 1978, advising that he no longer represented them, nor by their failure to appear at the hearing.

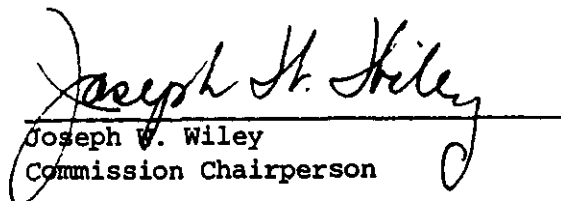
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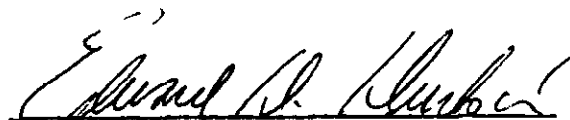
ORDER

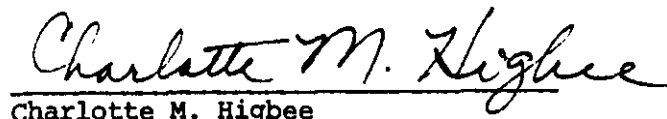
IT IS HEREBY ORDERED that the respondent's motion to dismiss is
DENIED.

Dated: Jan 30, 1979.

State Personnel Commission


Joseph W. Wiley
Commission Chairperson


Edward D. Durkin
Commissioner


Charlotte M. Higbee
Commissioner

JWW:skv