

STATE OF WISCONSIN

PERSONNEL COMMISSION

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 JOHN MCPEEK,

 Appellant,

 v.

 The Department of Industry, Labor, and
 Human Relations & The Division of Personnel,

 Respondents.

 Case No. 78-252-PC
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DECISION
 AND
 ORDER

NATURE OF THE CASE

This is an appeal of a reclassification from Research Analyst 1 to 3, the appellant taking the position that the appropriate level was Research Analyst 4. At the prehearing conference the respondent, the Division of Personnel, objected to jurisdiction on the ground that there had been no decision made as to the Research Analyst 4 level. The parties have filed arguments on the jurisdictional issue and the findings which follow are based on matter that appears to be undisputed.

FINDINGS OF FACT

1. The reclassification of the appellant's position to Research Analyst 3 followed a request by the appellant's supervisor that the position be reclassified to Research Analyst 3.
2. The reclassification was effectuated by the DILHR personnel on a delegated basis from the State Division of Personnel.
3. The Division of Personnel has not delegated to DILHR the

authority to reclassify to the Research Analyst 4 level.*

CONCLUSIONS OF LAW

1. The question of whether the respondent's position is appropriately classified at the Research Analyst 4 level has not been decided.
2. The only appealable decision that has been made has to do with the lack of authority for DILHR to grant or deny a Research Analyst 4 classification.
3. The appellant has not appealed the only appealable decision.
4. The Commission lacks jurisdiction over this appeal.

OPINION

The respondent, Division of Personnel's, theory behind this objection is that the appellant is attempting to appeal a decision which has not been made since DILHR lacked authority to have effectuated reclassification to the Analyst 4 level and only reviewed the request for reclassification to the Analyst 3 level, which was granted.

The appellant argues, in opposition to the objection, that a decision that the Analyst 3 level is appropriate is by implication a decision that the Analyst 4 level is not appropriate, and this decision is appealable.

In the opinion of the Commission it is important to keep in mind the distinction between a decision by an agency that it lacks authority to

*At the prehearing conference the Division of Personnel offered to hold this appeal in abeyance while it reviewed the position and made a determination on the appropriate classification for the position which could then be appealed. The appellant declined to proceed in this fashion but elected to proceed before the Commission and dispute the respondent's jurisdictional objection.

effectuate an action and a decision by an agency that it has the authority but determines for substantive reasons that the action should not be effectuated.

In this case DILHR has determined, at least implicitly, that it lacks authority to reclassify to the 4 level. While this can be construed as a negative decision with respect to an Analyst 4 level classification, it is not, as argued by the appellant, an implied decision that the 4 level is substantively inappropriate. Rather, it is a decision that DILHR lacks authority to pass on the substantive merits of the 4 level. This does not mean that there is not an appealable decision. DILHR's decision that it lacked the authority to deal with any classification higher than the 3 level is appealable as a decision of the administrator on a delegated basis pursuant to §230.44(1)(b), Wis. Stats.

However, this is not the decision that the appellant is seeking to appeal. See his memo of December 18, 1978: "Therefore, DOA has made a decision that Research Analyst 4 is not appropriate to my position, by implication and through its delegated agency. It is this decision I am appealing." Since the Commission does not agree that any substantive decision has been made, it must conclude that it has no jurisdiction over the appeal as formulated.

The Commission notes parenthetically that regardless of how the appeal were phrased or interpreted, it would not appear to be possible to reach the substantive question of the appropriate classification level on the facts here presented. All the Commission could do would be to remand the matter to the appropriate agency for a classification review on the merits. While at this time the Commission dismisses this appeal the same

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end can apparently be accomplished if the appellant now submits a reclassification request for Research Analyst 4 which presumably will be dealt with on the merits and provide an appealable decision.

ORDER

This appeal is dismissed for failure of subject matter jurisdiction.

Dated: Jan 30, 1979.

State Personnel Commission

Joseph W. Wiley
Joseph W. Wiley
Commission Chairperson

Charlotte M. Higbee
Charlotte M. Higbee
Commissioner

AJT:skv