

STATE OF WISCONSIN

PERSONNEL COMMISSION

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 *
 LEROY R. FORSLUND, JOHN H. ROEMER,*
 JOHN P. PURCELL,
 *
 Appellants, *
 *
 v. *
 *
 Secretary, DEPARTMENT OF HEALTH *
 & SOCIAL SERVICES, and *
 Administrator, DIVISION OF *
 PERSONNEL, *
 *
 Respondent. *
 *
 Case Nos. 79-182,193,194-PC *
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 * * * * *

DECISION
AND
ORDER

These consolidated appeals, filed in August, 1979, were of downward reallocations of the appellants' positions. A prehearing conference was held on September 19, 1979. It was agreed to hold matters in abeyance pending attempts to resolve the disputes by stipulation. By correspondence dated October and November, 1979, the appellants indicated that they were not happy with the explanation of the reallocations with which they had been provided and requested audits of theirs and other representative positions in DVR.

By letter dated July 31, 1980, the attorney for the Division of Personnel indicated that a survey of the classification series in question would be forthcoming, but it was not clear which positions, including the appellants', would actually be audited.

In August, 1980, the appellants indicated in correspondence to the Commission that they still favored audits of their positions.

In a letter to the parties dated October 3, 1980, the Commission reviewed the status of these cases, and included the following statement:

"Based on the most recent correspondence from the appellants, it appears that they are in favor of awaiting an evaluation and possible audit of their positions.

Subsequent to the receipt of the most recent correspondence, I contacted Mr. Hinrichs regarding the timing of all of these matters, and he indicated that the survey is scheduled for next fall (1981). He further indicated that this schedule is tentative and subject to change.

If, in light of this additional information, the appellants, or any of them, decide that their positions on this litigation should be changed and that the Commission should proceed with the processing of their cases, they should so notify the Commission. Otherwise, it would appear that these matters can continue to be held in abeyance until 'resolved by mutual agreement among the parties or settlement efforts have reached an impasse,' as set forth in the conference report."

Shortly thereafter, in October, 1980, each of the appellants stated in correspondence in part as follows:

"...I think that there is unnecessary delay and much uncertainty as to whether an audit will ever be conducted of a field office supervisory position in the Division of Vocational Rehabilitation. Therefore, it is my desire that the matter be scheduled for a hearing before the State Personnel Commission as soon as possible, so that we can resolve this issue."

Another prehearing conference was held on January 26, 1981, and a hearing was scheduled for March 11 and 12, 1981, with the following statement of issue:

"Whether or not the administrator's decision to reallocate appellants' positions from Vocational Rehabilitation Supervisor 3 (PR 1-16) to Vocational Rehabilitation Supervisor 2 (PR 1-15) was correct? Should appellants' positions be classified as Vocational Rehabilitation Supervisor 2 (PR 1-15) or Vocational Rehabilitation Supervisor 3 (PR 1-16)?"

By letters to the Commission dated February 9, 1981, February 18, 1981, and March 2, 1981, each of the appellants stated as follows:

"This letter is in reference to the hearing scheduled on March 11 and 12, 1981, at 9:00 a.m., in Room 803, 131 West Wilson Street, Madison.

I have changed my position on this litigation and have decided not to pursue the issue at the hearing scheduled above.

I am in favor of awaiting an evaluation and possible audit of all supervisory positions at a later date."

The respondents' attorney had not been sent copies of these letters.

On March 2, 1981, the Commission entered an Order dismissing 79-193-PC (Roemer) "at the request of the appellant."

By letter to the Commission dated March 9, 1981, Mr. Roemer stated in part as follows:

"I would like to clarify my position. I do not want this case dismissed as I am still very much concerned about the demotion. However, I feel the appeal should be postponed until the audit of the position, which had been promised in the past, is completed."

By letter dated March 9, 1981, Mr. Forslund stated in part as follows:

"This is to restate my position in that I am asking that the hearing be postponed which was originally scheduled for March 11 and 12, 1981, at 9:00 a.m. I am not dropping the appeal but merely wish to have an evaluation and audit of all supervisory positions completed prior to a hearing by the State Personnel Commission."

Mr. Purcell stated in part in a letter dated March 9, 1981:

"I do not wish to drop this appeal.

I wish to postpone the scheduled hearing pending the outcome of an audit to be performed on my position."

By letter dated March 10, 1981, counsel for respondents objected to reconsideration of the March 2, 1981, order, or further postponement, and further moved that the appeals be dismissed for lack of prosecution. By letter to the appellants from the Commission dated March 16, 1981, they were informed that if they wished to respond to this letter, including the motion to dismiss for failure of prosecution, they should submit their response as soon as possible and that the Commission intended to consider the matters raised by her letter at its March 25, 1981, meeting. No response to this letter has been received.


The Commission can only conclude on this record that the appellants do not intend to pursue these appeals to hearing on the question of the original reallocations -- the issue noticed for hearing March 11-12, 1981. In the opinion of the Commission, it is not appropriate at this point to continue to carry these appeals in abeyance. The respondents have made it clear that there is no guarantee that the three positions will be audited as a result of the survey. Furthermore, it is entirely possible that the positions will be reallocated to entirely new classifications defined by newly-created class specifications as a result of the survey. These reallocations could generate new appeals without resolving the issues noticed for hearing on March 11-12, 1981.

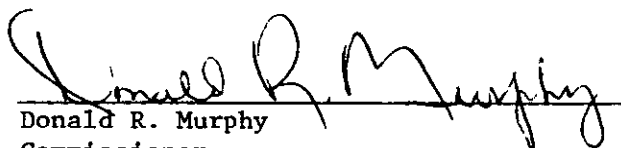
ORDER

These appeals are dismissed for lack of prosecution.

Dated April 1, 1981

STATE PERSONNEL COMMISSION


Gordon H. Brehm
Commissioner


Donald R. Murphy
Commissioner

Dissent: 
Charlotte M. Higbee
Chairperson

AJT:mek
Parties:

Mr. LeRoy R. Forslund
6603 Ogden Avenue
Superior, WI 54880

Mr. Donald Percy
Secretary, DHSS
1 W. Wilson St.
Madison, WI 53702

Mr. Charles Grapentine
Administrator, DP
149 E. Wilson St.
Madison, WI 53702

Mr. John P. Purcell
Division of Vocational Rehabilitation
333 Buchner Place
LaCrosse, WI 54601

Mr. John H. Roemer
Division of Vocational Rehabilitation
110 East Grand Avenue
Wisconsin Rapids, WI 54494