

STATE OF WISCONSIN

CIRCUIT COURT
Branch 9

DANE COUNTY

DEPARTMENT OF EMPLOYMENT RELATIONS,
DIVISION OF PERSONNEL, STATE OF
WISCONSIN,

Petitioner,

RULING ON PETITION
FOR REVIEW

-vs-

Case No. 79CV5099

WISCONSIN PERSONNEL COMMISSION,
STATE OF WISCONSIN (Elmer Cady),

Respondent.

This action is before the Court on a petition for review filed by the Department of Employment Relations (DER) seeking review of a decision of the Wisconsin Personnel Commission (The Commission) ordering that Gerald Vigdal, an employee in the Bureau of Human Resources, Division of Corrections, Department of Health and Social Services (DHSS), be reclassified to a position higher than Social Services Supervisor 3. DER objects to the Commission's decision on the ground that: 1) the appeal was brought to the Commission by Allyn Sielaff, Administrator of the Division of Corrections,¹ who, according to DER, lacked standing to bring such an appeal, and 2) even if the Commission had jurisdiction over the appeal, its findings that Vigdal was improperly classified are against the great weight of the evidence. DER also argues that even if Sielaff had standing and even if

¹This position is now filled by Elmer Cady.

reclassification is proper, the effective date of the reclassification should be September 5, 1979, the date of the final order of the Commission, rather than April 24, 1977, the date on which Vigdal was reclassified from Social Services Specialist 3 to Social Services Supervisor 3.

In response, the Commission argues that Sielaff had standing pursuant to Wis. Adm. Code Pers. s. 3.05 and the authority delegated him by Donald Percy, Secretary of the Department of Health and Social Services and the "appointing authority" within the meaning of Pers. s. 3.05. The Commission also argues that its findings are supported by substantial evidence, and that the effective date of Vigdal's reclassification is properly April 24, 1977.

As discussed below, the Court concludes that Allyn Sielaff had standing to appeal the reclassification action to the Commission that the Commission's findings are supported by substantial evidence, and that the effective date of the Commission's reclassification must be September 5, 1979, the date of the Commission's final order.

With regard to the first issue, the Court notes that Wisconsin Administrative Code Pers. s. 3.05, enacted pursuant to s. 16.03(6), Stats. (1975), expressly recognized the right of the appointing authority to appeal from the denial of a request for reclassification. While this appeal was filed with the Personnel Commission on February 16, 1978, and was thus subject to the provisions of ch. 196, L.1977, certain rules

promulgated under the 1975 statutes still applied. According to c. 196, s. 129, L.1977:

"(4q) The rules of the director of the bureau of personnel in the department of administration promulgated under section 16.03(3), 1975 stats., shall remain in full force and effect until modified by the administrator of the division of personnel of the department of employment relations, as created by this act."

Pers. s. 3.05 was not modified during the time pertinent to this case. Moreover, s. 230.44(1)(a), Stats. (1977), which deals with appeals to the Personnel Commission, makes no mention of who can bring appeals. Its failure to mention even employe/applicants weakens DER's statutory construction argument. Consequently, the Court concludes that Pers. s. 3.05 is still in effect and grants appointing authorities the right to appeal denial of reclassification requests to the Commission.

The Court also concludes that this right, originally possessed by Donald Percy, was delegated to Allyn Sielaff by Percy by letter of July 6, 1977. (See Attachment #1 to DER's letter brief to the Commission, dated October 13, 1978, included in the trial court file with petitioner's brief). By delegating to Sielaff the authority to "appoint, remove and discipline" employes within his unit, Percy delegated those powers that define who is the "appointing authority". See Wis. Adm. Code Pers. s. 1.02(1) (1977). Consequently, Sielaff had authority to appeal this case to the Personnel Commission.

The next issue is whether the findings on which the Commission based its decision that Vigdal should be classified at a level higher than Social Service Supervisor 3 are supported by substantial evidence. After examining the hearing transcript, exhibits and the findings, conclusions and order of the Commission, the Court concludes, for the reasons set forth in the Commission's brief, pp. 7-11, that the Commission's findings are supported by substantial evidence. Although this issue was not briefed by the parties, the Court also concludes that, as a matter of law, the Commission's findings are sufficient to support its decision to reject the action of the Division of Personnel.

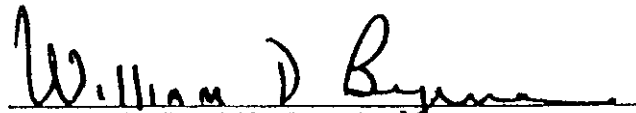
The final issue is whether the Commission had authority to establish April 24, 1977 as the effective date of the reclassification. The Court agrees with the DER that the effective date of the reclassification should be September 5, 1979, the date of the Commission's final order in this case. The Court reaches this conclusion on the basis of the reasoning contained in Van Laanen v. Carballo and Knoll (Personnel Board, 3-19-76, amended 3-23-76), aff'd sub nom Van Laanan v. State Personnel Board, Case No. 153-348 (J. Currie, 5-31-77), relied on by the DER in its briefs. In that case, Justice Currie held that s. 16.38(4), Stats., (1975), the nearly identical predecessor to s. 230.43(4), Stats. (1977), did not permit an award of backpay when a denial of reclassification, even if improper, was involved. The Court agrees with this interpretation of the language of ss. 16.38(4) (1975) and 230.43(4) (1977), noting

that s. 230.43(4), Stats., speaks of retroactive relief only when an employe is being "reinstated". The Commission did not order reinstatement here. Further, Wis. Adm. Code Pers. s. 5.037 is irrelevant, since an agency's statutory authority cannot be expanded by rule promulgation. Consequently, the Commission's decision is not retroactive and is effective only from September 5, 1979.

As modified, the Commission's decision is affirmed.

Dated this 24th day of July, 1981.

BY THE COURT:


WILLIAM D. BYRNE, Judge
Circuit Court Branch 9

Copies to:

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