

\* \* \* \* \*

EDWARD J. FORRESTER,  
 Appellant,

v.  
 Administrator, DIVISION OF  
 PERSONNEL and Secretary,  
 DEPARTMENT OF NATURAL  
 RESOURCES,  
 Respondents.

Case No. 80-252-PC

\* \* \* \* \*

DECISION  
 AND  
 ORDER

This is an appeal from respondents' determination of the proper hourly pay rate for appellant's promotional probationary step increase. The parties agreed to submit the case for decision based upon stipulated facts, exhibits and briefs of the parties. The following findings are determined from the agreed record.

FINDINGS OF FACT

1. Since January 13, 1980, the appellant, Edward J. Forrester has been employed as a Natural Resources Supervisor 2 - Area Forest Ranger (PR 1-13) with the State Department of Natural Resources. This is a permanent position in the state classified civil service.

2. In September 1979, appellants' current position was announced as a competitive promotional opportunity open to all classified employes of the Department of Natural Resources (DNR). The job announcement stated in part:

PAY AND PROBATIONARY PERIOD - PROMOTION\*: Start at \$8.166 per hour (\$1,421/mo.) or receive an increase over your present pay rate of \$.306 per hour (\$53/mo.), whichever is greater. Receive an increase of \$.306 per hour (\$53/mo.) after six months. Starting pay rate and probationary increase subject to the maximum of the pay range established in the current Classification and Compensation Plan. A 12-month probationary period is required.

\*The pay statements apply to promotion and a new probationary period. Pay as a result of other types of appointments, such as transfer, reinstatement or demotion will be based on the rules that apply to the specific transaction, but the beginning pay will not be less than the minimum stated.

Appellant, a Natural Resources Specialist 3, applied for the position, took the examination, passed it and was certified. On December 19, 1979 appellant received a telephone call from the DNR Northwest District Headquarters offering him the position and he accepted.

3. By letter dated December 20, 1979, the district director advised the appellant of his appointment. The letter of appointment states:

Members of my staff have recommended to me your promotional appointment to the permanent position of Natural Resources Supervisor 2 - Area Forest Ranger (PR 01-13).... I am approving this appointment effective January 13, 1980. Your hourly salary for this classification will be \$8.933 ... with a one step increase after satisfactory completion of the first 6 months. This appointment requires that you reside within 10 miles of the Cumberland Area Headquarters.

After appellant accepted the position, he placed his home for sale, began commuting 90 miles per day to the new job site and later moved his family within 10 miles of the Cumberland Area Headquarters.

4. Appellant completed six months of probation on or about July 13, 1980. The 1980-81 Pay Plan approved prior to July, 1979 by the Joint Committee on Employment Relations was in two parts; during the first year of the Pay Plan (July 1, 1979 to June 30, 1980), the step increase for range 13 -

appellant's position level--was \$.306 per hour; during the second year of the Pay Plan (July 1, 1980 to June 30, 1981) the step increase for the same range was \$.265 per hour. By letter dated July 17, 1980 from the Deputy Secretary of DNR, appellant was informed that he was being retained and his salary was to be increased by \$.265 per hour, the amount of his six month probationary salary increase.

5. On July 28, 1980, the appellant appealed to the Commission from the amount of his six month probationary increase. He alleged that he accepted the position based upon salary and \$.306 per hour 6 month probationary increase as expressed in the job announcement.

6. The Department of Natural Resources applied the compensation plan in effect at the time appellant completed the first six months of his probationary period and appropriately determined the probationary salary increase to be \$.265 per hour.

#### OPINION

The appellant argues that the DNR or DER illegally reduced the amount of compensation in his promotional probationary step increase. The basis of this allegation are two documents: a job announcement for his position, which states the six month probationary step increase to be \$.306 per hour and a letter from the DNR stating the increase would only be \$.265 per hour. This argument must fail as it presents no reasons for appeal to this Commission.

As has been said on other occasions, this Commission's jurisdiction is determined by statute. Mid-Plain Telephone Inc. v. PSC 56 Wis 2d 780, 786 (1973).

Appealable actions to this Commission are set forth in §230.44 Wis. Stats., which in pertinent part is as follows:

§230.44 APPEAL PROCEDURES. (1) APPEALABLE ACTIONS AND STEPS (a) Decision of administrator. Appeal of a personnel decision of the administrator, including but not limited to a refusal to examine an applicant or certify an eligible under §230.17, orders by the administrator under §230.05(4) and actions and decisions of the administrator under §230.09, shall be to the Commission.

(b) Action delegated by administrator. Appeal of an action delegated by the administrator to an appointing authority under §230.05(2) shall be to the Commission.

(c) Demotion, layoff, suspension or discharge. If an employe has permanent status in class, the employe may appeal a demotion, layoff, suspension, discharge or reduction in pay to the Commission, if the appeal alleges that the decision was not based on just cause.

(d) Illegal action or abuse of discretion. A personnel action after certification which is related to the hiring process in the classified service and which is alleged to be illegal or an abuse of discretion may be appealed to the Commission.

There is no allegation that there has been a decision of or delegated by the administrator under §230.44(1)(a) or (b), or disciplinary action resulting in a reduction in pay as provided in §230.44(1)(c). However, respondents are accused of an illegal action. §230.44(1)(d) provides that the "illegal action" must be "related to the hiring process."

The appellant was a probationary employe at the time of the alleged offense. The Wisconsin Court of Appeals has held that the hiring process does not include an employe's probationary period. Board of Regents of UW System v. Wis. Pers. Comm., and Steve Dropik, No. 80-1411 and Edwin Young, Pres. UW System v. Pers. Comm., Chester Miller v. Pers. Comm. No. 80-1684 (1981). Accordingly, the appeal does not include subject matter appealable to this Commission. This result is also consistent with the Commission's decision in Black, et al v. DP, Case No. 81-266-PC (11/19/81) where the Commission ruled it lacked authority over appeals from decisions as to the salary paid following promotion.

Notwithstanding the procedural defect, the decisions of the respondents should be affirmed. The process followed by respondents in determining appellant's probationary step increase was as required by the pay schedule for the position.

Appellant's argument that the job announcement constituted a binding contract with the respondent is without merit. The job announcement was a circular distributed to DNR classified personnel inviting them to apply for a particular position. The initial offer of employment to appellant occurred after application, examination and certification.

The terms of the employment contract were set forth in the letter of appointment dated December 20, 1979, which contained no specified amount for appellant's probationary step increase.

In order to accept appellant's contention, respondents would be empowered to unilaterally change existing classified civil service employee pay schedules. This is not the case. The compensation plan, which includes appellant's pay schedule, is a function of the Joint Committee on Employment Relations and the legislature and has not been delegated to respondents. Any contract contravening the compensation plan without specific, delegated authority, would be contrary to state law and invalid.

It is uncontraverted that respondents abided by the appropriate pay schedule when determining appellant's probationary step increase. Accordingly, appellant was compensated the correct amount at the end of six months of his probationary period.

CONCLUSION(S) OF LAW

The Commission lacks subject matter jurisdiction to decide this appeal.

ORDER

It is hereby ordered that this appeal is dismissed.

Dated: March 19, 1982 STATE PERSONNEL COMMISSION

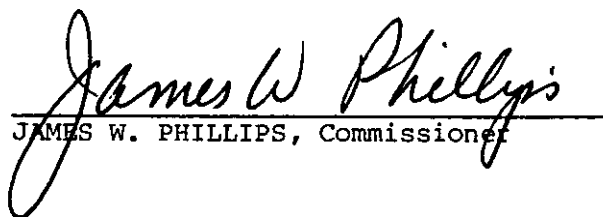
DRM:jmf

Parties:

Edward J. Forrester  
Box 397  
Cumberland, WI 54820

  
DONALD R. MURPHY, Chairperson

  
LAURIE R. McCALLUM, Commissioner

  
JAMES W. PHILLIPS, Commissioner

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

Carroll Besadny, Secretary  
DNR  
101 S. Webster St., 5th Floor  
Madison, WI 53702