
 *
 ROBERT E. BARNETT, et al, *
 *
 Appellants, *
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 v. *
 *
 Secretary, DEPARTMENT OF *
 TRANSPORTATION, and *
 Administrator, DIVISION OF *
 PERSONNEL, *
 *
 Respondents. *
 *
 Case No. 81-366-PC *
 *

ORDER

In its Decision and Order dated June 25, 1982, the Commission dismissed the above matter upon respondent's motion. The respondent has subsequently requested that the Commission reconsider some of the language found in the opinion section of the Decision and Order.

The Commission now adopts the following statement which is in clarification and is to be read in conjunction with its prior Decision and Order:

The analysis used in ruling on respondent's motion is limited to the particular facts of this case and is not to be construed as providing a jurisdictional basis under s.230.44(1)(b), Wis. Stats., for general review of a supervisor's action or inaction.

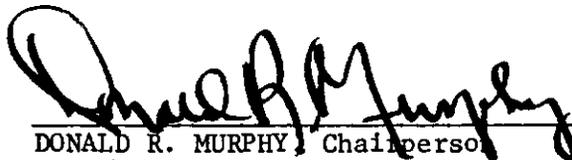
Dated: July 27, 1982

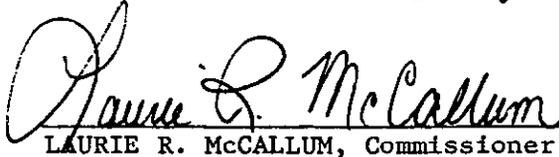
STATE PERSONNEL COMMISSION

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 DONALD R. MURPHY, Chairperson


 LAURIE R. McCALLUM, Commissioner


 JAMES W. PHILLIPS, Commissioner

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DECISION
 AND
 ORDER

The respondents have objected to the Commission's authority to hear this matter, alleging that there was no decision made by the appointing authority that is ripe for review. The parties have filed briefs. The findings of fact are based upon matters that appear to be undisputed.

FINDINGS OF FACT

1. In May of 1981, one of the twenty-eight appellants in this case (Florian Kotecki) contacted his supervisor concerning his classification.

2. By memorandum dated August 7, 1981, Mr. Kotecki was informed that Colonel Howard N. Goetsch, Deputy Administrator, Division of State Patrol did not intend to seek reclassification of his or any other inspector position because a survey which included the Motor Vehicle Inspector series was being conducted:

A complete Division personnel survey, except for clerical personnel, using the new Factor Evaluation System is in progress at present that includes the inspector series. Thus no separate, duplicate reclassification requests for the inspector series are being addressed this year.

Any adjustments to the inspectors salaries must come through the survey and the current labor agreement under negotiation.

3. Mr. Kotecki and the twenty-seven other appellants wrote letters to the Commission at the suggestion of Local 55, Wisconsin State Employees Union.

4. On September 9, 1981, the Commission received letters from nineteen individuals. Each letter was worded as follows:

The undersigned, being an Inspector I with the Wisconsin State Patrol, hereby appeal for immediate reclassification to the position of Inspector II, pay range 10.

Also on September 9, 1981, the Commission received a letter signed by Jeffrey J. Jansen, purporting to appeal a "denial of reclassification to pay range 10" on behalf of nine individuals.

5. The authority to make classification decisions regarding the Motor Vehicle 1 and 2 classifications involved here has been delegated by the administrator to the Department of Transportation.

6. A prehearing conference was held between the parties on October 20, 1981, at which time the respondent objected to the authority of the Commission to hear the matter, arguing that "no decisions has been made by the appointing authority that is ripe for review." The prehearing conference report goes on to state, in part:

Parties have agreed not to proceed further for a period of three weeks, during which time, Mr. Frisch will contact the 28 appellants to advise them of the pending jurisdictional objection. If desired by any or all of the individual appellants, they may submit an updated position description and a request for reclassification, including a brief explanation as to why they feel they should be reclassified. This information shall be sent directly to Ms. Gelderman [DOT Personnel Specialist] for an audit. Ms. Gelderman has 60 days from receipt of the information to complete her audit.

If the appellants agree to follow the above procedure, they may wish to submit letters of withdrawal in the instant appeals. If all 28 appellants do not agree to withdraw the instant appeals, respondent reserves the right to argue the above-described jurisdictional objection.

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OPINION

This matter raises three jurisdictional issues for consideration: (1) Is a refusal by an employe's superior to process a reclassification request a decision that may be reviewed by the Commission; (2) if so, may the remaining twenty-seven appellants in this case obtain review of their positions' classification based upon the same refusal; and (3) what effect does respondent's prehearing agreement to audit the classification of the positions have on the Commission's jurisdiction?

The Commission has express statutory authority to hear appeals from decisions of the administrator and actions delegated by the administrator. Section 230.44(1)(a) and (b), Wis. Stats.

In the recent case of Loy et al v. UW & DP, Case No. 81-421-PC, etc. (3/19/82), the Commission stated:

As a general matter, only a formal reclassification decision by the administrator (or, by the appointing authority in a delegated action) will trigger the Commission's jurisdiction over classification questions. An exception to this general rule occurs if the appointing authority refuses to act on an employe's reclassification request. Such a refusal would constitute a constructive denial of the request, thereby providing a basis for the exercise of the Commission's jurisdiction.

An opposite result would permit the employer to refuse to analyze a reclassification request without the possibility of review. Abuse of such a system would be unavoidable. In this particular case, given the refusal to process the request, it was impossible to Mr. Kotecki to obtain a decision of the appointing authority, per se, regarding the merits of his request. Under these circumstances, the decision of Mr. Goetsch must be imputed to the appointing authority.

Therefore, the Commission concludes that the refusal by Mr. Kotecki's superiors to process his reclassification request constituted a constructive denial of the request.

The second issue in this matter is whether all of the other appellants in this matter gained the right to appeal their classifications to the Commission when Mr. Kotecki's request was refused.

The documents attached to respondent's brief indicate that Mr. Kotecki was one of five individuals who submitted a joint reclassification request to their superior, Inspector Peterson. None of the other four individuals who requested reclassification are parties in this matter.

The actual decision precluding review of Mr. Kotecki's reclass request appears to have been made by Colonel Goetsch. The scope of Colonel Goetsch's letter is quite broad, stating that "no separate, duplicate reclassification requests for the inspector series are being addressed this year." Given the breadth of the letter, the appellants could rely on it as a series-wide bar to the processing of reclassification requests. Once the letter was issued and the appellants were informed of its contents, they were in a position to directly appeal the constructive classification decisions to the Commission. An opposite result would have required all of the appellants other than Mr. Kotecki to submit formal reclass requests to their supervisors, after Colonel Goetsch had expressly stated that no requests would be considered. Under the circumstances of this case, the Commission concludes that Colonel Goetsch's letter constituted a delegated action of sufficient scope to provide a basis for an appeal to the Commission by all twenty-eight of the appellants in this matter.

The third issue raised by this matter is whether the prehearing agreement by the respondent to conduct audits of the 28 positions upon the submission of an updated position description acts to preclude the Commission from exercising jurisdiction. In this case, the appeal was filed as a result of a decision by the respondent not to process reclassification requests from Motor Vehicle Inspector I's. The net effect of prehearing conference agreement was for the respondent to alter its prior position and to conduct the audits. Respondent agreed to review the positions of any of the 28 appellants once they submitted an updated position description and an explanation of the basis for their request. The respondent agreed to conduct the audits; therefore, the jurisdictional basis for the appellants original appeal to the Commission (i.e., the refusal to review/constructive denial) was removed.

Some of the appellants responded to DOT's offer and sent in their position descriptions. The file in this matter indicates that their reclassification requests were denied by DOT. Review of DOT's decision was then appealable to the Commission. The Commission notes that the reclassification requests processed via this route have resulted in a hearing on the merits. (Kotecki et al v. DOT & DP, Case Nos. 82-34, 35, 36, 56, 59, 62, 63-PC.)

ORDER

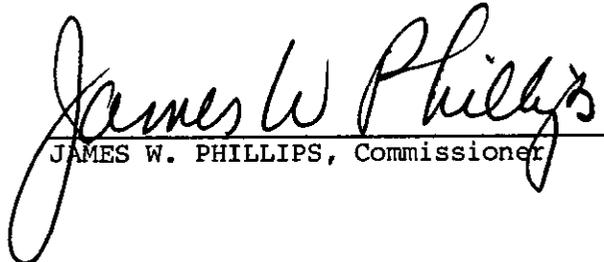
Respondents' motion to dismiss is granted and this matter is dismissed.

Dated: June 25, 1982 STATE PERSONNEL COMMISSION


DONALD R. MURPHY, Chairperson


LAURIE R. McCALLUM, Commissioner

KMS:jmf


JAMES W. PHILLIPS, Commissioner

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