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HENRY SCHIFFER,
Appellant,

v.

Secretary, DEPARTMENT OF
TRANSPORTATION, and Admin-
istrator, DIVISION OF
PERSONNEL,

Respondents.

Case No. 81-4-PC

* * * * *

HENRY SCHIFFER,
Appellant,

v.

Administrator, DIVISION OF
PERSONNEL,

Respondent.

Case No. 81-342-PC

* * * * *

INTERIM
DECISION
AND
ORDER

NATURE OF THE CASE

On January 7, 1981, appellant filed an appeal with the Commission seeking review of respondent DOT's decision denying appellant's reclassification request. Appellant had sought reclassification of his position from Civil Engineer 4 - Transportation Supervisor (CE4-TS) to Civil Engineer 5 - Transportation Supervisor (CE5-TS). In its letter advising the appellant that his reclassification request had been denied, the Department of Transportation (DOT) specifically noted that any appeal from DOT's decision should be taken directly to the Personnel Commission

The Commission assigned Case No. 81-4-PC to appellant's appeal and on February 24, 1981, held a prehearing conference, attended by representatives of the parties, where the following issue for hearing was agreed upon:

Whether or not the administrator's denial of the reclassification of appellant's position from Civil Engineer 4 - Transportation Supervisor to Civil Engineer 5 - Transportation Supervisor was correct.

In April of 1981, counsel for respondent DOT became aware that authority over the classifications in dispute had not been delegated by the Division of Personnel (DP) to DOT and, accordingly, sought dismissal of Case No. 81-4-PC due to lack of subject matter jurisdiction. Appellant subsequently referred DOT's decision to DP for review pursuant to s. PERS 3.03(4), WAC. In a letter to the appellant dated July 17, 1981, the Division also denied the reclassification request. On August 17, 1981, the appellant appealed DP's decision to the Commission. This second appeal was assigned Case No. 81-342-PC.

On September 14, 1981, a prehearing conference was held regarding the more recent appeal, and the following issue for hearing was proposed by the appellant:

Whether or not the administrator's denial of the reclassification of appellant's position from Civil Engineer 4 - Transportation Supervisor to Civil Engineer 5 - Transportation Supervisor was correct, including the following sub-issues:

a) Whether the Department of Transportation (DOT) can deny a reclassification request based upon a comparison of duties and responsibilities of the position where the duties and responsibilities of the position have been changed without notice.

b) Whether DOT can deny a reclassification request where the justification for such denial is based upon a reorganization of the department that is accomplished in violation of applicable statutes or regulations.

Respondent DP objected to the proposed issue and a briefing schedule was set.

The parties to Case No. 81-342-PC (the appellant and DP) also agreed to

consolidate the matter with Case No. 81-4-PC.

Since the conclusion of the September 14th conference, DOT has renewed its jurisdictional objection to Case No. 81-4-PC. Therefore, two questions are before the Commission: Whether the Commission has jurisdiction over Case No. 81-4-PC, and what is the proper issue for hearing in Case No. 81-342-PC. Both matters have been thoroughly briefed.

The following findings of fact are based on matters that appear to be undisputed.

FINDINGS OF FACT

1. The November 3, 1980 letter from DOT denying the reclassification of appellant's position from Civil Engineer 4 - Supervisor to Civil Engineer 5 - Supervisor, included the following statements:

On September 26, 1976, your position was reallocated to Civil Engineer 4 - Supervisor, to correct an error in not previously recognizing the supervisory status for field personnel. From 1972 until the formal merger of District 2 and 9 was fully implemented in the Traffic Section (August 1980), your duties remained essentially the same (District 9 Marking and Signing Supervisor). In that capacity you reported to the Traffic Chief for District 9, Robert Moe, a Civil Engineer 7 - Transportation - Supervisor.

The recent merger substantially altered the Traffic Section, including some key relationships affecting your position and responsibilities ...

The net effect has been: (1) the introduction of an intervening unit/subunit relationship between you and the Traffic Chief; (2) the naming of Mr. Rake to manage the merged district M&S Unit functions; (3) your continued responsibility for Milwaukee based M&S activities (now a subunit); (4) an expansion of PS&E work projects by you outside of Milwaukee County (the old District 9).

* * *

The Civil Engineer - Transportation Position standard provides two pertinent comparison allocations:

Civil Engineer 4 - Transportation
Assistant District Traffic Operations Supervisor -
Responsible to the District Chief Traffic Engineer for a specific major portion of the traffic program such as all district planning in a large urbanized district, and/or responsible for special projects and coordinating such activities as speed zone analysis, accident location analysis, traffic placement control, etc.

Civil Engineer 5 - Transportation
District Traffic Operations Supervisor -
Responsible for a specific and major portion of the traffic engineering program in a district involving complex urban traffic problems.

Your position as a Subunit Supervisor (Assistant Marking and Signing Supervisor) compares favorably with the CE4 specification example above.

* * *

Conversely, your position does not compare favorably at this time to Traffic Unit Supervisor positions (Marking and Signing Supervisors) as noted in the CE5 specification example above ... As the facts indicate, while you may have had such responsibility previously in District 9, the merger structure no longer finds you accountable district wide for all M&S related functions.

2. In his initial letter of appeal, received by the Commission on January 7, 1981, the appellant outlined the various grounds for his appeal:

We think it is manifestly clear from a fair reading of the reclassification request and supporting documents together with the decision and memorandum opinion of the Bureau of Personnel Management that the duties and responsibilities currently assigned to Mr. Schiffer approximate those stipulated in the Position Standard for the position of Civil Engineer 5 - Transportation Supervisor and we urge the Commission to reverse the decision of the Bureau of Personnel Management for that reason alone. We believe this decision is arbitrary and capricious and ignores the relevant criteria posited for a judgment of this kind by Pers. 3.01, et. seq., of the Wisconsin Administrative Code. To the extent that the decision and memorandum opinion of the Bureau of Personnel Management can be read to suggest that Mr. Schiffer was functioning before the merger as a CE-5 Supervisor without portfolio but has now been reduced to a CE-4 Supervisor by the interposition of an intervening unit supervisor and to sanction such reduction in grade, then we challenge the decision for the following additional and alternative reasons:

1. The action constitutes a functional demotion without just cause and in violation of Section 230.34, Stats., and Pers. 17.01, et. seq.

2. The action constitutes a functional transfer in violation of Sections 230.15 and 230.38, Stats., and Pers. 15.01, et. seq.

3. The action was undertaken and implemented in violation of Sections 230.06 and 230.09(2), Stats., and Pers. 3.01, et. seq.

4. The action is a direct result of the merger of Transportation Districts 2 and 9 and is in violation of Section 15.02(4), Stats., and various other applicable civil service statutes, regulations and guidelines.

3. Respondent DP did not delegate the authority to grant or deny appellant's reclassification request to DOT.

4. After requesting respondent administrator to review the reclassification request, appellant was notified by letter dated July 17, 1981 that the administrator formally denied the request.

5. Appellant filed his second appeal with the Commission on August 17, 1981.

This appeal was based upon the administrator's decision:

The facts which form the basis of this appeal and the grounds for this appeal are those stated in the reclassification request herein before referenced as herein supplemented, and in the Notice of Appeal filed in Case No. 81-4-PC as subsequently elaborated upon by letter dated May 6, 1981, copies of which are attached hereto and by this reference specifically incorporated herein. We believe the instant decision to be an abuse of discretion as well and appeal for that reason also.

6. Appellant's May 6, 1981 letter merely restated those points raised in his initial letter of appeal.

7. From 1976 through August 17, 1981, the appellant's position was never officially classified at the CE5-TS level.

CONCLUSIONS OF LAW

1. The Commission lacks subject matter jurisdiction over the appeal in Case No. 81-4-PC.

2. The proper issue for hearing in Case No. 81-342-PC is as follows:

Whether or not the administrator's denial of the reclassification of appellant's position from Civil Engineer 4 - Transportation Supervisor (PR 1-15) to Civil Engineer 5 - Transportation Supervisor (PR 1-16) was correct?

3. The Commission lacks subject matter jurisdiction to consider the question of whether the appellant suffered a functional reduction in grade, a demotion, a transfer or a reallocation at some time prior to November 3, 1980.

4. The Commission lacks subject matter jurisdiction to consider whether the reorganization that affected appellant's position in August of 1980 violated provisions of the statutes and administrative code.

OPINION

Appellant's initial appeal was filed with the Commission based upon DOT's statement that the administrator had delegated to DOT the authority over the classifications involved. This statement subsequently proved to be inaccurate and the appellant perfected a new appeal once the administrator formally denied his reclassification request. It is clear from these events that the Commission lacks jurisdiction over the appeal from DOT's reclassification decision.

(Case No. 81-4-PC)

Appellant's initial appeal should also be construed as including arguments that extend well beyond the scope of a traditional reclassification appeal. (These arguments were also specifically adopted by reference in appellant's second appeal.) Appellant alleges that an illegal reorganization occurred that altered the responsibilities of his position. Essential to the appellant's arguments is the conclusion that at some time prior to the reorganization, the appellant's position should have been classified at the Civil Engineer 5 - Supervisor level. And if the position was at the 5 level before the reorganization and is, according to the review by DOT and DP, now properly at the 4 level, then the appellant argues that at some point he was functionally demoted, transferred, reallocated, or suffered a reduction in grade from the 5 to the 4 level.

However, the appellant's arguments ignore the fact that he was never formally classified at the CE5-S level. Whether or not someone should have reclassified appellant's position prior to the reorganization is irrelevant. The fact remains that from 1976 through the time of his appeal, the classification of the appellant's position never changed, nor did the appellant request reclassification. As a consequence, until December of 1980, there was never any decision of the administrator or DOT that could have been appealed to the Commission.

This conclusion is borne out by an examination of the sources of the Commission's jurisdiction. The Commission derives its jurisdiction from ss.230.44 and .45, Wis. Stats. An analysis of these provisions indicates that the only matter from the two instant appeals that is within the authority of the Commission to rule upon is the correctness of the administrator's reclassification decision.

Pursuant to s.230.44(1)(a), Wis. Stats., the Commission may hear an appeal of "a personnel decision of the administrator." The only such decision was issued on July 17, 1981 when the administrator's representative "concluded that [appellant's] present position is correctly allocated to the Civil Engineer 4 - Transportation (Supervisor) classification level." Nothing in that decision acted to transfer, demote, or reduce the appellant's position in grade, nor did it reorganize the Department of Transportation.

Actions "delegated by the administrator to an appointing authority under s.230.05(2)" are also appealable to the Commission. S.230.44(1)(b), Wis. Stats. The facts clearly indicate that the reclassification decision was not delegated to the appointing authority (DOT) but was retained by the administrator. In contrast, certain personnel functions are, by statute, expressly granted to the appointing authority.

"An appointing authority shall:

* * *

(b) Appoint persons to or remove persons from the classified service, discipline employes, designate their titles, assign their duties and fix their compensation, all subject to this chapter and the rules prescribed thereunder." S.230.06(1), Wis. Stats.

By definition, any functions expressly granted to the appointing authority may not be delegated to the appointing authority by the administrator under s.230.05(2), Wis. Stats. No decisions as to demotion, transfer, regrade or reorganization can be delegated because they are included within the discipline, assignment of duties and designation of title functions that are reserved to the appointing authority. Therefore, the Commission must conclude that none of the matters alleged by the appellant are appealable under s.230.44(1)(b), Wis. Stats.

The third statutory provision granting jurisdiction to the Commission is for appeals from disciplinary decisions:

"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." S.230.44(1)(c), Wis. Stats.

As noted above, the appellant argues that there was a functional demotion, transfer or reduction in grade, but the facts show that there has been no disciplinary action that altered appellant's classification. There must be an actual reduction in an employe's classification rather than merely a perceived reduction in order to generate an appealable decision under this provision.

None of the remaining sources for jurisdiction appear to be relevant to the instant appeals. (See ss.230.44(1)(d) and 230.45, Wis. Stats.)

The underlying focus of the appellant's arguments relating to reduction in grade and the reorganization is that the respondent DOT assigned duties to the appellant's position in an improper manner. Prior decisions issued by the Commission have concluded that the assignment of duties is not appealable to the Commission. See Roberts v. DHSS & DP, Case No. 81-44-PC (7/27/81), Oakley v. Comm. of Sec., Case No. 78-66-PC (4/19/79) and Smith v. DOA, Case No. 80-42-PC (6/11/81) regarding the Commission's lack of authority over assignment of duties and reorganization issues.

Based upon the above analysis, the only matter properly before the Commission is whether the administrator's reclassification decision was correct.

ORDER

Case No. 81-4-PC is dismissed for lack of subject matter jurisdiction. Case No. 81-342-PC may proceed to hearing on the issue as stated in Conclusion of Law #2.

Dated: Feb 18, 1982 STATE PERSONNEL COMMISSION

KMS:ers

Parties

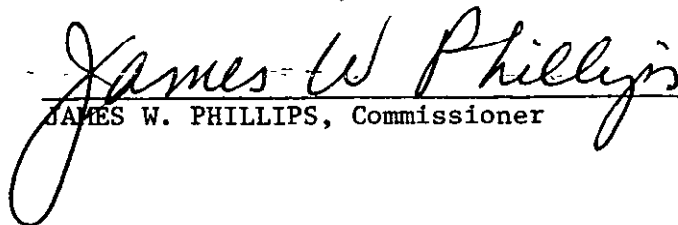
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