

HOWARD LUSTIG, KEVIN CARR,  
RONALD PACK, JOYCE BORKENHAGEN,  
CHARLES HAMMER,

Petitioners,

DECISION

v.

Case No. 81-CV-0542

PERSONNEL COMMISSION,

Respondent.

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Prior to July 3, 1977, the legislature's Joint Committee on Employment Relations (JOCER) adopted a compensation plan (Sec. 230.12(3)(b)). By it employees with permanent status in class were assigned to a regrade point based on their current pay, but if the employee's pay is below the dollar amount for Retrograde Point A, the employee is not assigned to a regrade point. In order to provide appointing time to evaluate performance, the first effective date for regrades was set as January 1, 1978. Each of petitioners had a pay level below that of Point A. On January 1, 1978, each was regraded to Point A. Successive regrades in later years were made to Point B and Point C.

Each of petitioners claims that because of long seniority he was entitled to be placed in an initial grade as of July 3, 1977, and that he was treated unfairly because some employees with less seniority but higher wages were graded on July 3, 1977, while he had to wait until after January 1, 1978. No question is raised that the plan is not valid. Nor is there any issue that each petitioner was not treated as the plan stated. Rather the petitioners' contention is that because of their seniority they were treated unfairly.

The classifications provided by the plan were based on salary, not seniority. Under the plan none of petitioners would be awarded the status of Point A until after January 1, 1978, without regard to seniority.

On application to the respondent Personnel Commission, the Commission determined that since the basis of the petitioners' complaints were the plan itself, not the decision of the administrator, it had no power to afford relief, since it had nothing to do with the ultimate creation of the plan nor any power to modify it. The plan is the creation of JOCER and it alone can change it.

It appears that petitioners were the victims of the plan and not the administration of it. The petitioners would have the Commission somehow adjust the plan to make way for benefits to petitioners. They do not point a way for the Commission to supercede the authority of JOCER so as to create benefits which JOCER did not provide in the plan. We do not find a way which would permit the Commission to do this since no authority is to be found in the statutes for such authority to be exercised. The only authority the Commission has is that given by statute.

The actions appealable under Sec. 230.44(1) are personnel decisions of the administrator. The administrator had prior to the plan classified petitioners and no one objected to the class allocated to petitioners when they took their positions. It was not a decision of the administrator that created the problem complained of, but the creation of the plan by JOCER which did. There having been no decision of the administrator there was nothing to appeal from. Petitioners claim that somehow it was the duty of the administrator to reclassify the petitioners under Sec. 230.09 to permit the plan's benefits

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to reach them. The problem is that the classification had been made long before the plan went into effect. Petitioners did not ask for reclassification of duties, etc. as the administrator may do under Sec. 230.09, but did ask to upgrade the salaries in the petitioner's classifications to meet the requirements of the plan. The administrator has not reclassified petitioners. Hence, there is no decision to appeal from.

Since the Commission has authority only to hear appeals from decisions of the administrator, and there is here no decision to appeal from, the Commission was correct in determining that it had no authority to resolve petitioners' problem.

We therefore affirm the Commission and direct that the Assistant Attorney General prepare the proper order to that effect.

Dated August 13, 1981

By the Court:

  
Reserve Judge

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