

STATE OF WISCONSIN

PERSONNEL COMMISSION

\* \* \* \* \*  
ANNETTE NICHOLS,  
Appellant,  
v.  
Secretary, DEPARTMENT OF  
EMPLOYMENT RELATIONS,  
Respondent.  
Case No. 83-0099-PC  
\* \* \* \* \*

INTERIM  
DECISION  
AND  
ORDER

This matter is before the Commission to resolve a dispute as to the proper statement of issue. The parties have filed briefs on this question.

This is an appeal pursuant to §230.44(1)(a), Stats.(1981-82), of the reallocation of appellant's position from Research Analyst 3 (PR8-03) to Research Analyst 2 (PR8-03) in a new series as a result of the Research and Planning Survey. At the prehearing conference, the parties were able to stipulate as to one issue, but not the second.

The parties agreed to the first issue as follows:

Was the decision of the secretary to reallocate the position of Annette Nichols from the Research Analyst 3 (PR8-03) to the Research Analyst 2 (PR8-03) correct?

As to the second issue, the appellant framed it as follows:

If not, should the position in question be classified as a Research Analyst 3 (PR8-04)?

The respondent framed the issue thusly:

If not, should the position in question be classified as a Research Analyst 3 (PR8-04) or Research Technician 4 (PR6-11)?

In reallocating the appellant's position, the respondent presumably placed it in the classification in which, in his judgment, it was most appropriately classified. It is implicit in the respondent's decision on reallocation that he determined that Research Analyst 2 (PR8-03) was a more appropriate classification than Research Technician 4 (PR6-11). The appellant's main objection to the respondent's proposed second issue, which would have the Commission consider whether the position is more properly classified as Research Technician 4 (PR6-11), is summarized in her brief filed August 25, 1983, as follows:

Appellant argues that to permit respondent to interject a "third class" into the issue would be tantamount to giving respondent the right to appeal its own decision.

The question presented by the parties' dispute as to the statement of issue is essentially one of standing. It seems fairly clear that there was an appealable "decision" by the respondent under §230.44(1)(a), Stats., and that this decision impliedly rejected the Research Technician 4 classification. The question is whether the respondent has standing to seek review of or challenge that specific rejection.

Section 230.44, Stats., does not specifically address who has standing with respect to a decision of the administrator (now secretary, DER), in connection with a §230.44(1)(a), Stats., appeal. Therefore, the Commission must look to the more general provisions of the state's Administrative Procedure Act, Chapter 227, Stats., to determine who has such standing.

Some illumination is provided by §227.01, Stats. Section 227.01(6) defines "party" as:

... each person or agency named or admitted as a party. Any person whose substantial interests may be adversely affected by any proposed agency action in a contested case shall be admitted as a party. (emphasis supplied)

There is little case law interpreting this definition of "party" at the administrative level. However, the definition of "party" for judicial review of administrative decisions uses some of the same language, and can be looked to by way of analogy. See, §227.16(1), Stats., which provides in part:

Except as otherwise specifically provided by law, any person aggrieved by a decision specified in §227.15 shall be entitled to judicial review thereof... .

Section 227.15, Stats., provides in part:

Administrative decisions which adversely affect the substantial interests of any person ... are subject to review... . (emphasis supplied)

Section 227.01(8), Stats., provides:

A 'person aggrieved' includes any person or agency whose substantial interests are adversely affected by a determination of an agency. (emphasis supplied)

Thus, in order to have standing as a party to obtain review of a particular agency determination, either at the administrative or judicial level, a person must have suffered or be threatened by an adverse effect on his substantial interests. In the instant case, in order for the secretary to have standing with respect to the issue he now proposes, it would appear necessary that his substantial interests have suffered an adverse impact as a result of his failure to have reallocated appellant's position to Research Technician 4, or, put another way, that they would be threatened with adverse impact as a result of the Commission's failure to require reallocation to Research Technician 4.

In Mortensen v. Pyramid Savings and Loan Assoc., 51 Wis. 2d 81, 83-84 197 N.W. 2d 730(1971), the Wisconsin Supreme Court held that the Commissioner of Savings and Loan had no standing under §227.16(1) as a "person aggrieved" to petition for review of a decision by the Savings and

Loan Review Board reversing his decision to deny an application to establish a branch office:

The trial court held, and we think correctly so, that the Commissioner of savings and loan is not a person aggrieved and is not directly affected within the meaning of sec. 117.16(1).

The basic reason for this interpretation of the statute is that the commissioner of savings and loan is a part of the decisional process of the savings and loan department and his decision only initially determines the issue in the administrative proceeding... Unless the statute expressly so provides, an aggrieved party is one outside the decisional process who is directly affected. (emphasis added)

If the Commission of Savings and Loan is considered a part of the "decisional process" that culminates in a determination of the Savings and Loan Review Board, and thus not a "person aggrieved" by that determination, it would seem that the same conclusion is even more strongly compelled with respect to the respondent/secretary in the instant case, who is seeking to review his own determination. If he is seeking to review his own decision, clearly he is a person or party who is a part of the decisional process.

Similar results have been reached by courts in other jurisdictions. See, e.g., State ex rel Basista v. Melcher, 188 N.E. 2d 293, 299, 118 Ohio App. 37, 24 Ohio Ops. 2d 366 (1963):

... we are constrained to deal briefly with the right of the councilmanic member of the Board of Zoning Appeals to appeal the decision of such Board (a decision in which he participated as a trier of the facts) to the City Council for review. The case law of Ohio is clearly against such right unless authority is provided therefor by ordinance or statutes. The right of a member of a board exercising quasi-judicial powers to appeal the decision of the Board rendered in the exercise of such power to the Court of Common Pleas is non-existent. If a member of the Board attempts to exercise the right of appeal as an interested party or as a person aggrieved, then he should not be a trier of the facts in a case in which he is interested. One who has an interest in the outcome of litigation has no right to act as the trier of the facts in such litigation presented in a judicial or quasi-judicial proceeding.

See also, Hadley v. Board of Trustees of the Firemen's Pension Fund of the City of Batavia, 447 N.E. 2d 958, 962, 113 Ill. App. 3d 866, 69 Ill. Dec. 644 (1983):

Thus the plaintiffs, acting as constituent members of the administrative agency, who served as fact finders on the board, were not parties of record appearing before the board, but were themselves part of the decision-making process. Since the only interest the plaintiffs could be said to have in the proceeding is to decide the application fairly and impartially, it cannot be said that the board members are aggrieved by the decision any more than is the board which itself is not a 'party.'

Since the Commission concludes that the respondent lacks standing to challenge his own decision not to reallocate the appellant's position to Research Technician 4, the Commission will decline to consider the respondent's proposed issue with respect to that classification.

ORDER

The issue and subissue for hearing will be as follows:

Was the decision of the secretary to reallocate the position of  
Annette Nichols from Research Analyst 3 (PR8-03) to Research Analyst 2  
(PR8-03) correct?

If not, should the position in question be classified as a Research  
Analyst 3 (PR8-04)?

Dated: September 16, 1983      STATE PERSONNEL COMMISSION

  
DONALD R. MURPHY, Chairperson

AJT:jmf

  
LAURIE R. MCCALLUM, Commissioner

  
DENNIS P. MCGILLIGAN, Commissioner

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\* Pursuant to the provisions of 1983 Wisconsin Act 27, published on  
July 1, 1983, the authority previously held by the Administrator,  
Division of Personnel over classification matters is now held by the  
Secretary, Department of Employment Relations.