

STATE OF WISCONSIN

PERSONNEL COMMISSION

* * * * *
GARY WENTZ,
Complainant,
v.
Secretary, DEPARTMENT OF
EMPLOYMENT RELATIONS,
Respondent.
Case No. 84-0068-PC-~~RR~~
* * * * *

ORDER

The Commission issued a decision and order in this matter on January 18, 1985. On February 6, 1985, the respondent filed a petition for rehearing. In his petition, respondent argues that the Commission's order was inconsistent with the issue noticed for hearing. That issue read:

Whether or not the respondent's decision setting September 16, 1984 as the proper effective date for reclassifying the appellant's position from Training Officer 3 - Supervisor to Administrative Officer 1 was correct. If not whether the effective date should have been October 30, 1983.

In its January 18th decision and order, the Commission concluded that 1) the appellant had sustained his burden to show that the effective date established by respondent was not correct and 2) the effective date of the appellant's reclassification should be December 12, 1983.

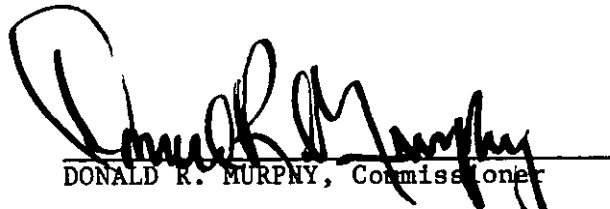
Although the December 12th date was not one of the two dates specifically identified within the agreed upon issue for hearing, it does fall within the range of dates that are implicit within that issue. The respondent's argument simply places too restrictive an interpretation on the issue set for hearing. Respondent's argument might have some merit if the correct effective date had been found to be 1977 instead of sometime

between the two dates specified in the issue. Under the circumstances here, the issue provided adequate notice to the respondent. Therefore, respondent's petition is denied.

This case is distinguishable from Wisconsin Telephone Co. v. ILHR Dept., 68 Wis. 2d 345 (1975) where the court held that the respondent had not received adequate notice of an issue of pregnancy leave benefits because the complaint of sex discrimination and the initial determination of probable cause only referred to discrimination as to the duration of maternity leave. In the Wis. Tel. case, the additional theory of sex discrimination involved a completely new set of facts going well beyond the issue encompassed by either the complaint or the initial determination. In the instant appeal, the December 12th date established by the Commission is simply a different result of the issue identified in the issue established prior to hearing, i.e., the correctness of respondent's decision.

Dated: March 5, 1985 STATE PERSONNEL COMMISSION


DENNIS P. MCGILLIGAN, Chairperson


DONALD R. MURPHY, Commissioner


LAURIE R. MCCALLUM, Commissioner

KMS:jmf

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