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ROMAN KAMINSKI et al,

Appellants,

v.

Secretary, DEPARTMENT OF  
EMPLOYMENT RELATIONS,

Respondent.

Case No. 84-0124-PC

\* \* \* \* \*

DECISION  
AND  
ORDER

This matter is before the Commission on respondent's motion to dismiss. The conference report of a prehearing conference held September 10, 1984, provides:

The appellant's positions were reallocated to the Private Sewage Consultant 2 (PR-5-13) classification as a result of a survey. The appellants raised the following issues regarding the reallocation action:

1. The appellants' positions include duties (representing 25% of their time) which are specifically excluded from the Private Sewage Consultant 1 and 2 specifications, and, therefore the specifications should be rewritten to better identify the appellant's positions.
2. The Private Sewage Consultant 1 classification should be assigned to pay range 5-13 instead of 5-12 and the Private Sewage Consultant 2 classification should be assigned to pay range 5-14 instead of 5-13.

The respondent moved to dismiss the appeal.

In their brief, the appellants' raise two arguments against respondent's motion. Appellants first argue that "[s]ignificant factual errors in position standards may be appealed to the Personnel Commission under §230.44(1)(b), Stats."

Pursuant to §230.44(1)(b), Stats., the Commission may hear:

[A]ppeal of a personnel decision under §§230.09(2)(a) or (d) or 230.13 made by the secretary of by an appointing authority under authority delegated by the secretary under §230.04(lm).

Of the three statutory provisions cited, appellants suggest that

§230.09(2)(a), Stats., provides a basis for this appeal. That reads:

After consultation with the appointing authorities, the secretary shall allocate each position in the classified service to an appropriate class on the basis of its duties, authority, responsibilities or other factors in the job evaluation process. The secretary may reclassify or reallocate positions on the same basis. (Emphasis added.)

Clearly, the Commission has the authority under §230.44(1)(b), Stats., to review decisions of the secretary allocating individual positions to a particular job classification. However, decisions to "establish, modify or abolish classifications" are decisions of the secretary that are made pursuant to §230.09(2)(am), Stats., which provides:

(am) The secretary shall maintain and improve the classification plan to meet the needs of the service, using methods and techniques which may include personnel management surveys, individual position reviews, occupational group classification surveys, or other appropriate methods of position review. Such reviews may be initiated by the secretary after taking into consideration the recommendations of the appointing authority, or at his or her own discretion. The secretary shall establish, modify or abolish classifications as the needs of the service require.

Personnel decisions made under §230.09(2)(am), Stats., are not among those decisions of the secretary that are appealable to the Commission under §230.44(1)(b), Stats.

The Commission has consistently held that it is bound by existing class specifications and has no authority to update the specifications even though it could be shown that they had become outdated and created salary inequities. Zhe et al v. DHSS & DP, 80-285-PC, (11/19/81), affirmed, Dane County Circuit Court, 81 CV 6492, 11/82; Kennedy et al v. DP, 81-180, etc.-PC

(1/6/84). The appellants suggest that even though some survey decisions may not be appealed to the Commission, others may be:

The appellants concede that the statutory scheme does not envision the relitigation of every survey decision before the Commission. This is apparent from the fact that §230.44(1)(b) references only §230.09(2)(a) and (d) and does not refer to §230.09(2)(b). However, the appellants submit that the existence of significant factual errors in the Private Sewage Consultant position standard brings this appeal squarely under §230.09(2)(a) because such errors must have had a material effect on the actual allocation decision. (The errors are specified in the appeal memorandum of July 16, 1984.)

A distinction between "significant" and insignificant" errors in a position standard is simply not contemplated anywhere in §230.44, Stats., in terms of the appealability of those errors to the Personnel Commission. Regardless of the significance of any errors in a particular position standard, the Commission is bound by the existing specifications.

Appellants also argue that "[i]f factual errors have influenced the assignment of a position to an incorrect pay range, constitutional standards of due process require that the affected employe receive a hearing before either the Personnel Commission or the Department of Employment Relations:"

Although the Personnel Commission may not have direct statutory authority to rule on the assignment of pay ranges, public employes have a recognized property interest in their employment which is constitutionally protected. Given this constitutional interest and the Personnel Commission's jurisdiction to consider the correctness of position standards, the Commission must possess at least the minimal remedial power of rejecting a position standard that is based on significant factual errors and remanding the matter to DER for the reconsideration of all decisions that were affected by the error. This procedure would entail a review of the pay range assignment in the light of a corrected position standard. It would do no violence to the DER survey process and would recognize the due process employment rights of state employes.

The appellant's argument presupposes that the Commission "has the authority to consider the correctness of position standards," which has already been shown not to be the case. In addition, the secretary's

authority to make a decision to assign classifications to a particular pay range is provided in §230.09(2)(b), Stats., which again is not one of the decisions listed in §230.44(1)(b), Stats., as being appealable to the Commission. The Commission may not simply ignore the clear statutory limitations established under §230.44(1)(b), Stats., and entertain an appeal based on arguments of due process. <sup>FN</sup>

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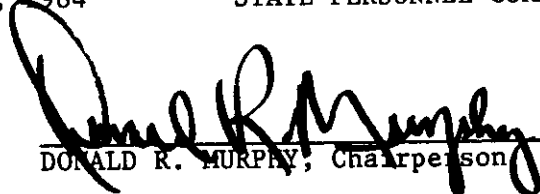
<sup>FN</sup> The Commission's conclusion that it lacks the authority to consider these matters does not mean that the appellants are being deprived of any due process rights. Pursuant to §227.15, Stats., "[a]dministrative decisions which adversely affect the substantial interests of any person, whether by action or inaction, whether affirmative or negative in form, are subject to review as provided in this chapter."

ORDER

Respondent's motion is granted and this case is dismissed for lack of subject matter jurisdiction.

Dated: Dec 6, 1984

STATE PERSONNEL COMMISSION

  
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LAURIE R. McCALLUM, Commissioner

  
DENNIS P. MCGILLIGAN, Commissioner

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