
 JOHN PETERS,
 Appellant,
 v.
 Secretary, DEPARTMENT OF
 EMPLOYMENT RELATIONS,
 Respondent.
 Case No. 84-0148-PC

DECISION
 AND
 ORDER

This matter is before the Commission on respondent's motion to dismiss. The prehearing conference report dated September 28, 1984, provides as follows:

The underlying issue raised in this appeal is whether the Plant Industry Inspector 2 (PII 2) is more appropriately assigned to PR [Pay Range] 5-12, 13 or 14 rather than PR 5-11. Specifically, the appellant argues that (1) the documents describing PII 2 positions [were] inaccurate or otherwise inadequate, causing a particular pay range decision that otherwise might have resulted in the creation of a PII 3 classification; (2) the public hearings at which state employees could comment on the survey draft were not scheduled sufficiently in advance and testimony at those hearings was not adequately considered in establishing classifications and pay ranges, and; (3) there were faults in the design of the factor evaluation system that resulted in the assignments of classifications to pay ranges.

The respondent moved to dismiss the appeal, arguing that the Commission lacks subject matter jurisdiction.

This case raises a jurisdictional issue that is substantially identical to the issue addressed by the Commission in its decision in Smetana et al v. DER, 84-0099, etc-PC, (8/31/84). There, the appellants asked the Commission to create a new classification, assign it to a particular pay range and then allocate the appellant's positions to the new classification. The Commission held:

Certain decisions of the Secretary, Department of Employment Relations are appealable to the Commission. Pursuant to §230.44(1)(b), Stats., (1983-84), the Commission may hear an: [a]ppeal of a personnel decision under §230.09(2)(a) or (d) or 230.13 made by the secretary or by an appointing authority under authority delegated by the secretary under §230.04(1m).

Under §230.09(2)(a), Stats., the Secretary has the authority to allocate, reclassify and reallocate positions within the classified service. Under §230.09(2)(d), Stats., the Secretary must decide, after reclassifying or reallocating a position, to either upgrade the incumbent or to open the position for competition. The reference to §230.13, Stats., is to the Secretary's responsibility for maintaining the confidentiality of personnel records.

In contrast to the three statutory provisions summarized above, the Secretary's authority to establish, modify or abolish classifications or to assign a classification to a particular pay rate or range is established elsewhere in §230.09(2), Stats:

(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.

(b) To accommodate and effectuate the continuing changes in the classification plan as a result of the classification survey program and otherwise, the secretary shall, upon initial establishment of a classification, assign that class to the appropriate pay rate or range, and may, upon subsequent review, reassign classes to different pay rates or ranges. The secretary shall apply the principle of equal pay for work of equivalent skills and responsibilities when assigning a classification to a pay range. The secretary shall give notice to appointing authorities to permit them to make recommendations before final action is taken on any such assignment or reassignment of classes.

Because the decisions that the appellants wish to appeal were made pursuant to §§230.09(2)(am) and (b), Stats., rather than §§230.09(2)(a) or (d), Stats., those decisions are outside of the Commission's jurisdiction. Preder v. DER, 84-0112-PC, (8/21/84). The appeals must, therefore, be dismissed.

In the present case, the three issues raised by the appellant all suggest that there were errors or inequities in the survey process that resulted in unsupportable decisions establishing classifications and

assigning pay ranges. Just as in Smetana, the identified issues relate to decisions of the Secretary made under §230.09(2)(am) and (b), Stats., over which the Commission has no jurisdiction.^{FN} The Commission's authority in the reallocation area is limited to reviewing reallocation decisions that are made based upon already established classifications (and pay ranges assignments). In a typical reallocation case, filed under §230.44(1)(b), Stats., the Commission will apply the language of the available (i.e., existing) job specifications to determine which classification best describes the collection of duties and responsibilities performed by the appellant.

Because the issues raised by the appellant relate to decisions over which the Commission lacks jurisdiction, this appeal must be dismissed.

ORDER

This matter is dismissed due to a lack of subject matter jurisdiction.


Dated: Dec-6, 1984 STATE PERSONNEL COMMISSION

KMS:ers

Parties

John Peters
867 Victor Blvd.
Green Bay, WI 54304

Howard Fuller
Secretary, DER
P.O. Box 7855
Madison, WI 53707


DONALD R. MURPHY, Chairperson


LAURIE R. McCALLUM, Commissioner


DENNIS P. MCGILLIGAN, Commissioner

^{FN} The Commission's conclusion that it lacks the authority to consider these matters does not necessarily mean that there is no review available. 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."