

STATE OF WISCONSIN

PERSONNEL COMMISSION

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 *
 GERALDINE PEABODY, *
 GERALD DISTERHAFT, *
 *
 Appellants, *
 *
 v. *
 *
 Secretary, DEPARTMENT OF *
 INDUSTRY, LABOR AND HUMAN *
 RESOURCES, *
 *
 Respondent. *
 *
 Case No. 85-0060, 0114-PC *
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 * * * * *

INTERIM
 DECISION
 AND
 ORDER

These cases arise from a decision to reclassify a position in the appellants' work unit. Respondent moved to dismiss the matters due to lack of standing and untimeliness. In an interim decision and order issued on December 5, 1985, the Commission did not reach the issue of standing but, as to the issue of timeliness, provided the appellants a period of twenty days to file affidavits establishing the date they were first notified of the reclassification decision. As a result of the appellants' affidavits and discussions between the parties, the respondent withdrew his objection based on timeliness. Therefore, this ruling relates only to the issue of whether the appellants have standing to pursue an appeal of a decision to reclassify a co-workers' position.

FINDINGS OF FACT

1. The appellants are classified as Job Service Specialist 2's and work in the Special Applicant Services unit of the Fond du Lac office of the Job Service Division of the Department of Industry, Labor and Human Relations.

2. Effective April 14, 1985, the position occupied by Mary Jo Norton of the Fond du Lac office's Employment Assistance unit was reclassified from Job Service Specialist 2 (JSS 2) to Job Service Specialist 3 (JSS 3).

3. Prior to her reclassification, Ms. Norton was the least senior JSS 2 in the Fond du Lac office. Her reclassification occurred during a period when the Fond du Lac office was under a threat of staff reductions.

CONCLUSION OF LAW

The appellants have standing to pursue this appeal.

OPINION

The appellants seek to appeal the decision to reclassify a co-worker's position. Prior to the reclassification, the position was at the same level (JSS 2) as the appellants' positions. Reclassification decisions are appealable to the Commission pursuant to §230.44(1)(a), Stats. In order to resolve questions of standing under §230.44, Stats., the Commission looks to §227.01(6) and (8), Stats., both of which refer to "substantial interests" that are or may be "adversely affected." Pullen v. DILHR, 79-72-PC (5/15/80). In Wisconsin's Environmental Decade, Inc. v. PSC, 69 Wis 2d 1, 230 N.W. 2d 243 (1975), the Wisconsin Supreme Court concluded that "the law of standing should not be construed narrowly or restrictively," 69 Wis. 2d 1, 13, and described a two step analysis of standing questions:

The first step under the Wisconsin rule is to ascertain whether the decision of the agency directly causes injury to the interest of the petitioner. The second step is to determine whether the interest asserted is recognized by law. 69 Wis. 2d 1, 10.

In the present case, an exhibit attached to the respondent's brief clearly defined the injury that resulted to the appellants as a consequence of Ms. Norton's reclassification:

Shortly after the approval of Ms. Norton's reclassification request, during a staff meeting in the Fond du Lac office, Mr. Grenier announced that Ms. Norton had been reclassified to a Job

Service Specialist III and that she was the employer services representative for the Fond du Lac office. The timing of this is significant because during this period of time, the Fond du Lac office was under a threat of staff reductions. Therefore, the employes of the Fond du Lac office were anxious that this reclassification action would have an adverse effect on them. Ms. Norton who had less seniority as a Job Specialist II, would now be in a higher classification where no reductions were to take place.

Ranking by seniority within a given class specification for layoff purposes is specifically provided for in §ER-Pers 27.06, Wis. Adm. Code. As noted in Kaeske v. DHSS & DP, 78-18-PC (11/22/78), the injury need not have an immediate effect to generate standing. In addition, civil service employes' interest in both the layoff process and in reclassification decisions is reflected in the inclusion of these decisions among those made appealable to the Commission under §230.44, Stats.^{FN}


Therefore, the appellants have met the two step standing analysis and the Commission enters the following


ORDER

The respondents' motion to dismiss is denied. The parties will be contacted for purposes of scheduling a prehearing conference.

Dated: April 16, 1986 STATE PERSONNEL COMMISSION


DENNIS P. MCGILLIGAN, Chairperson


DONALD R. MURPHY, Commissioner


LAURIE R. MCCALLUM, Commissioner

KMS:jmf
ID3/1

^{FN} This interest is present whether the employes' positions are within a bargaining unit or whether they are unrepresented.

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