
 *
 SUSAN SPILDE, *
 *
 Appellant, *
 *
 v. *
 *
 Secretary, DEPARTMENT OF *
 EMPLOYMENT RELATIONS, *
 *
 Respondent. *
 *
 Case No. 86-0040-PC *
 *

INTERIM
 DECISION
 AND
 ORDER

This matter is before the Commission on respondent's motions to dismiss and to reconsider an interim decision and order dated October 9, 1986. The October 9th order found subject matter jurisdiction and relied upon the following findings of fact:

1. In 1980, while employed as a Program Assistant 1 with the Bingo Control Board in the Department of Regulation and Licensing, appellant submitted a written request for review of her position description to William Dusso.

2. In 1981, appellant submitted a written request for reclassification along with a revised position description which she drafted to Wilma Morris, her immediate supervisor.

3. Appellant's supervisor did not agree that her position had the duties and responsibilities of a higher classification.

4. Appellant then submitted the reclassification request and her proposed position description to Sue Adix, Deputy Secretary and Personnel Officer for the Department. Deputy Secretary Adix verbally notified appellant that Morris did not feel Spilde's position warranted reclassification. Neither Morris nor Adix responded to appellant's reclassification request in writing, and it appears the matter was never referred to DER despite the fact it appears the reclassification transaction was not one that was delegated to the Department of Regulation and Licensing.

5. No one informed appellant of her right to appeal or the proper procedure to follow. A Department of Regulation and Licensing Management Manual in effect in 1981 did not provide appellant any

guidance for appeal or information regarding any other recourse available to her. Appellant did not pursue the matter any further at that time.

6. In September of 1982 or 1983, appellant assumed a position as a Program Assistant 1 within the Division of Enforcement.

7. On March 7, 1985, appellant wrote to Barbara Nichols, Secretary of the Department of Regulation and Licensing, requesting a review of the matter. Specifically, appellant asked for "an audit of my duties for possible reclassification of my position at the time of my original request."

8. Secretary Nichols referred the request to the respondent. Robert J. Belongia, Executive Personnel Officer in respondent's Division of Classification and Compensation issued a written denial on February 12, 1986. Specifically, Belongia wrote that "we have determined that a classification action in 1985 is inappropriate." Belongia explained that "the lack of an actual reclassification request precludes any action or consideration suggested by your March, 1985 letter."

9. On March 14, 1986, appellant filed a timely appeal with the Commission.

The Commission then went on to find that the March 14th appeal letter was timely as to the decision dated February 12, 1986, that the appellant had never been informed in 1981 of the procedures to follow to have her reclassification request reviewed by DER and that by leaving her PA 1 position in 1983, appellant did not cancel a 1981 reclassification request.¹

In its renewed motion to dismiss and its motion to reconsider, the respondent argues that because there was no effective receipt of appellant's reclassification request, it could not have made a classification decision that would be appealable to the Commission under s. 230.09(2)(a), Stats., and 230.44(1)(b), Stats. Respondent points to

¹ The Commission's October 9th decision twice refers incorrectly to the "respondent" rather than to appellant's "appointing authority." The second sentence in the first full paragraph on page 4 of that decision should read: "The rules require that the appointing authority give appellant a written response to her reclassification request." Similarly, the first full sentence on page 5 should read: "This is particularly true where, as here, the appointing authority did not process appellant's reclassification request in accordance with the rules."

policies set out in the Wisconsin Personnel Manual, effective in 1981, which required that specific documentation be supplied to what was then the Division of Personnel in order to dictate further processing of a reclassification request. The policies also required that the appointing authority take certain steps in order to formally deny a reclassification request. Respondent contends that these policies were not followed as to the appellant's reclassification efforts and that its February 12th decision was a determination that there was no proper reclassification before the respondent rather than a decision to deny a reclassification request.

The Commission acknowledges that this is not the typical case appealed under s. 230.09(2)(a), Stats. The Commission's authority to review classification matters is premised on s. 230.44(a)(b), Stats., which provides that certain personnel actions are appealable to the Commission:

(b) Decision made or delegated by secretary. Appeal of a personnel decision under s. 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 s. 230.04(lm).

Reclassification/reallocation decisions are described in s. 230.09(2)(a), Stats.:

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 recognized in the job evaluation process. The secretary may reclassify or reallocate positions on the same basis.

Clearly, the net effect of respondent's February 12th decision not to process further the appellant's reclassification request was to deny the request. The statutory basis found in ss. 230.09(2)(a) and .44(1)(b), Stats., is broad enough to encompass review of a decision, attributable to the respondent, not to further process a reclassification request. To hold

otherwise would preclude administration review of an incorrect decision not to review a reclassification request. The result in this case is consistent with the Commission's ruling in Barnett, et al v. DOT & DP, 81-366-PC (6/25/82, as explained 7/27/82).

The standard issue for hearing in a typical reclassification case is whether the respondent's decision denying the reclassification request from classification A to classification B was correct. Here, the respondent declined to process the appellant's request before the respondent reached a determination as to the appropriate classification level. Therefore, it would appear that the proper issue for hearing in this matter does not include an analysis of the appropriate classification of the appellant's position as it existed in 1981. Based on the information before it, the Commission would phrase the issue as follows:

Whether respondent's February 12, 1986 decision not to process further the appellant's 1981 reclassification request, thereby effectively denying the request, was correct.

The parties shall have 20 days from the date of this decision to file alternative statements of the issue. Absent timely receipt of any alternative issues, the above issue shall serve as the issue for hearing in this matter.

In opposing respondent's motion to reconsider, the appellant contended that the provisions of Wisconsin's Administrative Procedure Act relating to petitions for rehearing, found in s. 227.49(1), Stats.², were applicable:

A petition for rehearing shall not be a prerequisite for appeal or review. Any person aggrieved by a final order may, within 20 days after service of the order, file a written petition for

² Pursuant to 1985 Wisconsin Act 182, s. 227.12, Stats., was renumbered as s. 227.49, Stats., effective April 22, 1986.

rehearing which shall specify in detail the grounds for the relief sought and supporting authorities.

Respondent renewed its motion to dismiss on November 14, 1986, thirty-five days after October 9th. Respondent correctly noted that the Commission's October 9, 1986 decision was an interim, rather than a final, decision. Therefore s. 227.49, Stats., is inapplicable. In addition, the Commission's rules specifically provide that objections as to jurisdiction may be raised at any time. S. PC 1.03(3), Wis. Adm. Code.

Based upon the above analysis, the Commission issues the following:

ORDER

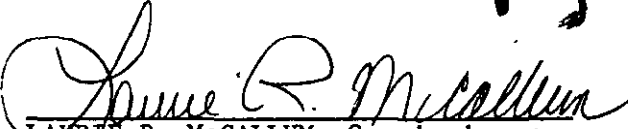
Respondent's motions to dismiss and to reconsider the Commission's October 9th interim decision and order are denied.

Dated: January 8, 1987 STATE PERSONNEL COMMISSION

KMS:baj
JGF004/2


DENNIS P. MCGILLIGAN, Chairperson


DONALD R. MURPHY, Commissioner


LAURIE R. MCCALLUM, Commissioner

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