

STATE OF WISCONSIN

PERSONNEL COMMISSION

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 ANITA JANOWSKI and  
 ARLENE CONRADY,  
 Appellants,  
 v.  
 Secretary, DEPARTMENT OF  
 EMPLOYMENT RELATIONS,  
 Respondent.  
 Case Nos. 86-0125-PC  
 86-0126-PC  
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INTERIM  
DECISION

These are appeals of reallocations that have been consolidated for hearing with a number of other cases. At a prehearing conference held on July 8, 1986, certain issues were raised as to the Commission's authority to enforce and consider a settlement agreement previously entered in earlier Commission proceedings:

2. Does the Commission have jurisdiction to enforce the settlement agreement in Case Nos. 81-PC-ER-9, 81-PC-ER-19, and 80-363-PC<sup>1</sup>, with respect to Conrady's and Janowski's reallocations?

3. Does the Commission have authority to consider the settlement agreement noted above in determining the correctness of the Conrady and Janowski reallocations?

The parties have filed briefs on these points. The following facts appear to be undisputed.

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<sup>1</sup> This reference to 80-363-PC is in error, as the settlement agreement was reached only as to 81-PC-ER-9 and 81-PC-ER-19. The appeal in 80-363-PC was dismissed on the merits, following a hearing on November 9, 1983, approximately a year and a half before the execution of the aforesaid settlement agreement.

In September, 1980, Arlene Conrady's and Anita Janowski's positions in the Dept. of Industry, Labor and Human Relations (DILHR) were reallocated from Job Service Assistant Supervisor 3 (PR 1-09) to Job Service Supervisor 2 (PR 1-11), following a personnel management survey. Ms. Conrady filed an appeal (Case No. 80-363-PC) and a discrimination complaint (Case No. 81-PC-ER-9), in response to such reallocation. Ms. Janowski filed only a discrimination complaint (Case No. 81-PC-ER-19). A hearing on all three cases was held. A decision affirming the Respondents' reallocation decision and ordering that the case (No. 80-363-PC) be dismissed was issued in the appeal. Ms. Conrady did not seek further review of such decision. A decision finding probable cause to believe that Ms. Conrady and Ms. Janowski were discriminated against on the basis of sex was issued. The parties to the complaints reached a settlement and the Personnel Commission dismissed those cases (Nos. 81-PC-ER-9, 81-PC-ER-19) as the result of a settlement agreement in September, 1985. As part of the settlement agreement, the Respondent agreed to "reallocate Ms. Conrady's and Ms. Janowski's positions from Job Service Supervisor 2 (PR 1-11) to Job Service Supervisor 3 (PR 1-12) or the equivalent existing professional level supervisory classification assigned to pay range 1-12 and regrade Ms. Conrady and Ms. Janowski as incumbents effective July 21, 1985, or upon implementation of the survey, whichever is sooner." The subject positions were so reallocated effective July 21, 1985.

The survey referred to in the above-cited language of the settlement agreement was completed in 1986. In March of 1986, Ms. Conrady's and Ms. Janowski's positions were reallocated from Job Service Supervisor 3 (PR 1-12) to Unemployment Benefit Supervisor 2 (PR 1-11). Ms. Conrady and Ms. Janowski filed timely appeals of such actions.

As noted above, the settlement agreement in question was entered in two Fair Employment Act (FEA) cases. Therefore, the question of the commission's enforcement authority must be considered in the context of its responsibilities under the FEA.

According to §111.375(2), stats., "...complaints of discrimination or unfair honesty testing against the [state] agency as an employer shall be filed with and processed by the personnel commission under §230.45(1)(b)...." The Attorney General has expressed the opinion that:

"...the Commission possesses the same powers and duties with respect to the processing of discrimination complaints involving a state agency as an employer as does the Department [of Industry, Labor and Human Relations (DILHR)] with respect to discrimination complaints involving an employer other than a state agency...." 68 OAG 403, 405-406 (1979).

DILHR has no enforcement powers under the FEA with respect to its orders; there are specific judicial enforcement actions available, and, in accordance with the foregoing opinion, these provisions apply equally to this Commission. Therefore, the enforcement of Commission orders in discrimination cases is as set forth at §111.39(4)(d), stats:

"...The order to have the same force as other orders of the department and be enforced as provided in ch. 101. Any person aggrieved by noncompliance with the order may have the order enforced specifically by suit in equity...."

Under Ch. 101, stats., §101.02(13)(a) provides, inter alia:

"If any employer, employe, owner or other person ...fails, neglects or refuses to obey any lawful order given or made by the department...for each such violation, failure, or refusal, such employer...shall forfeit and pay into the state treasury a sum not less than \$10 nor more than \$100 for each such offense."

Unless otherwise specifically provided by statute forfeitures are recovered in judicial proceedings. Ch. 778, stats.

Given these explicit, specific provisions for judicial enforcement of Commission orders in FEA cases, and the absence of any statutory reference to any enforcement authority vested in the commission, there is no basis upon which to conclude there is an implied enforcement authority. Accordingly, with respect to issue #2, the commission must conclude it does not have authority to enforce the settlement agreement entered in Case Nos. 81-PC-ER-9 and 81-PC-ER-19.

The other issue before the Commission is whether it has the authority "...to consider the settlement agreement...in determining the correctness of the ...reallocations?" Obviously, based on the foregoing discussion, the Commission lacks authority to consider the settlement agreement in determining the correctness of the reallocations if this were to involve enforcing the agreement. However, it is difficult to postulate in advance of the hearing for exactly what purpose the settlement agreement might be offered, and in what context. Therefore, beyond reiterating that the Commission cannot "consider" the agreement for purposes of enforcement, the Commission will not further address issue #3 in advance of the hearing.

Dated: October 29, 1986 STATE PERSONNEL COMMISSION

  
DENNIS P. MCGILLIGAN, Chairperson

  
DONALD R. MURPHY, Commissioner

  
LAURIE R. MCCALLUM, Commissioner