

STATE OF WISCONSIN

PERSONNEL COMMISSION

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NORBERT W. SIEBERS,
 Appellant,

v.

Secretary, DEPARTMENT OF
 HEALTH AND SOCIAL SERVICES,
 Respondent.

Case No. 87-0028-PC

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INTERIM
 DECISION
 AND
 ORDER

The following facts appear to be undisputed:

1. In a letter to appellant dated January 12, 1987, Donald W. Gudmanson, Superintendent of the Oshkosh Correctional Institution, confirmed appellant's appointment to the position of Facilities Repair Worker 3 (FRW 3) (PR 03-08), in the Oshkosh Correctional Institution, Division of Corrections, Department of Health and Social Services, effective February 2, 1987, at an hourly rate of pay of \$8.522.
2. As of January 12, 1987, the minimum hourly rate of pay for a position in pay range 03-08 was \$8.522.
3. Effective February 1, 1987, the minimum hourly rate of pay for a position in pay range 03-08 was reduced to \$8.352. This reduction resulted from Pay Equity Adjustments proposed by the Department of Employment Relations and approved by the Legislature's Joint Committee on Employment Relations pursuant to the provisions of a legislative enactment.
4. On February 2, 1987, appellant assumed the duties and responsibilities of the FRW 3 position to which he had been appointed. Some time

after February 2, 1987, appellant received notice that he would be paid at the hourly rate of \$8.352.

5. On March 9, 1987, appellant filed an appeal with the Commission regarding his starting rate of pay in the FRW 3 position.

6. At a prehearing conference held on April 22, 1987, respondent moved, to dismiss the instant appeal for lack of subject matter jurisdiction. The parties were given an opportunity to file briefs on the motion and the briefing schedule was completed on July 16, 1987. Neither of the parties requested an evidentiary hearing on the matter.

Respondent argues first that, since DHSS had no authority to make "pay range decisions," DHSS is not a proper party to the instant appeal. In support of its argument, appellant cites §230.09(2)(b), Stats., and the Commission's decisions in Smetana, et al. v. DER, Case Nos. 84-99, etc.-PC (8/31/84) and Preder v. DER, Case No. 84-112-PC (8/21/84). Section 230.09(2)(b), Stats., provides that the secretary of the Department of Employment Relations (DER) "...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...", and the Smetana and Preder decisions held that it is not within the Commission's subject matter jurisdiction to review the decisions of the Secretary of DER to assign a classification to a particular pay rate or range. However, the instant appeal does not deal with the assignment of a classification to a particular pay rate or range. It is undisputed that the classification of the position to which appellant was appointed, Facilities Repair Worker 3, was assigned to pay range 03-08 at all times relevant to this matter and that appellant is not appealing this assignment or the change in the pay rates for pay range 03-08 but is appealing his starting rate of pay.

Respondent further argues that, since, according to §ER-Pers 29.02(1), Wis. Adm. Code, respondent was required to establish appellant's starting rate of pay as the minimum hourly rate of pay for pay range 03-08 as of the effective date of appellant's appointment to the FRW 3 position and, since this minimum hourly rate of pay for pay range 03-08 is not determined by DHSS, DHSS had no discretion or role in the matter of the establishment of appellant's starting rate of pay and, as a result, DHSS is not a proper party to the instant appeal. However, §230.06(1)(b), Stats., provides that an appointing authority shall "appoint a person to... the classified service,... and fix their compensation, all subject to this subchapter and the rules prescribed thereunder." Therefore, regardless of the strictures imposed on the appointing authority's fixing of the compensation of one of its employees, the authority to fix such compensation is the appointing authority's. The appointing authority in the instant case is the DHSS.

The Commission has jurisdiction over this appeal pursuant to §230.44(1)(d), Stats. In Taddey v. DHSS, Case No. 86-0156-PC (1987), the PC decided:

"Section 230.44(1)(d), Stats., provides for commission jurisdiction over a: ...Personnel action after certification which is related to the hiring process in the classified service and which is alleged to be illegal or an abuse of discretion."

This provision explicitly includes more than the decision as to whom to appoint to a position -- it includes all personnel actions after certification which are related to the hiring process.

"In this case, a personnel action was taken when appellant's starting salary was established. This decision as to how much appellant would be paid occurred after certification, and it was related to the process of hiring appellant to this position. Therefore, there is jurisdiction under §230.44(1)(d), Stats. See Porter v. DOT, Case No. 78-154-PC (5/14/79), affirmed, Dane County Cir. Crt. No. 79 CV 3420 (3/24/80)."


The Commission has been offered no convincing reason to reach a different result in the present case.

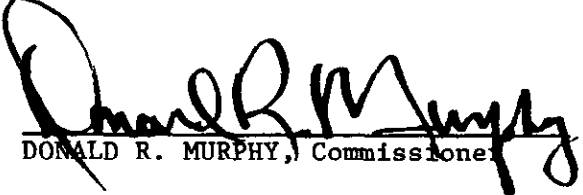
ORDER

Respondent's motion to dismiss is denied.

Dated: September 10, 1987 STATE PERSONNEL COMMISSION


DENNIS P. MCGILLIGAN, Chairperson


LAURIE R. McCALLUM, Commissioner


DONALD R. MURPHY, Commissioner

LRM:jmf
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