
 *
 DIANE MESCHEFSKE, *
 *
 Appellant, *
 *
 v. *
 *
 Secretary, DEPARTMENT OF *
 HEALTH AND SOCIAL SERVICES, *
 *
 Respondent. *
 *
 Case No. 88-0057-PC *
 *

INTERIM
 DECISION
 AND
 ORDER

The following facts appear to be undisputed:

1. In December of 1987, appellant applied for the position of Volunteer Coordinator at Winnebago Mental Health Institute (WMHI) and was advised by the WMHI personnel office that, if she were appointed to this position from her current position, it would be a promotion.

2. In February of 1988, as a result of Pay Equity Adjustments (commonly known as Comparable Worth - Phases I and II) proposed by the Department of Employment Relations and approved by the Legislature's Joint Committee on Employment Relations, appellant's then-current position was assigned to the next-higher pay range. This next-higher pay range was the same pay range to which the Volunteer Coordinator position was assigned.

3. As a result of this Pay Equity Adjustment, appellant received a pay increase of \$.073 per hour.

4. On April 22, 1988, appellant was offered the Volunteer Coordinator position which she later accepted. Appellant's appointment letter stated as follows in pertinent part:

Congratulations, this letter is to confirm your promotion to the position of Volunteer Coordinator, located in the Division of Care and

Treatment Facilities, Department of Health and Social Services,
Winnebago Mental Health Institute, effective April 10, 1988.

When an employe is promoted, his or her salary is increased to the minimum of the new pay range or ten percent of their current salary, whichever is greater. Our records indicate that your present salary is \$10.734 per hour and that your new salary will be \$11.808 per hour. You will be required to serve a six month probationary period. Upon successful completion of your probationary period, you will attain permanent status in your new classification and receive a one step pay increase (if within the maximum of your pay range) effective the nearest pay period to that date.

5. Appellant began work in the Volunteer Coordinator position on April 11, 1988. About two weeks later, appellant was notified that an error had been made in the designation of the personnel action involved as a promotion and in the computation of her starting rate of pay and her rate of pay upon the completion of her probationary period. She was advised that, because her former position and her new position were in the same pay range as of the effective date of her appointment to the new position, the action must be regarded as a lateral transfer, not a promotion, and, as a result, appellant was not eligible for the \$1.07 pay increase upon appointment or the one-step increase upon the completion of her probationary period.

6. Appellant filed a timely appeal of the subject action with the Personnel Commission on May 20, 1988.

7. At the prehearing conference held on June 10, 1988, respondent filed a motion to dismiss for lack of subject matter jurisdiction.

Before a decision can be made regarding the presence or absence of subject matter jurisdiction, it must be determined what appellant is appealing, the assignment of her former position and her new position to the same pay range; the designation of the underlying transaction upon her appointment to the new position as a lateral transfer instead of a

promotion; and/or her starting rate of pay in her new position and/or her rate of pay upon the completion of her probationary period.

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...." The Personnel Commission made it clear 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), that it is not within the Personnel 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 and the Personnel Commission so holds in the instant case.

Under the civil service system encoded in Ch. 230, Stats., an appointing authority has the authority to decide which of the available procedures is to be used to fill a vacant position while the Administrator of the Division of Merit Recruitment and Selection (DMRS) has the authority to decide if the procedure used by the appointing authority accords with all applicable requirements. (See Stasny v. DOT, Case No. 79-217-PC (1/12/81); Miller v. DHSS, Case No. 81-137-PC (10/2/81); and Ford v. DHSS and DP, Case Nos. 82-243-PC, 83-0011-PC, 83-0020-PC (6/9/83). Under the facts of the instant case, respondent decided to fill the subject vacancy by utilizing a competitive procedure and this decision of the appointing authority is not reviewable by the Personnel Commission. (See Miller and Ford, above.) The Administrator of DMRS, in reviewing the procedure used by respondent in filling the subject vacancy, decided, either directly or by delegation to respondent, that the underlying transaction should be designated and

treated as a transfer, not a promotion. This decision of the Administrator is reviewable by the Personnel Commission under §230.44(1)(a), Stats.

The Personnel Commission decided in Siebers v. DHSS, Case No. 87-0028-PC (9/10/87), that:

"... §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 Commission has jurisdiction of this appeal pursuant to §230.44(1)(d), Stats. In Taddey v. DHSS, Case No. 86-0156-PC (1987), the Personnel Commission 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 Personnel Commission concludes then, in the instant case, that it has jurisdiction, pursuant to §230.44(1)(d), Stats., over respondent's decision establishing appellant's rate of pay upon appointment to the subject position. Since, however, the establishment of appellant's rate of pay by respondent upon completion of her probationary period could not be considered part of the hiring process, it is not reviewable by the Personnel Commission.

ORDER

Respondent's motion to dismiss for lack of subject matter jurisdiction is denied. The Administrator of DMRS is added as a party respondent.

Dated: July 13, 1988 STATE PERSONNEL COMMISSION

LRM:rcr
DPM/2


DONALD R. MURPHY, Commissioner


LAURIE R. McCALLUM, Commissioner