

STATE OF WISCONSIN

PERSONNEL COMMISSION

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DONNA SCHMIDT,

Appellant,

v.

Secretary, DEPARTMENT OF
EMPLOYMENT RELATIONS,

Respondent.

Case No. 89-0058-PC

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INTERIM
DECISION
AND
ORDER

This matter is before the Commission on respondent's motion to dismiss for lack of subject matter jurisdiction. Both parties have filed briefs.

The underlying facts relating to the issue of subject matter jurisdiction will not be set forth here, but the Commission will rely on the findings of fact already made in an interim decision and order entered November 1, 1990, which were in turn based on a stipulation of facts. The factual background of this matter was summarized in the aforesaid interim decision as follows:

As a result of a personnel survey, the pay range of appellant's position at UW-M was raised from range 12 to range 13, effective 10, 1984. Later that year, respondent raised the minimum pay rates and PSICM's (permanent status in class minimums) of police officers at UW-M, including detective, pay range 13, and sergeant, pay range 14, effective October 14, 1984. Respondent did this at the request of the appointing authority (UW-M), which had asserted (Exhibit 9) that "in order to retain qualified, experienced Police Officers we must ask for a new raised minimum rate." The new PSICM rates that were approved were \$11.072 for detective and \$12.081 for sergeant. As a result of this change, appellant received a salary increase.

Subsequently, in 1988, respondent determined that it had made an error in 1984 in connection with the personnel survey by having assigned the detective classification to pay range 13 instead of 14, as the sergeant classification had been, and on May 2, 1988, reassigned appellant's classification from pay range 13 to 14 with an effective date of June 10, 1984. In connection with this transaction, respondent sent a memo dated April 18, 1988 (Exhibit 5) to UW-M personnel which included the following:

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[W]e are making the pay range change [from 5-13 to 5-14] effective June 10, 1984, and will go back to that date to determine what pay rate for affected employees would have been appropriate at that time, including the back pay due them . . . I am . . . requesting that someone in your payroll department provide information for those employees on the hourly payroll rate calculation showing the actual rate paid and what the pay rate should have been at the higher level from the effective date of the change to the present time. Please have them also include the calculations on the amount of back pay due to each affected employee.

In response to this memo, UW-M personnel provided respondent a breakdown or reconstruction of appellant's salary premised on her position having been assigned to pay range 05-14 instead of 05-13 as of June 10, 1984. This analysis reflected the following entry with respect to the 1984 raised minimum rate: "Base rate raised to \$12.081 (PSICM of PR 5-14) as result of approved Raised Hiring Rate for UWM effective 10/14/84" (Exhibit 6) . . . when the classification of appellant's position was re-assigned from pay range 05-13 to 05-14 in 1988, appellant's salary and back pay was calculated by applying the October 1984 raised minimum rates for pay range 05-14 to her salary, but subsequently respondent decided that this approach was incorrect and that appellant was required to refund the extra salary she had received in connection with that approach.

In support of its motion to dismiss, respondent contends it took no action with respect to appellant's salary status which is appealable under §230.44(1)(b), stats. (appeals of decisions by the Secretary of DER) because jurisdiction under that subsection runs only to the Secretary's decisions under §§230.09(2)(a),(d), or 230.13, stats., none of which are applicable here:

Decisions such as those listed above, concerning the assignment of classifications to a particular pay range, the use of raised minimum rates, and correcting overpayment errors in an individual's salary are not governed by §230.09(2)(a) or (d), or §230.13, stats., and therefore, the Commission does not have jurisdiction to hear appeals concerning those issues.

The Commission agrees with this contention, as far as it goes. However, in her memorandum in opposition to the motion, appellant argues, inter alia, that the Commission has jurisdiction over this matter as a reduction in base pay pursuant to §230.44(1)(c), stats.¹ Based on the summary of facts set forth above it

¹ Respondent did not file a reply brief.

appears that appellant received an increase in her base salary as a result of the approval of a raised hiring rate, and the subsequent reassignment of her classification to a higher pay range, and that respondent's decision "correcting overpayment errors" (as respondent puts it) resulted in an appealable action under §230.44(1)(c), stats. — i.e., a "reduction in base pay," see Mirandilla v. DVA, No. 82-189-PC (7/21/83). Therefore, notwithstanding that respondent's decision that the reduction had to be made (presumably by the appointing authority, UW-Milwaukee, acting at respondent's behest) is not appealable under §230.44(1)(b), stats., this is not fatal to Commission jurisdiction under §230.44(1)(c), stats.

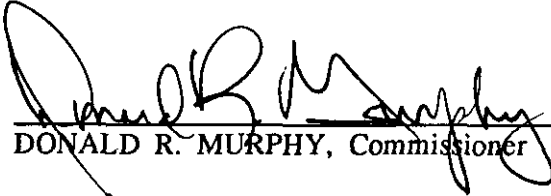
ORDER

Respondent's motion to dismiss filed December 5, 1990, is denied.

Dated: February 26, 1991 STATE PERSONNEL COMMISSION


LAURIE R. McCALLUM, Chairperson

AJT/gdt/3


DONALD R. MURPHY, Commissioner