

STATE OF WISCONSIN

PERSONNEL COMMISSION

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BRIAN GARR,
 GUY CLOUD,
 BRIDGET OELKE,
 EDWARD BERGER,
 LEONARD PALMERI,
 HENRY KLEMMER,
 JAMES ZANON,

Appellants.

v.

Secretary, DEPARTMENT OF
 EMPLOYMENT RELATIONS,

Respondent.

Case Nos. 90-0163, 0165, 0166,
 0167, 0168, 0173,0175-PC

* * * * *

RULING ON
 MOTION TO
 DISMISS

These consolidated reallocation appeals are before the Commission on respondent's motion to dismiss on the ground of lack of "jurisdiction over the issues the appellants wish to raise," filed December 4, 1990.

The facts material to jurisdiction appear to be both straightforward and undisputed. Each of appellants' positions was reallocated from Officer 5 to Supervising Officer 2. As a result of prehearing conferences, it is apparent that appellants' primary focus of dissatisfaction with these reallocations has to do with the salary transactions (or lack thereof) which occurred in connection with the reallocations, and the impact of the reallocations on appellants' future salary prospects. For example, appellant Garr's appeal includes the following:

I am appealing my position being reallocated to supervising officer II without financial compensation. If I would have stayed a supervising officer 1, I would have received one step in this class. With this reclass, I have been moved up two pay grades - to supervising officer 2 and still have received only one step as a supervising officer 2. This increased my salary by less than \$.03 per hour over a supervisor officer 1. In my opinion I have received a new position title with increased responsibility for only a few pennies. I have 15 years left in my career in which I could have promoted to supervising officer 2 and I could have received four pay steps. As it stands now, this promotional opportunity has been stolen from me.

Appellants appear to concede their positions are properly classified; none has asserted his position is better described by the position standard for a different classification.

The Commission's jurisdiction over respondent DER's actions (as potentially material to these proceedings) is set forth in §230.44(1)(b), stats., as hearing appeals of actions of the Secretary of DER §230.09(2)(a), stats., allocating or reallocating positions. Salary transactions upon reallocation are covered by a different subsection, §230.09(2)(f): "If a position in the classified service is . . . reallocated . . . the pay rate of the incumbent shall be adjusted under the rules prescribed under this section." Since §230.44(1)(b) gives the Commission authority to hear appeals of actions taken under certain enumerated subsections of §230.09(2), but that enumeration does not include §230.09(2)(f), the conclusion is inescapable that the Commission has no jurisdiction over decisions regarding salary adjustments made in connection with reallocations. Since appellants have not identified any issues in connection with these reallocations except for salary adjustments, the Commission lacks jurisdiction to proceed with these matters.

Appellant Garr in his appeal letter refers to a problem with a denial of promotion:

On 04-06-1990, I interviewed for officer 6 at DCI and on 04-09-1990, was offered the promotion to officer 6 which included the 3 steps and one step after 6 months. One hour after DCI made me this offer, Mr. Kastin called me and stated I had already become a captain, he said I had been reclassified but was still welcome to make a lateral transfer; with no compensation. Despite help from my supervisor, and many others, there was no relief available. My loss is approximately \$1.44 per hour

This allegation conceivably could give rise to an appealable transaction under §230.44(1)(d) ("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") but it appears that appellant is raising this matter as an element of damages arising from the reallocation rather than as a separately appealable transaction.¹


¹ It is noted that pursuant to §ER-Pers 1.02(2), Wis. Adm. Code, an appointment is effective "when the employe reports for work or is in paid leave status on the agreed starting date and time." It appears obvious that due to appellants' reallocation, DCI had no choice but to rescind the offer of promotion.

In conclusion, the Commission simply has no statutory authority to hear the issues appellants seek to raise concerning the salary adjustments connected to their reallocations or the effect of these reallocations on their careers. The legislature has limited the Commission's authority to hear only those appeals (as pertinent here) to those falling within §230.09(2)(a), stats., and the Commission has no choice but to observe those limitations imposed by law.

ORDER

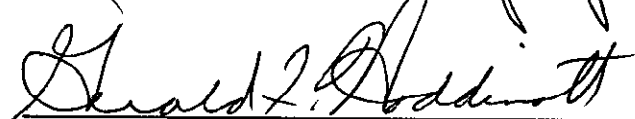
These appeals are dismissed because of an absence of any issue over which the Commission has jurisdiction.

Dated: January 11, 1991 STATE PERSONNEL COMMISSION


LAURIE R. McCALLUM, Chairperson

AJT/gdt/2


DONALD R. MURPHY, Commissioner


GERALD F. HODDINOTT, Commissioner

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