

STATE OF WISCONSIN

PERSONNEL COMMISSION

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SHARON L. PAYNTER,
Appellant,

v.

Secretary, DEPARTMENT OF
EMPLOYMENT RELATIONS,

Respondent.

Case No. 93-0120-PC

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RULING
ON
JURISDICTIONAL
OBJECTION

This matter is before the Commission on the respondent's motion to dismiss for lack of subject matter jurisdiction. The appeal arises from the respondent's decision in June of 1993 to reallocate the appellant's position from Accountant-Advanced to Accountant-Advanced-Management. Respondent contends that the proper avenue for the appellant to seek review of the decision to categorize her position as a "management" position is to the Wisconsin Employment Relations Commission (WERC).

The classification specification for the Accountant series includes the following language in the exclusions section:

Excluded from this series are the following types of positions:

* * *

- 4. Positions which spend the majority of their time performing management duties, as defined in s. 111.81, Wis. Stats.

The specifications indicate they were created in April of 1992 and revised in January of 1993.

In a letter dated June 16, 1993, to respondent Secretary, the Administrator of respondent's Division of Classification and Compensation recommended creation of 10 new classifications, including Accountant Advanced Mgt. The letter expressed the following rationale:

The recognition of the Professional Fiscal and Staff Services (PFSS) bargaining unit has necessitated the creation of several new classification titles. The primary rationale for the latter de-

cision is the need to identify those positions which have primarily management or confidential responsibilities.

Prior to the bargaining unit designation, the positions found in these titles were in a nonrepresented classification title without a management or confidential title. An analysis conducted jointly by the Divisions of Collective Bargaining and Classification & Compensation indicates the need to create the classes for the aforementioned titles.

On June 28, 1993, DER issued a bulletin indicating that respondent Secretary had approved the creation of various classifications pursuant to s. 230.09, Stats., including Accountant Advanced Mgt. The bulletin noted that the action was effective June 27, 1993. However, no separate class specifications for the Accountant-Advanced-Mgt. classification have been issued. According to the respondent, the classification specifications for the Accountant series are used to determine "the proper classification level for a position's duties within the Accountant series (for example, Entry, Advanced Entry, Developmental, Journey, etc.)" but that the "decision whether a position should be designated as 'management', 'confidential' or 'supervisor' under [the State Employment Relations Act] is a separate decision which is controlled by the definitions and caselaw established by the WERC." Respondent's brief, p. 3.

As noted above, the class specification for the Accountant series specifically excludes those positions "which spend a majority of their time performing management duties, as defined in s. 111.81, Wis. Stats." Pursuant to §111.81, Stats:

(3) "Commission" means the employment relations commission.

* * *

(7) "Employee" includes:

(a) Any state employe in the classified service of the state, as defined in s. 230.08, except limited term employes, sessional employes, project employes, supervisors, management employes and individuals who are privy to confidential matters affecting the employer-employe relationship, as well as all employes of the commission.

* * *

(13) "Management" includes those personnel engaged predominately in executive and managerial functions, including

such officials as division administrators, bureau directors, institutional heads and employes exercising similar functions and responsibilities as determined by the commission.

Pursuant to §111.825(3), Stats., the WERC "shall assign employes to the appropriate collective bargaining units set forth in subs. (1) and (2)" which in turn list numerous collective bargaining units, including Professional-Fiscal and Staff Services.

The Personnel Commission's jurisdiction over reallocation appeals is based on §230.44(1)(b), which gives the PC authority to hear an appeal "of a personnel decision under s. 230.09(2)(a)" made by the Secretary of DER. The latter provision refers to decisions by the Secretary to allocate, reclassify and reallocate "each position in the classified service to an appropriate class."

The WERC is granted specific statutory authority to determine whether positions in the classified service fit within a particular collective bargaining unit. In exercising that authority, it is possible that the WERC would decide whether the appellant's responsibilities fit within the scope of the definition of a "management" employe as set forth in §111.81(13). The instant case was not filed with the Personnel Commission as a request for bargaining unit determination.¹ It reached the Commission as an appeal from a reallocation decision. The Personnel Commission has very specific statutory authority to review reallocation decisions and the WERC has no such authority. In conducting such a review relative to the appellant's position, the Personnel Commission will presumably have to decide whether the appellant's responsibilities fit within the scope of the definition of "management" employe set forth in §111.81(13). However, that determination will be made in the context of the reallocation appeal, and not as a consequence of a unit clarification petition. The Personnel Commission's statutory authority over reallocations is not superseded by the WERC's authority to hear unit clarification petitions.²

¹In Snyder v. Schmidt, 74-119, 3/24/75, the Personnel Commission's predecessor, the Personnel Board, concluded that it lacked jurisdiction to entertain petitions for clarification of bargaining units.

²In Murray v. DER, 91-0105-PC, 6/4/93 (appeal pending), the Commission reviewed DER's reallocation decision in terms of whether Mr. Murray's position was more appropriately classified as a Civil Engineer Supervisor 4 or as an Architect/Engineer Manager 1. In carrying out this review the Commission analyzed the responsibilities assigned to the position in terms of whether they were "predominately executive and managerial functions in the field of architecture or engineering as defined in s. 111.81 Wis. Stats."

ORDER

Respondent's motion to dismiss for lack of subject matter jurisdiction is denied. The Commission will schedule a prehearing conference.

Dated: December 13, 1993 STATE PERSONNEL COMMISSION


LAURIE R. MCCALLUM, Chairperson

KMS:kms
K:D:temp-12/93 Paynter


DONALD R. MURPHY, Commissioner


JUDY M. ROGERS, Commissioner
