

**DIANE M. ARENZ, JANE B. WOOD,
LINDA M. ANNEN, KAROL KAETHER,
PHYLLIS MATZ, KAY MILLER,
TIMOTHY ROOKEY, KATHRYN J.
SCHENK,**

Appellants,

v.

**Secretary, DEPARTMENT OF
TRANSPORTATION, and
Secretary, DEPARTMENT OF
EMPLOYMENT RELATIONS,**

Respondents.

**RULING
ON MOTION
TO SUPPLEMENT
ISSUE**

Case Nos. 98-0073 through 0080-PC

These matters are before the Commission on the appellants' motion to supplement the issue for hearing.

During a telephone conference held on October 20, 198, the parties agreed to the following statement of issue for hearing:

Whether the respondents' decisions reallocating the appellants' positions to Transportation Customer Representative 2 rather than Transportation Customer Representative 3 were correct.

The parties further agreed to a hearing on March 4 and 5, 1999, and the notice of hearing, found within the prehearing conference report, notes the Commission has jurisdiction over the matter "pursuant to s. 230.44(1)(b), Stats."

Appellants seek to add the following clause to the above issue:

" . . . and whether respondents' decisions concerning reallocation of appellants' positions to Transportation Customer Representative 2 constitute an abuse of discretion pursuant to s. 230.80 Wisconsin Statutes."

In their brief, appellants also reference §230.44(1)(d), Stats., as the jurisdictional basis for the new allegation. That provision reads:

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 may be appealed to the commission.

Appellants point out that the phrase "related to the hiring process" is not defined in the statutes and argue that "common sense tells us that the term 'hiring process,' when discussed in light of an appeal of abuse of discretion, **must** be applied to any delegated personnel action of the employer." (Appellants' reply brief, page 2, emphasis in original.) Paragraph (1)(d) typically serves as the vehicle for obtaining review of selection decisions. However, it does not extend to every personnel action taken after an employe has been hired. In *Board of Regents v. Wis. Pers. Comm.*, 103 Wis. 2d 545, 309 N.W.2d 366 (1981), the Court of Appeals concluded that the "hiring process [as used in 230.44(1)(d)] cannot be reasonably construed to embrace the acquisition of permanent status in class." 103 Wis.2d 545, 559¹

The decision to reallocate appellants' positions to one classification level rather than to another classification level is a decision made by the secretary of the Department of Employment Relations (or delegated by the secretary²) pursuant to

¹ The Commission has consistently interpreted the term "hiring process" more narrowly than suggested by the appellants. In *Greuel v. DOC*, 96-0135-PC, 1/16/97, the Commission held that actions by an appointing authority to deny appellant's request for an exemption to the agency's employe fraternization policy and to remove appellant's name from an inmate's visitation list had no relationship to the process of hiring the appellant but were solely related to appellant's contacts with a particular inmate during the period of time appellant was employed by respondent. In *Cleasby v. DOT*, 82-227-PC, 12/29/82, the Commission held that the decision to hire the appellant and the decision to deny her application for medical insurance were not "related." Paragraph (1)(d) provides the Commission with jurisdiction over a decision establishing an employe's rate of pay upon appointment to a vacancy, but that jurisdiction does not extend to the action setting the employe's rate of pay upon completion of her probationary period. *Meschefske v. DHSS*, 88-0057-PC, 7/13/88.

² Pursuant to §230.04(1m), Stats:

Any delegatory action taken under s. 230.09(2)(a) . . . by an appointing authority may be appealed to the personnel commission under s. 230.44(1)(b). The secretary [of DER] shall be a party in such an appeal.

§230.09(2)(a), Stats., rather than a decision by an appointing authority that relates to the hiring process. Certain decisions of the secretary of DER, including reallocation decisions, are reviewable by the Commission pursuant to §230.44(1)(b), rather than (1)(d). The appointing authority, rather than the secretary of DER, has the power to "appoint persons to . . . the classified service." §230.06(1)(b), Stats. The appellant in a reallocation case has the burden of proof and must establish, by a preponderance of the evidence, the facts necessary to show that respondents' decision that appellant's position was properly classified at a particular classification level was in error. *See, Harder v. DNR & DER*, 95-0181-PC, 8/5/96. This standard is distinct from the "abuse of discretion" standard applicable to proceedings pursuant to §230.44(1)(d), Stats. *See, Lundeen v. DOA*, 79-208-PC, 6/3/81.


Appellants also refer, tangentially, to §230.80, Stats., and to subch. III, ch. 230, Stats. This subchapter is generally referred to as the whistleblower law and the Personnel Commission has the authority, pursuant to §230.45(1)(gm), Stats., to "receive and process complaints of retaliatory disciplinary action under s. 230.85." Should the appellants feel they fall within the scope of §230.85(1), Stats., they may file a complaint form with the Commission to be processed pursuant to ch. PC 2, Wis. Adm. Code.

For the above reasons, the Commission denies appellants' motion to supplement the issue for hearing.

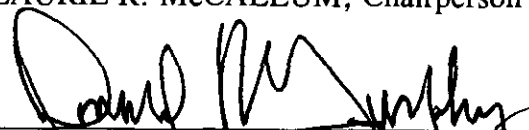
ORDER

Appellants' motion to supplement the issue for hearing is denied.

Dated: February 10, 1999. STATE PERSONNEL COMMISSION


LAURIE R. McCALLUM, Chairperson

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DONALD R. MURPHY, Commissioner


JUDY M. ROGERS, Commissioner