

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

JOSEPH EIDENSHINK, Appellant,

vs.

Secretary, **DEPARTMENT OF EMPLOYMENT RELATIONS**, Respondent.

Case 557
No. 62776
PA(der)-19

Decision No. 30819

Appearances:

Joseph Eidenshink, W12269 Sunny Knoll Rd., Brandon, Wisconsin 53919, appearing on his own behalf.

David J. Vergeront, P.O. Box 7855, Madison, Wisconsin 53707-7855, appearing on behalf of the Office of State Employment Relations (formerly the Department of Employment Relations).

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

This matter was initially filed with the Wisconsin Personnel Commission (PC) as an appeal arising from the action of reallocating the Appellant's position. By letter dated July 14, 2003, the PC noted that the appeal raised a jurisdictional issue and invited the appellant to file any arguments on that topic. The Appellant did not respond and the findings set forth below are undisputed. 1/

1/ The PC was abolished, effective July 26, 2003, pursuant to 2003 Wis. Act 33, and the authority over this matter was transferred to the Wisconsin Employment Relations Commission. The same legislation reorganized and renamed the Department of Employment Relations which is now known as the Office of State Employment Relations in the Department of Administration.

FINDINGS OF FACT

1. At all times relevant to this matter, Appellant has been employed by Respondent, most recently as a Correctional Officer.

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2. Effective May 18, 2003, his position was reallocated due to a change in classification structure and concepts and/or assignment of the classification to a new pay range. Appellant's position continued to be identified at the Correctional Officer classification, but his base salary was adjusted.

3. By letter received by the PC on July 1, 2003, the Appellant filed an appeal. The letter states:

I have been a [Facilities Repair Worker] for four years, in which I coordinated and supervised crews of 9 – 13 workers. When I changed positions to Correctional Officer I was placed on the grid at first year range 30, pay \$11.799; starting officers were placed at \$11.041. Now we settled and it was nice you raised starters to \$12.813, but you neglected to bring me up to 3rd year grid, \$15.223. You placed me at \$12.952, only 14 cents higher than beginners. I have 4 years experience directing people. I've [written] Conduct and Incident Reports, and have qualified for Sergeant.

The remedy I seek is to be placed on the grid at year 3, \$15.223.

CONCLUSION OF LAW

The Commission lacks subject matter jurisdiction over this appeal.

OPINION

The Appellant does not dispute that his position is accurately described by the Correctional Officer classification. He is appealing the decision to place him at a certain point on Pay Schedule 05: Security & Public Safety Seniority-Based Transaction Grid.

In DEPARTMENT OF EMPLOYMENT RELATIONS (ALLEN), Dec. No. 30772 (WERC, 1/04), the Commission identified limits to the scope of its jurisdiction over the reallocation process. The Commission held that while it has the authority under §230.44(1)(b), Stats., to review decisions to allocate (and reallocate) individual positions to a particular job classification, its jurisdiction does not extend to an appeal seeking the creation of an entirely new classification, assignment of the classification to a particular pay range and a “market stratification” pay increase. In reaching these conclusions, the Commission relied upon the legal analysis performed by the Personnel Commission in KAMINSKI ET AL. V. DER, 84-0124-PC, 12/6/84, and GARR ET AL. V. DER, 90-0163, etc.-PC, 1/11/91. The latter decision included the following language:

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 [under] §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.

This analysis also reflects the current statutory framework found in ch. 230. For the same reasons explained in GARR, the Commission must dismiss this matter for lack of subject matter jurisdiction.

ORDER

This matter is dismissed for lack of subject matter jurisdiction.

Given under our hands and seal at the City of Madison, Wisconsin, this 2nd day of March, 2004.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Judith Neumann /s/

Judith Neumann, Chair

Paul Gordon /s/

Paul Gordon, Commissioner

Susan J. M. Bauman /s/

Susan J. M. Bauman, Commissioner

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