

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

CHERYL FERRILL, Appellant,

vs.

DEPARTMENT OF HEALTH SERVICES, Respondent.

Case ID: 2.0010

Case Type: PA

DECISION NO. 35687

VICKIE CAMPBELL, Appellant

vs.

DEPARTMENT OF HEALTH SERVICES, Respondent.

Case ID: 2.0011

Case Type: PA

DECISION NO. 35688

Appearances:

Cheryl Ferrill, 11313 West Green Tree Road, Milwaukee, Wisconsin, appearing on behalf of herself.

Vickie Campbell, 2367 North 47th Street, Milwaukee, Wisconsin, appearing on behalf of herself.

Lara M. Herman, Wisconsin Department of Health Services, 1 West Wilson Street, Room 651, P.O. Box 7850, Madison, Wisconsin, appearing on behalf of Respondent Department of Health Services.

DECISION AND ORDER GRANTING MOTION TO DISMISS

On February 9, 2015, Appellant Cheryl Ferrill filed an appeal with the Wisconsin Employment Relations Commission, pursuant to § 230.44(1)(d), Stats., challenging her non-selection for the position of Program and Policy Analyst – Advanced – Management in the

Department of Health Services' Bureau of Milwaukee Enrollment Services (MilES). The next day, February 10, 2015, Appellant Vickie Campbell filed a similar appeal challenging her non-selection for the position of Program and Policy Analyst – Advanced with the same Bureau.

The Department of Health Services has moved to dismiss these appeals asserting the Commission lacks jurisdiction over the appeals or, in the alternative, that they are moot. Ferrill, Campbell and DHS have submitted written argument. We have consolidated the appeals as the material facts and the legal issues are the same.

DECISION

On September 30, 2014, DHS posted transfer announcements for one Program and Policy Analyst - Advanced – Management position and three Program and Policy Analyst - Advanced (PPA – Advanced) positions at MilES. Seventeen people applied for one or both of the positions. Ferrill applied for the single “management” position and Campbell applied for one of the three non-management positions. The applicants were interviewed over a two-day period. Ferrill was selected for the management position, and Campbell was approved for the PPA - Advanced position (along with one other person). The appointing authority, Marlia Mattke, made the decision to hold off on a hiring decision pending the appointment of a new Bureau director. On November 3, 2014, Tonya Banks was selected for that position. Banks became the appointing authority, and she and Mattke decided to move forward with the hiring process.

The decision was made to utilize a second round of interviews. There had been complaints of bias regarding the first set of interviews. Additionally, there was controversy in the Milwaukee media triggered by allegations of nepotism with the MilES program (Ex.1, Ferrill Brief). A second round of interviews was conducted in December of 2014 which included some type of Excel spreadsheet entry. Both Ferrill and Campbell had concerns about the fairness of that aspect of the process.

Ultimately, DHS made the decision in February of 2015 to reorganize the Bureau and, as a result, the positions that Ferrill and Campbell sought were eliminated. No one was hired into either of the positions because they were eliminated.

Neither Ferrill nor Campbell dispute that the positions they sought were eliminated as a result of the reorganization. Ferrill alleges that the decision to reorganize was a pretext for denying her a position because of “unfounded” allegation of nepotism. Campbell challenges the decision to place the hiring on hold after she was certified and passed the second interview hurdle.

This dispute arises under § 230.44(1)(d), Stats., which provides that an employee may appeal:

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.

The first problem Ferrill and Campbell encounter is to establish that what occurred was a “personnel action after certification which is related to the hiring process.” It would appear that the “action” which created their problem was the decision to reorganize the Bureau without the positions they sought. We believe that such a decision is independent of the hiring process and therefore not subject to challenge under § 230.44(1)(d), Stats.

Even if the decision is viewed as connected to the hiring process, establishing such a claim would be difficult. Reorganization or restructuring of governmental entities is a common and often useful effort. Our jurisdiction does not extend to second guessing agency restructuring decisions and, accordingly, we have no alternative but to conclude neither Ferrill nor Campbell have a viable claim over which we have jurisdiction.

ORDER

That the appeals of Cheryl Ferrill and Vickie Campbell are dismissed.

Signed at the City of Madison, Wisconsin, this 5th day of May 2015.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James R. Scott, Chairman

Rodney G. Pasch, Commissioner