

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

DONALD STRAHOTA, Appellant

vs.

STATE OF WISCONSIN DEPARTMENT OF CORRECTIONS, Respondent

Case ID: 1.0243

Case Type: PA

DECISION NO. 37440

Appearances:

Donald Strahota, 118 Pleasant Street, Beaver Dam, Wisconsin, 53916, appearing on his own behalf.

Anfin Jaw, Attorney, Department of Administration, 101 E. Wilson Street, 10th Floor, P.O. Box 7864, Madison, Wisconsin, 53707-7864, appearing on behalf of the State of Wisconsin Department of Corrections.

**DECISION AND ORDER DENYING MOTION TO
DISMISS IN PART AND GRANTING IN PART**

On April 2, 2018, Donald Strahota filed an appeal with the Wisconsin Employment Relations Commission asserting that he had been improperly reassigned from a warden position to a deputy warden position. On April 17, 2018, the State of Wisconsin Department of Corrections filed a motion to dismiss. The motion alleges that the Commission lacks jurisdiction to hear the appeal because Strahota's career executive reassignment from his former position of warden to a position of deputy warden was reasonable and proper, and his pay was set according to the 2015-2017 State Compensation Plan, which was in effect at the time of the reassignment. Strahota responded to the motion on April 23, 2018.

Having considered the matter, the Commission concludes the motion to dismiss should be denied in part and granted in part.

NOW, THEREFORE, it is

ORDERED

The motion to dismiss is denied in part and granted in part.

Signed at the City of Madison, Wisconsin, this 11th day of May, 2018.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James J. Daley, Chairman

MEMORANDUM ACCOMPANYING DECISION AND ORDER
DENYING MOTION TO DISMISS IN PART AND GRANTING IN PART

This case involves an employee's reassignment from one career executive position to another. On January 30, 2018, Donald Strahota was notified in writing that he was being reassigned from his career executive position as a warden at the New Lisbon Correctional Institution to a career executive position as a deputy warden at the Prairie du Chien Correctional Institution. Both career executive positions are in the same pay range, 81-01. The January 30 letter indicated that this reassignment was a permanent civil service movement under the authority of Wis. Admin. Code § ER-MRS 30.07. The letter further notified Strahota of his new salary which was lower than his previous salary. Strahota challenges both the reassignment and the reduction in pay.

Section 230.24(4), Stats., provides as follows:

An appointing authority may reassign an employee in a career executive position to a career executive position in any agency if the appointing authority in the agency to which the employee is to be reassigned approves of the reassignment.

Additionally, Wis. Admin. Code § ER-MRS 30.07 states:

Career executive reassignment.

(2) When an appointing authority determines that the agency's program goals can best be accomplished by reassigning an employee in a career executive position within the agency to another career executive position in the same or lower classification level for which the employee is qualified, the appointing authority may make such reassignment, *provided it is reasonable and proper*. All such reassignments shall be made in writing to the affected employee, with the reasons stated therein.

Emphasis added. Furthermore, Wis. Admin. Code § ER-MRS 30.10 provides:

Career executive employee redress rights.

(1) ... Career executive reassignment and career executive *voluntary* movement to a position allocated to a classification assigned to a lower or higher pay range shall not be considered a demotion, or a promotion, respectively, and the statutory appeal rights provided therein shall not apply.

(2) Career executive reassignment by the appointing authority, as defined under s. ER-MRS 30.07(1) and referred to in sub. (1), is authorized without limitation. However, an employee with permanent status in the career executive program may appeal the reassignment to the Wisconsin Employment Relations Commission if it is *alleged that such reassignment either*

constitutes an unreasonable and improper exercise of an appointing authority's discretion or is prohibited by s. 230.18, Stats.

Emphasis added.

While there is no question that DOC could reassign Strahota, those individuals such as Strahota who are part of the career executive program established by § 230.24, Stats., and who are “permanently reassigned” can still request that the Commission exercise its review authority, albeit in a limited framework quoted above. Specifically, the Commission can review such action but only to determine whether it was “unreasonable and improper” or otherwise violates § 230.18, Stats. Therefore, this portion of the State’s motion is denied.

The motion to dismiss as it relates to the independent challenge to the reduction in pay is granted. When an individual is moved to a position with a lower or higher pay range within the career executive program, it is not considered a demotion or promotion and statutory appeal rights do not apply so long as the new position remains part of the career executive program. *Wistrom vs. Wisconsin Department of Veterans Affairs*, Dec. No. 33180 (WERC, 2/2012). If there is no independent right to appeal the change in a career executive pay range, it would logically follow that there is no right to appeal a change in compensation within a pay range. While there may be a compelling reason to revisit that logic, no such argument here presented forces such revisitation.

Here, DOC asserts that its reassignment of Strahota was reasonable and proper. While that may be the case, a hearing is needed to allow Strahota the opportunity to prove otherwise.¹ Thus, the matter will proceed to hearing to allow for the presentation of evidence on that point.

Signed at the City of Madison, Wisconsin, this 11th day of May, 2018.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James J. Daley, Chairman

¹ If Strahota is successful, review of his level of pay may be implicated.