
RUTH ANN BAUHS,

Appellant,

v.

DEPUTY DIRECTOR, Bureau of Personnel,

Respondent.

Case No. 77-139

OFFICIAL

INTERIM
OPINION AND ORDER

Before: James R. Morgan, Calvin Hessert and Dana Warren, Board Members.

NATURE OF THE CASE

The appellant's position is currently classified as Payroll and Benefits Specialist (PBS) 2 (a non-confidential classification) in the Department of Industry, Labor, and Human Relations. She requested a reallocation of her position (and other positions on the DILHR payroll staff) to a confidential classification. This request was disapproved by the director and she appealed to this Board. The respondent director has moved to dismiss the appeal on the ground that the Personnel Board lacks jurisdiction over the subject matter of the appeal. This interim decision is limited to that motion.

OPINION

Before examining the arguments of the parties it is necessary to review exactly what the director decided that prompted this appeal. The following excerpts are taken from respondent's exhibit 1, letter from Verne H. Knoll to Stephen J. Reilly, Administrative Officer, DILHR, June 30, 1977:

"I have reviewed the petition of the payroll employes in your department to be reallocated to confidential payroll classifications, and I concur with the decision of Mr. Braunhut of my staff that these positions do not meet the statutory intent of confidential exclusion under S111.81(15), Wis. stats.

Bauhs v. Bur. of Pers.
Case No. 77-139
Page Two

Based upon the information and rationale submitted by your agency, I do not feel that the functions performed by the payroll staff in your agency meet the intent of §§111.81(15), Wis. stats. as it is currently being interpreted by the Wisconsin Employment Relations Commission. (WERC). Therefore, I cannot approve this request for reallocation."

In the respondent's brief, he frames the issue raised by the motion to dismiss as concerning "the jurisdiction of the Personnel Board to order a change in bargaining unit status of an employe's position by virtue of ordering a change in classification."

The respondent goes on to argue that the sole authority to determine whether any specific employe or the position occupied is to be excluded from coverage as an "employe" by the state employment relations act, because limited term, sessional, supervisory, management, or confidential (see §111.81(15), stats.) is vested in the WERC. It is argued that the June 30, 1977, letter from Mr. Knoll constituted a statement that the director lacked authority to reallocate the position and that it did not constitute a "decision" of the director which is appealable pursuant to §16.05(1)(f), stats.

The Board is of the opinion that the question presented by the objection to subject matter jurisdiction is not as stated by respondent. The question is whether the Board has jurisdiction to review this decision of the director, not whether the Board has the authority to order a change in bargaining unit status of an employe's position by virtue of ordering a change in classification.

The Board agrees that the WERC has final authority to determine appropriate placement of employes or positions in bargaining units. However, the director has a role in this process and the director's decisions in exercising that role are reviewable by the Board.

The process of determining the appropriate placement of employes or positions in bargaining units is addressed in a document submitted by the respondent. This is a letter to the Board from the WERC setting forth the WERC's position on a somewhat similar case. See respondent's exhibit 2.

This document contains the following outline of WERC's position:

1. It is the Commission's position that it has the exclusive jurisdiction under Section 111.80 et seq. of the Wisconsin Statutes to determine appropriate placement of employes in the bargaining units established by the State Employment Labor Relations Act (SELRA);
2. In those instances where the State and the certified bargaining representative are unable to agree as to the proper placement of employes in the statutory bargaining units the Commission will entertain petitions from the State or the certified bargaining representative for the purpose of determining unit placement.
3. The Commission will not entertain petitions filed by individual employes for the purpose of determining placement in bargaining units where there is no dispute between the State and the certified bargaining representative as to appropriate placement;
4. The Commission recognizes that it has no jurisdiction for requests regarding reallocations or reclassifications, such as are involved in the subject case, and that the Personnel Board has the exclusive jurisdiction for that purpose; and
5. The Commission will not accept as binding upon it a determination by the Personnel Board that an employe should be classified as "supervisory" or "managerial", as those terms are defined under ss. (19) and (20) of Section 111.81 of SELRA, where such finding is disputed by the State or the certified bargaining representative.

Now, applying this framework to the case before the Board, if the director had agreed in the first instance with and implemented appellant's request for reallocation to a confidential classification, this determination would have been subject to ultimate review and decision by the WERC if the union disagreed. The same result is reached if the director's reallocation action is taken following a remand from the Board pursuant to §16.05 (1)(f), stats. after a Board determination that the director erred in denying the employe's reallocation request.

Bauhs v. Bur. of Pers.
Case No. 77-139
Page Four

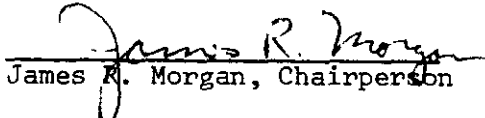
In both cases the final authority resides in the WERC. The Personnel Board by reviewing the director's decision would not thereby "order a change in bargaining unit status" as is suggested by respondent in his brief.

The WERC in paragraph (5) of its outline of position quoted above states that it would not accept a Personnel Board determination that is disputed by the "state." To reiterate, the Board does not have the authority to reallocate positions. This authority resides in the director. The Board does have the authority under §16.05 (1)(f), stats. to "hear appeals ... from actions and decisions of the director," and, if the decision is rejected "to remand the matter to the director for action in accordance with the Board's decisions." Presumably, if the "state" were to dispute the decision the director would appeal the Board's decision to circuit court and/or the employee would seek enforcement in circuit court of the Board's decision if the director refused to reallocate the position on remand. If the director were upheld then there would be no reallocation. If the Board prevailed then there would be a reallocation and presumably the "state" would no longer be "disputing" the Board's determination. In any event, the WERC's position is consistent with the statutory provisions and the conclusion that the Board itself lacks the authority to reallocate positions.

ORDER

The motion to dismiss is denied.

Dated: 2 - 30, 1978 STATE PERSONNEL BOARD


James R. Morgan, Chairperson