

STATE OF WISCONSIN

PERSONNEL COMMISSION

\* \* \* \* \*

LARRY HALTER, \*

Appellant, \*

v. \*

DEPARTMENT OF INDUSTRY, LABOR AND \*  
HUMAN RELATIONS, and \*  
DIVISION OF PERSONNEL, \*

Respondents. \*

Case No. 78-144-PC \*

\* \* \* \* \*

INTERIM  
DECISION

NATURE OF THE CASE

This appeal relates to the filling of a position at the Green Bay District Job Service Office. This decision will address a number of questions which arose at and after the prehearing conference about the issues which are properly before the Commission in this appeal.

FINDINGS OF FACT

1. The appellant's appeal letter dated August 28, 1978, contains in part the following:

"I wish to file a formal complaint concerning a recent personnel transaction in the Green Bay District Job Service Office through which a person has been appointed to a Specialist III position under the guidelines of the promotional examination system.

\* \* \*

According to the reclassification policy of the APM (Per 004 - effective date 12/15/77), I feel that a reclassification was in order. However, I have been told that a reclassification was not possible because of JSD 41-76, which discriminates between persons currently classified as Job Service Specialist II, depending on work unit. It appears unreasonable that such discriminatory and contradictory policies should exist."

2. At the prehearing conference held October 3, 1978, the appellant indicated that he was objecting to the validity of the scores generated

by the examination for Job Service Specialist III. This was objected as not being within the scope of the appeal letter and not timely raised.

3. At this prehearing conference the following issue was framed as to other matters in the case and the respondents agreed with this formulation:

"Whether the decisions of DILHR to deny appellant's request for reclassification to Job Service Specialist III and to utilize a competitive promotional examination process pursuant to DILHR policy JSD 41-76 to fill the Job Service Specialist 3 position were correct or incorrect. The parties agreed that his statement of issue included the question of the correctness of the use by DILHR of JSD 41-76, as it relates to the transaction in question."

4. The appellant did not take a position on this statement of the issue. He was directed to submit a statement regarding his position on this statement of the issue and whether he wished to continue to pursue the question on examination scores.

5. In response to this provision, the appellant submitted the following letter, dated October 16, 1978:

"As you had requested, I am providing a written response to clarify the issues that I would like to discuss in the hearing that is scheduled for December 7, 1978.

By using my own situation as an example, I would like to bring to the Personnel Commission's attention the restrictive and discriminatory affects of JSD 41-76, also known as 'Career Ladder Within the Job Service Classification Series'. The main emphasis of my complaint is, and always has been, to challenge the existence and use of this document as, in the words of Don Weinkauff, 'an extension of policy.' Specific points will necessarily include:

- 1.) Determining the appropriateness of interpreting original policy in the formation of the above mentioned directive.
- 2.) The discriminatory aspect of establishing two separate methods of progression that apply to the same class of workers (Job Service Specialist 2).
- 3.) The existence of discriminatory transfer rights that have the potential to eliminate the already restricted progression possibilities of a portion of the Specialist 2 classification.
- 4.) As stated in an opening paragraph of JSD 41-76, the progression from Job Service Specialist 2 to Specialist 3 is not based solely on the civil service classifications. What is the legal basis for this determination?

I also intend to cover several other areas of personnel practices, which is perceived to be both my legal right and obligation concerning this matter.

Additional areas will include the following:

- 1.) Restrictive policies and procedures governing the Job Service series which are unique within DILHR.
- 2.) The use of vague and misleading wording of 'policy' that allows additional arbitrary interpretations. Example:  
" ... logical and gradual change ... "
- 3.) The need for an updated review of position descriptions, performance levels, and objective levels.
- 4.) The validity of promotional examinations that are currently used.

6. The respondents have objected to this statement and requested that the Commission limit the issues for hearing to that set forth in finding #3, above.

#### OPINION

The Commission recently discussed the question of amending pleadings in Personnel Commission appeal proceedings. See Oakley v. Commr. of Securities, Wis. Pers. Commn., No. 78-66-PC, (10/10/78):

"In the Commission's view, parties to personnel appeals should be permitted a good deal of liberality in amending pleadings. It is a general rule of administrative law that pleadings are liberally construed and are not required to meet the standards applicable to pleadings in a court proceeding. See 73 C.J.S. Public Administrative Bodies and Procedures §120., General Electric Co. v. Wis. Empl. Relations Board, 3 Wis. 2d 227,245 (1958), National Realty & Constr. Co. v. Occupational Safety & Health Review Commission, 489 F.2d 1257, 1264 (D.C. Cir. 1973). Amendments to pleadings are committed to the sound discretion of the agency, see 2 Am. Jur. 2d Administrative Law §374.

In judicial proceedings in this state the new code of civil procedure permits great liberality in amending pleadings. Pleadings may be amended without leave of court at any time 'prior to the entry of the scheduling order,' §802.09(1) Stats., and the amendment relates back to the date of the filing of the original pleading 'if the claim asserted in the amended pleading arose out of the conduct, transaction or occurrence set forth or attempted to be set forth in the original pleading, §802.09(3), Stats. While these provisions do not apply to administrative proceedings, this Commission does not believe any stricter rule is called for in the regulation of proceedings before it."

In the opinion of the Commission the appellant should be allowed to raise issues which may fairly be said to relate to the transaction that was

the subject of the original appeal, and may be allowed to amend the original appeal letter to do so.

At the prehearing the appellant indicated that he was objecting to the validity of the scores generated by the examination for Job Specialist III. He was asked to indicate in his statement of position whether he wished to continue to pursue this question. He did not so indicate and therefore this question is not in issue.

Those matters set forth in the second paragraph of the appellant's letter of October 16, 1978, including the 4 numbered subparagraphs, are in the opinion of the Commission, subissues which are fairly subsumed in the general statement of issue contained in finding #3, above.

Those matters contained in the last paragraph of his October 16, 1978, letter are generalized in nature and relate to job service personnel practices generally. The Personnel Commission only has the authority to hear appeals of particular personnel transactions. General investigatory authority is vested in the Personnel Board pursuant to §230.07(4), Stats. (1977). Therefore, the matters set forth in this paragraph will not be considered by the Commission in the context of this appeal.

ORDER

This appeal will proceed to hearing as scheduled on December 7, 1978, at 9:00 AM, in Room 202, 131 West Wilson Street, Madison. This will be a class 3 proceeding with jurisdiction pursuant to §230.44(1)(b), Stats. The issue for hearing will be:

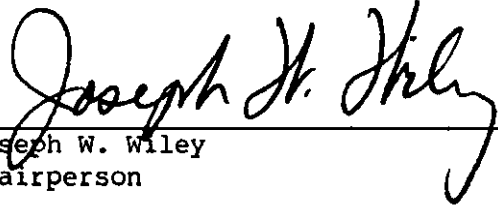
"Whether the decisions of DILHR to deny appellant's request for reclassification to Job Service Specialist III and to utilize a competitive promotional examination process pursuant to DILHR policy JSD 41-76 to fill the Job Service Specialist 3 position were correct or incorrect. The parties agreed that his statement of issue included the question of the correctness of the use by DILHR of JSD 41-76, as it relates to the transaction in question.

The following "clarification" of the issues submitted by appellant may be considered as subissues of the foregoing issue:

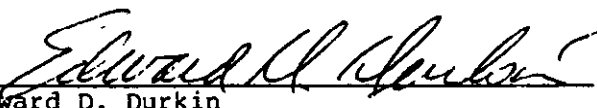
"By using my own situation as an example, I would like to bring to the Personnel Commission's attention the restrictive and discriminatory affects of JSD 41-76, also known as 'Career Ladder Within the Job Service Classification Series'. The main emphasis of my complaint is, and always has been, to challenge the existence and use of this document as, in the words of Don Weinkauff, 'an extension of policy.' Specific points will necessarily include:

- 1.) Determining the appropriateness of interpreting original policy in the formation of the above mentioned directive.
- 2.) The discriminatory aspect of establishing two separate methods of progression that apply to the same class of workers (Job Service Specialist 2).
- 3.) The existence of discriminatory transfer rights that have the potential to eliminate the already restricted progression possibilities of a portion of the Specialist 2 classification.
- 4.) As stated in an opening paragraph of JSD 41-76, the progression from Job Service Specialist 2 to Specialist 3 is not based solely on the civil service classifications. What is the legal basis for this determination?

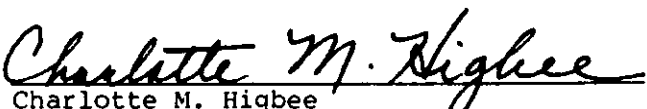
Dated: Nov 22, 1978.

  
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Joseph W. Wiley  
Chairperson

Dated: Nov 22, 1978.

  
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Edward D. Durkin  
Commissioner

Dated: Nov. 22, 1978.

  
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Charlotte M. Higbee  
Commissioner