

STATE OF WISCONSIN

PERSONNEL COMMISSION

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JANSEN, ET AL

Appellants,

v.

Secretary, DEPARTMENT OF
TRANSPORTATION, and
Administrator, DIVISION OF
PERSONNEL,

Respondents.

Case Nos. 78-170, 156, 162,
163, 168, 171, 175, 194, 196,
201, 204, 206, 209, 212, 228,
229, 231-PC

* * * * *

DECISION AND
ORDER ON
PETITION FOR
REHEARING

In order entered on August 19, 1982, the Commission dismissed these matters for lack of subject matter jurisdiction. The appellants subsequently filed a petition for rehearing on September 8, 1982, stating that the Commission had erred in dismissing the matter.

The procedural background of this case was summarized in the Commission's August 19th Order as follows:

This case was originally filed in 1978 as an appeal from respondents' decision not to reclassify the appellants from State Patrol Trooper 2 to State Patrol Trooper 3. A hearing was held and in a Decision and Order dated January 8, 1981, the Commission ordered, inter alia:

That the action of respondent in denying reclassification of the appellants to Trooper 3 solely on the basis of the MSA (measured standard of activity) is rejected, and the matter is remanded to the respondent DOT for action in accordance with this decision.

Thereafter, a petition for judicial review was filed pursuant to §227.16, stats., and the circuit court affirmed the Commission's order.

On April 16, 1982, the appellants filed an appeal with this Commission of:

". . . the matter of the Department of Transportation (DOT's) compliance with an earlier Order entered by the Personnel Commission (PC) in Case No. 78-170-PC.

DOT has not complied with the order."

A prehearing conference was scheduled for May 12, 1982. Appellant's counsel could not be reached at the previously agreed upon time. The following day, he indicated that he had forgotten about the conference and that he would talk with respondent's counsel regarding the possibility of resolving the appeal. Nothing in the Commission's file suggests that appellant's counsel made an effort to contact respondent's counsel.

In a letter received by the Commission on June 11, 1982, respondent moved for the dismissal of these matters for lack of prosecution. In support of its motion respondent stated, in part:

A prehearing conference was scheduled for May 12, 1982, by conference call. The Department of Transportation appeared through its attorney, but the appellants made no appearance. Efforts were made to locate Attorney Graylow, but he could not be located at or through his office. Since that time, Mr. Graylow has not made any contact with the Department of Transportation or to my knowledge with the Personnel Commission. It is the position of the Department of Transportation that by this course of conduct, the appellants have waived any further right to complain of the actions of the respondent in response to the Commission's order and that these consolidated appeals be dismissed for lack of prosecution.

Subsequent correspondence from the appellants stated that they were ready to proceed via hearing or briefs on the issue of "whether or not DOT has complied with the earlier Order of the Commission as it relates to back pay, if any, and to what date." However, the appellants failed to address the respondent's motion to dismiss for lack of prosecution.

In its Decision and Order dated August 19, 1982 the Commission concluded that the April 16th appeal sought compliance with an earlier order of the Commission and that the Commission lacked the authority to enforce its own orders. The Commission dismissed the matter for lack of subject matter jurisdiction without reaching the question of respondent's motion to dismiss for lack of prosecution.

In their petition for rehearing, the appellants argue that they are merely seeking "an adjudication of the effective date of reclassification/reallocation." According to the appellants, they should be reclassified as of September 1, 1978, while respondent DOT had indicated it will use a January 8, 1981, date (apparently based upon the date that the Commission issued its initial Decision and Order in these matters.) The appellants also state:

The Commission in its Order of Dismissal dated August 19, 1982, construed this action as one requiring "enforcement" of its earlier Decision. This characterization is erroneous.

* * *

Surely the Commission has subject matter jurisdiction over this dispute which arises, solely or partially, from DOT's unilateral attempt to interpret and implement this Commission's earlier order.

The Commission's characterization of this appeal as a request for enforcement was based on the appellants' assertion that "DOT has not complied with the Order" (letter dated April 14, 1982) and that "[t]he only question now unresolved by this litigation is whether or not DOT had complied with the earlier Order of the Commission as it relates to back pay, if any, and to what date." (Letter dated June 14, 1982.) This characterization was buttressed by appellants' memorandum which describes the "dispute" as one "which arises, solely or partially, from DOT's

unilateral attempt to interpret and implement" the Commission's order of January 8, 1981.

Even if this appeal is not properly characterized as a request for enforcement, but is instead a matter over which the Commission has jurisdiction, the respondent's motion to dismiss due to lack of prosecution would have to be considered before any further proceedings would be appropriate.

The documents in the case file as well the rebuttal statements of the respondent show that the appellants' counsel failed to appear at the scheduled prehearing conference, failed to contact respondent's counsel, as agreed, to look into the possibility of resolving the appeal informally, and failed to provide any argument responsive to respondent's motion to dismiss for lack of prosecution. In light of this course of conduct, and given the absence of any request for a hearing on the motion, there is nothing that would justify denial of respondent's motion. Therefore, even if the Commission had jurisdiction, these matters would be dismissed due to lack of prosecution.

ORDER

Appellants' petition for rehearing is denied.

Dated: October 4, 1982 STATE PERSONNEL COMMISSION


DONALD R. MURPHY, Chairperson


LAURIE R. McCALLUM, Commissioner


JAMES W. PHILLIPS, Commissioner

KMS:ers

Parties

Jeffrey Jansen, 2377 CTH "N", Stoughton, WI 53589
Edwin Kufawa, 3952 E. Van Norman Ave., Cudahy, WI 53110
John Mundy, 2638 E. Armour Avenue, St. Francis, WI 53207
Thomas J. Walsh, 1633 Cindy Circle, Port Washington, WI 53074
Roy Hopgood, 4449 N. Teutonia Ave., Milwaukee, WI 53209
William Liedke, Rt. 2, Box 252, Ashland, WI 54806
Mike Caramanidis, 3568 Bambi Lane, Oshkosh, WI 54901
David Heinle, 137 S. 3rd St., Medford, WI 54451
Ronald Niemann, 1050 Lokhorst St., Baldwin, WI 54002
Jon Steinbergs, 1939 S. 83rd St., West Allis, WI 53219
Jerry Hair, 1912 Ruger Avenue, Janesville, WI 53545
Thomas Patrie, 2925 North St., East Troy, WI 53120
J. L. Nelson, Rt. 3, Box 305, Lodi, WI 53555
Warren Holsbo, 1130 Beech St., Sun Prairie, WI 53590
Keith Nollenberg, Rt. 1, Box 244, Portage, WI 53901
Arthur Shackleton, Rt. 1, Mazomanie, WI 53560
Delburn Walter, 6094 N. Lewellen St., Marshall, WI 53559
Thomas Maklovich, 614 Ski Slide Rd., Ixonia, WI 53036
Duane Frey, 2455 N. Summit Ave., Oconomowoc, WI 53066
Lorren Raether, W332, 5574 Gov't. Hill Rd., Delafield, WI 53018
Authur Schrock, P. O. Box 232, Oregon, WI 53575
D. L. Mayer, Rt. 2, Box 25, Waterford, WI 53181
Donald Engel, Rt. 1, Box 182, Minocqua, WI 54548
Kenneth Duplayee, 3104 Maple Hill Dr., Wausau, WI 54401

Owen Ayres, Secretary, DOT, P. O. Box 7910, Madison, WI 53707
Charles Grapentine, Administrator, DP, P. O. Box 7855, Madison, WI 53707