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CHRISTINE ZIEGLER,
 DAN HILTON,

 Appellants,

 v.

 Administrator, DIVISION
 OF PERSONNEL,

 Respondent.

 Case No. 80-34-PC, 79-358-PC

 * * * * *

OFFICIAL

INTERIM
DECISION
AND
ORDER

NATURE OF THE CASE

These are appeals pursuant to §230.44(4) (a), Stats., of the reallocations of appellant's positions following surveys. At the pre-hearing conference held in the Ziegler appeal, the parties agreed that the following issue was properly before this Commission:

"Whether or not the administrator's decision to reallocate appellant's position from Management Information Specialist 2-Confidential to Management Information Specialist 2 instead of Management Information Supervisor or Management Information Specialist 5-Confidential was correct."

The respondent objected to the Commission's authority to hear the following issue:

"Whether the Management Information Specialist position standards are incorrect as a result of not containing 'Administrative' elements." See Conference Report dated September 18, 1980.

At an earlier prehearing conference held in the Hilton case, the parties agreed on the following issue:

"Whether or not the administrator's decision to reallocate the appellant's position from Management Information Specialist

5 (PR 1-15) to Administrative Assistant 5-Confidential (PR 1-15), instead of Management Information Supervisor 4, 5, or 6 (PR 1-15, 16, or 17) or Administrative Officer 1 or 2-Confidential (PR 1-16 or 17), was correct." See Conference Report dated April 14, 1980.

At that prehearing the respondent objected to "the relief requested in the last paragraph of appellant's appeal letter dated December 13, 1979, on the grounds that the Commission lacks jurisdiction to grant this relief or to consider the subject matter presented by said request." The "relief requested" was as follows:

"Also, as relief I expect 'administrative elements to be added to position standards throughout Data Processing classification series, Support personnel in Data Processing at all levels are overlooked and misclassified as a result of this survey."

The parties agreed to the consolidation of these appeals. An opportunity was provided for the submission of written arguments on the jurisdictional issues raised by the aforesaid objections.

OPINION

In these cases, the administrator conducted a survey, drafted new or revised class specifications or position standards, submitted them to the personnel board for approval, and, following approval, reallocated the appellant's positions to new classifications so established. The appellants have appealed the reallocations. In addition to arguing that their positions should have been reallocated to higher level classifications, they also argue that the position standards or class specifications themselves are incorrect as not containing "administrative elements." The respondent objects to

consideration of the latter argument as involving a subject outside the Commission's jurisdiction.

Section 230.09(2)(am), Stats., provides as follows:

"The administrator shall maintain and improve the classification plan to meet the needs of the service using methods and techniques which may include personnel management surveys, individual position reviews, occupational group classification surveys, or other appropriate methods of position review. Such reviews may be initiated by the administrator after taking into consideration the recommendations of the appointing authority, or at his or her own discretion. The administrator shall establish, modify or abolish classifications as the needs of the service require, and subject to the approval of the board."

Section 230.09(2)(a), Stats., provides:

"After consultation with the appointing authorities, the administrator shall allocate each position in the classified service to an appropriate class on the basis of its duties, authority, responsibilities or other factors recognized in the job evaluation process. The administrator may classify or reallocate positions on the same basis."

Thus the statutes provide the authority for the administrator to modify the classification structure by establishing, modifying, or abolishing classifications through changes in the position standards or class specifications, but only with the approval of the board. The administrator may reallocate positions within the classification structure established, with no requirement for Personnel Board approvals of specific reallocation transactions.

These appellants have appealed specific reallocation transactions, and in so doing seek to call into question the classification structure itself -- they argue that the position standards are incorrect in not containing "administrative elements."

In order to resolve the respondent's objection to consideration of an issue involving the correctness of the position standards, the Commission must determine whether the administrator's actions in connection with the development of the position standards in question are appealable pursuant to §230.44(1)(a), Stats., which provides:

"(1) APPEALABLE ACTIONS AND STEPS. (a) Decision of administrator. Appeal of a personnel decision of the administrator, including but not limited to a refusal to examine an applicant or certify an eligible under §230.17, orders by the administrator under §230.05(4) and actions and decisions of the administrator under §230.09, shall be to the Commission."

This subsection must be interpreted in connection with other related statutes. There are certain kinds of what arguably are "personnel decisions" of the administrator that the legislature could not have intended by subject to review by the Commission on appeal.

For example, in Holmblad v. Hart, no. 76-229 (2/23/77), the predecessor agency to this Commission considered the question of whether it had jurisdiction pursuant to then §16.05(1)(f), stats. (1975),¹ to hear an appeal of the following grievance:

"The salary schedule for Management Information Specialist 1 thru 6 provides smaller increments and has a lower maximum than the salary schedule for Management Information Specialist 1 thru 6 Confidential, despite the fact that the training, experience and job assignments for both classes are the same."

The salary schedule in question had been developed by the director, State Bureau of Personnel, pursuant to §16.086(3)(b), stats., which provided in part:

"The [director's] proposal, as may be modified by the

¹"Hear appeals of interested parties and of appointing authorities from actions and decisions of the director."

joint committee on employment relations together with the unchanged provisions of the current compensation plan shall for the ensuing fiscal year or until a new or modified plan is adopted pursuant to this subsection, constitute the state's compensation plan for position in the classified service. Any modification of the director's proposed changes in the compensation plan by the joint committee on employment relations may be disapproved by the governor within ten calendar days. A vote of six members of the joint committee on employment relations is required to set aside any such disapproval of the governor."

Although the director's activities in drawing up the compensation plan could be considered to be literally "actions and decisions of the director," the board concluded that the appeal could not be heard:

"Prior to submission to the joint committee, the Director must submit his proposals to the Personnel Board, whose function is limited to providing "advice and counsel." Section 16.086(3)(b), stats.

It appears to us that there is a basic incompatibility between this limited "advice and counsel" function specifically provided for this board in the compensation plan process and the assumption of a plenary review jurisdiction pursuant to Section 16.05(1)(f), stats., of actions of the Director associated with his proposals regarding the compensation plan. In Section 16.086 the legislature has provided a rather unique process that involves the Director, the Personnel Board, the joint committee on employment relations, and the Governor. There are specific roles for each with a potential for functional input by the Director, the committee, and the Governor. The committee can modify the Director's proposals subject to what amounts to a veto by the Governor, subject in turn to being overridden by the committee. The Board's role is limited to providing advice and counsel to the Director. It would be totally incongruous and at odds with the evident legislative intent if the Personnel Board had a plenary review power over the entire pay plan once it had been approved through the operation of the Section 16.086 procedure. This is a situation calling forth the rule that the more specific statute controls over the more general one. See Schlosser v. Allis-Chalmers Corp., 65 Wis. 2d 153, 161, 222 N.W. 2d 156 (1974): '... where two statutes deal with the same subject matter, the more specific controls.'

Sometime subsequent to this decision the legislature enacted Chapter 196, Laws of 1977, effective February 16, 1978. This legislation had the effect of creating, in place of the pre-existing Personnel Board, a new Personnel Board and the Personnel Commission. The Board retained most of the quasi-legislative authority of the prior Board, including the authority to approve changes in the classification structure. The Commission was given most of the quasi-judicial authority of the kind of exercised by the prior Board, including the authority to hear appeals of certain personnel decisions of the administrator, as set forth in §230.44(1)(a), stats.

With respect to the appeals now before the commission, the administrator drafted the position standards in question (apparently without "administrative elements") prior to their submission to the Personnel Board for approval. The standards had to be approved by the Board before they could become effective and be used by the administrator to reallocate the appellant's positions to their new classifications.

In the opinion of the Commission, these appeals are somewhat analogous to the Holmblad case.

In the Holmblad case, the development of the compensation plan was somewhat more complex in terms of input by agencies other than the Division of Personnel. However, with respect to both the development of the compensation plan and the position standards, the head of the state's personnel agency developed proposals which could not take effect and have been used to process individual personnel

transactions unless and until they were approved by other government bodies - the compensation plan by the Legislative Joint Committee on Employment Relations, and the position standards by the Personnel Board.

In attempting to attack the body of the position standards, the appellants are attempting to contest not only the decision of the administrator, but also the decision of the Personnel Board, without whose approval the position standards could not have been effective.

In addition to the concept that the more specific statute (review by the Personnel Board of the administrator's actions in developing position standards) controls as against the more general provision (review by the Personnel Commission in general), there also are policy considerations pertaining to this issue.

The question of whether the position standards for the management information series should contain administrative elements is a question of potential broad concern to many employees, employee representatives, as well as to the agencies and perhaps others. The proposed position standards were presented to the Personnel Board, and, presumably, in accordance with the state public meetings law, were the subject of a legislative type or class 1 public hearing, preceded by public notice, before approval by the board. At such public hearing there would have been an opportunity for input by employees, union representatives, and anyone else wishing to be heard. Once the board approved the position standards, they became effective. At that point, they were available for use for the reallocation of all the positions

included within the occupational coverage. Also at that point, it would seem to the Commission, the actions of the board and administrator in implementing the standards could have been reviewed in circuit court. In the opinion of the Commission it is more likely that the legislature intended that more general questions about the position standards be handled in a quasi-legislative setting before the Personnel Board with the possibility of some form of subsequent judicial review, rather than in an appeal of a particular personnel transaction which could occur months or years after the standards have been approved, and after many possibly interrelated personnel transactions have occurred in reliance on those standards.

ORDER

The respondent's objections to the appellant's proposed issue in Ziegler v. DP, 80-34-PC, as set forth in the prehearing Conference Report dated September 18, 1980, and to the appellant's requested relief in Hilton v. DP, 79-358-PC, as set forth in the Conference Report dated April 14, 1980, are sustained. The issues for hearing will be as follows:

Ziegler v. DP, 80-34-PC:

"Whether or not the Administrator's decision to reallocate appellant's position from Management Information Specialist 2-Confidential to Management Information Specialist 2 instead of Management Information Supervisor or Management Information Specialist 5-Confidential was correct."

Hilton v. DP, 79-358-PC

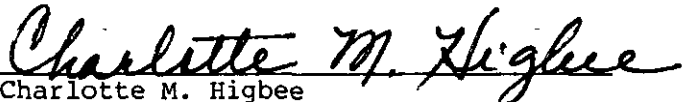
"Whether or not the administrator's decision to reallocate

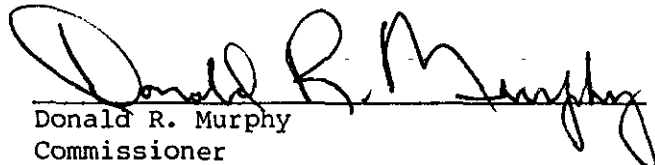
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the appellant's position from Management Information Specialist 5 (PR 1-15) to Administrative Assistant 5-Confidential (PR 1-15), instead of Management Information Supervisor 4, 5, or 6 (PR 1-15, 16, or 17) or Administrative Officer 1 or 2-Confidential (PR 1-16, or 17), was correct."

Dated: Dec. 8, 1980.

STATE PERSONNEL COMMISSION


Charlotte M. Higbee
Chairperson


Donald R. Murphy
Commissioner


Gordon H. Brehm
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AJT:jmg

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