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JOHN HOLZHUETER,
 Appellant,
v.
Director, STATE HISTORICAL
SOCIETY,
 Respondent.
Case No. 83-0166-PC

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DECISION
AND
ORDER

This matter is before the Commission on consideration of the proposed decision of the hearing examiner. The Commission has considered the appellant's objections and arguments with respect to the proposed decision and has consulted with the examiner.

In order to clarify its position in this matter, the Commission adds the following comments:

1. In his objections to the proposed decision, appellant argues that, since an employe must be paid for all hours worked for the state, appellant should have been paid for the 171 hours he spent doing research in Norway. Technically, appellant was paid for the 18 work days that he spent in Norway, since he was on work status or vacation (leave with pay) status during that entire time. Moreover, the state need only pay an employe for those hours the employe is assigned to work by the employer. If this were not so, a state employe could perform work which the employer did not ask to be performed or did not want to be performed and be entitled to payment for it. As stated in the proposed decision, an employer clearly has the right to determine work assignments, change work assignments, schedule work assignments, and prioritize work assignments. Implicit in this is the right to determine

the length of time an employe may spend on a work assignment. It should be kept in mind that appellant proposed the trip to Norway to respondent and that respondent concurred as an accommodation to appellant, not because respondent felt that the proposed research was a priority of the agency; that respondent at no time required the appellant to carry out the Norway research (in fact, respondent would have preferred that respondent not take the trip); that appellant understood at the time he proposed the Norway trip and while he was making arrangements for the trip that respondent may not approve his using work time to make the trip; and that appellant decided to make the trip anyway. As determined by respondent five weeks before appellant's scheduled departure date, only nine working days were to be spent by appellant doing research in Norway. Appellant had ample opportunity to decline the Norway trip or to attempt to reschedule the trip if he didn't want to use vacation time to make the trip. It was appellant's choice to make the trip, to spend 18 work days in Norway, and to use 9 days of vacation time while in Norway, and respondent is not required to pay appellant for work appellant performed which was not assigned by respondent.

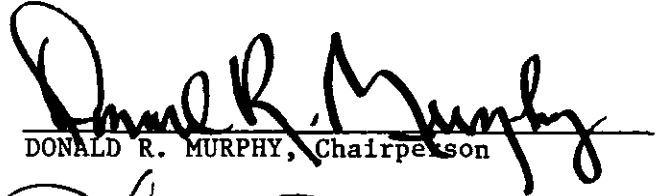
2. Appellant also questions respondent's motives in limiting the length of the Norway assignment. Respondent did so because appellant was, at the time, working on a top priority project which was scheduled to end within a few months. Appellant argues that the progress of the project would not have been hampered any more if appellant would have been on work status during the entire Norway trip because appellant would have been away from his Madison office the same amount of time regardless of his work/vacation status during his absence. However, appellant had 9 fewer days of vacation to use when he returned from Norway than he would have had if he had been on work status

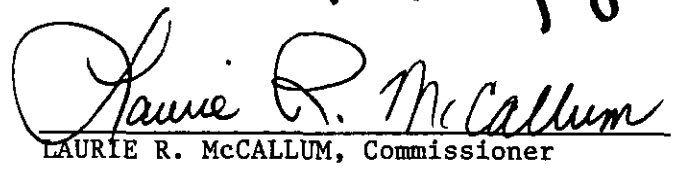
during the trip and, hence, 9 fewer days he could have been away from the project.

3. Appellant continues to argue that respondent's decision somehow violated the conditions of the gift from Mr. Granum. However, it was not a condition of the gift that the researcher be a state employe on work status or that the researcher be a state employe at all. Moreover, appellant made a commitment to do the research at a time when both he and Mr. Granum understood that respondent may not approve appellant's use of work time to make the trip. Respondent did not regard the Norway research as a top priority and only made the arrangements for Mr. Granum's gift to be accepted by the Wisconsin History Foundation at appellant's request and to make it possible for appellant to go on a trip that he was very anxious to make. Appellant attempts to create the impression that appellant was unfairly coerced into carrying out an assignment without getting paid for it. This is a misrepresentation of the facts. Appellant asked respondent to go to Norway, he asked respondent to arrange for Mr. Granum's gift to be tax deductible, he went ahead with his plans despite being told he may not be able to use work time to make the trip, and he went ahead with his plans despite being told he would not be able to use more than nine working days to make the trip. Respondent at no time indicated that appellant was required to go on the trip to Norway. Indeed, respondent made it clear that they would have preferred that appellant not make the trip.

Accordingly, the Commission adopts as its decision and order in this matter the proposed decision and order, a copy of which is attached hereto and incorporated by reference, with the addition of the foregoing comments.

Dated: April 4, 1984 STATE PERSONNEL COMMISSION


DONALD R. MURPHY, Chairperson


LAURIE R. McCALLUM, Commissioner


DENNIS P. MCGILLIGAN, Commissioner

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Parties

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STATE OF WISCONSIN

PERSONNEL COMMISSION

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JOHN HOLZHUETER

Appellant,

v.

Director, STATE HISTORICAL SOCIETY,

Respondent.

Case No. 83-0166-PC

* * * * *

PROPOSED
DECISION
AND
ORDER

NATURE OF THE CASE

The matter which forms the basis of this appeal was originally filed as a state employee grievance relating to conditions of employment. The Commission, in considering this matter, is serving as final step arbiter pursuant to the authority granted by §230.45(1)(c), Stats.

FINDINGS OF FACT

1. At all times relevant to this matter, appellant has been employed by the State Historical Society. Prior to March 1, 1983, appellant was employed as an Associate Editor in the Editorial Division (classification = Publications Editor 3; editorial duties = 50% of appellant's position) and as a Reference Librarian in the Historical Library (classification = Librarian 2; librarian duties = 50% of appellant's position). On or around April 1, 1983, appellant was assigned on a full-time basis to the Editorial Division for the primary purpose of editing and revising the History of Wisconsin manuscript. At that time, the deadline for the completion of the History of Wisconsin project was July 1, 1983, the date on which the project director's project position was to end. On or around July 13,

1983, as a result of the restoration of the project director's position in the state budget, the project deadline and appellant's assignment to the project were extended to September 30, 1983.

2. In a letter to appellant dated February 14, 1983, Robert M. Granum wrote as follows:

"In case you are interested, I am prepared to pay your travel expenses plus your living expenses for a two-week period to visit Norway for purpose of viewing the work of Aslak Lie. I'm presuming I could regard this payment as a contribution to the HISTORICAL SOCIETY for income tax purposes. Hans Stenvik has already said he would accompany us and I assure you we could find no finer guide and companion in all of Norway. It's possible that Babe Stenvik might also like to accompany us and so also might my brother and my elder son.

"Let me know if you are interested in doing this and if so, when would be a convenient time."

Mr. Granum, a private business person, was a descendant of Aslak Lie's.

3. In a memorandum to F. G. Hamm, the Assistant Director for Research Services and appellant's second-line supervisor, dated March 7, 1983, appellant wrote as follows:

"For the record, I have been offered by Robert Granum a trip to Norway (flight and expenses paid) to continue research about the Norwegian-American craftsman, Aslak Lie, an ancestor of Granum's. Granum would like the trip to be a donation to the Society for tax purposes. I have your tentative OK about this. I also would prefer counting this as staff time, since the trip is connected with Wisconsin history research, since I have done a good deal of sites research and museum research at the request of the Society administration, and since there is ample precedent for this sort of thing, as with Tari, Knipping, and Martin trips for sites. I understand this point is not settled."

Prior to drafting this memorandum, appellant advised Mr. Hamm that the trip would last about two weeks.

4. In a letter to appellant dated March 11, 1983, Mr. Granum indicated that the scheduled departure date was August 7, 1983, and the planned return date was August 31, 1983.

5. In a memo to Richard Erney, Executive Director of the State Historical Society; Robert Thomasgard, Deputy Director of the State Historical Society; and Mr. Hamm, dated June 29, 1983, appellant provided a summary of the arrangements that had been made in regard to the trip to Norway and stated as follows:

"Unless I hear from you to the contrary, I will assume that I will be working on Wisconsin history in Norway, with the purpose of writing an eventual monograph about Aslak Olsen Lie, and therefore that this trip will constitute work time, not vacation time."

6. In a memo to appellant dated July 5, 1983, Mr. Hamm stated:

"As per our conversation of 6-30-83 the Society will allow you to use up to 9 working days (but not more than half the total leave) for research proposed."

7. In a letter to appellant dated July 19, 1983, Mr. Granum proposed the following:

"In order to qualify my cost of financing your trip to Norway as a tax deductible contribution I will have to write a check for an appropriate amount directly to the State Historical Society of Wisconsin. In addition to your living and travel expenses certain expenses of the Stenviks which I have already paid and will be paying are directed specifically at aiding your study and constitute, I believe, a most economical means of making the time you spend in Norway as productive as possible.

"With the approval of your administrators, I would like to handle this as follows: I will keep an accurate accounting of expenses which I feel are directly attributable to your study. I will review these with you as they are accumulated to gain your agreement of their propriety. On completion of our travel I will submit this accounting to your administrators for review. Presuming their approval, I will then write a check to the State Historical Society of Wisconsin for a round-figure amount somewhat in excess of my total expenses. On receipt of this check I would expect the Society to promptly issue a check to me reimbursing me for my total expenses."

It is clear from the record that, as arranged by respondent, Mr. Granum's gift was to be made to the Wisconsin History Foundation and that the Foundation agreed to the payment arrangement proposed by Mr. Granum. The Wisconsin History Foundation was established to accept and administer

private donations deemed to advance the interest of the State Historical Society.

8. Appellant did travel to Norway and conduct the research as proposed. Respondent required that the number of days for which he was absent from his Madison work site in excess of the nine allowed for the Norway work assignment be regarded as days of annual leave.

9. In 1975, Mark Knipping, a State Historical Society employee involved in planning Old World Wisconsin, an open air museum maintained by the Society, travelled to Europe for the purpose of studying open air museums. Mr Knipping's expenses were paid by the Society and he was considered to be on work status during the entire trip.

10. In 1980, Emilie Tari, who is employed by the State Historical Society as the curator at Old World Wisconsin, travelled to Norway for the purpose of conducting research on Norwegian craftsmen. Her expenses were paid by the Norwegian government and she was considered to be on work status during the entire trip.

11. On July 11, 1983, appellant filed a grievance relating to respondent's limitation on the amount of work time to be used on the subject assignment. Appellant filed a timely appeal of the action taken in regard to such grievance with the Commission on August 3, 1983.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over this action pursuant to §230.45(1)(c), Stats.

2. The appellant has the burden of proving that respondent's limitation on the amount of work time that could be used for the subject assignment was a violation of Ch.ER-Pers 18,Wis. Adm. Code, and/or §230.35, Stats.

3. The appellant has not satisfied his burden of proof.

4. The action of respondent which is the subject of this appeal was within the scope of its authority and was consistent with the requirements of applicable law.

OPINION

The parties acknowledge that an employer has the right to determine work assignments, change work assignments, schedule work assignments, and prioritize work assignments. On this basis, it would appear that respondent was clearly acting within the scope of its authority when it limited the amount of work time that could be used for the subject work assignment.

Appellant argues, however, that the situation under consideration here is exceptional because a gift from a private donor is involved. Appellant contends that, by making arrangements for the Wisconsin History Foundation to accept as a gift an amount equal to appellant's total living and transportation expenses for the entire Norway trip, the respondent implicitly agreed that appellant was on work status during the entire Norway trip.

The Wisconsin History Foundation was established for the purpose of accepting and administering private donations deemed to advance the interests of the State Historical Society. Appellant has presented no evidence to show that, in order to advance the interests of the State Historical Society, in order to be of historical significance to the Society, research must be conducted by a State Historical Society staff person while on work status. In fact, part of Mr. Granum's gift was his payment of some of the expenses of appellant's traveling companions who were not employees of the State Historical Society. It appears from the correspondence that Mr. Granum was concerned only that appellant do the research and that his payment of the expenses associated with appellant's Norway research be tax

deductible. The record does not show that a condition of Mr. Granum's gift was that appellant be on work status for the duration of the Norway trip or that it was necessary for appellant to be on work status in order for Mr. Granum's payment of the subject research expenses to be tax deductible. The existence of an implicit agreement as alleged by appellant is clearly not supported by the record.

At no time did respondent mislead appellant as to the permissible duration of the Norway work assignment. In appellant's first mention of the trip to respondent, he estimated that the trip would last about two weeks and that he understood that the issue of whether he would be on work status while on the trip had not yet been settled. Appellant did not present respondent with any additional information relating to the Norway trip until June 29, 1983. On June 30, 1983, more than 5 weeks prior to the scheduled date of departure, respondent clearly indicated that no more than 9 days of appellant's Norway trip would be considered work days. Respondent's financial arrangements with Mr. Granum should not have led appellant to believe that he would be on work status during the entire Norway trip in view of respondent's specific statements to the contrary.

Appellant also alleges that he was treated differently than other State Historical Society employees whom respondent had allowed to remain on work status during the entire duration of their trips to Europe. It should be noted, however, that the research conducted by Mr. Knipping and Ms. Tari was directly related to and an outgrowth of their principal assignments at the time they took these trips. It is clear from the record that appellant's principal assignment at the time he took the trip to Norway was the editing and revising of the Wisconsin manuscripts and his Norway trip was not directly related to or an outgrowth of this assignment. It should also be

noted that, over a period of several years, it is natural to expect that the demands on and the goals of an agency will change and it would be inefficient and unreasonable to require an agency to maintain the same work priorities in the face of these changing demands and goals.

Finally, appellant has failed to demonstrate how respondent's actions in this regard violated §230.35, Stats., or Ch. ER-Pers 18, Wis. Adm. Code, or any other requirement of the law.

It is clear to the Commission that respondent, in view of the relative priorities of the two projects, would have preferred that appellant remain in Madison and work on the History of Wisconsin manuscripts instead of going to Norway. Respondent, however, relying on appellant's representation that the trip would last about 2 weeks, recognizing that the research would have historical value and was an outgrowth of work appellant had done in the past in his position with respondent, and as an accommodation to appellant's desire to take the trip, gave its approval.

On the basis of the record before it, the Commission must conclude that respondent acted properly and within the scope of its authority in limiting the amount of work time that could be used for the subject work assignment.

ORDER

The action of the respondent which is the subject of this appeal is affirmed and this appeal is dismissed.

Dated: _____, 1984 STATE PERSONNEL COMMISSION

DONALD R. MURPHY, Chairperson

LRM:jat

LAURIE R. McCALLUM, Commissioner

DENNIS P. MCGILLIGAN, Commissioner

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