

STATE OF WISCONSIN

PERSONNEL COMMISSION

* * * * *
 *
 GENE TISER, *
 *
 Appellant, *
 *
 v. *
 *
 Secretary, DEPARTMENT OF *
 EMPLOYMENT RELATIONS, *
 *
 Respondent. *
 *
 Case No. 84-0160-PC *
 *
 * * * * *

INTERIM
 DECISION
 AND
 ORDER

This appeal arises from the reallocation of the appellant's position. The appellant had been classified as a Natural Resources Patrol Officer 1 but was reallocated to the Ranger 3 classification. Respondent moved to dismiss the appeal for lack of subject matter jurisdiction and stated the facts of the case as follows:

The appellant filed an appeal with the Personnel Commission on August 6, 1984 after receiving notice of the reallocation of his position from Natural Resources Patrol Officer 1 (PR5-06) to Ranger 3 (PR3-09), effective June 10, 1984. In his letter of appeal, the Appellant clearly identifies that he is challenging the change in bargaining unit status, that is, the positions which were classified in the Natural Resource Patrol Officer series which was abolished and which are now in the Ranger series, were in the security and public safety bargaining unit and are now in the blue collar bargaining unit.

In a letter brief responding to the motion to dismiss, the appellant identified four points that he wished to appeal relating to the reallocation decision:

- 1) The movement from Security and Public Safety to Blue Collar Bargaining Unit
- 2) Being placed at a pay grade 10
- 3) The change from 05E to 40I Overtime Status
- 4) The inclusion of our position in the ranger classification

However, the appellant also indicated that for jurisdictional reasons, he did not wish to proceed as to the first two points.¹

Change in Overtime Status.

In his letter of appeal, the appellant alleged that the change in overtime status will prevent him from effectively carrying out his responsibilities because he is unable to exercise his law enforcement responsibilities other than during the limits of his 40 hour work week.² The distinction between 05E and 40I overtime status appears to be explained in §Pers. 5.06, Wis. Adm. Code:

(1) Definitions. (a) Overtime hours -- time that an employe (except for law enforcement personnel, security personnel at correctional institutions and fire protection personnel) works in excess of 40 hours per work week.

* * *

(3) Provisions for nonexempt employes. (a) Nonexempt employes shall be paid at a premium rate for all overtime hours worked.

* * *

(4) Provisions for exempt employes. (a) The pay rates for exempt employes are generally intended to compensate for the total responsibility assigned to the position.

The question is whether the change in someone's status from an exempt employe (as law enforcement personnel) to a nonexempt employe is a decision that is reviewable by the Commission. Of the various statutory sources

¹ In Harpster v. DER, 84-0121-PC (8/31/84), the Commission held that it lacked the authority to review a decision to place a classification within one bargaining unit rather than another. In Smetana et al v. DER, 84-0099, etc-PC (8/31/84), the Commission concluded that it lacked jurisdiction to review a decision made by the Secretary of DER pursuant to §230.09(2)(b), Stats., to assign a classification to a particular pay rate or range.

² Documents attached to the letter of appeal in this matter state that no funds are available for overtime payments to the appellant's position.

identified in §230.44(1), Stats., upon which the Commission may assert jurisdiction, a change in overtime status is not a disciplinary decision (§230.44(1)(c), Stats.), a post-certification action related to hire (§230.44(1)(d), Stats.) nor a decision made or delegated by the Administrator of the Division of Merit Recruitment and Selection (§230.44(1)(a), Stats. To the extent that the overtime status decision may have been made by appellant's appointing authority, there is nothing within §230.44, Stats., that would grant the Commission the power to review such a decision.

Finally, the decision regarding overtime status is not among those three types of decisions made by the Secretary of the Department of Employment Relations which are appealable to the Commission. Pursuant to §230.44(1)(b), Stats., (1983-84), the Commission may hear an:

[a]ppeal of a personnel decision under §230.09(2)(a) or (d) or 230.13 made by the secretary or by an appointing authority under authority delegated by the secretary under §230.04(lm)

Under §230.09(2)(a), Stats., the Secretary has the authority to allocate, reclassify and reallocate positions within the classified service. Under §230.09(2)(d), Stats., the Secretary must decide, after reclassifying or reallocating a position, to either upgrade the incumbent or to open the position for competition. The reference to §230.13, Stats., is to the Secretary's responsibility for maintaining the confidentiality of personnel records.

The overtime status decision described by the appellant appears to be closely related to the decision to place the Ranger classification in a bargaining unit other than Security and Public Safety. As noted above, the Commission has previously ruled that it lacks the authority to review such a decision. Harpster, (supra). In any event, the decision that a position in the Ranger classification should be in overtime status 40I is not among

those decisions that may be reviewed by the Commission under §230.44, Stats.

Inclusion in the Ranger Classification.

In his brief, the appellant argues that there are other classifications that describe his position better than the Ranger classification:

There are other positions within the Department of Natural Resources where we would make a better fit. The best fit, of course, would be as a Conservation Warden II. This is where the Conservation Warden Patrol Officers were placed in the reallocation process. I do the same type of work as a conservation warden from September until May.

The decision to reallocate the appellant's position to the Ranger classification rather than the Conservation Warden 2 classification is a decision made under §230.09(2)(a), Stats., and is appealable to the Commission under §230.44(1)(b), Stats. Therefore, the respondent's motion to dismiss must be denied.

ORDER

Respondent's motion to dismiss is denied.

Dated: 9/28, 1984 STATE PERSONNEL COMMISSION

Donald R. Murphy
DONALD R. MURPHY, Chairperson

KMS:jmf

Laurie R. McCallum
LAURIE R. McCALLUM, Commissioner

Dennis P. McGilligan
DENNIS P. MCGILLIGAN, Commissioner

Parties:

Gene Tiser
DNR
P. O. Box 440
Woodruff, WI 54568

Howard Fuller
Secretary, DER
P. O. Box 7855
Madison, WI 53707