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 *
 GENE KLEINERT, *
 *
 Appellant, *
 *
 v. *
 *
 Secretary, DEPARTMENT OF *
 EMPLOYMENT RELATIONS, *
 *
 Respondent. *
 *
 Case No. 87-0206-PC *
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INTERIM
 DECISION
 AND
 ORDER

This matter is before the Commission on a dispute as to the appropriate issue for hearing in a reclassification appeal. The parties have been provided an opportunity to file briefs and the following facts appear to be undisputed for the purpose of issuing this interim decision.

1. In a memo dated February 10, 1987, to his supervisor, appellant wrote:

Please consider this a request for reclassification from Audit Specialist 4 to Audit Specialist 5.

* * *

I have reviewed the position description of the Auditor 3 level positions within the department and I see no apparent differences in the duties performed by these positions compared to my position. It is my contention that my position be reallocated to the Auditor 3 level or, at the very least, reclassified from Audit Specialist 4 to Audit Specialist 5.

2. By memo dated March 27, 1987, appellant's supervisor advised the appellant that he did not support appellant's request for reclassification "from an Audit Specialist 4 to an Audit Specialist 5 or to the Auditor series."

3. The responsibility for reviewing the reclassification request was assigned to Thomas Marx of respondent's Division of Classification and Compensation. During the course of the review, Mr. Marx spoke with the appellant who mentioned possible classification at the Regulation Compliance Investigator 5 level.

4. By memo dated November 10, 1987, Mr. Marx informed the appellant of his conclusion to deny appellant's request "for reclassification to Auditor 3 (PR 01-13) or Audit Specialist 5 (PR 01-13)."

5. On December 7, 1987, appellant filed a letter of appeal with the Commission which included the following:

I was informed on November 20, 1987 that my request for reclassification from Audit Specialist 4 to Audit Specialist 5 or reallocation to Auditor 3 or Regulation Compliance Investigator 5 was denied and I hereby notify you that I wish to appeal said denial.

OPINION

During a prehearing conference held on January 8, 1988, the respondent posed the following issue for hearing:

Whether the respondent's decision denying the appellant's request to either reclassify his position from Audit Specialist 4 to Audit Specialist 5 or to reallocate his position from Audit Specialist 4 to Auditor 3 was correct.

The appellant proposed the following statement of issue:

Whether the respondent's decision denying the appellant's request to either reclassify his position from Audit Specialist 4 to either Audit Specialist 5 or Regulation Compliance Investigator 5 or to reallocate his position from Audit Specialist 4 to Auditor 3 was correct.

The respondent argues that consideration at hearing of the Regulation Compliance Investigator 5 (RCI 5) classification would be inappropriate because appellant failed to specifically request consideration of that classification in his February 10, 1987 memo. In Kennedy et al v. DP, 81-180, etc.-PC, 1/6/84, the Commission held that, in a reclassification case, it lacked the authority to consider alternative classifications other

than those explicitly or implicitly encompassed by the respondent's reclassification decision:

This is not to suggest that in no case involving an appeal of a classification matter could the Commission properly consider classifications which were not explicitly addressed by the administrator's decision. For example, in a particular case, the administrator's decision as to the reallocation of a position following a survey may well be considered an implicit rejection of various related classifications. Another example is a denial of a request to a particular classification and level within the series, which in some cases may be considered an implicit denial of a higher level within the series.

In Saindon v. DER, 85-0212-PC, 10/9/86, the Commission considered two classifications even though the classifications had not been identified by the appellant when she had requested reclassification and even though the classifications were not examined by the respondent DER when it reviewed the reclassification request. The appellant and her supervisor had been told by the personnel office that appellant should not include a specific classification in her reclassification request and that the appropriate classification would be decided upon in response to the request. The Commission concluded that the appellant had a right to assume, under the circumstances, that the respondent would select the most appropriate classification out of the universe of potential state classifications. In addition, the respondent had not restricted itself to the classification actually requested by the employing agency but ended up reallocating her position to a classification it determined was more appropriate than either the current classification or the one requested.

In the present case, the key issue is whether, by having "mentioned" the RCI 5 classification to Mr. Marx during the position audit, the appellant is now able to construe respondent's November 10, 1987 memo as either an explicit or implicit rejection of that classification. Nothing suggests that respondent actually did consider the RCI 5 classification, nor is

there anything that suggests the appellant reasonably expected an analysis of that classification. It is unclear how the topic was "mentioned" to Mr. Marx, i.e., whether it was simply one sentence or a comment offered by the appellant during a lengthy interview or whether it was a subject which was discussed at some length with Mr. Marx advising the appellant that he would consider the RCI 5 classification as a fourth classification option. It is not possible on this record to reach a determination on this point. In order not to unnecessarily delay a hearing on the merits, the Commission directs the parties to proceed to hearing on an issue broad enough to allow a determination of this preliminary issue.

Even though there were no arguments offered on this point, it appears that both proposed issues fail to reflect the fact that appellant requested reallocation to the Auditor 3 level, but respondent specifically denied reclassification to the Auditor 3 level. The issue for hearing should reflect that respondent's decision explicitly denied reclassifications to the Auditor 3 level and also implicitly denied reallocation of the appellant's position to that level.

ORDER

The issues for hearing in this matter shall read as follows:

1. Did respondent implicitly reject a request from the appellant to reclassify his position to the Regulation Compliance Investigator 5 level?
- 2a. If so, was respondent's decision denying the appellant's request to either reclassify his position from Audit Specialist 4 to either Audit Specialist 5, Auditor 3 or Regulation Compliance Investigator 5 or to reallocate his position from Audit Specialist 4 to Auditor 3 correct.
- 2b. If not, was respondent's decision denying the appellant's request to either reclassify his position from Audit Specialist 4 to either Audit Specialist 5 or Auditor 3 or to reallocate his position from Audit Specialist 4 to Auditor 3 correct.

Dated: February 24, 1988 STATE PERSONNEL COMMISSION


DENNIS P. MCGILLIGAN, Chairperson


DONALD R. MURPHY, Commissioner

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