

STATE OF WISCONSIN

PERSONNEL COMMISSION

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 *
 RUTH A. GUNDLACH, *
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 Appellant, *
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 v. *
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 Secretary, DEPARTMENT OF *
 EMPLOYMENT RELATIONS, *
 *
 Respondent. *
 *
 Case No. 88-0016-PC *
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DECISION
 AND
 ORDER

This matter is before the Commission on respondent's motion to dismiss. The parties have filed briefs.

On February 18, 1988, appellant filed a letter of appeal with the Commission, stating:

On behalf of all affected employes of the State of WI, I wish to appeal the denial of Comparable Worth wage adjustments to employes serving permissive probationary periods due to transfer.

In an attached letter to the administrator of respondent's Division of Classification and Compensation, appellant wrote:

If an employe transferred to a given unit prior to the implementation of Phase 2 of Comparable Worth he/she is currently only guaranteed the minimum of the pay range. Any employe who transfers under the same circumstances after the implementation of Phase 2 of Comparable Worth is guaranteed at least PSICM. Hence, 2 employes doing the same work in the same unit are paid differently, with the one with less experience paid more.

By letter dated March 18, 1988, respondent raised several objections to the appeal.

The appeal relates to the level of pay for those persons who transferred from one position to another prior to January 3, 1988 and were in probationary status on that date due to their transfer. Respondent DER

issued one or more bulletins which addressed the second phase of comparable worthy pay adjustments. None of the employees received reduction in their base pay. Those transferees who had already attained the permanent status in class minimum (PSICM) level in their new positions were denied an increase.

The Commission's jurisdiction to hear appeals is based on §230.44(1), Stats. Of the various paragraphs in that subsection, two are relevant to the instant appeal:

230.44 Appeal procedures. (1) APPEALABLE ACTIONS AND STEPS. Except as provided in par. (e), the following are actions appealable to the commission under §230.45(1)(a):

* * *

(b) Decision made or delegated by secretary. Appeal 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(1m).

* * *

(d) Illegal action or abuse of discretion. A personnel action after certification which is related to the hiring process in the classified service and which is alleged to be illegal or an abuse of discretion may be appealed to the commission.

Only three categories of decision by the secretary of DER are appealable: allocation decisions (i.e., reclassification and reallocation decisions), regrade decisions and decisions relating to personnel records. None of these three categories include decisions as to implementing pay increases or to assign classifications to pay ranges (see §230.09(2)(b) and (bp), Stats.). Also, it cannot be argued that the instant pay adjustments "relate to the hiring process" because they were imposed by directive of the Department of Employment Relations rather than by each appointing authority and they were independent from the selection process. Depending on the duration of the transferee's probationary period, the instant decision could have occurred many months subsequent to the transfer action.

In her brief, appellant also argues that the language of the Wisconsin State Employees Union contract expressly grants the Commission jurisdiction over such matters:

Finally, Article (10) of the WSEU contract specifically reiterates Wi. Stats. 111.91(2)(b) 1 and 2: "The Personnel Commission may...hear appeals from actions taken by Employer...the job evaluation system specifically including...assignment and reassignment of classification to salary ranges..." The instant appeal arose as a result of assignment and reassignment of classification to salary ranges, and is therefore properly before the Commission.

In Phelps v. DHSS, 85-0193-PC, 12/19/85, the Commission declined to adopt a similar argument in an appeal of a probationary termination. The Commission held that even though the language in the contract appeared to permit an appeal of a probationary termination, the absence of any specific companion legislation to the contractual agreements that would modify the conflicting language in §230.44(1)(c), Stats., caused the contractual language to be ineffectual. In the present case, there has been no legislation modifying the specific language in §230.44(1)(b), Stats., to include pay range assignments. In the absence of such legislation, the contractual language cannot create jurisdiction with the Commission. Board of Regents v. Wis. Personnel Commission, 103 Wis. 2d 545, 555-58 309 N.W. 2d 366 (Ct. of App., 1981).

For the above reasons, the Commission concludes that it lacks subject matter jurisdiction over this appeal.

ORDER

This matter is dismissed for lack of subject matter jurisdiction.

Dated: June 29, 1988 STATE PERSONNEL COMMISSION

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DONALD R. MURPHY, Commissioner


LAURIE R. McCALLUM, Commissioner

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